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(2009) 11 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 1017 of 2006

The Solapur District Central Co-op. Bank Ltd. and Shri A.J. Bhosale, General Manager, The Solapur District Central Co-op. Bank Ltd.	APPELLANT
Vs	
The State of Maharashtra, The Agriculture Insurance Company of India Ltd. and The Union of India (UOI)	RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Citation : (2010) 1 ALLMR 164 : (2010) 1 BomCR 145

Hon'ble Judges : J.H. Bhatia, J;F.I. Rebello, J

Bench : Division Bench

Advocate : Vineet B. Naik, for the Appellant; N.R. Nargolkar, AGP and V.S. Masurkar and N.V. Masurkar, for the Respondent

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—A large part of the country, and particularly this region, depends on the nature and the monsoon for cultivation of land. Many times, crops fail due to drought or due to floods and sometimes due to crop diseases. The cultivators are generally required to secure loan for the purpose of sowing operations and other agricultural activities, but in case of failure of crop, it becomes difficult for them to repay the loan and once they fail to repay the loan, they will not be eligible to obtain crop loan till earlier loan is repaid. To provide some support to the cultivators and to avoid such contingencies, the Union Government framed an Insurance Scheme entitled "Comprehensive Crop Insurance Scheme ("CCIS" in brief) from kharif season of 1985 with the object to provide financial support to farmers in the event of crop failure as a result of drought, flood, etc., to restore the credit eligibility of the farmers for the next crop season after the crop failure and to support and stimulate production of cereals, pulses and oil seeds. Under the said Scheme, a Bank or a primary Co-operative Society advancing the crop loan to farmers would be required to deduct an amount of premium from the said loan and to make payment of the premium amount to the General

Insurance Corporation of India ("GIC") and in case of failure of crop, the GIC would be required to pay the insurance amount to the farmers through the Bank or the Credit Society which had advanced the loan to the farmers. The Government of India was to pay 50% of the premium amount as subsidy and only 50% was to be deducted from the loan advanced to the farmers. The crop insurance cover would be to the extent of 150% of the crop loan. The GIC would be working as agent for the Central Government to implement the Scheme and the Bank or the primary Co-operative Society advancing the loan would act as agent for the cultivators. The GIC had an Agricultural Cell for implementation of the Scheme and later on, that Cell was itself converted into the Agriculture Insurance Company of India Ltd., which is respondent No. 2 in the present petition. The petitioner No. 1 is the Solapur District Central Co-op. Bank Ltd. and petitioner No. 2 is its General Manager. The petitioner No. 1 by its letter dated 17.3.1988, forwarded a Demand Draft of Rs. 9,59,675.27 to the General Insurance Corporation of India towards the net amount of premium, exclusive of 50% subsidy of insurance policy for the small and marginal farmers under the Comprehensive Crop Insurance Scheme for Rabi season 1987-88 along with detailed statement. On 24.3.1988, GIC addressed a letter to the petitioner No. 1 acknowledging receipt of the letter dated 17.3.1988 with the Demand Draft towards the net premium for Rabi Season 1987-88 with 42 declarations. By the same letter, the GIC informed the petitioner No. 1 that the said declarations included crop loans advanced during August and September i.e. prior to the loaning period of 1st October to 31st March 1987-88 for Rabi crops, fixed by he Government of India as per Circular dated 18th November, 1986. In view of this, the GIC informed that they will not take risk in respect of loans disbursed prior to 1st October, 1987 under any of 42 declarations and, therefore, the said declarations were returned with a request to the petitioner No. 1 to delete the sum insured in respect of the loans disbursed prior to 1st October, 1987 and to resubmit the same. The Demand Draft was retained by the GIC in Suspense Account with an assurance that immediately after receipt of the revised month-wise declaration, the excess amount of premium could be refunded. On 6.6.1988, the GIC addressed another letter to the petitioner No. 1 whereby whole of the premium was remitted back to the petitioner No. 1. According to the petitioners, they had also advanced loans for the kharif season 1986-87. Similar objections were taken by the GIC in respect of the loans advanced by several Co-operative Banks including petitioner No. 1 and the primary Credit Societies. Having taken that stand, they had refused to pay the assured amount and therefore, several writ petitions were filed. A bunch of Writ Petitions, including Writ Petition No. 1706 of 1987 was decided by the Aurangabad Bench of this Court on 18.10.2000 wherein it was held that the GIC was liable to pay the assured amount. The same Judgment was followed in other group of Writ Petitions including W.P. No. 2853 of 1989. In the light of the same, on 21.5.2005, the petitioner No. 1 addressed a letter to the respondent No. 2 (successor of the GIC). With that letter, the Demand Draft of the premium amount was re-submitted and the respondent No. 2 was called upon to pay the insurance

