IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 2070 of 2009 (U)

PETITIONER(S):

KERALA STATE CO-OPERATIVE BANK LIMITED,
CO-BANK TOWERS,
VIKAS BHAVAN, THIRUVANANTHAPURAM,
REP. BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.K.RAVIKUMAR, SC
SRI.GEORGE POONTHOTTAM, SC
SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENT(S):

1. KERALA STATE FARMERS DEBT RELIEF COMMISSION, THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.

2. K.K.MOYEDU, S/O.AMMED, KAYALAKANDI VEEDU PUTHUSERYKADAVU PO., MANANTHAVADY, WAYANAD.

R1 BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R2 BY ADVS. SRI.B.S.SWATHY KUMAR
SMT.P.A.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-04-2015 ALONG WITH WP(C) 12082/2011 & WP(C)16658/2011 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 2070 of 2009 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE APPLICATION SUBMITTED BY THE
2ND RESPONDENT DTD.9.6.2007.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT DTD.10.10.2007 TO
EXT.P1 APPLICATION.

EXT.P3: TRUE COPY OF THE FINAL ORDER DTD.23.10.2007 OF THE
1ST RESPONDENT.

EXT.P4: TRUE COPY OF THE APPLICATION SUBMITTED BY THE
2ND RSPONDENT DTD.20.1.2005.

EXT.P5: TRUE COPY OF THE LOAN AGREEMENT DTD.26.5.2005.

EXT.P6: TRUE COPY OF THE AFFIDAVIT SIGNED BY THE 2ND RESPONDENT
DTD.26.5.2005.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K.ABDUL REHIM, J.

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W.P.(C). No. 2070 OF 2009,

W.P.(C). No. 12082 OF 2011

&

W.P.(C). No. 16658 OF 2011

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Dated this the 6th day of April, 2015

JUDGMENT

Challenge in all the above 3 cases is against orders passed by the Kerala State Farmers' Debt Relief Commission (hereinafter referred as the 'Commission' for short) under the Kerala Farmers' Debt Relief Commission Act, 2006. W.P.(C) Nos.16658/2011 and 2070/2009 are filed by the Kerala State Co-operative Bank Ltd. The 2nd respondent in W.P.(C).No.16658/2011 is the petitioner in W.P.(C). 12082/2011. In both the former cases the challenge is against Ext.P6 (in W.P.(C).16658/2011), the final order passed by the Commission.

2. The petitioner in W.P.(C)No.12082/2011 had approached the Commission seeking waiver of amounts due to the Bank with respect to a borrowing of Rs.1,50,000/- availed on 8.6.2005. The Commission granted concession

to the extent of waiving $^{1}/_{3}{}^{rd}$ of the interest accrued. The petitioner Bank is challenging the said order mainly contending that the dispute between the loanee and the Bank cannot be adjudicated by the Commission, within the powers conferred by virtue of Section 5 of the Act, since the Bank in question is a Scheduled Bank which is an 'Institutional Creditor' defined under Section 2(xvi) of the Act. But it is to be noticed that under Sections 9 and 10 of the Act, there are special provisions with respect to settlement of certain loans taken by farmers, which includes granting waiver of penal interest, rescheduling of term loans, necessary facilities for one time settlement of agricultural loans etc. Therefore it is to be held that the impugned order passed by the Tribunal is sustainable in view of Sections 9 and 10 of the Act.

3. Further contention raised is that, the loan in question is purely a commercial loan, which will not come within the purview of the term 'debt' defined under Section 2 (vii) of the Act. It is pointed out that amount taken by any

farmer for commercial purposes or luxury other than agricultural and allied commercial purposes is excluded from the purview of 'debt' as defined under the Act. But in the impugned order the Commission had categorically found that the loan of Rs.1,50,000 was availed for the purpose of dairying, though the loanee had mentioned reason as 'house maintenance'. The Commission found that the said reason was shown in the application as the respondent Bank could grant loan only on that count. Learned counsel appearing for the Bank had drawn attention of this court to Ext.P2 letter issued by the Bank sanctioning the loan in question. It is pointed out that, in the reference portion of the letter it is described as 'mortgage loan' of Rs.1,50,000/-. So also copy of the agreement executed by the loanee is produced as Ext.P3, wherein also it is mentioned that the loan is under the nomenclature 'mortgage loan' scheme. But it is to be noticed that the Commission, after adjudication of the dispute, had arrived at a factual finding that the loan in question was availed by the applicant for 'house maintenance'. The exemption contained under Section 2(vii) of the Act exclude only loan for commercial purposes or luxury other than agricultural and allied commercial purposes. In a decision of this court in Kerala State Co-operative Bank Limited v Kerala State Farmers Debt Relief Commission [2009 (4) KLT 917], it is held that the exclusion contained in Section 2(vii) is only with respect to loan amounts taken for commercial purposes or luxury, other than agricultural allied commercial purposes to augment income. It is held that the words, 'other than agricultural allied commercial purposes' in the second limb of the provision will essentially qualify the phrase 'for commercial purposes'. It is held that housing loan is neither a loan for commercial purposes nor one taken to augment income. The purpose is to provide a home. It is not a luxury. Therefore the housing loan does not fall within the exclusionary clause in Section 2(vii) of the Act.

