(1994) 02 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No''s. 1559 and 1771 of 1989

U. Gopalakrishna Kunikullaya APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Citation : (1996) 85 CompCas 440

Hon'ble Judges : Mathews P. Mathew, J

Bench : Single Bench

Advocate : U.P. Kunikullaya, for the Appellant; M. Lalitha Nair and Gowri Sankar Rai, for the Respondent

Final Decision : Allowed

Judgement

Mathews P. Mathew, J.—The petitioners in both the original petitions are agriculturists and are members of the second respondent-society. The petitioner, in O. P. No. 1559 of 1989 holds 2.12 acres of areca garden, about one acre of paddy field and some dry land in Uorangala village of Kasaragod Taluk, as a joint owner along with his two sons. The petitioner, in O. P. No. 1771 of 1989 is the owner of about five acres of paddy field, two acres of areca garden and four acres of dry land in Kuloor village of Kasaragod Taluk jointly with his son.

2. The petitioners'' case is that due to the increase in the cost of labour, fertilisers, etc., the cost of cultivation of land has increased considerably, whereas the price of agricultural produce has not only not proportionately increased but has been dropping and fluctuating. To add to this, there has been periodical scarcity of rains, thereby adversely affecting the cultivation due to inadequate supply of water to irrigate the properties. Due to continued draught from the year 1981, the areca gardens in Kasaragod Taluk including those of the petitioners have suffered great damage and consequently the petitioners have suffered heavy loss of income. Apart from that the existing trees and plants in the areca gardens have withered away and the petitioners were left with no money to rejuvenate the areca gardens. At this juncture the farmers including

the petitioners were greatly relieved when the first respondent-Government came to the aid of the agriculturists by issuing orders promulgating a scheme as evidenced by exhibits P-1 and P-2, whereby interest subsidy at the rate of 5 per cent. on loans taken from co-operative credit institutions by farmers/agricultural labourers was declared. According to the petitioners, the scheme was given wide publicity by respondents Nos, 1 and 2. To the petitioners who had otherwise to take loans at high rates of interest from other sources, this scheme introduced for the benefit of the farmers was a great relief and the petitioners opted to make use of the same and applied for loans under the scheme to the second respondent. The scheme was originally formulated by none other than the NABARD and was adopted by the State Government. The first respondent-State Government introduced the said scheme to encourage the agriculturists by way of an incentive to them, as most of the agriculturists began to lose their interest in the paddy cultivation and other agricultural crops because of the unremunerative nature of agriculture. The petitioner, in O. P. No. 1559 of 1989 was sanctioned a loan of Rs. 47,080 by the second respondent-bank to be advanced in five yearly instalments and repayable from the seventh year in five yearly instalments. Interest was payable in every year on the advanced instalments on the fixed dates without default in which event the debtor is given interest subsidy at 5 per cent. With such subsidy the actual interest payable is 7 per cent. on the amount advanced yearly. The benefit of interest subsidy is to avail till the discharge of the debt in five yearly instalments after the sixth year. The petitioner was given the first four instalments amounting to Rs. 26,740 at the time of filing the original petition. It is submitted that subsequently the balance amount was also, disbursed. The petitioner in O. P. No. 1771 of 1989 was given two loans, one for an amount of Rs. 31,936 and another for an amount of Rs. 25,650, both under the very same scheme. The bank issued exhibit P-3 notice dated February 15, 1988 (in O. P. No. 1559 of 1989), seeking payment of the first instalment of interest which was due. It is seen from exhibit P-3 that the amount of interest was Rs. 3,071.40 and after giving credit to the interest subsidy of Rs. 1,228.55, the actual amount demanded was only Rs. 1,842.95, which was duly paid by the petitioner as evidenced by exhibit P-5 receipt issued by the second respondent. Identical receipts evidencing payment after adjusting the subsidy is also produced by the petitioner in O. P. No. 1771 of 1989, as is seen from exhibits P-3 and P-4 (in O. P. No. 1771 of 1989).

3. The grievance of the petitioners is that the Government changed its mind subsequently regarding payment of subsidy in respect of agricultural loans advanced by co-operative societies and confined the benefit of the sqheme only to certain sections of farmers and restricting the benefits of such subsidy to loans of the maximum amount of Rs. 15,000 and availed by those who held less than five acres of land and the benefits were further restricted to one member of each family. Taking into consideration the protest from the farmers the Government made some relaxation and enhanced the maximum amount from Rs. 15,000 to Rs. 25,000 as evidenced by exhibit P-5 order dated October 31, 1988, annexed

to O. P. No. 1559 of 1989. Based on exhibit P-5, the second respondent issued to the petitioner, in O. P. No. 1559 of 1989, notice dated February 1, 1989, directing him to pay the entire interest without deducting the 5 per cent. subsidy. Similar notices were served on the petitioner in O. P. No. 1771 of 1989 also.