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amount to the farmers, on whose behalf the premium was paid for the Rabi season of 1987-88. However, by letter dated 3.6.2005, the respondent No. 2 refused to accept the premium amount along with 42 declarations and also to pay the insurance amount to the cultivators, on the ground that in view of the Circular No. 5/85 dated 18.11.1986, loans advanced prior to 1st October 1987 could not be treated as loans for the Rabi Season 1987-88. The respondent No. 2 also took a plea that the Judgment of the High Court in Writ Petition No. 2853 of 1989 was not applicable to the present set of circumstances. Being aggrieved by the stand taken by the respondent No. 2 in meeting its responsibility to pay the insurance amount, the petitioners filed this Petition seeking Writ of Mandamus or any other writ, order or direction in the nature of Mandamus directing the respondent No. 2 to pay to the petitioner No. 1 the claims for the insured loan disbursed by the petitioner No. 1. to its members on the basis of the insurance policies issued by the respondent No. 2 to the petitioner No. 1 together with interest thereon at the rate of 18% per annum from 30.6.1988 till payment.

2. Heard the learned Counsel for the parties. Though Rule was issued by the Court on this petition, the respondents have not filed any reply. The learned Counsel for both sides relied upon the documents. It is contended by the learned Counsel for the petitioners that in view of the Judgment dated 18.10.2000 rendered by the Division Bench of this Court at Aurangabad Bench in Writ Petition No. 1706 of 1987 and followed in the Judgment dated 22.7.2002 in Writ Petition No. 2853 of 1989, the respondent No. 2 was liable to pay the assured amount as the premium was paid by the petitioner No. 1 for and on behalf of its members who had taken crop loans for the Rabi crop of 1987-88. It is contended that the stand taken by the respondent No. 2 is in violation of the Comprehensive Crop Insurance Scheme itself. On the other hand, the learned Counsel for the respondent No. 2 vehemently contended that the earlier two Judgments, referred above, are not applicable to the facts of the present case because those writ petitions pertained to the loans advanced during 1st January to 31st March 1986 as the loans for the kharif season 1986. The Circular dated 18.11.1986 was held to be prospective and not retrospective. However, in the present case, in a number of matters, loans for rabi season 1987-88 were advanced prior to 1st October 1987. Those loans were advanced long after the Circular dated 18.11.1986 and therefore the parties are bound by the said Circular. It is contended that the loaning period could not be changed either by the State Governments or by any Bank or by the Insurance Company. It is contended that since a proposal was made in respect of these loans, the GIC had immediately informed the petitioner No. 1 and asked to re-submit the proposals 1st after deleting the loans which were advanced prior to October, 1987. However, the petitioner No. 1 had refused to delete those loans and re-submit declarations. Therefore, the premium amount was returned by the GIC to the petitioner No. 1 and thus there was no concluded contract between the parties in respect of the insurance. It is also contended that the respondent No. 2 is not now bound to accept the premium for the loans advanced during 1987-88 and to

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pay insurance amount. It is further contended that the present petition was filed almost 18 years after the premium amount was refunded by the GIC. And the petitioners is also liable to be dismissed on account of delays and laches on the part of petitioners.

