

(2011) 04 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3355 of 2006

Labh Singh Des Raj

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

- Constitution of India, 1950 - Article 12, 14

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

A Division Bench of this Court had disposed of 17 writ petitions through one common order on 5.11.2007 as common question of law arose in these petitions. The Petitioners in these petitions had approached this Court, seeking writ of mandamus, directing the Respondents to settle their dues in accordance with one time settlement scheme as per R.B.I. guidelines. The Division Bench observed that it was not disputed that the R.B.I. Scheme under consideration did not have any statutory flavour or statutory roots. While relying on some other judgments, these writ petitions were dismissed, giving liberty to the Petitioners to approach the Respondents in cases where deposits had been made either under the orders of the Court or otherwise that these be adjusted in striking out the balance amount. The Petitioners had impugned this order passed by the Division Bench by filing Special Leave Petition. The Hon'ble Supreme Court, by making reference and reliance on [Sardar Associates and Others Vs. Punjab and Sind Bank and Others](#), has observed that broad policy decisions contained in the guidelines were required to be followed. The Court accordingly felt that matter would require fresh look by the High Court and accordingly remitted all these cases for consideration afresh in accordance with law. The order passed by the Supreme Court dated 4.9.2009 in Civil Appeal No. 6064 of 2009 titled Subhash Chand Pasricha v. Haryana Financial Corporation is as under:

Leave granted.

All the Petitioners have availed loan from the Respondent Financial Corporation and wanted one time settlement, based on the Reserve Bank of India guidelines/policy. The High Court passed an order dismissing the writ petition on the ground that Reserve Bank of India guidelines are not enforceable under law.

Learned Counsel for the Petitioners point out that this Court in [Sardar Associates and Others Vs. Punjab and Sind Bank and Others](#), held that the broad policy decisions contained in the guidelines were required to be followed, the power of the Board of Directors to make division in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In view of the decision rendered by this Court, we feel that the matters require fresh look by the High Court and, therefore, we remit all these cases to the High Court of Punjab and Haryana for considering afresh in accordance with law.

The appeals are disposed of accordingly.

Parties are at liberty to raise their respective pleas.

2. Another Bench of Hon"ble Supreme Court, following the same precedent, had remanded the present writ petition for fresh consideration vide its order dated 25.1.2010. The relevant observations are as under:

It is conceded at the Bar that the subject matter that arises for consideration in this appeal is squarely covered by the Order dated 4th September, 2009 passed by this Court in Civil Appeal No. 6064 of 2009 titled Subhash Chander Pasrija v. Haryana Financial Corporation. In such view of the matter, this appeal shall stand disposed of in terms of the aforesaid order passed by This Court in Subhash Chander Pasrija (supra).

I.A. No. 2 and this appeal stand disposed of accordingly. There shall be no order as to costs.

3. Accordingly, the present writ petition has been now listed for hearing as per the roster.

Mr. Kamal Sehgal, Advocate, appearing for Respondent No. 3 submits that ratio of law laid down in Sardar Associates's case (supra) would be applicable only to the Banks but would have no applicability, so far as financial institutions are concerned. The counsel submits that the R.B.I Guidelines as issued may be binding on the Banks or Banking Institutions but can not have any binding effect on the financial institution like Haryana State Financial Corporation. In support of his submission, he has invited my attention to Paragraph 36 of the Sardar Associates's case (supra), which, according to the counsel, would clearly show that the Hon"ble Supreme Court was making reference to public sector Banks while considering the nature of

the policy guidelines issued by R.B.I. The relevant observations of the Supreme Court are as under:

While making a deviation, the Board of Directors of a public sector bank could not have taken recourse to a policy decision which is per se discriminatory. The Respondent Bank is "State" within the meaning of Article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by Reserve Bank of India. If, therefore, the broad policy decisions contained in the guidelines were required to be followed, the power of the Board of directors to make deviation in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In a case of this nature, we are satisfied that the Respondent Bank is guilty of violation of the equality clause contained in the Reserve bank of India Guidelines as also Article 14 of the Constitution of India.

4. The ratio of law as laid down in Sardar Associates's case (supra) would only show that the Court was considering the question of guidelines issued by Reserve Bank of India and there binding nature on the public sector or other Banks and perhaps no reference is found made to any financial institution, where the guidelines issued by the Reserve Bank of India could have any binding effect. Rather, Mr. Jagdish Manchanda, counsel appearing for the Petitioner, frankly admitted before me that no mention is made anywhere to financial institution in the case of Sardar Associates (supra).

5. Further Mr. Sehgal has referred to a Division Bench judgment of this Court in Lal Chand Katia v. Punjab Financial Corporation 2008 (1) ISJ 74 where this question was directly considered and it has been held that R.B.I. guidelines regarding one time settlement are not binding on the State Financial Corporations. The Division Bench in Lal Chand Katia's case (supra) has clearly taken this view, as can be seen from the following observations:

18. In view of the above analysis of the provisions of the various enactments, we hold that the RBI cannot give directions to the SF Cs in the matter of transaction of their business, including grants of loans and recovery thereof and it is within the exclusive domain of the SF Cs to take appropriate decisions in the matter subject, of course, to the direction which may be given by the State Government in consultation with and after obtaining advice of the SIDBI on questions of the policy.

19. As a logical corollary to the above conclusion, we hold that Corporation is not bound to follow the guide-lines contained in letter dated 27.7.2000 read with letter dated 28.7.2000 and the same can neither be enforced against it nor a writ in the nature of mandamus can be issued directing it to settle the accounts of the Petitioners in accordance with those guide-lines.

6. In view of above, the prayer made in the writ petition can not be allowed. The writ petition would warrant dismissal. The mandamus as sought accordingly can not be issued. However, the direction as earlier issued by the Division Bench of this Court, requiring the Petitioner to approach the Respondents, where deposits have been made either under the orders of the Court or otherwise to seek adjustment of the said amount by getting this amount struck off from the balance amount due from the Petitioner, would enure.

7. The writ petition is, however, dismissed.