

(1993) 03 SC CK 0004

In the Supreme Court Of India

Case No : C.A. No's. 4426 of 1985 with W.P. (C) No's. 4762-65, 5290-91, 5936-38, 6425, 6430 of 1980, 44, 1448, 5465 of 1981, 7654-57, 2758-2792 of 1982, 5496, 5497-99, 7771, 8882 of 1981, 2439, 2395-2403, 2457 of 1982, 8982/91, 9951/82, 2676, 60, 2804-05, 2846-59

Shashi Kumar Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Citation : (1993) 78 CompCas 149 : (1993) JT 71 Supp : (1993) 2 PLJR 64 : (1993) 2 SCALE 476 : (1993) 3 SCC 475 Supp

Hon'ble Judges : Kuldeep Singh, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : V.D. Khanna, C.V. Subba Rao, Ranjan Dwivadi and Suresh A. Shroff, for the Appellant;

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reddy, J.

1. In the year 1971, the Government of India in the Ministry of Food, Agricultural, Community Development and Co-operation propounded a Scheme through its Directorate of Extension for the creation of Agro Service centers in rural areas. The scheme envisaged not only providing technical services to the agriculturists but also to provide employment to unemployed engineers and technically trained personnel. The object of the scheme and its particulars are stated elaborately in this Court's order dated September 30, 1985. Suffice it to mention that the scheme contemplated establishment of Agro Service centers all over the country, for which purpose the engineers and other technically trained persons were to be provided with finance ranging from Rs. 50,000/- to Rs. 2 lakhs. Banks and other financial institutions were to provide the funds. The loan was re-payable in prescribed installments. The scheme also contemplated a

subsidy in the matter of payment of interest of such loans so that the borrowers may be liable to pay interest not exceeding 5% for a initial period of three years. The scheme was launched with all good intentions, but within a few years, it was found, most of the Agro Service centers failed. The reasons for failure are manifold. While the petitioners (the engineers and other technical personnel who established the Agro-Service centers) blame the banks for their un-cooperative and unsympathetic policy, the banks in turn blame the petitioners. Certain independent studies have also been made into the reasons for such failure. They found that the reasons are the sudden hike in the prices of diesel soon after the launching of the scheme, the inexperience of the persons incharge of these centers, lack of finance, inability to compete with other tractor-owners, high interest rates and so on and so forth. In some cases, the funds lent were not used for the purpose intended or misused. Be that as it may, most of the borrowers did not pay the installments as stipulated, whereupon the banks initiated proceedings for recovery of the loan. In some cases the tractors and other implements purchased with the loan amount were attached and in some cases sold. In other cases, suits were instituted for recovery of the loan amount due. In this state of affairs a writ petition was filed in the High Court of Patna by some of the entrepreneurs to declare the Agro-service centers in Bihar as sick industries and to secure for them the finance envisaged by the original scheme with an extension of the period of repayment to a longer term. The writ petition was dismissed by the High Court whereupon the petitioners approached this Court by way of SLP 5142 of 1979. A number of entrepreneurs from all parts of the country then approached this Court by way of writ petitions seeking various reliefs, all of which writ petitions were directed to be tagged on to C.A. 4426/85.

2. The matters came up before a Bench comprising R.S. Pathak and A.N.Sen, J.J. The learned Judges were of the opinion that such an excellent scheme evolved with a laudable object should not be allowed to fail and that the Central Government, State Governments, Financing Banks and the petitioners should all combine and work towards resuscitating the scheme. For this purpose the Court directed a revised scheme to be evolved by the Government of India in consultation with the State Governments. Banks and other concerned authorities and to place it before the Court for appropriate orders (Order dated September 30, 1985)

3. In accordance with the aforesaid orders, the Union of India placed before this Court a revised scheme enclosed to its affidavit dated 15th September, 1989. The scheme was called "Rehabilitation of Sick Agro-Service centers (ASCs)". The objective of the Scheme is stated to be "rehabilitation/revival of the identified sick Agro-Service centers set up under the Centrally Sponsored Agro-Service centers Scheme which was operated through Agro Industries Corporations at the State Level during the period 1971 to 1979 and later transferred to State sector on 1.4.79 as per decision of National Development Council". The eligibility criteria was stated under para 3 in the following words:

3.1: The Scheme will be confined to ASCs which were opened under the Centrally Sponsored Agro Service centers Scheme launched in December, 1971 and later transferred to State Sector on 1.4.79 as per decision of National Development Council.

3.2 ASCs whose owners have not migrated out of the country.

3.3. The agro-entrepreneurs who have taken up alternative employment, may also be considered for assistance, provided the units are found viable and the entrepreneurs agree to run the units themselves.

3.4 The agro-entrepreneurs who have sold their assets will not be considered eligible for any assistance under the scheme.

3.5. Agro-Entrepreneurs who have been willful defaulters in the past will not be eligible for any assistance under the Scheme.

4. In para 4 it is provided that under the scheme, the agro-entrepreneurs will be provided reliefs and concessions on the pattern contained in the said para. It would be appropriate to notice some of the provisions of the 'pattern'. Para 4.1 stated that "Bank will consider each case on merits and the normal steps for the recovery of bank dues will be initiated". Then followed an elaborate scheme detailing "the reliefs and concessions which can be extended by banks/financial institutions to potentially viable agro-service centers which can be rehabilitated". They included reduction/waiver of penal interest, normal interest, rescheduling of debt repayment and further financial assistance for rehabilitation. The State Governments were also to take necessary measures to strengthen these centers identified as viable by the District Level Appraisal Committee. The State Governments were also asked to process and pay subsidy claims in accordance with the original scheme. The revised scheme, however, does not envisage the writing off of the interest altogether as demanded by the petitioners nor does it agree to waive a part of the principal. It provides for identification of viable centers and for their rehabilitation and recovery. The scheme was to come into operation after the approval of this Court. The scheme provided for the Constitution of a District Level Appraisal Committee for identifying the viable centers and to recommend the cases of appropriate centers to the concerned banks for implementation of the revised scheme. The idea was to reject the cases of those centers not found viable. The DLAC was also to monitor the progress of rehabilitation process for which purpose another Committee (Task force) was set up. A National Level Committee was also envisaged to review and monitor the implementation of revised scheme over-all.

