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(2011) 12 AHC CK 0215

In the Allahabad High Court

Raj Kumari APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Citation : (2011) 12 AHC CK 0215

Hon'ble Judges : Ashok Bhushan, J and Sunita Agarwal, J

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.

We have heard learned counsel for the petitioner, Shri D.P. Singh, learned counsel appearing for the Zila Sahkari Bank, Jaunpur and the learned Standing Counsel.

All these writ petitions raising similar issues have been heard together. All the writ petitions except Writ Petition No.73732/2011, Cooperative Banks Staff Association U.P., Unit Jaunpur Vs. State of U.P. & Ors (Second Writ Petition) have been filed by the various depositors of Zila Sahkari Bank Ltd. Jaunpur praying for a mandamus commanding the respondents to release the entire amount deposited in their Savings Account/Fixed Deposit and other accounts. It is sufficient to refer to the pleadings in Writ Petition No.69290/2011 for considering the grievances raised by the depositors in different writ petitions. Writ Petition No.69290/2011, Smt. Raj Kumari Vs. State of U.P. & Ors (which is treated to be the leading writ petition) has been filed by the petitioner who has Saving Bank Account No.10938 with her husband in Sadar Branch of Zila Sahkari Bank Ltd, Jaunpur. Petitioner''s case in the writ petition is that the balance amount in her account is Rs.4,28,167.70/ (Rupees Four Lakh Twenty Eight Thousand One Hundred Sixty Seven and paise Seventy only). Petitioner''s case is that the petitioner has not been allowed to withdraw the amount deposited in her bank account. It is pleaded in the writ petition that Zila Sahkari Bank Ltd, Jaunpur which is a Central Society is carrying on Banking business within the meaning of Banking Regulation Act, 1949 (hereinafter called the "1949 Act". It is further pleaded that the Bank is obliged to permit withdrawal of the amount deposited in the Bank. Bank citing financial constraint is not permitting the withdrawal of the amount from the petitioner''s savings account which is arbitrary and unreasonable. The petitioner with the aforesaid pleading has prayed for following reliefs:

"(i)issue a Writ Order or Direction in the nature of mandamus commanding and directing the Respondent No.3 to 5 to release the entire amount of deposits made in the Saving Bank Account No.10938 with Sadar Branch of the Zila Sahkari Bank Ltd.,Jaunpur within the stipulated period to be fixed by this Hon''ble Court.

(ii)issue any writ order or direction in favour of the petitioner as this Hon''ble Court may deem fit and proper in the present facts and circumstances of the case.

(iii)award the cost of the petition to the petitioner."

A short counter affidavit has been filed by the Bank stating that the Bank is not able to carry on any business for the last more than 5 years. It is stated that the Bank has suffered a loss in Banking business and total loss up to 31/3/2011, has reached up to Rs.129.57 crore. It is stated that under the 1949, Act the Bank has to maintain a reserve namely; Cash Reserve Ratio (CRR) equivalent to 3 percent of its demand and time liability. The Bank has further to maintain 25 percent of total deposit towards Statutory Liquidity Reserve (SLR). It is stated that the required SLR is Rs.33.41 crore, whereas at present there is only an amount of Rs.16.71 crore. Similarly, against the required CRR of Rs.4 crore there is only 60 lacs under the CRR. The Bank employees have not been receiving their revised salary although their salaries were revised since 1996. It is further pleaded that Bank employees are drawing only 50 percent of their salary. It is further stated that for licence from the Reserve Bank to carry on Banking business the Bank has to maintain SLR and CRR as per norms of the 1949, Act. The Government of India has constituted a committee known as Professor Vaidhanathan Committee for submitting its report with regard to the restructuring of the Cooperative movement in India including the cooperative banks. Under the said recommendation the Bank has to receive Rs.66.25 crore for rehabilitation of the Bank and the amount is expected to be released by the Government of India in or before March, 2012. It is pleaded that number of depositors in the Bank are 100530 out of which about more than 350 depositors have come to this Court by filing various writ petitions in which this Court has passed an order for release of the amount. It is pleaded that the Bank has also formulated a policy on 31/7/2010, for considering the claim of withdrawal from different accounts of the depositors and the Bank is considering the claim of withdrawal according to the aforesaid policy. It is stated that the said policy has also been approved by the Division Bench of this Court in Writ Petition No.58429/2010, Kailash Chandra Maurya Vs. State of U.P. & Ors. The operative portion of the order is as follows:

