IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 21620 of 2010 (B)

PETITIONER(S):
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1. T.A. VISWANATHAN, SON OF ANDI EZHUTHACHAN,
   PUTHEN VEEDU, NAVUKODE, TATHAMANGALAM.

2. AMMINI, WIFE OF LATE KRISHNAN,
   PERUMOALLOM, TATHAMANGALAM.

3. AMMINI, NOMINEE OF LATE KRISHNAN,
   PERUMPALLOM, TATHAMANGALAM.

4. T.A. PRASAD, SON OF ANANTHA NARAYANAN,
   CHALA ROAD, THATHAMANGALAM-678 102.

5. THULASSIDAS, SON OF SUKUMARAN,
   VAVUKODEKALAM, TATHAMANGALAM.

   BY ADV. SRI.S.EASWARAN.

RESPONDENT(S):
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1. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY,
   FINANCE DEPARTMENT, CENTRAL SECRETARIAT,
   NEW DELHI.

2. NABARD , PONNIAM ROAD, PB NO.5613,
   STATUE, THIRUVANANTHAPURAM-695 039,
   REPRESENTED BY ITS GENERAL MANAGER.

3. THE TATHAMANGALAM SERVICE CO-OPERATIVE
   BANK LIMITED NO.P 502, P.O. TATHAMANGALAM-678 102,
   REPRESENTED BY ITS SECRETARY.

4. THE GRIEVANCE REDRESSAL OFFICER,
   TATHAMANGALAM SERVICE CO-OPERATIVE BANK
   LIMITED NO.P 502, P.O. TATHAMANGALAM- 678 102.

WP(C).No. 21620 of 2010 (B)

5. **THE PALAKKAD DISTRICT CO-OPERATIVE BANK LIMITED, PALAKKAD, REPRESENTED BY ITS GENERAL MANGER.**

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.K.N.SASIDHARAN NAIR.
R3 & R4 BY ADV. SRI.GEORGE POONTHOTTAM.
R5 BY ADV. SRI.M.P.ASHOK KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015, ALONG WITH WP(C).NO. 23953 OF 2010 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 21620 of 2010 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE AGRICULTURAL DEBT WAIVER AND DEBT RELIEF SCHEME, 2008 ISSUED BY THE 1ST RESPONDENT.
EXT.P2	COPY OF THE JUDGMENT DATED 10/08/2009 IN WP(C).NO. 36787/2008.
EXT.P3	COPY OF THE JUDGMENT DATED 02/02/2010 IN WP(C).NO.3277/2010.
EXT.P4	COPY OF THE PROCEEDINGS DATED 12/03/2010 ALONG WITH THE LIST FORWARDED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT.
EXT.P5	COPY OF THE RELEVANT EXTRACT OF STATEMENT OF THE HONOURABLE MINISTER FOR CO-OPERATION AND PUBLISHED IN THE MATHRUBHOOMI DAILY DATED 04/09/2010.
EXT.P6	COPY OF THE APPLICATION WITH THE PROCEEDINGS OF 3RD RESPONDENT.
EXT.P7	COPY OF THE PROCEEDINGS DATED 07/03/2013 ISSUED BY THE 3RD RESPONDENT.
EXT.P8	COPY OF THE PROCEEDINGS DATED 11/04/2013 ISSUED BY THE SPECIAL SALE OFFICER OF THE 3RD RESPONDENT.
EXT.P9A	COPY OF THE NEWS ITEM WITH RESPECT TO THE WORK OF THE 1ST PETITIONER PUBLISHED IN THE MATHRUBHOOMI DAILY DATED 19/01/2011.
EXT.P9B	COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 14/10/2005.
EXT.P9C	COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 25/02/2005.
EXT.P9D	COPY OF THE NEWS ITEM PUBLISHED IN THE DEEPIKA DAILY DATED 20/03/2005.
EXT.P9E	COPY OF THE NEWS ITEM PUBLISHED IN THE MATHRUBHOOMI DAILY DATED 14/01/2001.
EXT.P10A	COPY OF THE CERTIFICATE DATED 10/01/2002 ISSUED TO THE 1ST PETITIONER BY THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED.

