IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1973 of 2016
IN
Civil Writ Jurisdiction Case No. 12000 of 2013

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1. National Bank for Agriculture and Rural Development, Block Bandra (E), Mumbai- 400051 through its Managing Director.
2. Chief General Manager, National Bank for Agriculture and Rural Development, Maurya Lok Complex, Block- B, 4th and 5th Floor, Dak Bunglow Road, Patna- 800001.
3. Assistant General Manager, National Bank for Agriculture and Rural Development, Maurya Lok Complex, Block- B, 4th and 5th Floor, Dak Bunglow Road, Patna- 800001.

.... Appellant/s

Versus

1. Multi State Cooperative Land Development Bank Limited, Bihar and Jharkhand (Earlier Known as Bihar State Cooperative Land Development Bank Ltd.) Budh Marg, Patna-1 through its Managing Director.
2. The Union of India through Secretary (Financial Service) Ministry of Finance, Department of Financial Services, Govt. of India, 35, Jeevan Deep Building, Parliament Street, New Delhi 2.
3. Joint Secretary (B.O.), Ministry of Finance, Department of Financial Services, Govt. of India, 35 Jeevan Deep Building Parliament Street, New Delhi.
4. Secretary, Agriculture and Cooperative Department, Ministry of Agriculture, Krishi Bhawan, New Delhi.
5. Director, Agriculture and Cooperative, Govt. of India, Department of Agriculture and Cooperative, Ministry of Agriculture, Krishi Bhawan, New.
6. Comptroller and Auditor General of India, Bahadur Shah Jafar Marg, New Delhi-2

.... Respondent/s

With

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Letters Patent Appeal No. 1974 of 2016
IN
Civil Writ Jurisdiction Case No. 9020 of 2013

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1. National Bank For Agriculture and Rural Development, Plot No. C-24, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051 through its Managing Director.
2. National Bank for Agriculture and Rural Development, Maurya Lok Complex, Block- B, 4th and 5th Floor, Dak Bunglow Road, Patna- 800001, through its Chief General Manager.

.... Appellant/s

Versus

1. Brahmdeo Biswas, S/o Late Chhittan Mandal, R/o Village- Kochaili Dagarua, P.O.- Barsouni, P.S. Dagarua, District- Purnea.

2. Jagdish Mahto, S/o Ram Bahadur Mahto, R/o Village- Kandhar Paili, P.O.- Dawai, District- Katihar.
3. Kushum Kant Jha, S/o Late Raji Jha, R/o Village- Parsouna Navtoli, P.S.- Dhakjari, P.S.- Benipatti, District- Madhubani.
4. Doman Lal Mandal, S/o Late Kutai Mandan, R/o Village- Barsauni, P.S.- Dagruna, District- Purnia.
5. Kanak Lal Yadav, S/o Late Kardhan Lal Yadav, R/o Village- Kachauli Dagrua, P.S.- Barsauni, P.S.- Dargua, District- Purnia.
6. Multi State Cooperative Land Development Bank Ltd. Bihar- Jharkhand, Budha Marg, Patna-1 through Managing Director.
7. Director Finance, Multi State Cooperative Land Development Bank Ltd., Bihar-Jharkhand, Budh Marg, Patna-1.
8. Branch Manager, Purnea Branch, Multi State Cooperative Land Development Bank Limited, District- Purnea.
9. Branch Manager, Katihar, Branch, Multi State Cooperative Land Development Bank Limited, District- Katihar.
10. Branch Manager, Banipatti Branch, Multi State Cooperative Land Development Bank Limited, District- Madhubani.

.... Respondent/s

With

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Letters Patent Appeal No. 2294 of 2016

IN

Civil Writ Jurisdiction Case No. 12000 of 2013

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1. The Union of India through Secretary (Financial Service) Ministry of Finance Department of Financial Services, Government of India, 35, Jeevan Deep Building Parliament Street, New Delhi.
2. The Joint Secretary, Ministry of Finance, Department of Financial Services, Government of India, 35, Jeevan Deep Building, Parliament Street, New Delhi.

.... Appellant/s

Versus

1. Multi State Cooperative Land Development Bank Limited, Bihar and Jharkhand (Earlier known as Bihar State Cooperative land Development Bank Ltd.) Budha Marg, Patna-1, through its Managing Director.
2. The Secretary Agriculture and Cooperative Department, Ministry of Agriculture, Krishi Bhawan, New Delhi.
3. The Director, Agriculture and Cooperative, Government of India, Department of Agriculture and Cooperative, Ministry of Agriculture, Krishi Bhawan, New Delhi.
4. The National Bank for Agriculture and Rural Development, Block Bandra (E), Mumbai 400051 through its Managing Director.
5. The Chief General Manager, National Bank for Agriculture and Rural Development, Maurya Lok Complex, Block B, 4th and 5th Floor, Dak Bunglow Road, Patna-1.
6. The Assistant General Manager, National Bank for Agriculture and Rural Development, Maurya Lok Complex, Block B, 4th and 5th Floor, Dak Bunglow Road, Patna-1
7. The Controller and Auditor General of India Bahadur Shah Jafar Marg, New

Delhi-2.

