BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.20175 of 2021

M.Sudhakaran ... Petitioner

Vs

1.The City Union Bank Limited,
Represented through its Branch Manager,
S.S.Colony Branch, Madurai.

2.The ECGC Limited,
Represented by its Manager,
NVS Towers,
P.T. Rajan Road,
Chinna Chokkikulam,
Madurai 625 002.

3.Sri Durga Exports
No.12, Rajam Nagar,
Ponmeni,
Madurai 625 016. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to delist the petitioner's name in ECGC Specific Approval List (SAL) based on the "No Objection Certificate" dated 30.05.2017 issued by the 1st respondent Bank.

For Petitioner : Mr.S.Sankarapandian

For R-1 : Mr.V.Karthikeyan

For R-2 : Mr.V.P.Rajan

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the second respondent to delist the name of the petitioner from the Specific Approval List (SAL) based on the No Objection Certificate that was given by the first respondent dated 30.05.2017.

2. The case of the petitioner is that the third respondent had availed of loan facilities from the first respondent Bank and the petitioner stood as a guarantor for this loan. The third respondent failed to repay the loan amount and the loan account was categorized as non performing asset. Thereafter, the petitioner approached the first respondent Bank and arrived at a one time settlement. Accordingly, the petitioner paid a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the first respondent Bank and the first respondent Bank received the sum on 10.03.2017 and released the property belonging to the petitioner. The first respondent also

gave a letter dated 02.05.2017 stating that the delisting of the name of the petitioner from ECGC was under process. Ultimately, the No Objection Certificate was given on 30.05.2017. In spite of the No Objection Certificate given by the first respondent Bank, the second respondent was not acting upon the same and the name of the petitioner was not delisted from the SAL. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Heard the learned counsel on either side.

4. The main ground that has been urged by the learned counsel for the petitioner is that the petitioner had stood only as a guarantor and he had settled the entire amount that was due and payable by the third respondent and the property was also released and the first respondent had also granted a No Objection Certificate. In spite of the same, the second respondent was not acting upon the No Objection Certificate and has not delisted the name of the petitioner. Therefore, it was contended that a mandamus has to be issued to the second respondent to delist the name of the petitioner from the SAL.

6. Per contra, the learned counsel for the second respondent submitted that the present Writ Petition is not maintainable on the ground that the contract was only between the first respondent Bank and the second respondent and that there is absolutely no privity of contract between the petitioner and the second respondent. That apart, the learned counsel for the second respondent contended that the first respondent Bank had submitted the claim application in the year 2015 before the second respondent claiming for 75% of the principal amount on account of the default committed by the third respondent. The application made by the first respondent Bank was considered and the second respondent has also settled the claim of Rs.2,60,59,678/- (Rupees Two Crores Sixty Lakhs Fifty Nine Thousand Six Hundred and Seventy Eight only) on 01.12.2016. In spite of the same, the first respondent had settled the dispute with the petitioner by receiving a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and this information was not even shared with the second respondent. It was contended that the issue that is involved in the present Writ Petition is squarely covered by Judgment of the Division Bench of this Court in the case of ***Export Credit Guarantee Corporation of India Ltd., Vs. A.Jaya Kumar and others*** reported in ***(2006) 4 MLJ 230***, which

was subsequently followed by the learned Single Judge of this Court in W.P.Nos.27490 and 27491 of 2007, dated 02.12.2010. Accordingly, the learned counsel sought for the dismissal of this Writ Petition.

7. The short issue that arises for consideration in this Writ Petition is as to whether this Court can issue a direction to the second respondent to delist the name of the petitioner from the SAL maintained by the second respondent based on the No Objection Certificate issued by the first respondent Bank.

8. It will be relevant to take note of the Judgment cited by the learned counsel for the second respondent and for proper appreciation, the relevant portions in the Judgment passed in W.P.(MD).Nos.27490 and 27491 of 2007 are extracted hereunder:

> *"9. Having considered the rival submissions, this Court is unable to accept the plea of the petitioner in both the cases for the following reasons:-*
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> *(i) In respect of the plea that inclusion of the name of the petitioner in both the cases in the*

Specific Approval List, is affecting their export business, is based on no material. It is a hypothetical argument and therefore, has no merit.