4. This court is of the considered opinion that, in exercise of powers vested under Article 226 of the

Constitution, it is not possible to have an adjudication on the factual aspects in order to interfere with the findings concluded by the commission. This court is not acting as an appellate authority with respect to the decision rendered by the Commission. Hence the factual findings to the effect that the loan in question was availed for 'house maintenance' cannot be disputed, in this writ petition. The materials which were available before the commission for arriving at such a factual findings is not illustrated in this writ petition. Therefore, in exercise of powers vested under Article 226, this court cannot reverse such findings. Hence this court is of the opinion that the contentions raised by the Bank to challenge the impugned order cannot be accepted.

5. In W.P.(C).12082/2011 the petitioner is challenging the order of the Commission on the basis that the relief was limited only to the extent of $^{1}/_{3}{}^{rd}$ of the interest accrued. It is contended that under Sections 5 sub clause (f) and (j) of the Act, the Commission has got power to recommend to the Government regarding the extent and

manner in which debt relief to be granted to farmers and with respect to taking over of the entire or partial debt and for exoneration of the farmers from the effect of the debt. But this court is of the opinion that those provisions are not relating to adjudication of any individual dispute between the loanee and the creditor, in relation to a debt. On the other hand, those are provisions enabling the commission to recommend before Government to introduce debt relief/ debt waiver schemes. Learned counsel for the petitioner contended that the Commission had failed in taking into consideration of the recommendations made by the authorities like the Tahsildar and Deputy Director of Dairy Development. But going by powers vested on the Commission under Sections 9 and 10 of the Act, power is provided to the extent of providing necessary facilities for one time settlement of agricultural loans, rescheduling of short term loans, and waiver of penal interest etc. In exercise of such powers the Commission cannot go beyond granting waiver of interest at a reasonable extent. Therefore the contentions raised in W.P.(C)No.12082/2011 does not succeed.

6. In W.P.(C)No.2070/2009 Ext.P3 order passed by the Commission is under challenge at the instance of the Bank. One of the contentions raised is that the loan in question will fall within the excluded category contemplated under Section 2(vii) of the Act. But the Tribunal found that the applicant was cultivating coffee, coconut and pepper and he is a farmer with an annual income of Rs.2,400/- possessing of 19 cents of land. The petitioner Bank had produced Ext.P1 which is the application submitted by the 2nd respondent before the Commission. Ext.P2 is the written statement filed before the Commission by the Bank. It was specially stated that the loan was taken for business purposes. According to the petitioner Bank, Exts.P4 and P5 documents relating to the loan application and agreement would indicate that the loan was availed for business purposes. But as observed in the forgoing paragraphs, this court is not in a position to re-appreciate the factual

findings arrived by the Commission. It is not discernible as to what are the materials relied on by the Commission to arrive at the factual conclusions. It is also not discernible as to whether Exts.P4 and P5 documents were produced before the commission. Therefore this court is of the considered opinion that in exercise of power vested under article 226, it is not possible for this court to interfere on the factual findings.

7. Yet another contentions raised in W.P.(C). No.2070/2009 is that the impugned order had specially stated that the debt relief is granted in exercise of powers vested under Section 5 of the Act. But the petitioner Bank is a Scheduled Bank and is an 'Institutional Creditor'. Therefore the Commission cannot exercise powers vested under Section 5 of the Act for granting any debt relief in the case of loan availed from the petitioner Bank, is the contention. This court is of opinion that, eventhough the Commission had quoted Section 5 in the impugned order, the power exercised is one coming within the purview of Sections 9 and

10. Therefore the settlement and waiver permitted under Sections 9 and 10 warrants no interference. The limitations contemplated under Section 5(3) will not apply in such case. Therefore the contentions raised cannot be accepted.

8. In the result, the challenge against the impugned orders raised in all these three writ petitions fail and all the cases are accordingly dismissed.

Sd/-
C.K.ABDUL REHIM, JUDGE

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