

(2014) 01 DEL CK 0216

In the Delhi High Court

Case No : Writ Petition (C) 10266 of 2009

Shri Ram Kishan Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 45 45(2) 45(5) 45(5)(g)
Constitution of India, 1950 — Article 21 226
Deposit Insurance and Credit Guarantee Corporation Act, 1961 — Section 15 16
16(1) 16(2) 16(3)

Citation : (2014) 141 DRJ 79

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J; Manmohan, J

Bench : Division Bench

Advocate : Harish Malhotra and Mr. R.K. Modi, for the Appellant; O.P. Gaggar, for R-2/UBI, Mr. Jayant Bhushan , Mr. H.S. Parihar and Mr. K.S. Parihar, Advocates for R-3/DICGC, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present writ petition has been filed under Article 226 of the Constitution of India for the following reliefs:-

- i) A writ of certiorari or any other appropriate writ or direction against the respondent thereby quashing the provisions of section 16(2) of The Deposit, Insurance and Credit Guarantee Corporation Act, 1961, being ultra vires and unconstitutional;
- ii) A writ of mandamus or any other appropriate writ or direction in favour of the petitioner and against the respondents thereby directing the respondents to forthwith release the balance of the Fixed Deposit/Re-investment Deposit Receipt dated 23rd February, 1999 for Rs. 25,50,000/- alongwith its all maturity benefits to the petitioner;
- iii) cost of the writ be also awarded in favour of the petitioner and against the respondents;

iv) pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents.

Facts

The facts of the present case are that on 23rd February, 1999 petitioner had deposited Rs. 25,50,000/- in a Fixed Deposit Receipt (FDR) with Sikkim Bank Ltd. for a period of ninety-one days. However, on 8th March, 1999, that means before the FDR matured, Government of India passed an order of moratorium under the Section 45(2) of the Banking Regulation Act, 1949 (for short "Act, 1949").

2. In pursuance to the aforesaid moratorium order, the Scheme of Amalgamation (for short "Scheme") was notified on 21st December, 1999 by virtue of which Sikkim Bank Ltd. was amalgamated with Union Bank of India. This Scheme was challenged by various depositors before the Supreme Court. Finally, on 27th August, 2005 the Supreme Court approved the validity of the Scheme and held that RBI was not responsible for refund of the entire money deposited by the customers with interest.

3. In the above connection, it is important to note that Sikkim Bank Ltd. was duly insured with the respondent no. 3- Deposit Insurance & Credit Guarantee Corporation and in accordance with Sections 16 and 18 of the Deposit Insurance & Credit Guarantee Corporation Act 1961 (for short "Act, 1961"), respondent no. 3 had to pay every depositor atleast the "specified amount". As per the Scheme, the total readily realisable asset of erstwhile Sikkim Bank Ltd. could meet only 9.037% of the total deposits of the creditors. Accordingly, the petitioner received a sum of Rs. 2,37,050.63, which admittedly was more than the "specified amount" of Rs. 1,00,000/-.

4. Thereafter, on 14th July, 2006 petitioner filed a writ petition praying for a direction to the respondent to forthwith release the balance of the FDR to the petitioner. The said writ petition was disposed of on 30th March, 2009 with liberty to the petitioner to file another writ petition urging the same grounds and also additionally challenging the provisions of the Act, 1961. Thus, the present writ petition came to be filed before this Court.

Petitioner's submission

5. Mr. Harish Malhotra, learned senior counsel for the petitioner in the course of his arguments restricted his prayer to quashing of Section 16(2) of the Act, 1961 to the extent it restricted the liability of respondent No. 3 upto Rs. 1,00,000/- i.e. the "specified amount". He contended that u/s 16(2) of the Act, 1961 the difference between the amount paid and the amount deposited had to be reimbursed by respondent No. 3.

