
(1982) 07 MAD CK 0026

In the Madras High Court

Case No : W.A. No's. 363 and 366 of 1982

N. Rajakumar

APPELLANT

Vs

The Management of Indian Bank, Madras

RESPONDENT

Date of Decision : 15-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 41, 46

Citation : AIR 1983 Mad 145 : (1983) ILR (Mad) 126 : (1983) 96 LW 65 : (1983) 1 MLJ 4

Hon'ble Judges : Sengottuvelan, J;Ramanujam, J

Bench : Division Bench

Advocate : A. Ramachandran, for Row and Reddy and M.P. Subbayya and Dolia, for Aiyar and Dolia, for the Appellant;

Judgement

Ramanujam, J.—Since the issues involved in both these writ appeals are substantially the same, they are dealt with together. W. A. 363 of 1982 arises out of the judgment of Mohan, J. in W. P. 3796 of 1982, and W. A. 366 of 1982 arises out of the judgment of the same learned Judge in W. P. 3797 of 1982.

2. The first writ petition has been filed by one Rajkumar for the issue of a writ of certiorarified Mandamus for quashing the circular dated 19-2-1982, issued by the Management of the Indian Bank and to direct the said Bank to allow him to continue to do his business as Tiny Deposit Collector by enumerating new customers to earn his commission. The other writ petition has been filed by the Tamil Nadu Bank's Deposit Collectors Union for quashing a somewhat similar circular issued by the Canara Bank and for a direction forbearing the said Bank from giving effect to its circular so far as it relates to the Nithyanidhi Deposit Collectors.

3. The circumstances under which the impugned circulars had been issued by the respective banks may briefly be stated. The Indian Bank evolved a scheme for mobilising small deposits from sections of public like traders, wage-earners, transport operators, fishermen, farmers etc, who could save small amounts daily

or weekly. The petitioner in W. P. 3796 of 1982 is one of the Tiny Deposit Collectors Ashok Nagar branch of Indian Bank. The Tiny Deposit Collectors will go to these tiny depositors and collect the deposits. The Deposit Collectors open accounts and collect the deposits from the customers and the amounts collected will be deposited in the bank. They will get a commission at the rate of 3 per cent on the total collections made by them for each month. They have to provide a cash security of Rs. 500 at the time of executing the agreement. Ten per cent of the commission earned by them will be withheld by the Bank as security for their good behaviors as per the terms of the memorandum of agreement. By a circular dated 19-2-1982, addressed to all the branches in the zone it was stated that the intention of the Bank was to discontinue opening of new accounts under the tiny deposit scheme and that therefore the branches were not to open fresh accounts under the tiny deposit scheme and that therefore the branches were not to open fresh accounts under the said scheme. It is the validity of the said circular that has been challenged in W. P. 3796 of 1982 and the impugned circular is as follows-

"To all branches of our Zone

Dear Sir,

Ref: Tiny Deposit Scheme:- I has been decided by our Head Office to discontinue opening of fresh accounts under the tiny deposit scheme. Hence, branches are instructed not to open fresh accounts under the scheme. Hereafter a suitable advertisement will be published in newspapers shortly by our head office for information of public."

4. The petitioner in W. P. 3797 of 1982 is the Tamil Nadu Bank's Deposit Collectors Union represented by its General Secretary, one G. Jagannathan, and the circular challenged in the said writ petition is the one issued by the Canara Bank. There were two schemes started by the Canara Bank, namely, Nityanidhi and Balakshema Scheme. The Deposit Collector's commission was 2-1/2 per cent when the average weekly collections was more than Rs. 1,500 and when it was below Rs. 1,500 the Commission was 2 per cent. The deposit collectors were said to have been granted conveyance allowance, interest-free vehicle loans etc., by the Bank. The Bank is also stated to have contributed to the contributory benefit fund in respect of the deposit collectors. If the commission earned by the deposit collectors feel short of Rs. 60 in rural semi urban areas and Rs. 90 in urban metropolitan centres for the first three months, the short fall would be made up by the Bank. However, by a circular dated 25th Jan, 1982, the Bank instructed its branches not to receive future deposits under the Nityanidhi Deposit Scheme. it is the said circular which has been impugned in this writ petition.

5. According to the learned counsel for the petitioners, the circulars by which the opening of fresh accounts under the Tiny deposit Scheme in one case and the Nityanidhi Deposit Scheme in the other affect the petitioner's fundamental rights

to work under Art, 19(1)(g) of the Constitution, and the discontinuance of the scheme in both the cases is against public interest. Its continuance will be not only in the interest of the public but it will also serve the nation's economic interest and the policy of the Government to mobilise all savings, particularly from the tiny sector which consists of mostly the poor strata of the society. It is also pointed out that the continuance of the scheme will be in furtherance of the directive principles contained in Arts. 41 and 46 of the Constitution. It is further pointed out that the discontinuance of the deposit schemes adversely affects the interests of the deposit collectors, in that it will not only affect the average remuneration which they are now getting but also their future prospects of employment. The contention on this behalf advanced by the petitioners is as follows : Though the deposit collectors are paid commission in proportion to the collections made, it will come under the definition of wages which is normally taken to be 'property' within the meaning of Art. 300A of the Constitution and the circular in so far as it affects or reduces their wages takes away their right to property which cannot be done except with the authority of law as contemplated under Art. 300-A of the Constitution.