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"On the aforesaid facts and circumstances, we find that the policy of the Bank formulated by the Board of Directors of the Bank on 31.3.2010 for the time being is a reasonable policy, to serve the interest of all depositors. The scheme is based on the principle of equity and is in public interest.

We therefore direct the respondent Bank to consider petitioner''s application for payment of the matured amount in his fixed deposit accounts, within a month, as per policy framed by the Bank. The bank will pay the remaining amount to the petitioner, as soon as the grant under the plan prepared by Prof. Vaidyanathan Committee is received.

The writ petition is disposed of accordingly."

Learned counsel appearing for the Bank submits that in event the Court directs for permitting withdrawal by the petitioners who have come to this Court, the interest of majority of depositors shall suffer and the Bank has no amount except to permit withdrawal from SLR and CRR, and eroding the aforesaid amount shall lead to closure of the Bank. It is submitted that after receipt of the amount under the Vaidhnathan Committee''s recommendation the Bank shall be able to pay the amount to different depositors. Learned counsel appearing for the Bank further submits that the Bank has also suffered great loss in permitting overdraft for payment of salaries to cadre secretaries which was the principal liability of the State Government and the State Government has not made good the aforesaid amount.

Writ Petition No.73732/2011, has been filed by the Cooperative Bank Staffs Association, U.P. Jaunpur praying for following reliefs:

"(i)Issue a writ order or direction in the nature of MANDAMUS to issue necessary direction to Government of India, State of U.P., U.P. Cooperative Bank and to the State Cadre Authority to immediately recoup the loss caused to the Bank under their action or orders.

(ii)Issue a writ order or direction in the nature of MANDAMUS to command the Bank not to misutilize or pay the single amount to any other Head including the depositors before making upto date payment to the respective authorities namely EPF Trust and Gratuity Policy.

(iii)Issue a writ order or direction in the nature of MANDAMUS to direct the Bank to transfer the due amount to the Provide Fund and to pay the necessary premium to L.I.C. to ensure the payment of Provident Fund and gratuity to employees on their retirement.

(iv)Issue a writ order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

(v)Award the cost of the writ petition to the petitioner."

The case of the Cooperative Bank Staffs Association, Jaunpur is that the employees are getting only 50 percent of their salary that too in unrevised scale.

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The Provident Fund which is deducted from the salary of the employees is not deposited in the Provident Fund account. The Bank has not paid the premium to Life Insurance Corporation of India to ensure the payment of Provident Fund and gratuity and permitting withdrawal of the depositors shall cause great hardship to the employees of the Bank. It is submitted that the overdraft taken from the Bank was about 95crores and the State Government has not made good the aforesaid amount. The depositors amount is ensured with the Credit Guarantee Corporation. It has also been pleaded in the writ petition that a direction be issued to the Government of India, State of U.P., U.P. Cooperative Bank and the State Cadre Authority to immediately recoup the loss caused to the Bank. It is further submitted that the Bank be directed not to pay the amount to the depositors before making up to date payment to EPF Trust.

In Writ Petition No.73732/2011, i.e. second writ petition, notices on behalf of the Union of India has been accepted by the R.B. Singhal, Assistant Solicitor General of India, learned Standing Counsel appears for respondent nos. 1 to 3 and Shri D.P. Singh has accepted notice on behalf of respondent nos. 7 and 8. Notices are required to be issued to respondent nos.5 and 6. In rest of the writ petitions, except second writ petition i.e. writ petition filed by the Cooperative Banks Staff Association, a prayer has been made for a direction to the Zila Sahkari Bank, Jaunpur and its various branches to permit withdrawal of the deposited amount in the Savings Bank Account/Fixed Deposit. In some of the writ petitions the amount claimed varies and in some of the writ petitions the amount is about Rs. 25,000/ and in some of the writ petitions the amount varies up to several lacs.