6. According to Mr. Harish Malhotra, by virtue of Section 45(5)(g) of the Act, 1949, depositors had to be paid in full satisfaction of their claim in respect of

their rights or interests against the banking company before its amalgamation. The relevant portion of Section 45 of the Act, 1949 is reproduced hereinbelow:-

45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.--

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(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:

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(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under Cl. (f), in respect of such interest or rights as so reduced;

7. Mr. Malhotra stated that as per the Scheme, pro rata share had to be provided which had to be valued on the basis of the assets received by the transferee bank at the first instance and the balance amount had to be paid after receiving the same from respondent no. 3. According to him, Clause 6(b) and 6(c) of the Amalgamation Scheme was void as it was contrary to Section 45(5)(g) of the Act, 1949. Clause 6(b) and 6(c) of the Amalgamation Scheme are reproduced hereinbelow:-

Chapter III: Payment to creditors and depositors

6. Discharge of liability of the transferor bank:--In consideration of the transfer of the property, and the assets of the transferor bank to the transferee bank, the transferee bank shall discharge the liabilities of the transferor bank to the extent mention in this and the following clauses, namely:-

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(b) in respect of every savings bank account or current account or any other deposit account including a fixed deposit, cash certificate, monthly deposit, deposit payable at call or short notice or any other deposit by whatever name called with the transferor bank and every other account not covered by clause (a) including the interest to extent payable under the scheme, the transferee bank shall open with itself on the prescribed date a corresponding and similar account in the name of the respective holders thereof crediting thereto the pro rata share available in respect of each of the accounts out of the assets referred to in para 5 as valued for the purposes of this scheme on the prescribed date, after excluding from the said assets as so valued the advances considered not

readily realizable or bad or doubtful or recovery, any asset or portion of an asset not valued on the prescribed date and any amount needed for the payment or provisions mentioned at clause (a) above and after adding to the said assets so valued the aggregate amount of the payments made in terms of clause (a) (i) of paragraph 2 of the order of moratorium dated the 4th September, 1999 issued to the transferor bank:.....

(c) After the credits referred to in clause (b) above have been afforded, the transferee bank shall, with the least possible delay but in any case not later than three months from the prescribed date, furnish to the Deposit Insurance and Credit Guarantee Corporation established under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (hereinafter referred to as the Corporation) a list complying in all respects with the requirements of sub-section (1) of section 18 of that Act and thereafter whenever amounts referred to in sub-section (2) of section 18 of that Act are received from the Corporation, the transferee bank shall credit each of the accounts referred to in clause (b) above, within seven days from the date or dates on which the amount are received, to the extent of the sums due to that amount in accordance with sub-section (2) of section 18 of that Act....

(emphasis supplied)

8. Mr. Malhotra submitted that since respondent no. 3-Corporation had been receiving premium on the entire deposit, respondent no. 3-Corporation could not turn around and say that their liability was restricted to Rs. 1,00,000/- only i.e. the specified amount. According to him, Sections 16(2), 16(3), 16(4), 18 along with Sections 15, 2(j), 2(l) made it absolutely clear that in the case of amalgamation, the difference in the amount paid and the amount deposited had to be paid by respondent no. 3. He submitted that the specified amount which was earlier Rs. 1500/- but later increased to Rs. 1,00,000/-, had no relevance to the payment to be made in the present case u/s 16(2) i.e. in the case of reconstruction, arrangement or amalgamation. In any event, he submitted that if such a limitation of liability is read u/s 16(2), then it would be contrary to main object of the Act and would negate Section 15 of the Act, 1961.

Respondent no. 2'S submissions

9. Mr. O.P. Gaggar, learned counsel for the respondent no. 2 stated that the present case was not a case of consensual amalgamation as understood in Company law but was a takeover of an undertaking and transfer of the same by Reserve Bank of India with the permission of government under its statutory powers. He stated that since majority of the funds of the erstwhile Sikkim Bank Ltd. had been siphoned off by its promoters, the total readily realisable asset, as per Scheme, was only 9.037% of the total deposits. Mr. Gaggar pointed out that criminal prosecutions have been launched by the Central Bureau of Investigation against the promoters of the erstwhile Sikkim Bank Ltd. before the special court.

