

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2022

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE P.KRISHNA BHAT

W.A.No.625/2020 (GM - RES)

BETWEEN :

THE GOVERNOR
RESERVE BANK OF INDIA
CENTRAL OFFICE BUILDING, 18TH FLOOR,
SHAHID BHAGAT SING ROAD,
MUMBAI-400001,
REP BY ITS ASSISTANT GENERAL MANAGER
Mr. S.A.RAVISHANKAR.

...APPELLANT

(BY SRI R.V.S.NAIK, SENIOR COUNSEL A/W
SRI V.VINAY GIRI, ADV.)

AND :

- 1 . VELANKANI INFORMATION SYSTEMS LIMITED
No.43, ELECTRONICS CITY PHASE 1
DODDATHOGURU VILLAGE
BENGALURU-560 100
REP BY ITS MANAGING DIRECTOR
Mr. KIRON D. SHAH
- 2 . SECRETARY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI-110 001
- 3 . SECRETARY
MINISTRY OF FINANCE

GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI-110 001

- 4 . STATE OF KARNATAKA
VIDHANA SOUDHA
BENGLAURU-560001, KARNATAKA
BY ITS CHIEF SECRETARY
- 5 . HDFC BANK LIMITED
SALCO CENTRE, RICHMOND ROAD,
BENGALURU-560 025
REP BY BOARD OF DIRECTORS
- 6 . FEDERAL BANK LIMITED
MARUTI ARCADE NO.7
20TH MAIN ROAD, 7TH BLOCK,
KORAMANGALA, BENGALURU-560 095
REP BY BOARD OF DIRECTORS
- 7 . ADITYA BIRLA FINANCE LIMITED
NO.1(78), STAR AVENUE, 6TH CROSS,
VICTORIA LAYOUT, VICTORIA ROAD,
BENGLAURU-560 025
REP BY BOARD OF DIRECTORS ...RESPONDENTS

(BY SRI AJAY KUMAR M., ADV. FOR R-1;
SRI KUMAR M.N., CGC FOR R-2 & R-3;
SRI SHASHIKUMAR G.V., AGA FOR R-4;
SRI H.N.VASUDEVAN, ADV. FOR R-5;
SRI I.P.RAWLAY MUDDAPPA, ADV. FOR C/R-7;
VIDE COURT ORDER DATED 17.11.2021 SERVICE OF NOTICE
TO R-7 IS HELD SUFFICIENT;
VIDE COURT ORDER DATED 17.11.2021 SERVICE OF NOTICE
TO R-6 IS HELD SUFFICIENT.)

THIS W.A. IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
IMPUGNED ORDER DATED 08.07.2020 PASSED BY THE
LEARNED SINGLE JUDGE IN W.P.NO.6775/2020 (GM-RES) AND
DISMISS W.P.NO.6775/2020 (GM-RES).

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY,
S. SUJATHA, J., DELIVERED THE FOLLOWING:

J U D G M E N T

This is an intra Court appeal filed under Section 4 of the Karnataka High Court Act, 1961, challenging the order dated 8.7.2020 passed in W.P.No.6775/2020.

2. Briefly stated the facts of the case are that, respondent No.1 herein had availed the term loan facilities from respondent Nos.5 to 7. Respondent No.1 herein claiming to be the owner and operator of Five Star Hotel and Technology Park had approached the writ Court by filing W.P.No.6775/2020 being aggrieved by the rejection of its request for grant of moratorium by lending institutions, namely respondent Nos.5 to 7 *inter alia* seeking for a direction amongst others to the appellant to enforce the Regulatory Covid 19 Package dated 27.03.2020 announced by the Reserve Bank of India (RBI) in letter and spirit, further seeking certain consequential reliefs.

3. The learned Single Judge, after hearing the learned counsel appearing for the parties accepting the appellant's contention that Covid 19 package gave the discretion to lending institutions insofar as to grant or not grant a moratorium, proceeded to issue directions to the appellant to monitor the implementation of Covid 19 package including verification of whether there are board approved policies framed by each lender; the banks to submit the board approved policies for approval to the appellant; the appellant to approve such policies, to verify if such board approved policies contain objective criteria; the appellant to set up a proper and effective grievance redressal forum for any aggrieved borrower to approach on account of improper or non-implementation of the policy and/or circular, etc.

4. Aggrieved by the aforesaid directions, the appellant is before this Court.

5. Sri.R.V.S.Naik, learned Senior Counsel appearing for the appellant submits that the writ appeal is confined only to the direction issued by the writ Court in paragraph 26(i) pursuant to the observations made in paragraphs 23.5 and 25.4 of the order impugned. Learned Senior Counsel submitted that the said observations/directions are contrary to the finding of the Hon'ble Apex Court rendered in ***Small Scale Industrial Manufacturers Association (Registered) v. Union of India and others***, reported in (2021) 8 SCC 511. Learned Senior Counsel further argued that RBI can frame guidelines which serve as broad indicators for lending institutions which have the authority and discretion to make free independent assessments and decisions based on the requirements of the borrowers and the interest of its depositors. In that direction, the Circular dated March 27, 2020 was issued. The learned Single Judge erred in coming to a conclusion that a right had been created in favour of respondent No.1 as a

borrower to avail a moratorium in view of the said circular. The relief now extended by the learned Single Judge was not which was sought nor contemplated by the parties to the proceedings. The learned Single Judge committed an error in exceeding the jurisdiction, in issuing the direction to the appellant herein as per paragraphs 26(i) read with 23.5 and 25.4.