(ii) What is contained in the Specific Approval List is names of persons who have defaulted earlier for one or other reasons and those names are required for the purpose of assessing when a claim is made by a bank for insurance cover. Therefore, the Specific Approval List does not bar the exporter from borrowing loan from the bank. Even if the amount has been settled by the individual concern under one time settlement scheme, the petitioner has not pointed out before this Court the provision of Law or Rule in the ECGC policy which provides for deletion of names from Specific Approval List on settlement of the dues to the bank under one time settlement scheme. Therefore, when the ECGC policy does not provide any such specific provision, the petitioners are not entitled to seek the deletion of their names as a matter of right.

10. The similar issue arose in the case of Export Credit Guarantee Corporation of India

Ltd., represented by its Managing Director, Mumbai vs. - A.Jaya Kumar and others reported in (2006)4 M.L.J. 230, a Division Bench of this Court presided over by P.SATHASIVAM.J. as He then was, held in para 28 as follows:-

"28. The perusal of the impugned order shows that the learned Judge proceeded on the footing that the inclusion of the petitioners names in the Specific Approval List would amount to blacklisting and without further discussion by referring the judgment in Southern Painters v. Fertilizers and Chemicals Travancore Ltd. (supra), set aside the circular dated 6.5.1994 and allowed the writ petition. In view of our discussion in the earlier paragraphs, we are unable to accept the reasonings of the learned Judge. In addition to the above mentioned reasons, we are also satisfied that by putting the petitioners on the Specific Approval List, the appellant/ECGC had not disentitled them from obtaining export related advances from their bankers and their bankers could still extend export related advances to the petitioners either after obtaining the specific approval of appellant Corporation or the bank could still extend the

export related advances to the petitioners without obtaining the guarantee from the appellant Corporation. As pointed out earlier, the ECGC has not branded the writ petitioners as defaulters. As rightly pointed out, the inclusion of their names in the Specific Approval List only indicates that there are prima facie circumstances that warrants the collection of additional information before the risk could be accepted for cover. As discussed earlier, when the petitioners approached the second respondent bank for assistance and when the second respondent in turn sought for risk cover, the ECGC had to necessarily assess the credit risk factors and the list of exporters, i.e., potential operators with whom ECGC would like to be more cautious and hence, it cannot be equated to blacklisting. As said earlier, ECGC is a Government of India Enterprise established to provide insurance covers to exporters and cover their credit risk on overseas buyers and to their Bankers over their credit risk on export financing to Indian exporters, has to necessarily have a system to assess the credit risks that are offered to them for cover and where it is prima facie a bad risk, it will not be proper for them to accept such risk and no *insurance on the face of it would underwrite such bad risks. The precautions and arrangements made by ECGC cannot be termed as arbitrary action. We hold that the inclusion of the name of the petitioners in the Specific Approval List does not amount to blacklisting and it is nether arbitrary, nor illegal and there is no violation of the principles of natural justice."*

The above decision of a Division Bench of this Court, squarely covers the issue raised in the present writ petitions.

11. One other plea that was raised by the petitioner in both the cases is that the names of the defaulters present and past are found in the website of the second respondent and therefore, it is affecting petitioners international business. In this regard Shri Krishna Srinivas, learned counsel appearing for the second respondent, placed reliance on the note issued by the second respondent which gives the details as to the mode of circulation of the Specific Approval List. It reads as follows:-

"SAL is not a Publicly Circulated List. It is

neither published nor is otherwise available in public domain. Though the list is placed on the web-site of the Corporation, the same is exclusively available for the insured/customers (banks and financial institutions) for limited purpose and the access to this list is restricted with user id and password provided by the Corporation to the insured/customers. A detailed snapshot of the process to access SAL is attached. What is conceived of this process is that ECGC has formulated such a policy for safeguarding its own financial interests by way of assessing the risks before they are underwritten and avoiding loss that could be on account of failure of the borrowers who are availing credit facilities from the banking system under insurance cover of the ECGC i.e., Export Credit Insurance to Banks (ECIB). Obviously such a decision is taken by the Corporation with the object of having satisfaction about the conduct of the borrowers in their dealings with the bank(s) who are providing credit facilities from time to time to their exporter clients relating to their exports."