10. Mr. Gaggar submitted that the petitioner is not entitled to any relief in the

present petition since he had himself chosen to deposit his money in lure of a very high rate of interest. He stated that Sikkim Bank Ltd. had never been granted a licence by Reserve Bank of India.

11. Mr. Gagar further submitted that the present writ petition was not maintainable for recovery of the amount deposited, as deposit in a bank is in the nature of private contract.

Respondent no. 3'S submissions

12. Mr. Jayant Bhushan, learned senior counsel for respondent no. 3-Corporation submitted that the Act, 1961 was enacted for the purpose of insurance of small deposits and guaranteeing of credit facilities. He stated that respondent no. 3-Corporation subsisted on very small premium (15 paise/Rs. 100) charged from the banks (not from the depositors) and as per Section 16(1) and (2) of the Act, 1961 Rs. 1 lakh had been determined to be the maximum amount which could have been insured. The relevant portion of Section 16 of the Act, 1961 is reproduced hereinbelow:-

16.(1)....

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Provided further that the total amount payable by the Corporation to any one depositor in respect of his deposit in that bank in the same capacity and in the same right shall not exceed one thousand and five hundred rupees¹.

13. Mr. Jayant Bhushan further stated that the petitioner had already received the maximum admissible amount as per the Scheme and therefore, respondent no. 3-Corporation was not liable to pay any further amount u/s 16(2) of the Act, 1961 as the amount received was far in excess of the "specified amount" of Rs. 1,00,000/- mentioned in the Act, 1961.

Statement of Objects and Reasons as well as the relevant provisions of the Act, 1961

14. Having heard learned counsel for parties, this Court is of the view that it is first essential to outline the Statement of Objects and Reasons as well as the relevant provisions of the Act, 1961. The same are reproduced hereinbelow:-

Statement of Objects and Reasons

The question of establishing statutory Corporation for insuring deposits in commercial banks has been under consideration for some time. Various suggestions or proposals, in this connection including the recommendations made by the Shroff Committee on finance for private sector which reported in 1954, have been examined in consultation with the Reserve Bank and the representatives of the commercial banks and is now considered desirable that the scheme should be implemented at a very early date.

2. The Deposit Insurance Corporation will be established as a wholly owned

subsidiary of the Reserve Bank with a paid up capital of a crore of rupees. It will insure all deposits in commercial banks including the State Bank of India and its subsidiaries other than the deposits belonging to Central Government or to a State or foreign Government or to insured banks. The limit of insurance cover will be Rs. 1500 but this limit may be raised by the Corporation with the previous approval of the Central Government. The maximum rate for which provisions is being made in the Bill is 15 naye paise per hundred rupees per annum.

3. The Corporation's liability will arise and be discharged in the event of liquidation of a bank or the enforcement in relation to it a scheme of compromise or arrangement or reconstruction or amalgamation. The payment due to depositors upto limit of insurance cover offered by the Corporation will be made in most convenient and expeditious manner, which may be possible.

4. The Bill is intended to give effect to these proposals. The notes on clauses explain in detail the various provisions contained in the Bill.

Relevant provisions of the Act, 1961

16. Liability of Corporation in respect of insured deposits.

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(2) Where in respect of an insured bank a scheme of compromise or arrangement or of reconstruction or amalgamation has been sanctioned by any competent authority and the said scheme provides for each depositor being paid or credited with, on the date on which the scheme comes into force, an amount which is less than the original amount and also the specified amount, the Corporation shall be liable to pay to every such depositor in accordance with the provisions of section 18 an amount equivalent to the difference between the amount so paid or credited and the original amount, or the difference between the amount so paid or credited and the specified amount, whichever is less:

Provided that where any such scheme also provides that any payment made to a depositor before the coming into force of the scheme shall be reckoned towards the payment due to him under that scheme, then the scheme shall be deemed to have provided for that payment being made on the date of its coming into force.

