

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.39171 of 2016 &

W.M.P.No.33542 of 2016

1.Ajay Kumar Bishnoi
2.Amul Gabrani

...Petitioners

-vs-

1. Debts Recovery Tribunal-I,
6th Floor, Spencer Tower, 770A,
Anna Salai, Chennai - 600 002.
2. M/s.L&T Infrastructure Finance
Company Limited,
Having its Branch Office at
KGN Towers, 6th Floor,
No.62, Ethiraj Salai,
Commander in Chief Road,
Egmore, Chennai - 105.
3. Axis Bank,
Rep. by its Assistant Vice President,
Corporate Banking Branch,
Karumuthu Nilayam, Ground Floor,
No.192, Anna Salai,
Chennai - 600 002.
4. State Bank of India,
Rep.by its Deputy General Manager,
Leather & International Branch - MCG,
No.177/1, MVJ Towers,
Poonamallee High Road,
Chennai - 600 010.
5. Punjab National Bank,
Rep. by its Deputy General Manager,
Larges Corporate Branch,
Rayala Towers, III Floor,

781-785, Anna Salai,
Chennai - 600 002.

6.State Bank of Travancore,
Rep. by its Chief Manager,
Mount Road, HPA Plaza,
162, Anna Salai, Chennai - 600 002.

7.ICICI Bank Limited,
Rep. by its Authorised Signatory,
ICICI Bank Towers, No.24, South Face,
4th Floor, Ambattur Industrial Estate,
Amabattur, Chennai.

8.Kotak Mahindra Bank Ltd.,
Rep. by its Authorised Signatory,
Capitale, 555, Anna Salai,
Teynampet, Chennai - 600 018.

9.Standard Chartered Bank,
Rep. by its Authorised Signatory,
No.19, Rajaji Salai,
Chennai - 600 001.

10.M/s.GET Power Ltd.,
Represented by its Directors,
Having its registered Office at
Techpro Towers,
Plot No.11/A17, 5th Cross Road,
Siruseri IT Park,
Siruseri, Chennai - 603 103.

11.M/s.Hythro Power Corporation Ltd.,
Having its registered Office at
No.106, Vishwadeep Tower,
Plot No.4, District Centre,
Janak Puri, New Delhi - 110 058.

...Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling the the records of I.A.No.145 of 2015 in O.A.No.104 of 2015 on the file of the first respondent at Chennai culminating in the order dated 20.09.2016 and quash the same.

For Petitioners : Mr.Somaiyaji,
Senior Counsel for
Mr.Adeesh Anto

For Respondent Nos.2, 4 & 5 : Mr.M.L.Ganesh

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The second respondent is a Financial Institution. M/s.GET Power Ltd. availed term loan facility to the tune of Rs.60,00,00,000/- from the second respondent. The petitioners and M/s.Hythro Power Corporation Limited are Guarantors for the said loan facility. The petitioners are also Directors of M/s.GET Power Ltd. and M/s.Hythro Power Corporation Limited. As on 14.07.2015, a sum of Rs.13,18,12,955/- was due from them. The second respondent initiated recovery proceedings against the petitioners and the tenth respondent / M/s.GET Power Ltd. and the eleventh respondent / M/s.Hythro Power Corporation Limited in O.A.No.104 of 2015 for recovery of Rs.13,18,12,955/-. The Writ Petitioners are the respondents 2 and 3 in the said O.A.

2.In the said O.A. I.A.Nos.142 to 146 of 2015 have been filed for interim orders. In the case at hand, we are concerned with the interim order passed in I.A.No.145 of 2015. The Tribunal by its order dated 20.09.2016 in I.A.No.145 of 2015 in O.A.No.104 of 2015 passed the following order:

"a.The Respondents 2 & 3 shall deposit their Passports before the Registry of this Tribunal, within three days from the date of service of this order.

b.Simultaneously, the Respondents 2 & 3 shall also file an undertaking affidavit duly undertaking that they will not leave the country without obtaining the written approval from the Tribunal, within three days from the date of the receipt of the order.

c.On filing of such an undertaking affidavit, the Respondents 2 & 3 can take back their original passport from the Tribunal by submitting an undertaking that they will produce the same as and when directed by the Tribunal."

3.Aggrrieved by the said order, the present Writ Petition has been filed.

4.The learned Senior Counsel for the petitioners would submit that the Tribunal is not empowered to make the impugned order, and it violates the petitioners fundamental right to travel, guaranteed under Article 21 of the Constitution of India.

5.The learned counsel for the respondents 2, 4 and 5 would submit that the Writ Petition is liable to be dismissed since the petitioners have approached this Court under Article 226 of the Constitution of India, instead of preferring statutory appeal under Section 20 of RDDB and FI Act, 1993. In this connection, he relied on the judgment in PUNJAB NATIONAL BANK vs. O.C.KRISHNAN AND OTHERS [2001 SUPP(1) SCR 466]. The Hon'ble Supreme Court has pointed out that when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under constitutional provisions. The petitioners have approached this Court complaining that their freedom of movement has been infringed and so saying they had challenged the impugned order under Article 226 of the Constitution of India. Inasmuch as free movement, a fundamental right, is claimed to have been jeopardised, the petitioners would be certainly entitled to invoke the writ jurisdiction of this Court. If so, the Writ Petition is perfectly maintainable.

