
(1984) 11 MAD CK 0018

In the Madras High Court

Case No : Writ Appeal No's. 222 and 223 of 1983

P. Subramaniam and Another

APPELLANT

Vs

Reserve Bank of India and Another

RESPONDENT

Date of Decision : 07-11-1984

Acts Referred:

Companies Act, 1956 — Section 43A

Citation : (1985) 57 CompCas 755

Hon'ble Judges : Maheswaran, J;G. Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—These writ appeals arise out of the common judgment dated February 9, 1983, rendered by Padmanabhan J. in W.P.

Nos. 3180 and 3208 of 1979 A.S.P. Aiyar and Another Vs. Reserve Bank of India, Calcutta and Another, dismissing the same.

2. The appellants herein had filed the above writ petitions praying for the issue of a writ of mandamus directing the respondents herein to for bearer

from enforcing the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973 (hereinafter referred to as ""the Directions""), on the

ground that the said Directions are not valid and enforceable. These writ petitions having been dismissed by Padmanabhan J., the appellants have

filed these appeals reiterating the contentions which they urged before the learned judge.

3. The appellants are partners of the Palghat Credit Corporation, a partnership firm registered under the Indian Partnership Act, 1932. They are

also shareholders and directors of Palghat Chit Funds (P.) Ltd., a Company registered under the Companies Act, 1956 (hereinafter referred to as

the company""). The partnership firm receives deposits from and lends money to

the members of the public. During financial crises of the company, the partnership firm helps it by paying money to it to discharge the obligations of the company directly or get a credit in the books of the company.

As on December 31, 1976, the company owed to the partnership firm a sum of Rs. 24,43,601.87 which stood reduced to Rs. 6,40,000 as on May 31, 1979. The money advanced by the partnership firm to the company is said to be the money deposited with the partnership firm by the members of the public. The Reserve Bank with a view to impose certain restrictions on non-banking institutions including chit funds companies receiving deposits from the public have issued the above Directions. Under the said Directions, the deposits accepted by non-banking institutions from its shareholders will, however, be exempted if a declaration was given by the shareholder to the effect that such money has not been given by him by borrowing or accepting deposits from the members of the public. As the Palghat Chit Funds (P.) Ltd. received deposits from the partnership firm which had received deposits from the members of the public and as the amount of deposits also exceeded the limits specified in the Directions, the second respondent filed C.C. No. 3220 of 1979 on the file of the Sixteenth metropolitan magistrate, Madras, against the appellants on the ground that they had violated the said Directions. It is, in these circumstances, the appellants filed the above writ petitions. The appellants herein have challenged the validity of the said Directions. The first ground of attack is that in so far as the 1973 Directions make a departure from the 1966 Directions as regards the shareholders' right to receive deposits and to lend the same to the company, the same are open to attack as violative of art. 19(1)(g) of the Constitution and, therefore, the decision of this court in Mayavaram Financial Corporation Ltd. and Others Vs. Reserve Bank of India and Others, holding the 1966 Directions to be valid can have no application. The second ground of attack is that the 1973 Directions restricting the shareholders' right to receipt of deposits by the company as contemplated by s. 45H of the Reserve Bank of India Act, 1934, and, therefore, that portion of the Directions should be taken to be ultra vires s. 45H. The third ground of attack is that the 1973 Directions in so far as they make a classification with reference to the source of deposit is discriminatory and is violative of art. 14 of the

Constitution in view of the definition of ""Deposit"".

4. For the purpose of appreciating the above contentions, it is necessary to scan through the relevant statutory provisions. Section 45K of the

Reserve Bank of India Act, 1934, provides as follows :

(1) The Bank may at any time direct that every non-banking institution shall furnish to the Bank, in such form, at such intervals and with in such

time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified

by the Bank by general or special order.

(2) Without prejudice to the generality of the power vested in the Bank under sub-section (1), the statements, information or particulars to be

furnished under sub-section (1) may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for

which, and the rates of interest and other terms and conditions on which, they are received.

(3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-

banking institutions or group on non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits,

including the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any non-banking institution fails to comply with any direction given by the bank under sub-section (3), the Bank may prohibit the acceptance

of deposits by that non-banking institution.

(6) Every non-banking institution receiving deposits shall, if so required by the Bank and within such time as the bank may specify, cause to be sent

at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person

from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be

specified by the Bank.

