Before Jawahar Lal Gupta & V.S. Aggarwal, JJ

BHAGAT RAM & OTHERS,—*Petitioners*

versus

UNION OF INDIA & ANOTHER,—*Respondents*

CWP No. 17654 of 1998

8th December, 1998

Recovery of Debts due to Banks and Financial Institutions Act, 1993—S. 21—Scope of the Section—Whether provisions arbitrary and unconstitutional—Held, no.

Held that a perusal of the provision contained in Section 21 shows that a person who challenges the order passed by the Tribunal has to deposit 75% of the amount of debt as found due before his appeal can be entertained. The provision is salutary. It is calculated to promote the expeditious recovery of public dues. It serves public interest. It is not arbitrary. It is not unfair. It contains adequate safeguards. It makes it incumbent on the Tribunal to record reasons. (Paras 7 & 8)

N.D. Achint, Advocate—*for the petitioner*

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) Are the provisions of Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 arbitrary and unconstitutional ? This is the short question that arises in this writ petition. A few facts may be noticed.

(2) The petitioners, took a loan from the United Commercial Bank. On 25th October, 1985, the Bank instituted a suit against the petitioners and respondent Nos. 5 to 8 for the recovery of Rs. 11,97,144.20. On 2nd July, 1998, the Debts Recovery Tribunal, Jaipur decreed the suit and held that the Bank was entitled to recover Rs. 11,51,763. The claim for interest and costs was also upheld. The petitioners allege that along with respondent Nos. 5 to 8, they preferred an appeal before the appellate Tribunal,—*vide* order dated 15th September, 1998, they were directed to deposit Rs. 4 lacs in two instalments of Rs. 2 lacs each "on or before 1st November, 1998 and 1st December, 1998 respectively." This order

was passed under Section 21 of the Act. A copy of the order has been produced as Annexure P-1, with the writ petition. Aggrieved by this order, the petitioners have filed the present writ petition.

(3) The petition was listed for hearing on 18th November, 1998. We had dismissed the petition for "reasons to be stated later." We are now giving our reasons.

(4) Mr. Achint, learned counsel for the petitioners contended that the provisions of the Act have already been declared to be unconstitutional by a Division Bench of the Delhi High Court in *Delhi High Court Bar Association and another* vs. *Union of India* (1). On this basis, it was contended that the provisions of Section 21 are unconstitutional. Thus, the order directing payment of Rs. 4 lacs deserves to be quashed. Is it so ?

(5) The Act was promulgated to provide for the establishment of Tribunals for "expeditious adjudication and recovery of debts due to Banks and Financial Institutions." The issue regarding the constitutional validity of the Act was considered by a Division Bench of this Court in CWP Nos. 12901 and 13340 of 1996 *(M/s Kundan Rice Mills* v. *Union of India and M/s Chaman Rice Mills* v. *Union of India*). The decision of the Delhi High Court was also considered by the Bench. The view taken by the Delhi High Court was not followed. The Act was held to be "tailor-made" to meet the needs of the society. The challenge to its validity was negatived. The writ petitions were dismissed *in limine*. Thus, the argument based on the decision of the Delhi High Court cannot be sustained.

(6) The provision contained in Section 21 may be specifically noticed. It provides as under:—

> "Deposit of amount of debt due, on filing appeal—Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five per cent of the amount of debt so due from him as determined by the Tribunal under section 19:

(1) 1995 Delhi Law Times 815

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

(7) A perusal of the above provision shows that a person who challenges the order passed by the Tribunal has to deposit 75% of the amount of debt as found due before his appeal can be entertained. Still further, the appellate Tribunal can, by recording reasons in writing, waive or reduce the amount to be deposited. The power to waive the deposit would by implication include the power to extend the time for deposit.

(8) The provision is salutary. It is calculated to promote the expeditious recovery of public dues. It serves public interest. It is not arbitrary. It is not unfair. It contains adequate safeguards. It makes it incumbent on the Tribunal to record reasons. It is akin to the provisions which exist in various taxing statutes like the Sales Tax Act and the Income Tax Act. There is nothing arbitrary in the provision.

(9) The facts of the case are illustrative of the need for such a provision. The petitioners have not disclosed the date on which they had taken the loan. Still further, even a copy of the order passed by the Tribunal at Jaipur has not been produced. There appears to be a studied silence on the facts. Further, it also appears that the Bank had instituted the suit against the petitioners on 25th October, 1985. The order was passed by the Tribunal on 2nd July, 1998. The petitioners have succeeded in delaying the proceedings for 13 long years. In the meantime, the amount due from the petitioners has multiplied manifold. Despite this, the appellate Tribunal had granted them time to make a deposit of only Rs. 4 lacs. The petitioners did not want to do even that.

(10) We find no equity in favour of the petitioners. There is no merit in the contention with regard to the constitutional validity of the provision. It is a fit case for dismissal *in limine*. Accordingly, we do so.

S.C.K.

22138 HC—Govt. Press, U.T., Chd.