IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3349 of 2004

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Navendra Jha, son of Kulanand Jha, Chairman, the Rohika Central Co-operative Bank Ltd., Madhubani, at & P.O. Madhubani, P.S. and District Madhubani

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Finance, Department of Economic Affairs, banking Division, Jeevan Deep, Parliament Ist. New Delhi
2. The Chief General Manager, NAWARD, Patna
3. The Reserve Bank of India, through its Chief General Manager, Rural Planing and Credit Department, South Gandhi Maidan, Patna
4. The State of Bihar
5. The Bihar State Co-operative Bank Ltd., through its Managing Director, Ashok Raj Path, Patna.
6. The Registrar, Co-operative Societies, Government of Bihar, Patna.
7. The Secretary, Co-operative Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Jha, Advocate.
For the State : Mr. Kinkar Kumar, SC 27
For the Union of India: Mr. Rajesh Kumar Verma, Advocate.
For NAWARD : Mr. Chittaranjan Sinha, Sr. Advocate.
Mr. Siddharth Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-04-2015

Heard learned counsel for the petitioner, State as well as Union of India and learned counsel for the NAWARD.

2. In the present writ petition, petitioner is seeking a relief for issuance of mandamus directing and commanding the respondents to grant a sum of Rs. 8 Crores to the Rohika Central Cooperative Bank ltd., Madhubani in terms of their promises made to the Bank vide Government of Bihar Co-operative Department, letter no.6248 dated 13.6.1990 followed by their consequential letters issued from time to time under Agricultural

and Rural Debit Relief Scheme, 1990 (hereinafter referred to as "A.R.D.R. Scheme, 1990") of the Union of India.

3. The petitioner is the Chairman of the Rohika Central Co-operative Bank Ltd. Madhubani incorporated under the Bihar and Orissa Co-operative Societies Act. The basic business of the Bank is to lend the money on loan to the farmers and artisans. There was drought in the State of Bihar in the year in 1988-89, the Bank granted loan to them from their sustenance. Thereafter the Government came out for their rescue issued the scheme vide letter 6248 dated 13.6.1990 which was called as A.R.D.R. Scheme, 1990 where certain conditions were provided that the farmers who were not defaulter and were incapable to pay the loan, they would be entitled to waiver to deposit the loan up-to Rs.10,000/-. In pursuance of the A.R.D.R. Scheme, 1990 the Bank altogether waived amount of Rs.18.79 lacs granted waiver to loan up-to the aforesaid amount. The petitioner Co-operative Bank has claimed that it has not received entire waiver amount. The NAWARD has returned the amount after making 5% standard deduction thereby received Rs.17,82,54,000, did not return the rest amount of Rs.96,58,876.58 adding interest it arrives to Rs.6,25,58,082.24. The claim has been made by the petitioner that they have not charged any penal interest from the

farmers, they cannot be deprived of money by making 5% standard deduction created substantial effect on the financial health as balance gone down minimum limit fixed by Reserve Bank of India, had there been return of entire waiver amount, balance of petitioner Bank would have never gone beyond limit which led to issuance of notice by Reserve Bank of India issued a letter under Section 11 of the B.R. Act, 1949 for cancellation of licence. He submits that the State Co-operative Bank (respondent no.5) adjusted a sum of Rs. 5,61,98,331 against N.P.A. dues out of the statutory liquidity reserve lying with State Co-operative Bank to maintain minimum balance in the account to avoid cancellation of licence.

4. Learned counsel for the NAWARD submits that they have acted in terms of A.R.D.R. Scheme, 1990 where it has been provided that while returning the waiver amount the NAWARD would make 5% standard deduction from the total waiver amount which has been claimed by the petitioner and in term of that scheme the NAWARD has acted. They have not violated any of the condition of the Scheme which provides the manner the money has to be returned to the lending Bank.

5. For the proper appreciation it will be appropriate to quote relevant provisions of A.R.D.R. Scheme, 1990:

"The Scheme applies only to no-willful defaulters who could not repay their loans on account of circumstances beyond their control. In its very nature, no penal interest should have been levied to the beneficiaries of the Scheme and if levied, it should have been waived by the concerned society on its own without seeking any reimbursement from the State Government and Government of India in this regard based on such consideration, Government of India had taken a decision, inter alia, to exclude the element of penal interest from the claims lodged by the banks. However, it was found that the exact computation of the accounts involved in these items posed problems in view of the large number of accounts involved. Based on the feedback received from our Regional Offices, it was estimated that penal interest component included in the claim of the co-operative to be around 15%. It was decided by Government of India to settle the claims of co-operative, RRBs after effecting standard deduction of 5% and 10% respectively to provide for penal interest component included in respect of co-operative and penal interest along with compound interest component in respect of RRBs. In states, where the system of charging penal interest was not in vogue and the claims did not include penal interest, 100% reimbursement was made to the co-operative banks based on the certificates furnished by the apex banks to that effect. On implementation of the above decision, many representations were received by us for reconsideration of the above decision taken by Government of India on various grounds Government of India maintained the above decision. They had further maintained that the portion of claims covered under the standard deduction will have to be borne by the concerned banks and it will be left to them to account for it in their books."

6. On perusal of provision of this scheme it shows that the Government of India has allowed 5% and 10% standard deduction in a case when the lending Bank is charging the penal

interest from the borrower but the State of Bihar does not permit recovery of penal interest from the borrower. In such circumstances it has been provided that there would 100% reimbursement of the amount which has been paid to the borrower. In the present case the petitioner submits that the Bank has not charged any penal interest from any of the farmer, in terms of scheme entitled to 100% reimbursement to the amount of waiver to the farmer.

7. Learned counsel for the NAWARD has submitted that the State Co-operative Bank through which the money was claimed has not specifically mentioned about non-charging of penal interest from the borrower and as such the NAWARD has made 5% standard deduction from the waiver amount.

8. From the record it appears that there is no specific statement in the claim made State Co-operative Bank showing the penal interest charged from the farmers cannot be a basis for depriving the petitioner from 100% reimbursement where specific claim has been made by the Bank that he has not charged any penal interest.

9. Learned counsel for the NAWARD submits that ARDR Scheme is over in 1990, now they cannot return the said amount as fund was provided by Union of India dried out it can only be

done if the Union of India provides the money for reimbursement of the amount which has been claimed by the petitioner.

10. In that view of the matter, the petitioner is directed to file an application before the Union of India through NAWARD and NAWARD will examine the case of the petitioner, if it finds that petitioner is entitled make necessary approval for the proper reimbursement of the money which the petitioner is entitled under ARDR Scheme, 1990 after proper examination.

10. With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

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