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EXT.P10B COPY OF THE STATE HARITHASREE AWARD ISSUED IN FAVOUR OF THE 1ST PETITIONER BY THE CENTER FOR SOCIAL JUSTICE & HUMAN WELFARE.

EXT.P10C COPY OF THE CERTIFICATE DATED NIL ISSUED TO THE PETITIONER BY PALAKKAD DISTRICT AGRICULTURAL SOCIETY, PALAKKAD.

EXT.P10D COPY OF THE CERTIFICATE DATED NIL ISSUED TO THE PETITIONER BY PALAKKAD DISTRICT AGRICULTURAL SOCIETY, PALAKKAD.

EXT.P10E COPY OF THE CERTIFICATE DATED NIL ISSUED TO THE PETITIONER BY THE CHITTUR-THATHAMANGALAM MUNICIPALITY-CENTENARY 2009 FOR HIS MERIT EXEMPLARY ACHIEVEMENTS.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

C.K. ABDUL REHIM, J.

W.P.(C)Nos.21620, 23953, 24953 of 2010

&

W.P.(C)Nos.5269, 7108,10052 & 30016 of 2011

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Dated this the 23rd day of March, 2015

JUDGMENT

Since the issue involved in all these writ petitions are identical in nature, they were considered together and disposed of through this common judgment. Reference made hereunder with respect to respondents and exhibits are as in the order in which they are contained in WP(C) No.21620/2010.

2. Issue adjudicated is relating to eligibility of the petitioners for debt waiver/debt relief under the 'Agricultural Debt Waiver and Debt Relief Scheme 2008' (hereinafter referred to as the 'Scheme' for short) formulated by the Central Government. In WP(C) Nos.21620/2010, 23953/2010, 24953/2010 and 30016/2011 the lending institution is common, namely the “Thathamangalam Service Co-operative Bank Ltd. No.P 502”. In WP(C) Nos. 5269/2011, 7108/2011 and

10052/2011, the lending institution is the "Ayarkunnam Service Co-operative Bank Ltd". These two batch of cases are referred hereunder as the 1st batch and 2nd batch respectively, for the purpose of brevity.

3. In the 1st batch of cases, claims of the petitioners for granting benefit of debt relief was initially rejected by the lending institution finding that the loans availed by the petitioners would not come within the eligible category included under the Scheme. Finding of the lending institution was challenged before this court in various writ petitions. This court directed the "Grievance Redressal Officer" appointed under clause 10.2 of the Scheme to consider representations of the aggrieved farmers (petitioners therein) and to pass appropriate orders. Consequently the petitioners have approached the 4th respondent who is the "Grievance Redressal Officer" appointed by the lending Institution. But the 4th respondent, instead of considering the representations and taking a decision by himself, forwarded the

representations to the General Manager of the Palakkad District Co-operative Bank for taking necessary action. This was again challenged before this court in different writ petitions. In Ext.P3 common judgment this court observed that, a reading of clause 10.2 of the Scheme would make it clear that "Grievance Redressal Officer" is the authority to consider and to pass orders on the representations of the farmers and to decide whether they are entitled to benefit of the Scheme. Therefore the 4th respondent was directed to consider the matter afresh and to pass appropriate orders, within a time limit stipulated. In compliance with the directions contained in Ext.P3 judgment the 4th respondent considered the matter and issued Ext.P4 proceedings to the NABARD (the 2nd respondent), who is the nodal agency for implementation of the Scheme. But the 2nd respondent has not taken any action based on Ext.P4 to grant benefits under the Scheme to the petitioners. Under such circumstances, the petitioners are seeking reliefs for directing the 2nd respondent to grant the benefits as found eligible in Ext.P4 proceedings. *Inter alia*, the petitioners are seeking directions against the 3rd respondent, which is the lending institution, to make waiver of the debt under the respective loans on a time bound manner.

