IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WP(C).No. 33731 of 2011 (N)

PETITIONER:

THE KOLLAM DISTRICT CO-OPERATIVE BANK,
REPRESENTED BY ITS GENERAL MANAGER, CHINNAKKADA
KOLLAM-691001.

BY ADVS.SMT.AYSHA YOUSEFF,SC,KOLLAM DISTRICT CO
SRI.T.R.HARIKUMAR, SC, KOLLAM DISTRICT COOPERATIVE
BANK LTD.

RESPONDENTS:
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1. KERALA STATE FARMERS DEBT RELIEF
COMMISSION, REPRESENTED BY ITS SECRETARY
TRIVANDRUM-695001.

2. S.M.IQBAL, THEKKEVAZHIYATH,
VARAVILA P.O., VOWVAKAVU, KARUNAGAPPALLY
KOLLAM-690518.

RR2 BY ADV. SRI.K.SIJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015, ALONG WITH WPC NO.13457/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 33731 of 2011 (N)

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1: TRUE COPY OF THE WRITTEN OBJECTION DATED 19-8-2008 FILED BY THE PETITIONER BANK BEFORE THE R1.

EXT.P2: TRUE COPY OF THE ORDER DT.19-8-2008 PASSED BY R1.

EXT.P3: TRUE COPY OF THE ORDER DATED 15-3-2011 PASSED BY R1.

EXT.P4: TRUE COPY OF THE LETTER DT.26-5-2011 OF THE PETITIONER BANK SENT TO R1.

EXT.P5: TRUE COPY OF THE LETTER DT.26-5-2011 OF PETITIONER BANK SENT TO R2.

EXT.P6: TRUE COPY OF THE LETTER DT.17-8-11 OF THE R1 ADDRESSED TO THE PETITIONER BANK.

EXT.P7: TRUE COPY OF THE JUDGMENT DATED 11-8-2011 IN WPC 21918/11.

2ND RESPONDENT'S EXHIBITS

EXT.R2(A) COPY OF REPORT SUBMITTED BY THE BANK BEFORE R1 COMMISSION DT.10.4.08

EXT.R2(B) COPY OF INTERIM ORDER ISSUED BY R1 COMMISSION

EXT.R2(C) COPY OF RECEIPT SHOWING THE PAYMENT OF RS.39875/- TO THE BANK ON 29.1.08

EXT.R2(D) COPY OF RECEIPT SHOWING THE PAYMENT OF RS.125/- TO THE BANK ON 29.1.08

EXT.R2(E) COPY OF RECEIPT SHOWING THE PAYMENT OF rS.40,000/- TO THE BANK ON 31.3.08

EXT.R2(F) COPY OF RECEIPT SHOWING THE PAYMENT OF RS.40,000/- TO THE BANK ON 29.5.08

EXT.R2(G) COPY OF LAON PASSBOOK OF R2 SHOWING PAYMENT OF RS.448664/- ON 12.7.10

EXT.R2(H) COPY OF JUDGMENT IN WPC NO.2545/11 OF THIS HON'BLE COURT DT.25.1.11

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) Nos.33731 of 2011 &
13457 of 2012

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Dated this the 22nd day of June, 2015

JUDGMENT

The petitioners in both these writ petitions are challenging the very same order passed by the Kerala State Farmers' Debt Relief Commission (hereinafter referred to as 'Commission') in R.P.No.916 of 2010-Ext.P11, mainly on the ground that the Commission does not have any jurisdiction to undertake any review after a period of two months. The petitioners' case is that in accordance with Rule 20 of the Kerala Farmers' Debt Relief Commission Rules, framed under section 21 of the Act, a review can be undertaken only within 60 days of the date of receipt of the order.

2. The petitioner in W.P.(C) 13457 of 2012 will be hereafter referred to as petitioner and petitioner in W.P.(C) No.33731 of 2011 will be referred to as Bank.

3. The petitioner availed a loan of Rs.5 lakhs from the Bank. The loan was sanctioned and disbursed by the Bank in 2005. As the petitioner could not repay the loan, he submitted a

petition before the Commission requesting for benefit under the Kerala State Agricultural Debt Relief Scheme. The Commission granted the benefit allowing a sum of ₹1 lakh as debt relief and permitted payment of the outstanding balance in 3 installments. Accordingly the petitioner remitted a sum of ₹4,48,864/- in the stipulated installments. The Bank had closed the loan account and returned the title deeds. It was much thereafter the order on review was passed.

4. It is seen that the Commission has undertaken the review, on the basis of a petition received from a third party informing the Commission that the petitioner was not eligible for grant of debt relief. By order dated 19.08.2008, (Ext.P7 in W.P.(C) 13754 of 2012), the Commission had granted relief to the petitioner to the extent of ₹1,00,000/- and time for payment till 30.6.2010. Petitioner paid the balance amount of ₹4,48,864/-, accordingly. The Bank closed the account in July 2010 and returned the title deeds to petitioner.

5. Thereafter in January 2011, the Commission issued notice to the petitioner to appear before it in a review petition.

He thereupon approached this Court in W.P.(C) No.2545 of 2011 against a proposed review, saying that it was without jurisdiction. By Ext.P10 judgment dated 25.1.2011, the writ petition was disposed of observing that the right course open to the petitioner was to appear before the Commission and resist the prayer made for review.

6. It was thereafter Ext.P11 order was passed on 15.3.2011, after hearing the petitioner as well as the Bank cancelling Ext.P7 order and directing the Bank to remit ₹1 lakh, granted as relief, to Government, giving liberty to recover it from the petitioner.