It has been emphasized time and again by the second respondent that inclusion of the *petitioners name in the Specific Approval List, the bank need not deny the credit facility to the petitioners. It is always open to the bank to advance any amount to its customer even if the name finds place in the Specific Approval List. It is for the bank to decide to give or not to give. The second respondent has no role to play in this process.*

12. Since there is no privity of contract between the petitioners and the second respondent which is conceded in the writ affidavit itself. The petitioners have no right to seek a mandamus as against the second respondent for deletion of their names from the Specific Approval List.

13. With regard to the deletion of the names of the defaulter exporters from the Specific Approval List, the claim of similarly placed persons have been rejected by several High Courts, viz., (1) Bombay High Court (Rajaram Bandekar (Sirigao) Mines Pvt. Ltd., and others # vs. - Export Credit and Guarantee Corporation Ltd., and others reported in 1995 CC (Vol.82) 470;

(2) Kerala High Court (W.A.No.767 of 1989 Seema Cashew Traders; Thadicadu P.O. Anchal, Quilon District represented by its Proprietrix Annie Thomas # vs. - The Manager, Export Credit Guarantee Corporation of India Limited, Darbar Hall Road, Ernakulam, Cochin-16 and others);

(3) Calcutta High Court (International Industrial Gases Limited # vs. - Union of India (UOI) and others - W.P.14731(W) of 2007 and CAN 4399 of 2008 - MANU/WB/0077/2010);

(4) Madurai Bench of Madras High Court (M/s.Sekar Exports represented by its Partner Mr.V.S.Chandrasekaran # vs.- Export Credit Guarantee Corporation of India Ltd., (Madurai Branch) Raja Muthaiah Mandram, 2nd Floor, Dr.Ambedkar Road, Madurai 625 020 and another - W.P.(MD)No.4081 of 2005) (5) Madras High Court (V.Manikandan, Partner M/s.Vamadev Exports, Tirupur # vs. - The Export Credit Guarantee Corporation of India Ltd., Coimbatore and others # W.P.No.19462 of 1999) The petitioners have not made out a case in law for removal of their names from the Specific Approval List.

14. While declining the relief sought for by the petitioner in both the cases, the Court, however, would like to point out that in a case of this nature, viz., an exporter who earns foreign exchange to the country and defaults at one time and repays or settles thereafter, should be considered for benefits as applicable based on their track record in course of time. The first and the second respondents should keep in mind that due to market fluctuations and that of commodity, bullion and currency in world market and in view of the various trade agreements between member countries of the World Trade Organizations, the business prospects of an individual exporter may go up and down depending upon the condition prevailing from time to time. It is quite possible that an exporter may suffer huge loss at one point of time and may regain subsequently. If the exporter is able to show by material that they improved their business for the better with considerably good performance in earning foreign exchange to the country coupled with source of employment for a large number of people, the banks and other agency should keep the same in mind and such persons should be *encouraged by re-evaluating their credibility. Their performance should be re-evaluated based on facts. It is always open to the second respondent to reconsider the issue on its own merits. It is made clear that the letter impugned in the writ petition does not deserve to be quashed. No mandamus can be granted as prayed for.*

9. In the above Judgment, that was also a case were the entire amount that was borrowed from the Bank was repaid by way of one time settlement and the petitioner therein had also approached this Court seeking to delete his name from the SAL. On those facts, this Court held that there was no privity of contract between the petitioner and ECGC and therefore, no mandamus can be issued as against ECGC for the deletion of the name. This Court further held that ECGC has not blamed the petitioner as a defaulter and the inclusion of the name in the SAL only indicates that there are *prima facie* circumstances that warrants the collection of additional information before the risk could be excepted for cover. This is done by ECGC to be more precocious while extending the risk cover. The inclusion of the name of the SAL by itself does not amount to blacklisting and therefore, it was held that it is not arbitrary or illegal and consequently,

no direction can be issued to ECGC to remove the name. This finding was rendered by the learned Single Judge after taking note of the Judgment of the Division Bench.

10. I am bound by the Judgment of the Division Bench and I am in complete agreement with the Judgment passed by the learned Single Judge by relying upon the Judgment of the Division Bench. Even though the first respondent has issued the No Objection Certificate, that does not in any way bind the second respondent and no legal right is created in favour of the petitioner to seek for a direction to ECGC to delist the name of the petitioner from the approved list. In view of the same, the relief as sought for by the petitioner cannot be granted by this Court and as a result, the Writ Petition stands dismissed. No costs.

15.11.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg

N.ANAND VENKATESH, J.

tsg

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