4. The 2nd respondent had filed counter affidavit in WP(C)No.21620/2010 contending that, the procedure under the Scheme stipulates for a branch-wise certification and audit, before forwarding the claims for debt relief. It is stated that the audited branch-wise claims have to be subjected again for further audit by the Chartered Accountants of the Bank and thereafter the lending institutions have to forward a consolidated claim to the State Co-operative Bank, and the State Co-operative Bank in turn has to forward the claims to the NABARD for reimbursement. Therefore it is contended that the NABARD has no role to play in deciding eligibility of the individual claims. It is contended that NABARD is not a competent authority to take a decision on individual

claims forwarded in Ext.P4 by the 4th respondent, when the eligibility of the petitioners under the Scheme have already been denied by the lending institutions or by the Departmental Auditors of the Co-operative Department. Further it is contended that, forwarding of the claims directly to NABARD by the 4th respondent, is not in accordance with the procedure. It is also contended that NABARD can only entertain consolidated claims for reimbursement for debt waiver/debt relief forwarded by the State Co-operative Bank.

5. In this regard it is beneficial to have an appraisal of the relevant provisions of the Scheme (Ext.P1). Clause 7.8 of the Scheme provides that Reserve Bank of India shall be the nodal agency for the implementation of the Scheme with respect to Scheduled/Commercial Banks, Urban Co-operative Banks, and local area Banks. It provides that NABARD shall be the nodal agency in respect of Regional Rural Banks and Co-operative Credit Institutions. Clause 9 of the Scheme provides about

certification of the debt waiver/debt relief. It provides that the lending institutions should issue certificates with respect to waiver of eligible amounts, in the form which may be prescribed by the nodal agency. It is specified in clause 10.1 of the Scheme that every lending institution shall be responsible for correctness and integrity of the lists of farmers eligible under the Scheme and with respect to particulars of the debt waiver/debt relief in respect to each such farmers. Clause 10.2 obliges every lending institution to appoint one or more "Grievance Redressal Officers" for each State and the name and address of the "Grievance Redressal Officer" need to be displayed in each branch of the lending institution. It provides that, the "Grievance Redressal Officer" shall have authority to receive representations from aggrieved farmers and to pass appropriate orders thereon. It provides that the order of the "Grievance Redressal Officer" shall be final. Clause 10.3 provides that any farmer who is aggrieved by non inclusion of his name in the beneficiary list can make a representation through the branch or directly to the "Grievance Redressal Officer" and the "Grievance Redressal Officer" should dispose of such representations within 30 days of its receipt.

6. From the above referred provisions of the Scheme it is clear that any farmer who was denied of benefits under the Scheme is entitled to approach the "Grievance Redressal Officer." The "Grievance Redressal Officer" is bound to take an appropriate decision on such representations. It is evident from clause 10.2 that such decision if any taken by the "Grievance Redressal Officer" shall be final. Therefore the Scheme contemplates for an appellate forum to consider correctness of the decisions taken by the lending institutions on the question of eligibility for debt waiver/debt relief. Since it is specifically mentioned that the decision taken by the "Grievance Redressal Officer" shall be final, any decision which will be taken by the 4th respondent will be binding on the lending institution. Hence it is evident that the

lending institution is bound to forward the claim based on the decision of the "Grievance Redressal Officer" to the NABARD, for reimbursement of the benefit to be granted to the farmers. With respect to decisions taken by the "Grievance Redressal Officer" in individual cases, contentions taken by NABARD based on the procedure formalities cannot be accepted. In such cases, there cannot have any consolidated list of claims prepared by the lending institutions which can be routed through the State Co-operative Bank. Learned Standing Counsel appearing for NABARD had drawn attention of this court to the procedure contemplated under clause 9 of the Scheme with respect to issuance of certificates of debt waiver/debt relief by the lending institutions. He had also pointed out clause 11 of the Scheme which insists upon for conducting audit at the lending institutions. But it is pertinent to note that, such procedures of audit and other formalities are applicable only with respect to claims for reimbursement forwarded by the lending institutions.