4. The challenge in the original petition is against the action on the part of the second respondent seeking to collect the interest without deducting the subsidy promised to be given under the A.P.R.C. Scheme evidenced by exhibits P-1 and P-2. Learned counsel for the petitioners submits that in order to avoid further complication, after filing the original petition, the petitioners have paid the interest demanded under protest and subject to the result of the original petition and seek a declaration to the effect that exhibit P-5, Government order, dated October 31, 1988, will not have any retrospective effect and seek a further direction to the second respondent to collect from the petitioners only the interest after deducting the interest subsidy of 5 per cent. allowed as per exhibits P-1 and P-2. The petitioners also seek a direction to the first respondent to reimburse to the second respondent the interest subsidy given to the petitioners. In other words, the petitioners'' case is that any modification of exhibits P-1 and P-2 can apply only to such loans which are advanced after the issuance of the order whereby exhibits P-1 and P-2 are modified. The contentions of the petitioners to the effect that loans were advanced to them when exhibits P-1 and P-2 were in full force is not disputed.

5. A counter-affidavit has been filed on behalf of the first respondent in both the original petitions. The contention taken in the counter-affidavits and highlighted by the learned Government Pleader, appearing on behalf of the first respondent, is that exhibits P-1 and P-2 are general orders offering a concession or an incentive to the agriculturists who repay the loan taken from the co-operative institutions without default. In other words, the contention of the first respondent is that a concession was in fact announced by the first respondent-Government and the concession was to be availed of at the time when the loan was to be repaid. The fact that the concession was declared as a relief to the farmers is conceded in the counter-affidavit. The only plea put forward by the Government is that it is open to the Government to withdraw the promise so made to the farmers at any time before the concession was actually availed of. The logic advanced in support of this contention is that the concession is actually receivable by the farmers riot at the time of disbursement of the loan but at the time of repayment of the loan. In between, according to the Government, it is open to the Government to change the scheme according to its whims and fancies.

6. The concept of promissory estoppel has become so firmly established by the pronouncements of the apex court, that no detailed discussion is necessary at this stage to show the unsustainability of the arguments put forward on behalf of the State in this regard. Decisions are plenty that if the Government, by an executive order declares a concession and the beneficiary to whom the

concession is intended thereafter acts to its prejudice, on the basis of the Government''s declaration the Government is bound to stand by the promise given (see Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 ; Pournami Oil Mills and Others Vs. State of Kerala and Another, and Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . At any rate it is absurd to say that the interest subsidy is payable at the time of repayment of the loan, and, therefore, any promise made before the advancement of the loan is subject to any variation that the Government may effect to the scheme before the actual disbursement of the benefit. The very nature of the transaction is that interest will accrue only after the amount is actually advanced. The concession regarding the payment of interest subsidy is a solemn promise made by the first respondent. Once the promise is given and the parties act to their prejudice believing in the promise so made, it is not open to the first respondent to deprive the petitioners of the benefit by an executive order. Therefore, I have no hesitation in declaring that no executive order or direction including exhibit P-5 can have any effect on the loans advanced after the issuance of exhibits P-1 and P-2 and availed of before the issuance of orders effecting the change. The respondents are bound to give the concession of 5 per cent. interest subsidy on the loans taken by both the petitioners under the above-mentioned scheme.

7. It is further submitted by the learned Government pleader that, as mentioned in paragraphs 13 of the counter-affidavit, the scheme was introduced as a relief to the farmers, but it has no relation to the loan rules as per which the loans are issued to the petitioners. According to the first respondent, the interest subsidy scheme is a separate scheme of the Government applicable to all agricultural loans taken from co-operative credit institutions as per G.O. (Ms) 1/82/AD, dated January 1, 1982, and it is open to the Government to change the condition stipulated in the said order. According to the first respondent, the object of grant of 5 per cent. interest subsidy was to ensure prompt repayment of the loan advanced for agricultural purposes. I fail to understand the logic behind this contention. It is not disputed that the petitioners had availed of agricultural loans from a co-operative credit institution, viz., the second respondent. If interest subsidy is assured for prompt repayment of the loan, it was all the more obligatory on the part of the Government to see that the subsidy is allowed at the time of repayment, so that repayment is not delayed. Evidently the Government was convinced about the inability of the farmers to pay interest at the normal rates charged by the commercial banks and for that matter even the rates charged by the co-operative institutions. It is in these circumstances that 5 per cent. interest subsidy was assured to them. Therefore, any withdrawal of that concession would only further impair the farmers to repay the loans advanced thereby perpetually keeping them under the burden of debt. This would go against the very purpose for which the interest subsidy was announced by the Government as per exhibits P-1 and P-2.

8. Apart from the legal principles, there is a moral and equitable element

involved in this case. The industrial and agricultural progress of the country depends upon the faith of the citizens in the Government policies. If the Government declares policy decisions granting concessions and incentives with the object of helping the growth of industry or agriculture and induces the citizens to invest money, borrowed or otherwise based on such concession and the Government were to go back on the promise, after the citizens have acted to their prejudice by investing money, time and talent in various projects, it will affect the faith of the public in the Government. The consequent loss of morale of the citizens can have a very adverse effect on the progress of the country in all spheres of activity. This tendency has to be curtailed in the very interest of the country. Viewed in this perspective, the attempt made by the first respondent to withdraw the concession and justify the same by unsustainable pleas is, to say the least, most unfortunate.

9. As regards the actual amount due and payable after deducting the concession under exhibits P-1 and P-2 whereby the petitioners were given the benefit of 5 per cent. interest subsidy, the second respondent shall make necessary adjustments in the amount demanded in the light of the observations and directions contained hereinabove. It shall be open to the second respondent to claim the amount of subsidy from the first respondent.

10. The original petitions are disposed of as above.