

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.360 OF 2009

Ravi Shankar Bhushan

... Petitioner

Versus

Union of India and others

... Respondents

WITH
WRIT PETITION (CIVIL) NO.301 OF 2005

O R D E R

1. Mr. Rakesh Khanna, learned Additional Solicitor General, took us to the additional affidavit filed by the CAG and made specific reference to the various communications exchanged between the Ministry of Finance, Department of Financial Services and the Reserve Bank of India and also to the minutes of the meetings of the Board of Trustees of the Trust Fund held on 14.2.2014.

2. We find, from the minutes of the meeting held on 14th February, 2014, that the reply sent by the Department of Financial Services dated 14th February, 2014, including the compliance report dated 6th February, 2014 of the Reserve Bank of India, was discussed. CAG, now seeks further clarification from this Court on the following issues :-

i. In cases where the banks were in existence between October 1991 and March 1997 but were merged with another bank prior to the date of the Supreme Court order in April 2004 or merged subsequently without making the requisite payments in the Trust Fund, whether the transferee bank which took over the transferor bank's assets and liabilities is liable to make the payments (excess interest deposit and fund contribution amount) on their behalf.

ii. Whether the banks, which claim to have not collected the excess interest from the borrowers, are required to make contribution of Rs.50 lakh in the Trust Fund as per the Hon'ble Supreme Court order. Para 64 of the Hon'ble Supreme Court judgment reads that all 'concerned banks' must contribute Rs.50 lakh to the fund which can be interpreted as banks which collected the excess interest from the borrowers. Further, whether there is a need to call for statutory auditor's certificate stating that the bank has not collected any excess interest from its borrowers.

iii. The banking business, other than credit card business, of American Express Bank was taken over by Standard Chartered Bank and the credit card business was taken over by EECB Ltd. in February, 2008. The AEBC Ltd., has been granted a restricted licence to do only credit card business in India. Whether Standard Chartered Bank is liable to deposit the excess interest charged to the borrowers by American Express Bank and the Fund contribution amount of Rs.50 lakh, on behalf of American Express Bank.

iv. The banking operations of Dresdner Bank AG was taken over by Commerzbank AG in 2009 and further, the Commerzbank AG closed its banking operations in the same year and now only acts as Rep Office in India. Whether the above Rep Office is liable to deposit the amounts in the Trust Fund.

v. Three foreign banks (Abu Dhabi Commercial Bank Ltd., Bank of Nova Scotia and Mashreq Bank PSC) have advised that they have either destroyed the records or lost their records in bomb blasts. Whether there is a need to call for auditor's certificate from these banks in this regard. Whether these banks are liable and bound to pay at least Rs.50 lakh or not.

3. We have perused the various issues which were deliberated upon by the Trustees in their meeting held on 14.2.2014. We are of the opinion that it is for the Reserve Bank of India and the Small Industries Development Bank of India (SIDBI) to take earnest efforts to recover the excess amount of interest from the respective banks, on which they have got effective control. We notice, from the letter of the Reserve Bank of India dated 6th February, 2014 that 46 commercial banks have deposited an aggregate amount of Rs.1,54,26,96,316/- towards excess interest charged to the borrowers and 39 commercial banks have deposited an aggregate amount of Rs.19,50,00,000/- (i.e. Rs.50 lakhs each) as additional amount. Efforts should be made by the Reserve Bank of India and the SIDBI to recover rest of the amounts and pass on the same to the Trust Fund. We have gone through the various queries raised by the Board of Trustees in their meeting held on 14.2.2014, which we have already extracted in the earlier part of the order and we are inclined to give the following directions :-

i. In the cases where the banks were in existence between October 1991 and March 1997, but were merged with another bank prior to the date of this Court order in April 2004 or merged subsequently, without making the requisite payments to the Trust Fund, the transferee bank which had taken over the transferor bank's assets and liabilities, is liable to make the payment (excess of interest deposit and fund contribution amount) on their behalf.

ii. We also make it clear that the Reserve Bank of India is bound to take steps to recover the amount from those banks which have collected the excess interest from the borrowers since they have also to make contribution of Rs.50 lakhs in the Trust Fund as per the orders of this Court. Banks which have already collected the amount, have to pass on the same to the Trust Fund and those who have not collected, should take immediate steps to collect those amounts and then contribute the same to the Trust Fund.