In cases where the lending institutions have rejected the claim and the "Grievance Redressal Officer" had found that the person concerned is eligible for debt waiver/debt relief, the decision is binding on the lending institution. In such case the lending institution is at an obligation to forward the certificate of debt waiver/debt relief to the nodal agency for implementation. The NABARD is only a nodal agency selected for implementation of the Scheme. When the Scheme provides an appellate authority and when such appellate authority takes a decision regarding eligibility of a farmer, the NABARD cannot sit in judgment over the eligibility of such persons. Therefore if the lending institution forward a certificate of debt waiver/debt relief based on decision of the "Grievance Redressal Officer", the NABARD has to process the claim and to allow the benefits.

7. In the 1st batch of cases, it is evident that as per Ext.P4 the 4th respondent had forwarded a list of eligible persons to the 2nd respondent (NABARD). It is true that

NABARD cannot act upon based on such a list. On the other hand, it is for the 3rd respondent-lending institution to forward certificates of debt waiver/debt relief in each case to the NABARD seeking reimbursement of the amounts. Therefore this court is of the considered opinion that necessary directions in this regard is warranted.

8. Under the above mentioned circumstances, WP(C) Nos.21620/2010, 23953/2010, 24953/2010 and 30016/2011 are hereby disposed of by directing the 3rd respondent to prepare and forward certificate of debt waiver/debt relief in respect of the petitioners based on Ext.P4 decision forthwith to the 2nd respondent (NABARD). Needful steps in this regard shall be taken at the earliest possible at any rate, within a period of two weeks from the date of receipt of certified copy of this judgment. The 2nd respondent is directed to process claims of each of the petitioners based on such certificates by taking note of the decision of the 4th respondent, without further delay

and shall take necessary steps for reimbursement of the amounts so certified, not withstanding the fact that the term of the Scheme had already expired. This is especially because it is taken note of the fact that the petitioners have raised challenges against rejection of their claims at a time when Ext.P1 Scheme was in operation. The Central Government (1st respondent) is also directed to make available the requisite amounts for payment of the benefits to the petitioners, to the nodal agency without any further delay. Disbursement of the amounts to the lending institution shall be made at the earliest possible at any rate, within a period of two months from the date of receipt of the certificates of debt waiver/debt relief.

9. With respect to the 2nd batch cases, wherein "Ayarkunnam Service Co-operative Bank Ltd." is the lending institution, the "Grievance Redressal Officer" (2nd respondent) had evaluated the claims and issued individual certificates with respect to those petitioners

who were found eligible for debt waiver/debt relief. Grievance voiced in those writ petitions is also regarding non payment of the benefits to the petitioners, who were found eligible. It is evident that in certain cases the "Grievance Redressal Officer" had forwarded such certificates to the Joint Registrar of Co-operative Societies. It is further evident that in certain cases the Joint Registrar had issued letters declining such benefits mentioning technical objections with respect to eligibility. As already found in the foregoing paragraphs of this judgment, the Scheme postulates the "Grievance Redressal Officer" as an appellate authority. Once the "Grievance Redressal Officer" takes a favourable decision, finding eligibility of any of the loanees, it is for the lending institutions to forward certificates of debt waiver/debt relief to the NABARD, and the NABARD being the nodal agency implementing the Scheme has to reimburse the amounts so certified.

10. Therefore WP(C) Nos.5269/2011, 7108/2011 and

10052/2011 are also disposed of by directing the 1st respondent lending institution to forward certificates of debt waiver/debt relief to the NABARD, based on the findings arrived by the "Grievance Redressal Officer", with respect to those petitioners who were found eligible for debt waiver/debt relief. The certificate of debt waiver/debt relief shall be forwarded at the earliest, at any rate within a period of two weeks from the date of receipt of certified copy of this judgment. As ordered in the earlier batch of cases, the NABARD shall take steps to disburse the amounts within the time stipulated as above. The Central Government shall make available the requisite funds for disbursement of the benefits within the time stipulated.

Sd/-**C.K. ABDUL REHIM**
JUDGE

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