3. There is no dispute that Comprehensive Crop Insurance Scheme is being implemented since kharif season 1985 as a policy of the Central Government. 50% of the premium amount is being paid by the Central Government as subsidy and balance 50% amount is required to be paid by the concerned cultivator and that premium amount is required to be deducted from the crop loan advanced by the concerned bank. The premium amount collected from the farmers by the concerned Bank is required to be deposited with the GIC, now respondent No. 2 - The Agriculture Insurance Company of India. To appreciate the rival contentions in the present petition, it will be useful to quote the Circular No. 5/85-86 dated 18.11.1986. It reads as follows:

The Comprehensive Crop Insurance Scheme is being implemented since Kharif 1985 Season. It has come to the notice of the Central Government that the state Governments/U.Ts. have been changing the dates of loaning from time to time. In fact, the seasons, namely, kharif and Rabi, are clearly defined. However, after giving careful consideration to the entire matter, it has been decided to adopt uniform loaning period for kharif and rabi seasons for the entire country for the purpose of crop insurance coverage only. The loans granted from 1st of April to 30th September would qualify for kharif insurance business. The proposals in respect of these loans can be forwarded to the GIC latest by 31st October of that year. Loans granted from 1st October to 31st March of next year would qualify as rabi loans and proposals in respect of these loans should reach the GIC latest by 30th April of the year.

2. The State Governments should adhere to the above schedule and should not extend the cut off dates. In case any loans are advanced after the Season is over, these loans could be considered for the next crop.

3. All the State Governments are accordingly requested to adhere to the above loaning period for the purpose of crop insurance.

Yours faithfully, Sd/ (N.G. Garg) Director (Credit).

From this circular, it is clear that even though the kharif and rabi seasons are clearly defined, it had come to the notice of the Central Government that certain State Governments were changing the dates of loaning from time to time. After careful consideration of the entire matter, the Central Government decided to adopt uniform loaning period for kharif and rabi seasons for the entire country for the purpose of crop insurance coverage and, therefore, the above quoted circular dated 18.11.1986 was issued and as per the circular, the loans granted from 1st April to 30th September would qualify for khariff loans and that proposals could be forwarded to the GIC latest by 31st October of that year. The loans granted from 1st October to 31st March of next year would qualify as rabi

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loans and proposals in respect of these loans should reach the GIC latest by 30th April of that year. From this, it is clear that the loaning period for the rabi crops would be only 1st October to 31st March and if any loan was advanced prior to 1st October or after 31st March of subsequent year, the same would not qualify to be rabi loan for the purpose of insurance. In the light of this circular, the facts of the present case need to be considered.

4. As noted earlier, on 17.3.1988, the petitioner No. 1 submitted the proposal for insurance of loans advanced for the rabi season 1987-88 along with detailed statement containing 42 declarations and along with a Demand Draft of Rs. 9,59,675.27 towards the premium amount, exclusive of the subsidy amount to be paid by the Central Government. The GIC responded immediately by letter dated 24.3.1988 acknowledging receipt of the premium amount and 42 declarations in respect of the loans advanced for rabi season 1987-88. By that letter, the GIC immediately pointed out to the petitioners that the declarations included crop loans advanced during August and September 1987 i.e. prior to the 1st loaning period of October to 31st March for Rabbi loans as fixed by the Government of India by circular dated 18.11.1986. In view of this, the GIC informed the petitioner No. 1 that in view of the said circular and circumstances the GIC could not take risk in respect of the loans disbursed prior to 1st October 1987. Therefore, GIC returned all those declarations to the petitioner No. 1 with a request to delete the sums insured in respect of loans disbursed prior to 1st October 1987 and to re-submit the declarations. It also informed the petitioners that the Demand Draft of the premium amount was retained in Suspense Account and immediately after receipt of the revised declarations, the excess amount of premium would be refunded. It appears that by letter dated 11.4.1988, the petitioners refused to submit the revised declarations excluding the loans advanced during August and September 1987. In view of that letter dated 11.4.1988, the GIC addressed a letter dated 6.6.1988 to the petitioners informing that in the circumstances they had no alternative but to refund the premium amount and accordingly the whole amount of the premium was refunded by cheque dated 6.6.1988 by the GIC to the petitioner No. 1. There is no dispute that the said premium amount was received back by the petitioners. In view of this, it is clear that even though a proposal was forwarded by the petitioners to the GIC, the GIC found that the proposal was not in tune with the circular dated 18.11.1986 issued by the Central Government and, therefore, the said proposal could not be accepted unless the loan amounts advanced prior to 1st October 1987 were deleted. As the petitioners refused to delete those loan amounts and informed the GIC accordingly by letter dated 11.4.1988, the GIC finally repaid the premium amount to the petitioners and even refused to accept that proposal. It is settled position of law that unless the proposal is accepted, it does not become an agreement nor it is a concluded contract. Thus, in the given circumstances, there was no concluded contract of insurance between the petitioners and the GIC, the predecessor of the present respondent No. 2. After the letter dated 6.6.1988 from the GIC to the petitioners, there was no