After having heard the learned counsel for the petitioner, Shri D.P. Singh for the Bank and the learned Standing Counsel, we are of the view that critical situation has arisen regarding the affairs of Zila Sahkari Bank, Jaunpur, which needs immediate attention by the Union of India, State of U.P. and U.P. Cooperative Bank. The amount of the depositors, who are creditors in respect of the aforesaid deposit and the Bank who is the borrower is not permitting to withdraw depositors their amount due to financial crisis as referred to in the short counter affidavit filed by the Bank in the first writ petition. CRR and SLR of the Bank has come down below the prescribed limit as fixed by the Reserve Bank of India. The Bank is not transacting any business nor earning any profit for the last 5 years. The report of the Vaidhanathan Committee constituted by the Government of India for restructuring and rehabilitating the Cooperative Bank has already been submitted, but the necessary amount allocated to different Cooperative Banks have not yet been released. It has been pleaded on behalf of the Bank that the amount under the Vaidhanathan Committee report is likely to be received on or before March, 2012. It is also relevant to note that the depositors in the Cooperative Bank, Jaunpur and its various branches run into more than 1 lac. Several depositors have already filed various writ petitions which have been disposed of by different Benches of this Court. Some of the orders passed by this Court in the aforesaid writ petition have been annexed as Annexures2,3 and 4 to the first writ petition and Annexures2 and 3 to the short counter affidavit filed on

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behalf of the Bank.

The Division Bench judgment in the case of Kailash Chandra Maurya (supra) decided on 28/9/2010, was passed after considering the policy framed by the Bank dated 31/7/2010. The Division Bench has disposed of the writ petition directing the Bank to consider the application of the petitioner for payment of matured amount in his fixed deposit accounts within a month, as per the policy framed by the dated 31/7/2010. The policy of the Bank dated 31/7/2010 has been filed as Annexure1 to the short counter affidavit. The amount up to the maximum of Rs. 20,000/ could be permitted to be withdrawn by the Secretary/ General Manager and the amount up to the extent of Rs.50,000/ could have been permitted to be withdrawn with the approval of the Committee constituted under the policy of the Bank dated 31/7/2010. The Bank''s critical financial situation cannot be lost sight of, whereas the plight of the petitioners that they were not able to withdraw their own money deposited in the Bank also needs to be considered and appropriate measures be taken.

Considering the fact that the Government of India has constituted a Vaidyanathan Committee which has submitted its report for rehabilitation of the Cooperative Bank, it is appropriate that a direction be issued to the Union of India which is respondent no.4 in the Writ Petition No.73732/2011, to file a detail counter affidavit explaining measures which have been taken for rehabilitating the Cooperative Banks including the Cooperative Bank, Jaunpur. The State of U.P. may also file reply explaining the action taken by it for rehabilitating the Cooperative Banks including the Cooperative Bank. The State of U.P. may also explain as to why the overdraft taken by the Bank for payment of salary to the Cadre Secretary has not been made good till date.

We direct the respondents in the second writ petition i.e. Writ Petition No.73732/2011, to file a detail counter affidavit within four weeks. State of U.P. may also file counter affidavit in the first writ petition.

The petitioners have also made out a case for grant of interim relief to the following effect:

(I)The Zila Sahkari Bank Ltd. Jaunpur and its different branches shall consider the request/application for withdrawal by the petitioners and other depositors within one month from the date of request for withdrawal is received according to the policy of the Bank dated 31/7/2010.

(II)The District Cooperative Bank and its different branches shall permit withdrawal of small depositors whose deposits are up to Rs.25,000/ only. The consideration and payment of small depositors is necessary to obviate small depositors and farmers to rush to this Court or to take other measures for withdrawal of their amount.

Petitioner in Writ Petition No.73732/2011 shall take steps for service on respondent nos. 5 and 6 within three days.

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List this writ petition in the week commencing 30/1/2012 along with other connected writ petitions.

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