6. Mohan, J. who heard the said writ petition dismissed the same in limine on the ground that the petitioners have no fundamental right as claimed by them, that the right which they can claim only flows from a contract of employment or commission agents and that the mere fact that the circulars affect their contractual right if any will not be a ground for invalidating the circular, whatever the other remedies the petitioners may have as regards the reduction in emoluments arising out of the discontinuance of the deposit scheme.

7. In these appeals, the correctness of the view expressed by the learned Judge has been canvassed. However, after hearing the counsel in both the cases at length, we are of the view that Mohan, J. has come to the right conclusion. The respondent banks can commence and close any deposit scheme in accordance with the policy laid down by them and it cannot be said that the starting of deposit scheme or the closing thereof amounts to a public duty which can be enforced by a court of law by the issue of a writ of Mandamus directing them to start a particular deposit scheme or forbear them from discontinuing a scheme. The starting and closing of a deposit scheme being purely a policy matter to be decided by the Banks themselves, it is not open either to the petitioners or the court to tell them to start a particular deposit scheme or to stop discontinue a deposit scheme which they have already initiated. The starting of a new deposit scheme or the closing thereof by the bank would normally be guided by various factors which the Bank has to take into consideration. Merely because the Banks have chosen to stop a deposit scheme the court cannot restrain them from discontinuing the scheme if the banks come to the conclusion that the functioning of the scheme is not either beneficial to the public or to the proper or economic functioning of the Banking operations. If the deposit scheme has not been started by these banks it cannot be disputed that this court cannot direct the banks to start such a deposit scheme even if the court were to come to the

concluding that the starting of the scheme will in its view be beneficial to the public. If the court cannot direct any particular Bank to start any particular scheme, it has equally the power or jurisdiction to forbear them from discontinuing any deposit scheme which has been in existence. Merely because the deposit collectors will lose their commission if the deposit schemes were to be discontinued, it is not a ground for interfering with the discontinuance of the scheme which is purely a policy matter to be decided by the Bank. In starting a new deposit scheme or in discontinuing an existing deposit scheme the Bank is not doing any public duty or a statutory duty, in which case alone the court can intervene and direct the Bank to act in a particular manner. Even assuming that the deposit schemes which were originally started by the two Banks and which were now discontinued on the basis of the said circulars were beneficial to the weaker sections of the society, and come within the directive principles contained in the provisions referred to above, even then it is not for the court to intervene and forbear the bank from discontinuing the same. It is well established that the directive principles are not enforceable by courts and therefore on the ground that the action taken by the two Banks is against the directive principles referred to above this court cannot give a direction to the respondent banks to specifically enforce the directive principles by directing them to continue the deposit scheme.

8. Coming to the appellants' contention that their fundamental right is affected in that their remuneration will stand curtailed, we do not see how the petitioners can claim to have a fundamental right. Their entitlement to the commission flows from the agreement which they have entered into with the Banks in respect of their functions as deposit collectors and such a right flowing from a contract can never be treated as a fundamental right. If at all it will be a contractual right and for breach of any contractual right, the appellants have got effective and suitable remedies under the common law. Merely because the circulars ultimately result in the reduction of their emoluments, a mandamus cannot be issued to the Banks to continue the deposit schemes purely for the benefit of persons like the appellants.

9. It is also contended that while other deposit schemes are being continued by schemes and if on their working they find some deposit schemes are not so economical, it is always open to the banks to discontinue the schemes which are not economical or beneficial to the public. Merely because one scheme is continued while another scheme is discontinued by the Bank, a complaint of arbitrariness cannot be leveled against the banks. We are therefore of the view that reliance on Art. 14 of the Constitution by the appellants is not tenable at all.

10. It is pointed out that in the case of Nityanidhi deposit scheme initiated by the Canara Bank, the deposit collectors have practically become the employees of the Bank though remuneration is being paid by way of commission on the average weekly or monthly collections made by them, and as a result of the discontinuance of the said scheme, these deposit collectors will lose a part of their remuneration. Even assuming that the commission earned by the deposit

collectors amounts to remuneration and that relationship between the Bank and the deposit collectors is that of a master and servant, still no direction could be issued by this court to the bank to continue the Nityanidhi scheme so as to enable the deposit collectors to get their full salary. If any reduction in the so-called salary has resulted by the discontinuance of the Nityanidhi scheme, it is always open to the concerned deposit collector or all the deposit collectors to approach the proper forum and seek suitable relief against the bank either for monetary benefit or for other reliefs. But that is not a ground for directing the management not to discontinue the Nityanidhi scheme.

11. In this view of the matter, we are in entire agreement with the view expressed by Mohan, J. while dismissing the writ petitions. The writ appeals are therefore dismissed.

12. Appeals dismissed.