5. In exercise of the powers conferred by the said sections, the Reserve Bank of India issued certain Directions to every non-banking company on

October 29, 1966 (hereinafter called ""the 1966 Directions""). Clause 2(1)(d) of the said Directions defined a ""chit fund company"". Clause 2(1)(f)

defined the word ""deposit"" as meaning any deposit of money with, and includes any amount borrowed by, a company, but does not include any loan received from Government; and any loan raised on terms involving the issue of debentures or the creation of any mortgage, pawn, pledge or hypothecation, charge including floating charge, or lien on the assets of the company or any part thereof, among other things, and the definition of deposit"" also took in any loan received from a member of the company or any money received from a member by way of subscription to any shares, stock, bonds and debentures including calls or deposits received in advance and in the case of a chit fund company or any other company carrying on chit or kuri business, and subscriptions received from members of the chit or Kuri series in terms of the contract or other arrangement relating thereto and in the case of a stock exchange or stock-broking company, any money received in connection with the purchase or sale of securities, In view of the definition of ""deposit"" under the 1966 Directions, the deposit cannot take in any amount borrowed by a company on the issue of debentures or on mortgage, pawn, pledge or hypothecation or charge of the assets of the company. It will not also include any loan received from a member of the company or any money received from a member by way of subscription to any shares, stock, bonds and debentures and in the case if a chit fund company, the money received by way of subscription from a member to a chit.

6. On August 23, 1973, the Reserve Bank issued the 1973 Directions. Clause 3(1)(d)(vi) of the said Directions defined ""deposit"" as, meaning any deposit of money with and includes any amount borrowed by a company but does not include any money received from a person, who, at the time of the receipt of the loan, was or is a director of the company or any money received by a private company from its shareholders : provided that, in the case of any money received on or after the commencement of the said directions, the person from whom the money is received has furnished to the company at the time when the money is received, a declaration by such person, in writing, that the money has not been given by such person out of funds acquired by him by borrowing or accepting deposits from another person. Clause 4 of the 1973 Directions dealt with the acceptance of deposits by miscellaneous non-banking companies on and from September 1, 1973. Clause 4(b) states : No miscellaneous non-banking

company shall receive any deposit, which together with any other deposits falling under the same category already received and outstanding on the

books of the company, is in excess of the limits hereinafter specified in respect of each of the following categories of deposits, namely, (i) in the

case of a deposit received against an unsecured debenture, or from a shareholder or a deposit guaranteed by a person, who, at the time of giving

of the guarantee was or is a director of the company, twenty-five per cent. of the aggregate of the paid-up capital and free reserves of the

company; and (ii) in the case of any other deposit, twenty-five per cent. of the aggregate of the paid-up capital and free reserves of the company :

provided that for the purpose of clause (b), ""deposit"" shall not include any loan secured by the creation of a mortgage or pledge of the assets of the

company or any part thereof. Clause 5 of the 1973 Directions deals with the existing deposits of the miscellaneous non-banking companies and it

contains and explanation to the effect that in arriving at the aggregate of the paid-up capital and free reserves for the purposes of paragraphs 4 and

5, there shall be deducted from the aggregate of the paid-up capital and free reserves, as appearing in the balance-sheet of the company the

amount of accumulated balance of loss, if any, disclosed in the balance-sheet.

7. Thus, the definition of ""deposit"" under the 1973 Directions will not cover the money received from a person, who, at the time of the receipt of

the loan, was or is a director of the company. Similarly, any money received by a private company from the shareholders will also not fall within the

meaning of ""deposit"". However, the proviso which is to the effect that if money is received after the commencement of the directions from a

shareholder, he should have furnished to the company at the time when the company received the money a declaration in writing that the money

has not been given by such shareholder out of the funds acquired by him by borrowing or accepting deposit from another person. In 1977, the

Reserve Bank issued Miscellaneous Non-Banking Companies (Reserve bank) Directions, 1977 (hereinafter called ""the 1977 Directions""), in

supersession of the earlier directions issued in 1973. In the 1977 Directions, ""deposit"" is defined thus : ""3(c).""Deposit"" shall have the same meaning

as assigned to it in section 45-I(bb) of the Reserve bank of India Act, 1934"". Clause 4 of the 1977 Directions deals with non-applicability of the

Directions to certain types of deposits of money. It states :

Nothing contained in paragraphs 5 to 9 and 13 of these Directions shall apply to the following to deposits received by a miscellaneous non-

banking company, namely :- ...

(vi) any money received from a person who, at the time of the receipt of the money was or is a director of the company or any money received

from its shareholders by a private company including a private company deemed to be a public company by virtue of the provisions of section 43A

of the Companies Act, 1956 (1 of 1956) :

Provided that, in the case of any money received on or after the commencement of these Directions, the person from whom the money is received,

has furnished to the company at the time when the money is received, a declaration in writing that the money has not been given by him out of funds

acquired by him by borrowing or accepting deposits from another person.

