

(2010) 11 MAD CK 0250

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 10224 of 2009

G. Senthil Kumar

APPELLANT

Vs

The Regional Manager State  
Bank of India and  
Officer-Marketing and Recovery  
State Bank of India

RESPONDENT

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**Date of Decision:** Nov. 25, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 420

**Hon'ble Judges:** K. Chandru, J

**Bench:** Single Bench

**Advocate:** C. Suresh Kumar, for the Appellant; S. Sethuraman, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner has filed the present writ petition seeking to challenge the order of the first Respondent dated 15/9/2009 wherein the Petitioner's agreement with the Bank as a "Business Facilitator" was terminated with effect from 15/10/2009. The reasons found in the impugned order are as follows:

- It is reported that you have availed loans in your spouse's name from our Saptur Branch for activity, which is not pursued by your spouse. You have also not informed to the Bank about this loan account and the loan is irregular.
- It is also reported that you have a ranged credit facilities to your known persons with our Saptur Branch for activities, which are not pursued by them. You have also nor informed these to the Bank and the accounts are reported to be irregular.

- iii). Your services as a Business Facilitator are not up to the mark as envisaged under the agreement and you are not up to the mark as envisaged under the agreement and you are indulging in activities spoiling the reputation and image of the Bank.
- iv). In our opinion, your acts of commission and omission tantamount to fraud or prejudicial to the interests of the bank and its customers.
2. Aggrieved by the order, the writ petition was filed and it was admitted on 12/10/2009. Pending the writ petition, this Court granted an interim stay for a limited period which was subsequently, extended from time to time and after 8/3/2003, there was no further extension.
3. On notice from this Court, the Respondents have filed a counter affidavit dated 8/7/2010.
4. It is an admitted case that the Petitioner was engaged as a "Business Facilitator" and he had executed an agreement dated 16/2/2008. The agreement itself provides for a clause for termination. In paragraph 8 of the agreement which is valid for a period of one year with renewal clause on mutual basis and the Bank as well as the service provider are also having the liberty to terminate by giving three months notice.
5. Paragraph No. 8.3 (e) of the agreement reads as follows:
- If any acts of commission or omission on the part of SP or its agents employees, sub contractors or representatives, in the reasonable opinion of the Bank tantamount to fraud or prejudicial to the interest of the bank or its customers.
6. In so far as the status of a service provider, it is stated in paragraph 4.1 that the service provider will act as an independent agent and he cannot deem to be the agent of the Bank. The nature of the service provider as provided in paragraph 1.1, the nature of activities as the principle list including follow up of recovery.
7. The Petitioner opposing the termination of his agreement contended that a reasonable opportunity was not given and three months notice was not provided.
8. Counter affidavit, filed by the first Respondent subsequent to the expiry of the agreement on 15/2/2009, no renewal was done and after the expiry, it was renewed retrospectively for one year. The Bank found the performance was not satisfactory and in paragraph Nos. 7 and 13, it was averred as follows:
7. ...The Petitioner instead of identifying a borrower and preliminary processing of loan application including verification of primary data and help the common public has identified his wife herself as borrower and suppressed the fact that the applicant/beneficiary is his wife and availed a loan for an activity which was not pursued by her.

13. ...It is submitted that total quantity of amount misappropriated by the Petitioner is being assessed and amount due to the Bank has to be paid by the Petitioner. Hence the remuneration due to the month of August 2009 is still under consideration. The averment that the Petitioner has financial constraint and untold hardship are denied since most of loan applications are fictitious and there are no such persons or shops for which loans have been disbursed. Hence the entire loan amount amounting to several lakhs are in possession of the Petitioner. During verification process, this Respondent came to know that there are no such persons as verified by the Petitioner in capacity as a service provider or there is no Maligai shop or chappal mart for which loan application has been processed by Petitioner and verified and approached through the Petitioner.

9. It is also stated that on the basis of a complaint by one Smt. M. Monika, a case in F.I.R. No. 100 of 2010 has been registered at Paeraiyoor Police Station u/s 420 of the Indian Penal Code and the Petitioner was arrested and remanded to custody. It must be noted that the relationship with the Petitioner and the Respondent is one on an independent contract and the terms of contract do not provide for any notice period in case, the termination is not mutually renewed.

10. The reason found in paragraph No. 8 of the counter affidavit that the Petitioner's contract was rightly terminated by the Respondent Bank on specific allegations and such a contract cannot be restored by resorting to proceed under Article 226 of the Constitution of India.

11. The conduct of the Petitioner as discussed in the counter affidavit does not enhance the image of the Petitioner, on the contrary, the Bank had rightful decisions to pass the impugned order.

12. In the result, the writ petition is misconceived and accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.