iii. We also make it clear that the Standard Chartered Bank is liable to deposit the excess interest charged to the borrowers by the American Express Bank as fund contribution amount of Rs.50 lakhs on behalf of American Express Bank. Reserve Bank of India should take appropriate follow up action in this regard.

iv. We notice, banking operations of Dresdner Bank AG were taken over by the Commerzbank AG in 2009 and that bank closed its banking operations the same year and now acts as Rep Office in India. We are of the view that the Rep Office is liable to deposit the amount of Trust Fund, if already collected. Reserve Bank of India has to take further follow up action.

v. We notice, three foreign banks i.e. Abu Dhabi Commercial Bank Ltd., Bank of Nova Scotia and Mashreq Bank PSC, had either destroyed the records or lost their records in bomb blasts. Reserve Bank of India has to examine the same and take follow up action. Auditor's certificate from these banks may also be obtained and these banks are also liable and bound to pay Rs.50 lakhs. Reserve Bank of India would examine as to whether they have collected any amount at all. Reserve Bank of India should undertake follow up action and communicate the same to the CAG within a period of six weeks.

4. Post this matter after six weeks.

.....J.
(K.S. Radhakrishnan)

.....J.
(Vikramajit Sen)

New Delhi,
February 21, 2014.
ITEM NO.61

COURT NO.7 SECTION PIL

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(s). 360 OF 2009

RAVI SHANKAR BHUSHAN Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With office report)

WITH W.P(C) NO. 301 of 2005
(With appln(s) for directions and office report)
(FOR FINAL DISPOSAL)

Date: 21/02/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Colin Gonsalves, Sr.Adv.
Mr. Divya Jyoti,Adv.
Ms. Jyoti Mendiratta, Adv.

Ms. Kiran Suri, Adv.

For Respondent(s) Mr. Lalit Bhasin, Adv.
Ms. Nina Gupta, Adv.
Ms. Bina Gupta ,Adv
Ms. Ratna D. Dhingra, Adv.
Mr. Parvez A. Khan, Adv.
Ms. Swati Sharma,Adv.
Mr. Ranjan Jha,Adv.

Mr. Anurag Dayal Mathur, Adv.
Mr. P. Parmeswaran, Adv.

Mr. Karan Khanna, Adv.
Mr. Ram Swarup Sharma, Adv.
Mr. Dinesh Chandra Tripathi,Adv.

Mr. Rajesh Singh,Adv.

Mr. Sanjay Kunur, Adv.
Mr. R.N. Keshwani, Adv.

Mrs. Rachna Gupta, Adv.

Mr. Shreekant N. Terdal ,Adv

UOI

Mr. Rakesh K. Khanna,ASG
Ms. Seema Rao,Adv.
Mr. Sadman Ali,Adv.
Mr. D.S. Mahra ,Adv
Mr. Nawal Kishore Jha, Adv.

Mr. Manji Singh,AAG

Mrs. Vivekta Singh, Adv.
Ms. Nupur Chaudhary, Adv.

Ms. Pragati Neekhara, Adv.

Mr. Ritesh Choudhary, Adv.
Mr. Ananga Bhattacharyya, Adv.

Mr. B.K. Satija , Adv

Mrs. S. Usha Reddy , Adv

Mr. Sanjay Kapur, Adv.
Ms. Lekha Vishwanath, Adv.

Ms. Praveena Gautam, Adv.
Ms. Pushhp Gupta, Adv.

Mr. Rajiv Nanda , Adv

Mr. Abhijeet Kumar, Adv.
Mr. Dinesh S. Badiar, Adv.
Mr. Jitendra Kumar, Adv.

M/S. M.V. Kini & Associates

Mr. Awanish Sinha , Adv

Mr. Shiv Ram Sharma , Adv

Mr. B. Krishna Prasad, Adv.

RBI (R.5)

Mr. K.S. Parihar, Adv.
Mr. H.S. Parihar, Adv.

Mr. Rajesh Kumar, Adv.
Mr. Anupama Dhurve, Adv.
Mr. MannoJ Mehta, Adv.
M/s. Mitter & Mitter Co.

Ms. Meera Mathur, Adv.

Mr. R.N. Keswani, Adv.

Mr. P. Parameswaran, Adv.

UPON hearing counsel the Court made the following
O R D E R

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4. Post this matter after six weeks.

| (Narendra Prasad) | | (Renuka Sadana) |
| Court Master | | Court Master |

(Signed order is placed on the file)