(2002) 05 DEL CK 0098

In the Delhi High Court

Case No : CWP No. 4285 of 1995

Sh. Niranjan Singh and Others — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 99 DLT 332 : (2003) 1 LLJ 639

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Shyam Moorjani, for the Appellant; Amit Bansal, for respondents No. 1 and 2, Anil Kumar, for respondents No. 3 and 4 and Vipin Gogia, for respondents No. 5 and 6, for the Respondent

Judgement

A.K. Sikri, J.—The petitioners, two in number, have filed this petition under Articles 226 and 227 of the Constitution of India, invoking extraordinary jurisdiction of this court. They seek to challenge recovery certificates (annexed as Annexures P-13 and P-14) issued against them for recovery of the amount as determined by the arbitrator in arbitration proceedings under the Delhi Co-operative Societies Act, 1972.

2. The facts leading to issuance of the aforesaid recovery certificates, which are not in dispute, may be summarized first.

3. The respondent No. 2 is the Commandant, Central Ordnance Depot (hereinafter referred to as the ''employer''). Certain workers/employees of this employer have formed thrift and Credit Society of under the name of United Worker Co-operative Thrift and Credit Society Ltd. which is respondent No. 5 in these proceedings (hereinafter referred to as the ''society''). The respondent No. 6 is the President of this society. This society wanted loan for disbursement to its members (hereinafter referred to as the ''employees'') in need of the said loan. For this purpose it approached the Delhi State Co-operative bank Ltd. (for short ''Bank''). The Bank accordingly disbursed a sum of Rs. 72,000/- to the society for

this purpose. This money was given to various employees. The petitioners stood guarantors for this loan. The employees also entered into agreement with the employer whereby they agreed to the effect that employer would be entitled to deduct outstanding amount from their salaries for payments to the society in terms of Section 44 of the Delhi Co-operative Societies Act (for short the ''Act''). The employer also executed an undertaking in favor of the Bank to the effect that it would deduct the outstanding amount from the respective salaries of the employees and remit the same to the Bank.

4. However, as the entire money was not paid to the Bank by the society and the society became defaulter, the Bank approached the Registrar of the Co-operative Societies and requested for arbitration in terms of Section 60 of the said Act. The matter was referred for adjudication to the respondent No. 7. Before the arbitrator, the parties made the statement that they would make the payment to the Bank. This statement, as recorded in the award of the arbitrator, is to the following effect:

"The Secretary of the defendant society, H.K. Sharma and the sureties requested that the defendant society be allowed to pay Rs. 3600/- (Rupees Three thousand six hundred only) p.m. as monthly Installment towards Principal amount and interest to the plaintiff Bank. They also requested that other charges be reduced to Rs. 1000/- only instead of Rs. 5137/-. It was mutually agreed upon by the representative of the plaintiff Bank and defendants that a sum of Rs. 3600/- be deposited each month regularly with the plaintiff bank and the amount of other charges be fixed at Rs. 1500/- instead of Rs. 5137/-.

After hearing both the parties, and considering the matter, direct that the defendants mentioned above do pay the Delhi State Co-op. Bank Ltd., a sum of Rs. 3600/- p.m. regularly as Installment inclusive of interest with further interest @ 15% & 13% P.A. on Loan and CCL until the realisation in full of the principal sum of loan & C.C.L. An amount of Rs. 1500/- relating to other charges shall be paid by the defendants with the first Installment. In case of default, steps be taken by the appropriate authority to recover the amount due under the provisions of law."

5. On the basis of the aforesaid statement, the respondent No. 7 passed the award. However, even thereafter payment under the award was not made as undertaken before the arbitrator. In these circumstances the Bank, on the strength of the said award, approached the Assistant Collector, i.e., the respondent No. 4 for recovery of the amount as arrears of land revenue, a mode permissible under the Act. The respondent No. 4 sent notices dated 18th August, 1992 to the petitioners for payment of dues to the bank. The petitioners objected to the same and replied vide letter dated 18th September, 1992, inter alia, stating that as per the agreement before the arbitrator it was the society which was to deposit a sum of Rs. 3,600/- per month, and Therefore, the amount should be recovered from the society and no liability could be fastened on to the petitioners. The petitioners, in the meantime, also applied for certified copy of

the award which was not supplied to the petitioners although the petitioners followed up the request by various reminders. On the other hand, the respondent No. 4 continued to send letters and notices to the petitioners and even threatened to arrest the petitioners if the amount is not paid. On 23rd August, 1993 the salaries of the petitioners were also got attached. In these circumstances, the petitioners sent a communication dated 4th February, 1994 to the employer requesting the employer to deduct the amount from the defaulting employees. Even the society vide its letter dated 21st April, 1994 requested the employer to make the recovery and even supplied the list of the defaulting employees/members amount due from them. The respondent No. 4 also sent communication dated 2nd January, 1995 to the employer for making the recoveries from the salaries of the employees and the employer however did not effect any such recoveries. On the other hand, the respondent No. 4 threatened the petitioners to attach their assets and arrest them if the amount is not paid in October, 1995. This compelled the petitioners to file the instant writ petition challenging the recovery certificates. Following prayers are made in this writ petitions:

a) Allow the present writ petition and Consequently

b) issue a writ or certiorari or any other appropriate writ, order or directions quashing the impugned orders Annexure -13 (colly) and Annexure-p14 as also the other order, acts and actions of the respondents impugned hereinabove and consequently

c) issue writ or mandamus or any other appropriate writ, order or directions directing the respondent No. 4 to affect the recoveries of the dues from the respondents 2 and 5 and the loanee member employees themselves and further direct the respondent No. 7 to supply the certified copy of the alleged award to the petitioners so as to enable them to take further action in the matter, if so advised and consequently

d) issue appropriate writ, order or direction restraining the respondent No. 4 from recovering any amount from the salaries of the petitioners or threaten attachment or arrest of the petitioner and directing the respondent No. 2 to forthwith release the salary of the petitioners and also accept the voluntary retirement of the petitioners.

e) award the costs.