.... Respondent/s

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Appearance :

(In LPA No.1973 of 2016)

For the Appellant/s	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. Siddhartha Prasad, Advocate
For the UOI	:	Mr. S.D SANJAY (ADDL. SOC. GEN.) Mrs. Kanak Verma, CGC
For the respondent Bank	:	Mr. Y.V. Giri, Sr. Advocate Mr. Rajesh Prasad Choudhary, Advocate
For the Private respondent	:	Mr. P.K. Shahi, Sr. Advocate Mr. Rakesh Ranjan, Advocate

(In LPA No.1974 of 2016)

For the Appellant/s	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. Siddhartha Prasad, Advocate
For the UOI	:	Mr. S.D SANJAY (ADDL. SOC. GEN.) Ms. Parul Prasad, Advocate Mrs. Kanak Verma, CGC
For the respondent Bank	:	Mr. Y.V. Giri, Sr. Advocate Mr. Rajesh Prasad Choudhary, Advocate
For the Private respondent	:	Mr. P.K. Shahi, Sr. Advocate Mr. Rakesh Ranjan, Advocate

(In LPA No.2294 of 2016)

For the Appellant/s	:	Mr. S.D SANJAY (ADDL. SOC. GEN.) Mrs. Kanak Verma
For the NABARD	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. Siddhartha Prasad, Advocate
For the respondent Bank	:	Mr. Y.V. Giri, Sr. Advocate Mr. Rajesh Prasad Choudhary, Advocate
For the Private respondent	:	Mr. P.K. Shahi, Sr. Advocate Mr. Rakesh Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 12-01-2018

These intra-court appeals, L.P.A. No. 1973 of 2016 and L.P.A. No. 1974 of 2016 filed by the National Bank for Agriculture and Rural Development (for short the 'NABARD') and L.P.A. No. 2294 of 2016 filed by the Union of India are against the order passed in C.W.J.C. No. 12000 of 2013 filed by the Multi State Cooperative

Land Development Bank Ltd.(for short “the Bank”) and C.W.J.C. No. 9020 of 2013 preferred by the farmers (beneficiaries), which was heard and disposed of by a common order dated 11.05.2016 passed by the learned Single Judge.

2. For the sake of convenience L.P.A. No. 2294 of 2016 is being taken up as a leading case as all the three appeals arise out of common order.

3. C.W.J.C. No. 12000 of 2013 was filed by the Bank and C.W.J.C. No. 9020 of 2013 was filed by the farmers(beneficiaries). The facts emerging from the writ application is that the Central Government in the year 2008 announced a loan waiver scheme “Agriculture Debt Waiver and Debt Relief Scheme, 2008” (hereinafter referred to as “Scheme”), which was later notified by the Central Government in the Ministry of Finance, Department of Financial Services, Government of India, New Delhi. The NABARD was appointed as nodal agency for the implementation of the Scheme through the Regional Rural Banks (RRBs) and the Cooperative Banks like the Bank of the writ petitioner. The marginal farmers, small farmers and other farmers, as defined in the Scheme, were to get the benefit(s) of the said Scheme which was made applicable to the loans disbursed between 31.03.1997 to 31.03.2007. Clause 4(3) of the Scheme read as under :

“4.3 Nothing contained in this Scheme shall

> *apply to any loan disbursed by a lending institution prior to March 31, 1997."*

4. However, Ministry of Finance, Department of Financial Services, Government of India vide letter dated 28.05.2008, which was communicated by the Nodal Agency (NABARD) by letter dated 03.06.2008 giving certain supplementary instructions of explanatory nature to the implementing agencies for carrying out the Schemes, which is reproduced hereinbelow :

> *"This circular contains certain supplementary instructions of an explanatory nature implementing agencies will find these instructions useful to address doubts which may be raised by field level functionaries :-*
> *(i) Only those direct agricultural loans which fulfill all the three conditions, i.e. (a) disbursed between March 31, 1997 and March 31, 2007, (b) overdue on December 31, 2007, and (c) remaining unpaid until February 29, 2008 will be eligible for debt waiver/ debt relief under the Scheme.*
> *(ii) xxxxx*
> *(iii) xxxxx*
> *(iv) xxxxx*

5. However, Ministry of Finance, Department of Financial Services, Government of India again vide letter dated 18.06.2008 further sent a clarification regarding the said Scheme to

the Nodal Agency (NABARD). The relevant part of the clarification is item 20, which is extracted hereinbelow :

"20.	Whether loans disbursed on 31.03.1997 are eligible as the scheme says prior to 31.03.1997. While declaring the guidelines for implementation of the scheme, it is incorporated as item 4.3 as under : "Nothing contained in this scheme shall apply to any loan disbursed by a lending institution prior to March 31, 1997". GSCB Ltd. has further viewed that most of the PACS under liquidation are having overdues on the period before 31st March, 1997. Problem is further aggravated by no further finance by such PACS. These has put the borrowers of such PACS in a critical situation that- (i) They are not able to repay the loan (ii) They are not able to renew it as PACS has stopped financing because of liquidation proceedings (iii) They are not able to get other loan from other banking institution as they considered as defaulters. As such it has been requested for removal of item No. 4.3 of the ADWDR Scheme 2008, restricting the loans disbursed before March, 1997 and give the unqualified effect to the budget speech.	The Scheme does not apply to any loan disbursed by lending institutions prior to close of business on 31.03.1997."