Clause 5 reads as follows :

On and from 1st July 1977, non miscellaneous non-banking company shall -

(b) receive or renew -

(i) any deposit against an unsecured debenture or any deposit from a shareholder [not being a deposit received by a private company from its

shareholders as is referred to in clause (vi) of paragraph (4)] or any deposit guaranteed by any person who, at the time of giving of such guarantee,

was or is a director of the company, if the amount of any such deposit, together with the amount of such other deposits, of all or any of the kinds of

deposits referred to in this sub-clause already received and outstanding in the books of the company as on the date of acceptance or renewal of

such deposit, exceeds fifteen per cent. of its net owned funds.

(ii) any other deposit, if the amount of such deposit, together with the amount of such other deposits, not being deposits of the kinds referred to in

sub-clause (i) of this clause, already received and outstanding in the books of the company as on the date of acceptance or renewal of such

deposit, exceeds twenty-five per cent. of its net owned funds.

Explanation - For the purposes of this paragraph "net owned funds" shall mean the aggregate of the paid-up capital and free reserves as appearing

in the latest audited balance-sheet of the company as reduced by the amount of

accumulated balance of loss, deferred revenue expenditure and other intangible assets, if any, as disclosed in the said balance-sheet.

Section 45-I(bb) of the Act defines ""deposit"" thus :

Deposit shall include, and shall be deemed always to have included, any money received by a non-banking institution, by way of deposit, or loan

or in any other form, but shall not include amounts raised, by way of share capital, or contributed as capital by partners of a firm.

8. In the light of these statutory provisions, the contentions urged by Mr. Radhakrishnan, the learned counsel for the appellant, have to be

considered. Firstly, Mr. Radhakrishnan contends that in view of the fact that the 1977 Directions defined a ""deposit"" as having the same meaning

assigned to it under s. 45-I(bb) of the Act, the Reserve Bank would have no jurisdiction to restrict the receipt of deposit by a non-banking

institutions in any manner. According to him, the definition of a ""deposit"" in the 1977 Directions would render the 1973 Direction invalid and bad in

law and the restrictions placed by the 1973 Directions invalid and bad in law and the restrictions placed by the 1973 Directions would violate the

right of the appellant under art. 19(1)(g) of the Constitution. The validity of ss. 45J to 45L of the Reserve Bank of India Act, 1934, and the

Reserve Bank Directions of 1966 were challenged as being ultra vires the powers conferred on the Reserve bank of India before the Bench of this

Court in Mayavaram Financial Corporation Ltd. and Others Vs. Reserve Bank of India and Others, , and the Division Bench has upheld the

validity of the said Directions and held that the directions were warranted because of the necessity for the Reserve bank of India to have control

over the deposits received by non-banking financial institutions which have risen to nearly Rs. 209.1 crores in March, 1965, and the fact that the

non-banking institutions were receiving deposits from the public and utilising the same to advance money to others at higher rates of interest

requires to be regulated in public interest. Mr. Radhakrishnan, the learned counsel for the appellant, seeks of distinguish that case on the ground

that the restrictions introduced in the 1973 Directions on the shareholders' right to borrow from any person and to lend it to the company was not

in the 1966 Directions and, therefore, the court was not called upon to decide the validity of the directions in the light of the departure made by

the 1973 Directions. According to the learned counsel, there is no public interest involved in bringing in such restrictions on the shareholders' right

to borrow and lend. The learned counsel refers to an instance of a shareholder mortgaging his property and borrowing money and then coming

forward to deposit the same with the company in which he is a shareholder with view to give relief to the company from any financial stress and the

restrictions on such borrowing and lending cannot be in public interest. But so long as the object of the directions is to bring in a measure of control

over the deposits received by company from members of the public, the restriction imposed on the shareholders' right to borrow and lend it to the

company will also come within the object sought to be achieved by issuing the directions. It may be that but for the above restrictions on the right

of the shareholders, the company may get over the relevant restrictive provisions of the directions. It is only to plug such a loophole the restriction

has also been brought in on the shareholders' right to borrow and lend to the company. Such restriction on the shareholders' right should be taken

to be ancillary or incidental to the main provisions which are intended to serve public interest. The 1973 Directions are designed to introduce some

measure of control over non-banking companies inviting and accepting deposits in the ultimate interest of the depositors and by compelling limited

liquidity in resources, the society at large was sought to be protected from the ever haunting spectre of sickness in industry often conveniently

resorted to by the private sector companies. We are, therefore, of the view that the principle laid down in *Mayavaram Financial Corporation Ltd.*

and *Others Vs. Reserve Bank of India and Others*, , will squarely apply here and, therefore, the 1973 Directions should be held to be

constitutionally valid and enforceable.