6. We may mention at the outset that although against the award rendered by the arbitrator there is a provision for filing appeal in the Act but no such appeal was filed. Here, the case of the petitioners was that they could not do so as certified copy of the award was not supplied to the petitioners inspire of repeated requests. There is a force in this submission.

7. In so far as the Bank is concerned, its stand is simple. It says that the award is passed against the society which had taken the alleged loans against the

petitioners who stood guarantors and Therefore when inspire of the award, money is not paid to the Bank it has right to recover the amount by coercive means which are available under various provisions of the Act including by issuing of the recovery certificates.

8. The stand of the employer in the affidavit is that the matter is between the society and its members or the Bank and the society with which the employer has no concern. However, it is stated that the employer can make the recovery from the salary of any defaulting employee on request of the society only. But, the society did not give details of the outstanding loan against the loanee members/employees. Further, recovery was not feasible as some of the members repeated that their deposits with the society were much more than the loan outstanding against them.

9. In so far as the society is concerned, it has stated that since the members are the employees of the employer, the repayment of the loan amount is to be paid by the employer to the Bank on Installment basis after deducting the same from the salary of the said employee/member. It is also mentioned that for this purpose an undertaking bond is submitted by the borrowing member/employee authorising the employer to deduct the amount from the salary and copies of these undertaking bonds are submitted in terms of Section 45 of the Act. As a sequel thereto the Bank had obtained the undertakings from the employer to the effect that necessary deductions from the salary of the employees and pay the same to the Bank. It is stated that it is not only the duty but statutory obligation of the employer to make such deductions in terms of Section 44 of the Act.

10. It may be mentioned that the petitioners have challenged the validity of the recovery certificates and their liability to pay any amount, inter alia, on the following grounds:

a) The petitioners being not members of the society. There could not be any arbitration proceedings qua the petitioners, and Therefore, the entire proceedings and resultantly the award qua the petitioners was without jurisdiction and non-est.

b) As per the averments made in the award it is the society which had agreed to pay outstanding amount at the rate of Rs. 3,600/- per month, and Therefore, the petitioners were exonerated of any liability. There could not have been a direction in award qua the petitioners.

c) The petitioners have given to understand at the time of hearing that the award would be against the society and the money would be paid by the employer after recovery from the salaries of the employees, and Therefore, the petitioners could not even think that award eventually would be passed against them also. They were kept in dark about this award and came to know of the sake only when the respondent No. 4 sent the first notice of demand upon them. Since then the petitioners have been requesting for certified copy of the award so that further steps in the matter but such a certified copy was never supplied inspire of various reminders as well.

d) In any case u/s 44 of the Act, it is the obligation to employer to deduct the amount from the salaries of the employees and liability of the employees, who are beneficiaries, to pay the amount in question by having it deducted from their salaries.

11. Although certain legal issues are raised in this petition by the petitioners challenging their liability to make any payment under the award, it is not necessary to decide these issues in this writ petition in view of the stand taken by various parties.

12. The facts demonstrated above make it amply clear that even before the arbitrator, the society had agreed to make the payment of the loan amount. Naturally, when the employer had given an undertaking for deducting the amount from the salaries of the employees for this purpose and the employees had also given authorisation to this effect as contemplated u/s 44 of the Act, the society and the petitioners had legitimately hoped the needful would be done by the employer. Not only this after the award when the money was not paid, the petitioners, the society and even the Assistant Collector, i.e., respondent No. 4 wrote to the employer repeatedly and reminded the employer of the undertaking it had given and the obligation which it had to discharge in terms of Section 44 of the Act. However, the employer did not do the needful although on the strength of the bonds given by the employees to the employer which had the necessary authorization to make the deductions from the salaries of the employees. A matter which could be resolved by adopting positive approach has lingered on for all these years and in the process the Bank is deprived of its money and the petitioners who were merely guarantors are subjected to harassment their liability as guarantors should arise only if the money is not recovered from the principal debtors, i.e., the employees. The villain of the peace, Therefore, appears to be the employer who has for some reasons shielded its employees by not making necessary deductions from their salaries although the loan amount, after it was taken from the Bank, was disbursed to these employees.

13. Thus keeping in view the provisions of Section 44 of the Act, we dispose of this writ petition with the following directions:

1. The Bank shall inform the society about the amount due as per the award after calculating up to the date of interest within one week.

2. The society shall furnish the names of the defaulting employees to the employer Along with amount due from them within two weeks thereafter.

3. The employer shall immediately start effecting recoveries from the salaries of the employees and would start remitting the same to the Bank every month till the amount under the award stands liquidated.

