

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 5454 of 2023

Dreamlight Vyapaar Pvt. Ltd.

vs.

The Karur Vysya Bank Limited & Ors.

With

W.P.A 5461 of 2023

Joykey Merchandise Private Limited

vs.

The Karur Vysya Bank Limited & Ors.

For the petitioners : Mr. Kishore Datta, Sr. Adv.
Mr. Vivekananda Bose, Adv.
Mr. Ratikanta Pal, Adv.

For the respondent nos. 1 and 2 : Ms. Soni Ojha, Adv.

For the respondent no. 3 : Mr. Rajesh Upadhyay, Adv.

For the respondent no. 4 : Mr. Gautam Chakraborty, Adv.
Mr. Surath Chakraborty, Adv.

Last Heard on : 29.03.2023.

Delivered on : 31.03.2023.

Moushumi Bhattacharya, J.

1. The facts of both the writ petitions are identical and are hence being disposed of by this judgment.

2. The petitioners have challenged three letters dated 19th October, 2020, 3rd November, 2020 and 16th November, 2020 from the respondent Bank rejecting the petitioners' request for the benefit of the Emergency Credit Line Guarantee Scheme (ECLGS). The petitioners say that the petitioners are entitled to the benefit of the said Scheme being an "eligible borrower" as defined in clause 4 of the ECLGS and the Operational Guidelines updated as on 6th October, 2022 by the National Credit Guarantee Trust Company (NCGTC).

3. Since the respondent no. 2 Bank is admittedly a private bank, the maintainability argument of learned counsel appearing for the respondent Bank should first be considered. Learned counsel for the respondents submits that the respondent no. 2 is a private Bank and hence does not fall within the definition of "State" under Article 12 of the Constitution or "a person or authority" under Article 226 of the Constitution. The Supreme Court has held in several decisions that a private entity would be amenable to judicial review under Article 226 of

the Constitution when it exercises public functions or those with a public element.

4. The ECLGS was floated by the Ministry of Finance, Government of India, for providing 100% guarantee coverage for additional working capital term loans in case of Banks and FIs and additional term loans in case of Non Banking Financial Company (NBFC) upto 20% of their outstanding credits as on 29th February, 2020. The Scheme provided that eligible institutions, most specifically Member Lending Institutions (MLIs), would have to register themselves for seeking the guarantee cover under the said Scheme. The Resolution Framework issued by the Reserve Bank of India (RBI) on 6th August, 2020 with regard to the said Scheme specifically states that the Framework was necessary in the wake of the economic fallout caused by the Covid-19 pandemic and the resulting financial stress on borrowers across the board. The ECLGS read with the Resolution Framework/s published by the RBI binding all commercial banks makes it clear that the Scheme was floated in public interest to help small and medium scale business tide over the financial instability caused by the pandemic.

5. The Scheme issued on 23rd May, 2020 read with the Operational Guidelines updated as on 30th March, 2022 further makes it clear that the Scheme would be binding on all Banks and FIs as well as NBFCs. The respondent no. 2 Bank is admittedly a Member Lending Institution under the Scheme and is consequently drawn within the obligations and duties incorporated therein. The object of the Scheme elevates the

Scheme into one with a clear public element for preserving small and medium businesses following the pandemic. Therefore, the role of the respondent no. 2 cannot be seen within the limited parameters of a private financial institution. The respondent no. 2 is discharging a public function under the Scheme on behalf of the Government of India and the respondent is discharging its duty and acting as a nodal agency of the State in extending the benefit of the Scheme to its eligible borrowers.

6. It may also be stated that RBI circulars have statutory force and are binding on the constituent Banks and FIs who are under a statutory obligation to comply with the mandates of the circular, refer: *Central Bank of India vs. Ravindra; (2002) 1 SCC 376* where the Supreme Court held that the power conferred by sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with a duty to act and that the Reserve Bank of India, as the prime banking institute of the country, is entrusted with a supervisory role and is empowered to issue binding directions having statutory force in the interest of public.

7. Moreover, the Supreme Court held in several decisions that a body which performs public or statutory duties for the benefit of the public would fall within Article 226. In *Federal Bank Ltd. Vs. Sagar Thomas; (2003) 10 SCC 733*, the Supreme Court also made an exception for a private company or a person where such an entity may be amenable to writ jurisdiction where it becomes necessary to compel the entity to enforce any statutory obligations of a public nature.

8. Therefore, it is clear that the respondent no. 2 would be subject to judicial review and the writ petition is accordingly held to be maintainable.

9. The relevant dates however assume importance for assessing whether the petitioners have established a case for relief on the merits of the matter. The first rejection of the Bank was of 19th October, 2020 followed by the second communication of 3rd November, 2020 and the last communication is of 16th November, 2020. By all these three letters, the respondent Bank made it clear that the petitioners are not eligible for the Scheme. The petitioners' replies to these rejections are of 27th October, 2020, 9th November, 2020 and 5th December, 2020 amongst others. The last letter on record is of 2nd May, 2022 where the petitioners relied on FAQ/clarification no. 94 to substantiate their claim under the Scheme.

10. Learned counsel appearing for the petitioners submit that there is an urgency in the matter since the ECLG Scheme shall remain valid only till 31st March, 2023 which is precisely 2 days away from the last hearing of the matter. The writ petitions were however filed on 2nd March, 2023.

11. This Court does not find diligence or any steps taken by the petitioners immediately following the letters of rejection the last of which was given on 16th November, 2020. There are no documents to show that the petitioners were pursuing their remedies before any forum in support of their claim. The palpable silence after November, 2020 or at

least after May, 2022 goes against the petitioners. The petitioners have not shown any promptitude to corroborate the plea of urgency which is now being taken before this Court.

12. The replies/rejections of the Bank in any event raise questions which are disputed, convoluted and evidently matters which cannot be adjudicated in a discretionary jurisdiction under Article 226 of the Constitution.

13. This Court hence does not see any reason to exercise its discretion to grant the relief as prayed for. WPA 5454 of 2023 and WPA 5461 of 2023 are accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)