9. The second contention of the appellant is that the restrictions brought in on the shareholders' right is not a provision with reference to the receipt

of deposit and, therefore, such restriction is ultra vires s. 45K. Section 45K(3) provides that the Reserve bank may, in public interest, give

directions to a non-banking institution in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest

payable on such deposits and the periods for which deposits may be received. The expressions "in respect of" and "connected with" will take in all

matters relating to or connected with the receipt of deposits. Therefore, a receipt of deposit from a shareholder of the company is also a restriction

in respect of an connected with the receipt of deposits and, therefore, the 1973 Directions cannot be said to be ultra vires the provisions in s. 45K.

We have to, therefore, reject the second contention as well.

10. Coming to the third contention that the classification of the deposits on the basis of the source is discriminatory and violative of art. 14 of the

Constitution, we do not see how that classification will amount to a hostile discrimination which would attract art. 14. It is true that in the year

1974, s. 45-I(bb) was introduced in the Reserve bank of India Act, 1934, and that definition, as has been extracted above defines ""deposit"" as

including any money received by a non-banking company by way of deposit or loan without making a difference between a loan or a deposit taken

from a shareholder and the deposit and loan taken from a non-shareholder. The mere fact that the Reserve bank of India defined the expression

deposit"" in a slightly different manner will not make the earlier provision in the 1973 Directions invalid. According to the learned counsel, the 1973

Directions should be read in the light of the definition of ""deposit"" in s. 45-I(bb) in which case the distinction made in the 1973 Directions between

the deposit from a shareholder and a deposit from a non-shareholder would have to go after 1974. But, however, we are not in a position to agree

with the contention of the learned counsel. Even assuming that the 1973 Directions should be read subject to the definition of ""deposit"" in s. 45-

I(bb) of the Reserve bank of India Act, 1934, still we do not see how it prevents the Reserve Bank from bringing in a restriction on the deposits

made by a shareholder to the company. As already stated, there is a possibility of the shareholder being used as a media by the company for

getting over the regulation or restrictions proposed to be imposed on the deposits received by the company from the members of the public and to

get over such a situation, the Reserve Bank can bring in ancillary or incidental provision to regulate the deposits of shareholders as well. The

shareholder's deposit will not come within the ambit of the regulations provided he has not received deposits from the members of the public and

utilised the same for making the deposit in the company. We are of the view that this objection also is not tenable.

11. Next it is contended by the learned counsel for the appellant that the 1973 Directions have been issued by the Deputy Governor of the

Reserve bank when he had no power to issue the same. Section 17(15A) says that the Reserve bank of India is authorised to exercise the powers

and functions and performance of duties entrusted to the bank under the Act or under any other law for the time being in force. The 1973

Directions had been signed by the Deputy Governor only on behalf of the Reserve Bank of India. Section 58A deals with the powers of the

Central Board of Directors to make regulations. It states that the Central Board may, with the previous sanction of the Central Government, make

regulations consistent with this Act to provide for all matters for which provision is necessary or required for the purpose of giving effect to the

provisions of the Act. Pursuant to that power, the General Regulations of 1949 have been framed. Regulation 17(1) therein states that :

Subject to the provisions of the Act, any rules made by the Central Board in regard to expenditure to be incurred by or on behalf of the Bank and

any directions, which may be given by the Governor either generally or in any particular case in regard to the conduct of the business of the Bank,

the Deputy Governors and Executive Directors are hereby severally empowered to exercise any or all the powers and do any or all acts and things

which may be exercised or done by the Bank.

This regulation clearly enables the Deputy Governor to exercise all or any of the powers which could be exercised by the bank under s. 17. We

have to, therefore, hold that the Deputy Governor has rightly exercised the power to issue the 1973 Directions.

12. Hence, all the contentions of the appellant having been rejected, both the writ appeals fail and they are dismissed. There will, however, be no

order as to costs.

13. Learned counsel for the appellant makes an oral application for the grant of leave to appeal to the Supreme Court against the judgment just

now rendered. But we do not think that the point arising in this case warrants the grant of leave to appeal to the Supreme Court. Hence, the request

for leave is refused.