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(4) In this section,

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(b) "specified amount" means one thousand and five hundred rupees, or as the case may be, the amount fixed by the Corporation under the third proviso to sub-section (1).

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18. (1) Where a scheme of amalgamation of any insured bank with any other

banking institution (hereinafter referred to as the transferee bank) or a scheme of compromise or arrangement or of reconstruction in respect of such bank has been sanctioned and the Corporation has become liable to pay to depositors of the insured bank under sub-section (2) of section 16, the transferee bank where the scheme is of amalgamation and the insured bank in any other case shall, with the least possible delay and in any case not later than three months from the date on which such scheme, takes effect, furnish to the Corporation a list in such form and manner as may be specified by the Corporation and certified to be correct by the chief executive officer of the transferee bank or, as the case may be, of the insured bank showing separately deposits in respect of each depositor and the amounts of set off referred to in sub-section (3) of section 16 and also the amounts paid or credited or deemed to have been paid under the scheme.

(2) Before the expiry of two months from the receipt of such list, the Corporation shall pay the amount payable u/s 16 either directly to the depositor or to the transferee bank or the insured bank for being credited in his account.

(emphasis supplied)

Intention of Parliament was to protect the interest of the small depositors fully and protect other depositors upto a limited extent

15. Upon a harmonious construction of the aforesaid provisions as well as the Statement of Objects and Reasons of the Act 1961, we are of the view that the insurance required to be provided by respondent no. 3 is not full or general insurance, but only upto a limit of Rs. 1,00,000/- (raised in stages from the original amount of Rs. 1500/-). It is pertinent to mention that the Statement of Objects and Reasons to the Act, 1961, clearly shows that the intention of the Parliament was to protect the interest of the small depositors fully and protect other depositors upto a limited extent. In our opinion, it was never the intention of legislature while enacting Act, 1961 to provide full protection to large depositors. Keeping in view the changing economic scenario, the limit which was initially fixed at Rs. 1500/- has been enhanced w.e.f. 1st May, 1993 to Rs. 1,00,000/-.

16. Moreover, petitioner's interpretation of Section 16(2) is contrary to the explicit language of the Section itself. Section 16(2) clearly stipulates that only if the scheme of amalgamation provides for an amount which is less than the original amount and/or the specified amount (i.e. Rs. 1,00,000/-) would the Respondent No. 3 be liable to pay any amount. In the present case since the petitioner has already received more than the specified amount (i.e. Rs. 1,00,000/-), respondent No. 3 is not liable to pay anything more.

Present limit of Rs. 1,00,000/- is reasonable and has nexus with the object sought to be achieved by the Act, 1961

17. We are in agreement with Mr. Bhushan's argument that with the present limit of Rs. 1,00,000/- a majority of small depositors of banks are fully protected.

Further, as respondent no. 3 subsists on very small premium charged from the banks (not from the depositors) it cannot be said that the entire amount of the depositors is insured. In our view, Rs. 1,00,000/- which has been determined to be the maximum insured amount, is reasonable and has nexus with the object sought to be achieved by the Act, 1961.

Limit of insurance and premium to be paid are purely policy matters, which cannot be adjudicated upon

18. Further, the legislature under the third proviso to Section 16(1) of the Act, 1961 has conferred on the Corporation with the previous approval of the Central Government, the power to raise the limit upto which an account is to be insured and how much premium is to be paid. Consequently, we are of the view that both the issues namely, limit of insurance and premium to be paid are purely policy matters, which cannot be adjudicated upon. The Supreme Court in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, had held "the Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical..... "

Section 45(5)(g) of the Act, 1949 is not mandatory

19. Reliance by Mr. Harish Malhotra, learned senior counsel for petitioner on Section 45(5)(g) of the Act, 1949, is misplaced in law. Section 45(5) of Act, 1949 contains the word "may" in the opening sentence itself. Consequently, Section 45(5)(g) is not mandatory in nature but only directory. Consequently, said sub-section cannot be enforced and Clause 6(b) and (c) of the Scheme cannot be struck down as void.