5. Several objections have been filed by the petitioners to the said revised scheme. According to them it was not enough. On the other hand, the RBI submitted that it is not possible for the Banking system to bear any further burden. Be that as it may when the matter came up before this Court on 12.1.1990 it was represented by Mr. Tarkunde, the learned Counsel for the entrepreneurs that "about 80% of the unemployed engineers who had

participated in the scheme have failed to establish themselves and, therefore, in regard to them there is no question of revival. It is necessary to identify the remaining 20% so that those in the other group can also be identified. This is necessary for formulating a scheme that would help revival of the centers". The Court agreed with the said statement and suggestion. At the same time, it observed, it is necessary also to ascertain the correct position in every other case where money had been taken and there is a demand for return of it from the creditor and a request for exoneration for the participants. The Court suggested to Mr. Tarkunde to prepare and submit a State wise list specifying the particulars of every case of loan under two heads - of those that can be revived and those who have irretrievably broken down. Three Months time was given to the petitioners to supply the particulars.

6. Pursuant to the said order, statements have been filed with respect to several States. The matter is now placed before us for hearing. We have heard the counsel for the parties.

7. This is perhaps an instance where a scheme launched with all good intentions has failed on account of a combination of circumstances. The stage of apportioning the blame-is long past. The objective now should be to salvage what can be salvaged and to cut the losses. The scheme was transferred to State Governments in the year 1979 itself. The Government of Bihar says it is anxious to revive the centers and run the scheme. The banks say they are interested in recovering the money due to them, and that they can not wholly waive the interest, and certainly not the principal. The petitioners want the waiver of interest wholly and waiver of principal at least to the extent of one third in case of centers which have closed. They want the Banks to lend them further funds where the centers are sick but functioning. The objective tact is that 80% of the centers have failed; only 20% are still in the field including those which have become sick. It is 3 1/2 years since the revised scheme was submitted and more than 2 years since Mr. Tarkunde's statement that 80% of the centers have failed. May be many more have failed meanwhile. The Union of India has also offered this comments on the various suggestions and objections submitted by the entrepreneurs.

8. The question - not an easy one to answer- is what should be done now? We are of the opinion that any directions given herein should be such as are designed to make the matters less complicated. At the same time the directions should be such as to ensure the proper working of the Agro-Service centers which are still functioning. Such of those centers which are running properly, they do not, of course, call for any directions at our hands but those which have become sick may need some nursing and nurturing at the hands of the banks/ financial institutions. Keeping in view the several circumstances mentioned hereinabove and the material placed before us, the following directions are made:

(1) In the case of those Agro-Service centers which have closed down on any day prior to First day of March, 1993, nothing further is to be done except

recovering the amounts, if any, outstanding to the banks or other financial institutions. In all such cases the banks/financial institutions shall not be entitled to charge or recover penal or compound interest. Only the stipulated simple interest should be charged. The suits filed by banks/ financial institutions for recovery of the amounts due, and which may have been stayed under the orders of this Court, shall be proceeded with and disposed of according to law, subject to the direction relating to interest contained herein. In area, however, where the decrees have already been obtained by the banks/financial institutions and have become final, the direction contained herein (not to charge penal or compound interest but to charge only simple interest at the stipulated rate) shall not apply.

(2) The revised scheme for rehabilitation submitted by the Central Government shall apply only to those Agro-Service centers which are functioning as on March 1, 1993. It shall not apply to those centers which have been closed before the said date. The Committees contemplated by the said scheme shall be constituted forthwith and they shall take steps to rehabilitate the Agro-Service centers identified as viable. Those Service centers which are identified as not viable shall not be entitled to any further financial assistance from the banks or other financial institutions. The loan amounts due from them, if any, shall be recoverable in accordance with law. In such cases too, the banks/financial institutions shall not be entitled to charge any penal or compound interest but shall be entitled to collect only simple interest at the stipulated rate. It is clarified that this direction relating to interest shall not apply to cases where decrees have already been obtained and have become final.

(3) Whether an Agro-Service center is functioning as on March 1, 1993 or was it closed prior to the said date shall be decided by the concerned bank/financial institutions on the basis of the documentary evidence produced before it. In case of dispute it shall be open to either party to approach the District Level Appraisal Committee constituted under the revised scheme. The decision of the District Level Appraisal Committee shall be final on the said question.

(4) It is directed that where the suits were tiled by the banks or financial institutions and were stayed by the orders of this Court, interest shall be charged, from 1st October, 1985 till September 30, 1993 at the rate of 5% per annum simple.

(5) Though there is a request by the entrepreneurs for waiving the interest altogether, we do not find it feasible to so direct. May be that the interest rates are fairly high but that perhaps is the bane of the Indian economy over the last several years. The high interest rates may indeed be acting as a damper upon the enterprise and ability of the small and medium entrepreneurs to survive and stand on their own feet, but on that ground it is not permissible for us in law to make an exception in the case of these centers and/or to direct the waiving of the interest altogether. It is obvious that the question of waiving a part of principal can not arise in the circumstances.

9. The Civil Appeal and writ petitions are disposed of with the above directions.