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(1999) 06 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 18314 of 1991 and W.M.P. No. 27412 of 1991

R. Tamil Selvan — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

Date of Decision : 03-06-1999

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2001) 103 CompCas 796

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : R. Subramaniam, for the Appellant; Sukumaran, for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for

a writ of mandamus directing the respondents to furnish the report submitted by the technical officer after inspecting the unit and grant appropriate

reliefs and concessions as per the directions of the Reserve Bank of India.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him

to file the present writ petition and requested this court to allow the writ petition as prayed for. Per contra, on behalf of the respondents a counter-

affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately requested this court to dismiss the

writ petition for want of merit.

3. Heard the arguments advanced by learned counsel appearing for the parties. I have perused the contents of the affidavit and the counter

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together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the

various points raised by learned counsel appearing for the parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration in this writ petition is, as to whether there are any

valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows :

The first respondent herein invited the petitioner herein and others to attend the entrepreneurial development programme. He was selected as one

of the successful candidates to undergo a training programme. He was assured that loan facilities would be extended to him for setting up a small

scale industrial unit. He commenced the business of manufacturing Thennamarakudi oil. He was doing well. But unfortunately one of his

competitors, viz., R. S. Krishna and Co., filed a suit before this court and obtained an injunction restraining him from carrying on the business.

After a legal battle for about six months the petitioner herein succeeded in getting the injunction vacated but by then his business activities had been

paralysed. The first respondent was informed of the development then and there. It assured him that further financial assistance would be provided.

Believing this, he borrowed from third parties for higher interest to keep the industry going. But the first respondent did not provide any financial

assistance. On the other hand they illegally froze his CC account. His business went down further, He made several representations to the

respondent for rehabilitation of the unit. The first respondent deputed one of the technical officers to visit the unit and find out its viability.

According to him he had recommended that unless further finance is provided, the unit would become sick. He also appears to have recommended

that the unit would pick up on the assistance given by the bank. But the respondents did not keep him informed of the report. They threatened him

with dire consequences if he did not repay the dues. According to the petitioner the first respondent has violated the directives of the Reserve Bank

of India and has victimised him. The Reserve Bank has prescribed norms for grant of reliefs and concessions by banks for rehabilitation and

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potentially viable sick SSI units. It has emphasised that such units should be taken up for rehabilitation but the respondents have not followed this

norm which has resulted in collapse of his business. He issued a legal notice on November 23, 1991, calling upon the bank to provide him with a

copy of the report submitted by the technical officer, after inspecting his unit. The first respondent has issued a reply stating that the report is

confidential and cannot be made available to him. He also apprehends that the respondents have deliberately withheld the report with a view to

prejudice him further. Hence, this writ petition.

6. Per contra, in the counter-affidavit it is contended by the respondents that the writ petition is not maintainable as the subject-matter of the writ

petition is in the nature of a contractual relationship between the respondent-bank and the petitioner whereby the bank is bound only by the terms

and conditions of the contract. The bank is further not bound under any statutory obligation to conduct a technical survey, and to make such a

survey report if conducted, available to the petitioner. This is only one of the aids that the bank adopts to help it to decide as to whether to provide

financial assistance to a unit. This is purely a commercial venture of the bank and it is under no obligation to disclose any part of its decision-making

process to the petitioner including the production of the report of the third respondent. Thus, according to the respondents no writ will be

maintainable to compel these respondents to produce the report as prayed for by the petitioner. It is their case that the bank has sanctioned loan

facilities to the petitioner on the equity fund scheme in September, 1984, under certain terms and conditions. Accordingly, the petitioner should

have repaid the term loan commencing from July, 1985, and the equity fund loan from September, 1989. As the petitioner was irregular in

payment, he was called upon to regularise the loan several times. As there was no response from the petitioner, a legal notice was issued to him

and subsequently a suit O. S. No. 13 of 1992 has been filed in the Sub-Court of Thanjavur on December 20, 1991. The intention of the petitioner

appears to be to stall the proceedings in the civil suit filed by the bank. Therefore, his plea for further financial assistance at this stage is not

maintainable. According to the respondents, the cash credit amount can be allowed to be operated only up to the permissible limit and hence the