6.The learned Senior Counsel for the petitioners would submit that the Debts Recovery Tribunal Act does not authorise the Tribunal to make the impugned order. In this connection, he relied on the observations of the Hon'ble Supreme Court in V.T.KHANZONE vs. RESERVE BANK OF INDIA [(1982) 2 SCC 7]. The Hon'ble Supreme Court observed that "A statutory corporation can do only such acts as are authorised by the statute creating it and the powers of such a corporation cannot exist beyond what the statute provides expressly or by necessary implication. If an Act is neither expressly or impliedly authorised by the statute which creates the corporation, it must be taken to be prohibited." In our considered view, the observations of the Hon'ble Supreme Court has no baring on the matter in issue, inasmuch as it relates to a statutory corporation. In the case at hand, we are concerned with the exercise of powers by a statutory Tribunal.

7.A Division Bench of the Hon'ble Delhi High Court in GURBACHAN SINGH SALUJA vs. DEBTS RECOVERY TRIBUNAL [(2009) 163 DLT 369 (DB)] has held that the Debts Recovery Tribunal had no authority whatsoever to either impound Passport or to put any restriction on travel abroad in exercise of its powers to pass an interim order under Section 19(6) of the Debts Recovery Tribunal Act. The same view has been taken in SANJEEV R.APTE vs. I.F.C.I.LTD. [(2009) 3 PLR 44], and A.S.MITTAL vs. P.O., DEBT RECOVERY TRIBUNAL [(2004) 121 CompCas 309 (Delhi)].

8.In STATE BANK OF INDIA vs. PRAFULCHANDRA V.PATEL [AIR 2011 GUJ 81], a Division Bench of the Hon'ble Gujarat High Court

held that Debts Recovery Tribunal was not empowered to prohibit the borrower from leaving country without prior permission of Tribunal.

9.A single Judge of this Court in S.M.SHOBA vs. THE JOINT SECRETARY [2016 (2) CWC 423] has held that "impounding of Passport of an accused can be considered only if criminal case is pending and it is proved that the accused may flee the country". In AROCKIA JEYABALAN vs. THE REGIONAL PASSPORT OFFICER [2014-4-LW-841], it has been held that "Passport authority has no authority to continue to retain passport of the petitioner therein, as his case was not covered by any one of the contingencies stipulated in Clauses (a) to (h) of Sub-Section (3) of Section 10 of Passports Act". That was followed by this Court in EDVIN MERWIN HURTIS vs. THE REGIONAL PASSPORT OFFICER [2015 (2) MWN (Cr.) 157].

10.The Debts Recovery Tribunal Act, 1993 was enacted having regard to the difficulties experienced by the Banks in recovering the loans. The Act provides for expeditious adjudication and recovery of debts due to Banks. In ALLAHABAD BANK vs. RADHA KRISHNA MAITY [AIR 1999 SC 3426], the Hon'ble Supreme Court has held that the Tribunal can go beyond the code of civil procedure as long as it passes order inconformity with the principles of natural justice. The Hon'ble Supreme Court has pointed out that the Tribunal can pass orders to secure the ends of justice.

11.A pertinent reference may be made to the decision of a Division Bench of this Court in an identical matter in ICICI BANK LIMITED vs. THE DEBTS RECOVERY APPELLATE TRIBUNAL [2011 (6) CTC 70]. The Division Bench has taken note of the decision of the Hon'ble Kerala High Court in ANNAI JAYABHARATHI vs. THE DEBT RECOVERY TRIBUNAL AND ANOTHER [AIR 2005 Ker.137]. The Division Bench has also referred to the decision in MENAKA GANDHI vs. UNION OF INDIA [1978 (1) SCC 248]. It has been held that Debts Recovery Tribunal can direct debtor by means of interim order to surrender his passport. However, such power should be used sparingly and with caution to meet ends of justice.

12.It is true in a subsequent decision in RADHIKA VIJAY KUMAR vs. DEBTS RECOVERY TRIBUNAL-II [W.P.No.2621 of 2014 dated 11.02.2014], a contrary view would appear to have been expressed. The earlier binding decision of the Division Bench in ICICI BANK LIMITED vs. THE DEBTS RECOVERY APPELLATE TRIBUNAL [2011 (6) CTC 70] was not brought to the notice of the Court in the later case. We are in agreement with the view taken by the Division Bench in ICICI BANK LIMITED vs. THE DEBTS RECOVERY

APPELLATE TRIBUNAL [2011 (6) CTC 70]. The above ruling of the Division Bench will apply on all fours to the present case.

13. In terms of the conditions imposed by the Tribunal, it was ascertained in the open Court as to whether the petitioners are ready to give an undertaking and after getting instructions from the petitioners their counsel declined to give the undertaking.

14. The petitioners would submit that they might have to undertake journey to foreign countries in connection with their business. The conditions imposed by the Tribunal is only to ensure that the petitioners do not flee from justice and this cannot be viewed as an abridgement of freedom of movement and it is only a reasonable restriction. Viewed in this perspective, the conditions imposed by the Tribunal cannot be said to be unreasonable. The Tribunal has considered the matter in proper light and has come to the correct conclusion and the same does not warrant interference by this Court.

15. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

The Debts Recovery Tribunal-I,
6th Floor, Spencer Tower, 770A,
Anna Salai, Chennai - 600 002.

+1cc to Mr. Adeeshanto, Advocate, S.R.No.5909
+3cc to Mr. Ganesh, Advocate, S.R.No.5125

AD(CO)
RS(15/02/2017)

W.P.No.39171 of 2016