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correspondence between them till May 2005 when the petitioners again made an attempt to make payment of the premium for the same loans advanced during 1987-88 and the offer was again rejected by the respondent No. 2 by its letter dated 3.6.2005.

5. It is true that the GIC was an implementing agency on behalf of the Central Government to implement the Comprehensive Crop Insurance Scheme for the benefit of the cultivators throughout the country. As it was a Central Government Scheme, for implementation of which the Central Government was paying 50% of the premium amount as subsidy, the GIC could not refuse to accept any proposal arbitrarily. Therefore, if the Bank or the primary Cooperative Society would have complied with all the terms and conditions of that Scheme, the GIC would not be in position to refuse to accept any such proposal. At the same time, the GIC could not accept any proposal which was in contravention of the Scheme prepared by the Central Government. Therefore, it is necessary to see whether the act of the GIC in refusing to accept the proposal made by the petitioners was arbitrary or was as per the Scheme prepared by the Central Government. From the Circular dated 18.11.1986, quoted above, it is clear that even though Comprehensive Crop Insurance Scheme was implemented with kharif season of 1985, after some experience, it was noticed by the Central Government that even though the rabi and kharif seasons are well defined, the State Governments and the Union Government were changing the loaning period for kharif and rabi crop seasons. Therefore, the Central Government found it necessary to adopt a uniform period for rabi and khariff loans and the insurance thereof. Therefore, by the circular dated 18.11.1986, the Central Government prescribed the loaning period for the kharif crop from 1st April to 30th September and for rabi season from 1st October to 31st March of the next year. If any loan was advanced before or after a particular loaning period, it could not be covered by the insurance for that particular season. In the present case, from the contents of the documents referred above, it is clear that the petitioners had advanced certain loans during August and September 1987 and they were included in the loans for the rabi season of 1987-88. The GIC immediately pointed out that inclusion of such loans was in contravention of the circular dated 18.11.86 and asked the petitioners to delete those loans and to forward the proposal with rectified declarations, but the petitioners refused to delete those loans. In view of this, it is clear that the petitioners acted in breach of the specific directions given by the Central Government in the circular dated 18.11.1986 while the Insurance Company insisted upon compliance of the said requirements. The Insurance Company was justified in taking the stand that loans advanced during August and September 1987 could not be eligible to be the rabi loans for insurance. Only after refusal of the petitioners to delete the loans advanced prior to 1st October 1987, the GIC returned the premium amount to the petitioner and thus the proposal submitted by the petitioner was not accepted and was returned back. The GIC had given sufficient opportunity to the petitioners to rectify the proposal and to submit the same, but the petitioner, for the reasons best known to the management, was

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not willing to rectify the proposal and to make the proposal which would be in tune with the circular dated 18.11.1986. In view of this, it should be held that the proposal submitted by the petitioner itself was not as per the Scheme prepared by the Central Government and therefore, the GIC was right in refusing to accept such proposal. Thus, the contract could not be concluded for which the GIC could not be held responsible.

