

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO.291 OF 1998

COMMON CAUSE (A REGD. SOCIETY)

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

Date: 08/12/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Petitioner(s)

Mr. Prashant Bhushan,Adv.

For Respondent(s)

Mr. H.S. Parihar,Adv.

Mr. Kuldeep Parihar,Adv.

Mr. Rajiv Dutta,Sr.Adv.

Ms. Sunita Sharma,Adv.

Ms. Sushma Suri,Adv.

Ms. Anil Katiyar,Adv.

Mr. P.P. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

This writ petition pertains to the issue of binding guidelines to check growing of Non-performing Assets of the Nationalised Banks and Public Financial Institutions. Pursuant to order dated 9th August, 2005, Mr. Prashant Bhushan, learned counsel for the petitioner, has sent his suggestions, as contained in the letter dated 25th August, 2005, addressed to Mr. K.P. Pathak, learned Additional Solicitor General of

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India. According to the learned counsel, the suggestions, if implemented, will go a long way in checking the problem of Non-performing of Assets. The suggestions are:

"1. In the definition of 'Willful Defaulters' as contained in RBI guidelines dated 30th May 2002 a further clause 3 (d) may be added after clause 3(c) in the following terms:-

'3(d)- The unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed or removed the securities given by him or it for the purpose of securing the loan amount without the knowledge of the bank/lender.'

2. That as per the last affidavit of the Union of India the Banks have been asked to constitute a committee of higher functionaries headed by the Executive Director and two GMs/DGMs to determine whether the default is willful or not. It is suggested that it will be desirable that another committee consisting of high-ranking RBI officials may be constituted so that in the cases involving

the unpaid amount of Rs. One Crore or more and where the committee of the concerned bank have come to the conclusion that it is not a case of willful default the case can be reexamined by such committee of RBI. It is necessary to constitute such committee of RBI officials for reexamining the cases of large default of Rs. One Crore or more as sometimes top officials of banks are also involved in cases of big lending.

3. It will be desirable that the Promoter or promoters of a borrowing company should be required to give an affidavit stating that whether it or they have been promoters of other company or companies at present or in past who have been guilty of default whether willful or not and if so details thereof. This information will be a useful input for the banks to determine whether the company of such promoter is credit worthy or not.

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4. It will be desirable that in every case of borrowing by the public limited company a conditional personal guarantee of the promoter or promoters of such company is obtained, which can be invoked in the case it is found that the company has willfully defaulted in repayment of the loan advanced to it. No promoter can be heard to say that his assets should be touched even if the company promoted by him has willfully defaulted.

5. It has been stated in the affidavit filed by the UOI that a web site of Credit Information Bureau (India) Ltd. has been put in place which contains information about willful defaulters against who civil suits have been filed to recover the amount. However, it is essential that full information about all defaulters of Nationalized banks and public sector financial

institutions should be publicly available on the web site and otherwise. This is essential not only in the interest of transparency and under the national Right to Information Act, it would also be a useful input for any financial institutions to evaluate the credit worthiness of the borrower. If there are any rules/guidelines/confidentiality agreements which come in the way of such disclosure, these should be immediately amended to bring them in line with such disclosure, which in any case is required under the national Right to Information Act, 2005.

6. That in case of the bank officials sanctioning loans to any person who has willfully defaulted in the past and whose details are available on the web site or in the records available with the RBI it should be presumed that the concerned bank official/s have acted on extraneous considerations, until it is proved to the contrary, and appropriate criminal/civil and or departmental proceedings should be initiated against such officer/s."

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Mr. Rajiv Dutta, learned counsel appearing for the Union of India, submits that the comments of the Reserve Bank of India, Punjab National Bank and Oriental Bank of Commerce, on the suggestions of Mr. Prashant Bhushan, learned counsel, have been received but meeting, as noticed in the order dated 9th August, 2005, to discuss these issues with Mr. Prashant Bhushan could not take place for one or the other reason. Since considerable time has already elapsed, we expect that, now, the meeting should take place without any further delay and, in any case, preferably this month itself. The Union of India, Ministry of Finance, is directed to file an affidavit placing on record the consensus which may emerge as a result of such meeting so that remaining questions, if any, can be examined

by this Court. The affidavit shall be filed by 15th January, 2006.

List the petition on a non-miscellaneous day after six weeks.

[T.I. Rajput]

Court Master

[V.P. Tyagi]

Court Master