6. The limited question of controversy, which arose in the writ application was, whether the cut-off-date beginning from 31.03.1997 in the said Scheme to the farmers of different categories would be construed to be inclusive or exclusive.

7. The challenge of the Bank in C.W.J.C. No. 12000 of

2013 was of communication dated 03.04.2013 issued by the NABARD to the Bank raising a demand of Rs. 74,81,500/- referring to the objection/ observation of the Comptroller and Auditor General of India (for short “the CAG”), who was made party in the writ application and notice was issued, but no reply affidavit was filed by the CAG. Another communication dated 19.06.2013 reiterating the said demand by the NABARD was also under challenge.

8. Sri S.D. Sanjay, learned Senior Counsel representing the Union of India submits that after the Scheme was announced, the clarification by the Government of India, Ministry of Finance, Department of Financial Services came out with the clarification dated 18.06.2008 within time stating therein that the loans disbursed do not apply to any loan disbursed by lending institutions prior to “close of business on 31.03.1997”, which did not include loan disbursed on 31.03.1997 but the Banks went ahead including the loans of 31.03.1997. He submits that the Scheme was with respect to loan disbursed by lending institutions between 01.04.1997 to 31.03.2007 and would not apply to any loan disbursed on 31.03.1997. It is contended that the audit had also issued another clarification dated 21.06.2012, which had pointed out the audit objections to the waiver of the loans under the said Scheme.

9. Senior Counsel for the NABARD Mr. Chittaranjan Sinha ably assisted by Sri Siddhartha Prasad also adopts the

arguments made on behalf of the Union of India and submits that in spite of clarifications issued by the Government of India and communicated to the lending institutions by the NABARD, loans by the lending institutions have been waived considering 31.03.1997 to be also the date of disbursement of loan for consideration of waiver under the Scheme. Mr. Sinha further added that some of the Banks have abided by the communication and paid back the amount, but neither the Banks were made party before the Writ Court nor could be substantiated by the counsel for the NABARD by any materials before the Writ Court or even at the appellate stage.

10. However, Senior Counsel Mr. Y.V. Giri for the respondent Bank and Senior Counsel Mr. P.K. Shahi for the private respondent point out that there is no infirmity with the order passed by the learned Single Judge.

11. Learned Single Judge has committed no error in allowing the writ applications of the lending institution Bank and the beneficiaries and has rightly observed that the clarification of the NABARD dated 21.06.2012 wherein audit raised certain objections, added to the confusion and does not act as a clarification of the said Scheme, especially when the CAG, although, was made party and noticed, did not file its affidavit as to what formed the basis of audit note/ objection. The demand was made purely on the basis of audit/ objection. In this connection, reliance of the judgment of the Hon'ble

Apex Court in the Case of ***State of Bihar Vs. Industrial Corporation (P) Ltd.*** since reported in ***(2003) 11 SCC 465*** was cited in the context whether the audit report would invoke the power of the State Government to levy penalty for loss or wastage mechanically without any further investigation at paragraph 18 of the judgment, which is quoted hereinbelow :

> *"18. The statutory authorities also could not have sought to levy penalty relying on or on the basis of the audit report only. They were required to apply their own independent mind for the purpose of finding out as to whether the respondents in law had committed any breach of the terms and conditions of the licence or the provisions of the 1947 or 1915 Act so as to make them liable for levy of penalty. The authorities concerned acting in terms of the statutory provisions, therefore, without any further investigation could not have acted mechanically on the audit report."*

12. The Central Government had announced a beneficial Scheme for the benefit of marginal, small and other farmers, who were extended agricultural loans against guarantee/mortgage. The farmers did not make any misrepresentation to get the privilege/ benefits, and, loans of those beneficiaries were waived in favour of the applying farmers. The mortgage deeds,

documents of those farmers/ beneficiaries were already returned, account was closed. Thereafter raising a demand after nearly 4-5 years would amount to refund of the petty meagre privileges which these beneficiaries received.

13. The NABARD as an instrumentality of the State could not under the garb of clarification or an audit objection raise such demand, which would evidently fall on the beneficiaries, who are poor farmers and even on equity such demand cannot be raised now after a lapse of so many years.

14. The learned Single Judge has committed no error by allowing the writ applications. The appeals preferred by the Union of India and the NABARD are dismissed. No order as to costs.

(Nilu Agrawal, J)

I Agree
Ajay Kumar Tripathi, J :

(Ajay Kumar Tripathi, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	08.01.2018
Uploading Date	12.01.2018
Transmission Date	NA