7. In this case, the Commission passed its original order Ext.P7 on 19.08.2008. After hearing and after examining the contentions raised on either side Ext.P11 order was passed. From Ext.P11, it is seen that one Sri.K.K.Premji submitted a petition on 8.3.2010, pointing out that the petitioner was not eligible for grant of debt relief under the Kerala Farmers' Debt Relief Commission Act. The petitioner as well as the Bank filed objections against the proposed review after such a long lapse of

time. The Commission considered the contention raised by the Bank a well as the petitioner. Regarding the jurisdiction for review of its own order, after the lapse of more than 2 years, Commission found that time limit of 60 days period is applicable only to the parties to an application for review and there is no time limit prescribed for suomotu proceedings. Therefore the review undertaken under Rule 20 was found not barred by limitation.

8. The Bank has also challenged the proceedings of the Commission under W.P.(C) No.33731 of 2011. Apart from the contention that the review undertaken is beyond limitation and contrary to rule 20, they have got another contention that the Commission's direction to the Bank to return the sum of ₹1,00,000/- which was already remitted in the account of the petitioner, is illegal. It is their contention that on account of the order passed by the Commission and on payment of the dues in installments as directed in its order, the loan account in the case of the petitioner was closed on 17.7.2010 and they returned the title deed to him. Further contention is about the applicability of

the Act to petitioner and his account. Even though it had raised the contention that the petitioner did not come under the purview of farmer and the purpose of loan was commercial and he did not come under the purview of the debt relief in accordance with the scheme, disregarding the contentions raised by the Bank with reference to the application for loan submitted by the borrower, the Commission granted relief to the petitioner. It is pointed out that the specific version of the Bank was that in the application for loan the avocation of the applicant was shown as business and the loan was granted for the purpose of business. It was also pointed out that under section 2 (vii) of the Kerala State Farmers' Debt Recovery Commission Act, the debt availed for the commercial purpose cannot come under the purview of debt for the purpose of relief. Despite all those contentions, the petitioner was granted relief and now direction is issued as per Ext.P3 on 15.3.2011 (in W.P.(C) 33731 of 2011) to the Bank to remit the sum of ₹1 lakh, the relief granted to and availed by petitioner, to Government within one month.

9. In both the writ petitions there is one common question

raised ie. regarding the jurisdiction of the Commission to undertake review at this distance of time. Rule 20 of the Kerala State Farmers' Debt Relief Commission Rules provides as follows:

> *"Review: The Commission can either suomoto or on a petition filed within 60 days from the date of receipt of the order, can review any of its decision".*

10. The learned Government Pleader pointed out that there is yet another provision ie. Rule 15, which provides for correction of mistakes in the order, according to which the Commission can at any time correct any mistake or omission either suo moto or on application as the case may be. It is further provided that before such correction or modification, the concerned parties shall be allowed an opportunity of hearing. Learned Government Pleader submitted that this Court will not be justified in interfering with the order which will result in revival of an illegal order, enabling ineligible hands to enjoy undue benefits.

11. In this case Ext.P11 in W.P.(C) No.13457 of 2012 shows that the review was undertaken on the basis of a petition by a third party. The review itself is undertaken after a period of about

2 years. As far as the Bank is concerned, they have returned entire records including the title deeds to the borrower on closure of the account by 2010 itself and they are not even in a position to initiate any proceedings for recovery of the amount from the petitioner. Therefore the direction issued to the Bank to remit the amount cannot be justified.

12. It is the case of petitioners in both the cases that the review of the proceedings at this distance of time is without authority. Just because there is a provision for review and even assuming that the Commission has undertaken review suo motu, issue to be considered is whether the Commission has got power to undertake review at any time and whether it has exercised the power within a reasonable period.

13. The petitioner has a case that he is a farmer, while the Bank has got a case that he has availed the loan for commercial purpose. The benefit of debt relief has been granted to the petitioner as per Ext.P5 in the year 2008. According to the petitioner, he could not raise his contentions due to the absence of his counsel on the relevant day. The learned counsel for the

petitioner relied on a judgment reported in ***Kerala State Co-operative Bank Ltd. Vs. Kerala State Farmers Debt relief Commission*** *[2009 (4) KLT 917],* wherein it was held that housing loan is a debt, for which relief can be granted under the Kerala Farmers Debt Relief Commission Act, 2006. It was held therein that under section 2(vii) loan amounts taken for commercial purposes other than agricultural allied commercial purposes are excluded from the definition of debt. In this case, the case of the petitioner is that he availed the loan for the purpose of development of poultry farm and it comes under the definition of agricultural debt as it cannot be treated as one under commercial purpose or for luxury. At the same time Bank disputes his eligibility.

14. In these circumstances I think these are all matters to considered by the Commission afresh. The matter is therefore remitted to the Agricultural Debt Relief Commission to consider the question of eligibility of petitioner for relief under the Debt Relief scheme. It is made clear that the Bank shall not be made liable to remit any amount towards the relief granted to the

borrower/petitioner as directed in its order dated 26.5.2011- Ext.P11 in W.P.(C) 13457 of 2012, Ext.P5 in W.P.(C) 33731 of 2011.

15. In the above circumstances, I quash the order dated 26.5.2011- Ext.P11 in W.P.(C) 13457 of 2012/Ext.P5 in W.P.(C) 33731 of 2011 passed by the Kerala State Farmers' Debt Relief Commission. Commission will pass fresh orders after hearing all the parties, within a period of three months from the date of receipt of a copy of this judgment.

It is made clear that the Bank shall not be at any rate made liable for any payment towards the relief granted to the petitioner. The question regarding the authority of Commission to undertake review, on the basis of a petition of a third party after lapse of about 2 years is left open.

The Writ Petitions are disposed of accordingly.

Sd/-
P.V.ASHA,
JUDGE.

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