6. The learned Counsel for the petitioners relied upon the Judgment of this Court in Writ Petition No. 1706 of 1987 Vivid Grayakari Seva Sahakari Society Ltd. V s. Union of India and Ors., whereby a large number of similar writ petitions were disposed of. On perusal of the Judgment in the said Writ petition, it appears that the petitioner Bank and Credit Co-operative Societies had advanced loans for the kharif season of 1986-87. Some loans were advanced from January 1986 to t March 1986. The premium was paid accordingly. The premium amount was accepted and the insurance policies were also issued by the GIC. However, after receipt of the circular dated 18.11.1986, the GIC refused to pay the insurance amount in respect of the loans advanced prior to 1st April, 1986 on the ground that those loans would not qualify to be insured for the kharif season 1986. The claims in respect of loans from 1st April to 30th September 1986 were accepted and satisfied by the GIC. The dispute was only in respect of the insurance claims about the loans advanced from 1st January to 31st March 1986. The Division Bench of this Court noted that when those loans were advanced and the premium was paid and even accepted by the GIC, there was no circular similar to the circular dated 18.11.1986 and that even though the kharif and rabi seasons were well defined, there were no instructions that the loans advanced only during the particular period would qualify for insurance as kharif loan or rabi loan. Neither the farmers nor the banks or the Primary Co-op. Credit Societies advancing loans were aware that the kharif loan could be advanced only from 1st April to 30th September. Not only this, even GIC was not aware about it and therefore, GIC had accepted the premium in respect of the loans advanced prior to 1st April, 1986 and those loans were treated as loans for Kharif season 1986. Even GIC had issued insurance policies in respect of those loans. Thus, the contract was already concluded between the parties. It was held by this Court that the circular dated 18.11.1986 could not have retrospective effect and that it was only prospective in nature. In fact, in those writ petitions, the petitioners had sought a declaration that the circular dated 18.11.1986 was prospective and had no retrospective effect and this contention was accepted by this Court. However, when the loans were advanced by the petitioners in the month of August and September 1987, the circular dated 18.11.1986 was very much within the knowledge of the Banks as well as the Insurance Company. The petitioners could not issue rabi loans for the season 1987-88 before 1.10.1987. Granting loans for the rabi season prior to 1.10.1987 would change the loaning period which was strictly prohibited by the Central Government as per the circular dated 18.11.1986. In view of these facts, the petitioners cannot take benefit of the Judgment of this Court in Writ Petition No. 1706 of 1987 or the

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Judgment in Writ Petition No. 2853 of 1989 which had only followed the earlier judgment. The said Judgments nowhere indicate that irrespective of the circular dated 18.11.1986, crop loans advanced at any time could be qualified as kharif or rabi loans and would qualify for insurance.

7. Taking into consideration the facts and circumstances noted above, it is clear that inspite of the circular dated 18.11.1986, the petitioners advanced loans during August and September 1987 as rabi loans for 1987-88 in violation and breach of the said circular. The GIC was justified in taking a stand that those loans would not qualify to be insured as rabi loans and in asking the petitioners to delete those loans from the proposal. The petitioners refused to rectify the proposal inspite of the defects pointed out by the GIC. In such circumstances, the GIC was compelled to turn down the complete proposal and to refund the premium amount. All this happened because of the adamant stand taken by the management of the petitioners. No fault could be found in the approach of the GIC. In view of these circumstances, as the proposal or offer made by the petitioners for insurance of certain loans was not accepted by the GIC, there was no concluded contract between the parties and therefore it could not be enforced in law.

8. The petitioners were aware since the receipt of letter dated 6.6.1988 from GIC that its offer was turned down and there was no concluded contract for loans advanced by it and therefore the petitioners kept quiet and there was no correspondence between the petitioners and the GIC for almost 17 years from 1988 to 2005. Only after the judgment in Writ Petition No. 1706 of 1987 and in Writ Petition No. 2853 of 1989, the petitioners tried to revive the said offer by letter dated 12/21st May, 2005 which was rejected by the respondent No. 2 as per its letter dated 3.6.2005. Those two Judgments would not provide any support to the contention and claim of the petitioners for reasons given above. In view of the facts and circumstances, we find no substance in the present petition.

9. For the aforesaid reasons, the Writ Petition stands dismissed. Rule discharged.

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