**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CWP No. 18509 of 2018**
**Date of Decision: March 09, 2022**

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**Gurcharan Singh** ...**Petitioner**

**Versus**

**State of Punjab and others** ...**Respondents**

**Coram:** **Hon'ble Mr. Justice M.S. Ramachandra Rao**
**Hon'ble Mr. Justice H.S. Madaan**

**(THROUGH VIDEO CONFERENCING)**

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Present:- Mr. C.S. Bagri, Advocate for the petitioner.

Ms. Sunint Kaur, Asstt. Advocate General, Punjab.

Mr. Amit Bhanot, Advocate for respondent No. 2.

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**M.S. Ramachandra Rao, J. (Oral)**

The petitioner is a farmer holding agricultural land to the extent of 2 acres. In January, 2003, he approached the respondent bank and took 2 loans with Account No. 1073859974 and 01572002373 by mortgage. The first loan account was a CC limit for Rs.50,000/- granted on 30.1.2003 and the second loan account is a term loan for Rs.3,10,000/-

On the ground that the petitioner did not repay the same, the loan accounts of the petitioner were declared NPA on 30.9.2004. Subsequent thereto, recovery proceedings were initiated against the petitioner and a mortgage suit for recovery of Rs.4,94,503.60/- paise along with interest was filed in the Courts at Roopnagar by the respondent.

While the suit was pending, the Union Government introduced

"Agricultural Debt Waiver and Debt Relief Scheme, 2008". The scheme was to cover direct agricultural loans extended to "marginal" and "small" farmers and other farmers by Scheduled Commercial Banks, Regional Rural Banks etc.

Clause 3.5 of the said scheme defined the term 'Marginal Farmer' as a farmer cultivating either as owner or tenant or share cropper of agricultural land upto 1 hectare (2.5 Acres). Clause 4.1 of the said scheme provided that the amount eligible for debt waiver or debt relief, as the case may be shall comprise of, in the case of a short term production loan, to the amount of such loan (together with applicable interest) disbursed upto 31.3.2007 and overdue as on 31.12.2007 and remaining unpaid until 29.2.2008. Clause 5.1 of the said scheme stated that in the case of a "small" or "marginal" farmer, the entire eligible amount shall be waived.

Since the petitioner would fall under the definition of the term "marginal farmer" contained in clause 3.5 of the said scheme, and the amount of loans borrowed by him prior to 31.3.2007 were over due as on 31.12.2007, the petitioner was eligible to have his entire debt waived of under the said scheme.

Unfortunately, the said benefit was not given to the petitioner though the petitioner applied for benefit under the said scheme as per Annexure P-2 in June 2008.

Instead, in 2014, when there was an OTS scheme floated by the respondent bank, the petitioner was persuaded to enter into an OTS by the respondent and was made to pay Rs.5, 63,893/- on 16.10.2014.

In 2016 on 15.11.2016, the petitioner had filed an application under the RTI Act, 2005 for statement of his loan accounts, and also the list of beneficiaries of agricultural loan waiver of 2008, and details about how much of the loan amount of the petitioner was waived of against his loan account. On 27.10.2016, there was a reply given to the petitioner by the Regional Manager that the petitioner's representation appears to be a “complaint” and he is not seeking any information, and he should approach the concerned Forum. His request for information was thus rejected.

The petitioner then preferred an appeal to the General Manager (NW-1) who was the Appellate Authority in the bank under the RTI Act, 2005.

On 21.2.2017, the Appellate Authority allowed the appeal opining that what was sought by the petitioner was certainly information as per Section 2(f) of the RTI Act, and was not a “complaint” as was held by the primary authority under the Act, 2005. The primary authority was directed to have a re-look into the matter, and give a proper and appropriate reply to the appellant within 10 days.

Thereafter on 8.3.2017, the primary authority sent a reply to the petitioner stating that the statement of accounts of the loan accounts of the petitioner are enclosed, but according to petitioner there were no such enclosures to the said reply. It was further stated that the loan accounts had been written off in 2008 under OTS, and they were not eligible under the Government Debt Waiver and Debt Relief Scheme, 2008. No reasons are assigned as to why petitioner was held to be ineligible for the benefit under the said scheme.

The petitioner was then compelled to approach this Court with this Writ Petition for a Writ of Mandamus to direct the respondents to waive off the agricultural loan of the petitioner in view of the Agricultural Debt Waiver and Debt Relief Scheme, 2008, and to return the amount of Rs.5,63,893/- along with interest which had been paid by the petitioner to the respondents. He also claims parity with a similarly situated farmer named Shamsher Singh, and other farmers whose loans had been waived off as per the said scheme.

Reply to the Writ has been filed by respondent No. 2 stating that the petitioner paid the entire amount due as per the OTS sanctioned to him in 2014 under the SBI OTS scheme 2014-15, and the petitioner was habitual litigant harassing the bank by filing this Writ Petition. Annexure R1 is the scheme under which the OTS was sanctioned to the petitioner in 2014, and Annexure R2 gives the details of the cheques given by the petitioner while paying the above amount of Rs.5,63,893/-.

In the written statement, no reason is assigned as to why the petitioner was denied the benefit of Agricultural Debt Waiver and Debt Relief Scheme, 2008.

It is admitted that the petitioner paid the amount of Rs.5,63,893/- under two cheques.

` We have considered the contentions of the parties. We are of the opinion that there is no valid reason why the petitioner could have been denied the benefit of Agricultural Debt Waiver and Debt Relief Scheme, 2008 by the respondents; and that the respondents could not have collected Rs.5,63,893/- from the petitioner on 16.10.2014 under the SBI OTS 2014-15 by keeping the loan as live on that date, and misleading the petitioner.

It is most unfortunate that even the statement of account sought by the petitioner for the two loan accounts was not supplied to the petitioner inspite of the order of the Appellate Authority of the bank under the RTI Act till the petitioner approached this Court, and filed this Writ Petition.

In our opinion, when there is no liability on the part of the petitioner to pay any amount to respondents No. 1 and 2 after the coming into force of the Agricultural Debt Waiver and Debt Relief Scheme, 2008, any payment made by the petitioner was under a mistake, and the respondents cannot retain the same. In fact the said payments appear to have been taken from the petitioner taking advantage of the illiteracy, and the poor status of the petitioner and the said payment unjustly enriches respondents No. 1 and 2.

Therefore, the Writ Petition is allowed with costs of Rs.50,000/- to be paid by the respondents to the petitioner, and the respondents No. 1 and 2 are directed to refund Rs.5,63,893/- paid by the petitioner on 16.10.2014 with interest at the rate of Rs.7% per annum from the date of such payment till the date of refund, which shall not to be later than four weeks from the date of receipt of copy of this order. The 3rd respondent shall identify the official/s responsible for causing this hardship to the petitioner, and initiate disciplinary action against the said officer/s within six weeks from the date of receipt of copy of this order.

**(M.S. Ramachandra Rao)**
**Judge**

**(H.S. Madaan)**
**Judge**

**March 09, 2022**
*P.Singh*

Whether speaking/reasoned? Yes/No

Whether Reportable? Yes/No