Supreme Court has already upheld the validity of the present Scheme

20. It is pertinent to mention that Supreme Court in *Mr. Pramod Malhotra and Others Vs. Union of India (UOI) and Others*, has upheld the validity of the present Scheme of Amalgamation. In fact, the Supreme Court held that the present Scheme is in the interest of public at large and interest of a few depositors cannot outweigh the interest of others. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

25. We have heard the submissions of both the parties. Whilst we sympathise with the depositors for their loss, we are unable to accept the submission of Mr. Lalit that the principles laid down in cases relating to breach of Article 21 rights can be applied to cases of loss caused in financial transactions undertaken by individuals with open eyes. In our view the principles laid down in the cases of *Yuen Kun-yeu v. Attorney General of Hong Kong* and *Davis v. Radcliffe* are fully applicable. In our view the principles laid down in *Anns* case have no application to financial transactions. RBI is undoubtedly performing a statutory function. Undoubtedly, the general public interest has to be kept in mind by RBI. But that is not the only thing they have to keep in mind. They also have to balance

general public interest with the interests and need of banks and financial institutions. They cannot easily close down a banking institution merely because there are a few irregularities. They have to keep in mind the implications of closing a bank or a financial institution. The closing of a bank or financial institution has its impact not just on that bank/financial institution and its customers and debtors but on the future of financial services in that region. Thus competing interests have to be weighed and balanced. In the hindsight it is easy to point fingers. However, at that stage it would not have been an easy decision for RBI to have closed SBL when it was a major bank in a small State like Sikkim. One may criticize the decision of RBI to grant SBL a licence to open a branch in Delhi when the licence u/s 22 had not yet been granted. But still that will not be sufficient to foist liability on RBI to repay all depositors. What the petitioners want is to foist on RBI liability for the default of SBL. Such liability will be rarely imposed. RBI did not have day-to-day management or control on SBL. Also the relationship of RBI with creditors or depositors of SBL is not such that it would be just or reasonable to impose a liability in negligence on RBI.

26. Even otherwise, we find that there are no proper averments. There is absolutely no averment regarding bad faith. It was fairly admitted by Mr. Lalit that there is no case made out on the basis of public misfeasance. He fairly stated that at the highest the case could only be that of a violation of statutory duties. However, as observed above, compensation for violation of a statutory duty to enable individuals to recoup financial loss has never been recognized in India. In our view the petitioners having chosen on their own to deposit amounts with SBL cannot claim to recover against RBI. In such a case the loss has to be allowed to fall where it falls.

(emphasis supplied)

Section 16(2) is constitutional

21. We are also of the opinion that no case has been made out for declaring Section 16(2) as unconstitutional. In any case, if Section 16(2) as prayed is struck down, it would not help the petitioner as there is no other section under which the Corporation is under any liability to pay any amount to the depositor in case of amalgamation.

22. In our opinion, since the petitioner has already received more than the specified amount in accordance with Section 16(1) of the Act, 1961, respondent no. 3-Corporation is not liable to pay any additional amount to the petitioner in the present case. In view of the aforesaid observations, present writ petition is dismissed, but with no order as to costs.

1(In exercise of power conferred under Second proviso to section 16(1), the amount of Rs. 1,500 raised to Rs. 5,000 w.e.f. January 1, 1968; Rs. 10,000 w.e.f. April 1, 1970; Rs. 20,000 w.e.f. January 1, 1976; Rs. 30,000 w.e.f. July 1, 1980; and Rs. 1,00,000 w.e.f. May 1, 1993.)