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contention that the bank has frozen the cash credit limit is not maintainable. Further, the Reserve Bank of India directives to the banks at best serve

as guidelines for nursing sick units and it is up to the respective financial institutions to sanction a nursing loan subject to feasibility, risk taking ability

and repaying capacity of the unit as well as other factors governing such advances. Therefore, unless and until the bank is satisfied as to the

soundness of the business propositions there is no compulsion for providing further financial assistance to a sick unit considering the risk involved in

the proposal. It is stated by the respondents that no guidelines of the Reserve Bank of India are violated by the bank. The petitioner herein has filed

the present writ petition for compelling the bank to furnish to the petitioner a copy of the report submitted by the technical officer after inspecting

the petitioner''s unit. It is contended by them that the writ petition filed by the petitioner is a futile writ because the report of the technical officer will

not in any way bind the authorities who are empowered to sanction loans. According to the respondents, the technical report was duly taken into

account by the bank and the bank decided that the suggestions in the report cannot be given effect to. Further, the suggestion by the technical

officer to finance multani borrowings was not accepted by the bank. They also state that the technical officer''s report is meant for internal

assessment of the appropriate authority who takes the decision based on several factors and not exclusively on the technical report. Therefore, the

bank cannot be compelled to make it available to a third party. Further, it is contended by the respondents that the bank has already filed a civil

suit in O. S. No. 13 of 1992 on the file of the Sub-Court of Thanjavur, the present writ petition is not maintainable.

7. Having seen the entire material available on record and from the claims and counter-claims of the parties, it is clear that the petitioner herein is

aggrieved by the non-furnishing the report submitted by the technical officer after inspecting the unit and he also wants that the respondents should

grant appropriate reliefs and concessions as per the directions of the Reserve Bank of India. As rightly contended by the respondents the subject-

matter of the writ petition is in the nature of contractual relationship between the respondent-bank and the petitioner. Therefore, the parties are

bound only by the terms and conditions of the contract. Further, in this case, the bank has sanctioned loan facilities to the petitioner on the equity

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fund scheme in September, 1984, under certain terms and conditions and accordingly, the petitioner should have repaid the term loan commencing

from July, 1985, and the equity fund loan from September, 1989. As the petitioner was irregular in payment, he was called upon to regularise the

loan several times. As there was no response from the petitioner, a legal notice was issued to him and subsequently a suit also was filed in the civil

court on December 20, 1991. In such circumstances, it is the categoric contention of the respondents that the plea for further financial assistance at

this stage is not maintainable. That apart, it is up to the respective financial institutions to sanction a nursing loan subject to feasibility, risk taking

ability and repaying capacity of the unit as well as other factors governing such advances. Therefore, unless and until the bank is satisfied as to the

soundness of the business propositions there is no compulsion for providing further financial assistance to a sick unit considering the risk involved in

the proposal. Further, it is clear that the report of the technical officer will not in any way bind the authorities who are empowered to sanction

loans. This is only one of the aids that the bank adopts to help it to decide as to whether to provide financial assistance to a unit. Further as rightly

contended by the respondents this is purely a commercial venture of the bank and it is under no obligation to disclose any part of its decision-

making process to the petitioner including the production of the report of the third respondent herein. It is their specific case that the technical

report was duly taken into account by the bank and the bank decided that the suggestions in the report cannot be given effect to. That apart it has

to be seen that the technical officer''s report is meant for internal assessment of the appropriate authority who takes the decision based on several

factors and not exclusively on the technical report. Therefore, it is the strong contention of the respondents that the bank cannot be compelled to

make it available to a third party. I see every force in the above contentions of the respondents. That apart it is also contended by the respondents

that the subject-matter of the writ petition is in the nature of a contractual relationship between the respondent-bank and the petitioner and in this

regard as this bank has already filed a civil suit, the writ petition is not maintainable. In the facts and circumstances of this case, I see every force in

the said contention of the respondents also.

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8. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to

the various aspects of this case, I am of the clear view that the petitioner herein has failed to make out any case in his favour and that, therefore,

there is no need for any interference with the impugned action of the respondents in this writ petition. Thus, the writ petition fails and the same is

liable to be dismissed for want of merit.

9. In the result, the writ petition is dismissed. No costs. Consequently, W. M. P. No. 27412 of 1991 also is dismissed.

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