6. Learned counsel appearing for respondent No.1 fairly submits that no such relief was sought by the original petitioner inasmuch as the direction now issued by the learned Single Judge to the appellant. He further submits that he has no objection to set aside the said observations/directions in the light of the judgment of the Hon'ble Apex Court in ***Small Scale Industrial Manufacturers Association (Registered)***, referred to supra.

7. Learned counsel appearing for the State Government and Union of India also support the

arguments advanced by the learned counsel appearing for the appellant.

8. We have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the material on record.

9. At this juncture, it is apt to refer to the judgment of the Hon'ble Apex Court in the case of ***Small Scale Industrial Manufacturers Association (Registered)***, referred to supra and the relevant paragraphs of the said judgment are quoted hereunder for ready reference (paragraphs 79, 80 and 81);

“79. Now so far as the submission on behalf of the petitioners that the RBI should have issued directions which are sector specific and addressing such sector specific issues is concerned, at the outset, it is required to be noted that as such the Committee headed by Shri K.V. Kamath had gone into such sector specific issues and gave its recommendations. The recommendations of the Kamath Committee have been substantially

accepted by the RBI in its circular dated 7.9.2020 which provides for separate threshold for 26 sectors including power, real estate and construction. Even otherwise, it is required to be noted that every sector might have suffered differently and therefore it will not be possible to provide sector specific/sector-wise reliefs. The petitioners cannot pray for sector specific relief by either waiver of interest or restructuring by way of present proceedings under Article 32 of the Constitution of India and the question of such financial stress management measures requires examination and consideration of several financial parameters and its impact.

80. Now so far as the submission on behalf of the petitioners that as per the notifications/circulars/reliefs offered by the RBI and/or Finance Department of the Union of India ultimately it is left to the bankers and it should not have been left to the bankers and the Government/RBI must intervene and provide further reliefs is concerned, at the outset, it is required to be noted that as such the bankers are commercial entities and since the customer profile, organizational structure and spread of each lending institution is widely different from others,

each lending institution is best placed to assess the requirements of its customers and therefore, the discretion was left to the lending institutions concerned. Any borrowing arrangement is a commercial contract between the lender and the borrower. RBI and/or the Union of India can provide for broad guidelines while recommending to give the reliefs.

81. Now so far as the submission on behalf of the petitioners that the relief packages which are offered by the UOI/RBI/Bankers/Lenders are not sufficient and some better and/or more reliefs should be offered is concerned, it is not within the judicial scope of the courts to issue such directions. No mandamus can be issued to grant some more reliefs/packages. As observed hereinabove, the court cannot interfere with the economic policy decisions on the ground that either they are not sufficient or efficacious and/or some more reliefs should have been granted. The Government might have their own priorities and the Government has to spend in various fields and in the present case like health, medicine, providing food etc. Even as per the case of the Union of India and so stated in the counter filed on behalf of the Union of India and the RBI, so many policies have

been announced to mitigate the impact of Covid-19 pandemic, which are referred to hereinabove.”

10. Thus, it is clear that the Hon'ble Apex Court while considering a batch of petitions filed under Article 32 of the Constitution of India challenging the Circular dated 27.3.2020 – Covid 19 Regulatory Package issued by the RBI *inter alia* seeking direction to the RBI to extend the moratorium, without any interest being levied on the loans availed by the petitioners therein, has held that the RBI and/or the Union of India can provide for broad guidelines while recommending to give the reliefs. It has further held that whether more relief should be offered by the Union of India/RBI/Bankers/lenders, would not come within the judicial scope of the Courts to issue such directions. The economic policy decisions even announced to mitigate the impact of Covid 19 pandemic cannot come within the realm of judicial review. Merely for the

reason that some of the reliefs are not suiting the desires of the borrowers, the same cannot be said to be arbitrary/or violative of Article 14 of the Constitution of India.

11. The learned Single Judge in paragraph 23.5 has observed as under;

“23.5. Unfortunately, the RBI Circular does not deal in detail with the mode and methodology of consideration and grant of a moratorium by a lending institution. RBI ought to have envisaged this and laid down a methodology to be followed by all lenders rather than leaving the discretion to each lender, which would result in discriminatory and/or contradictory policies/practices being adopted by each lender at its whims and fancies, justifying such policies/practices on the basis of a so-called board approved Policy. In the present case, the Board Approved policy of all three banks do not have any objective criteria contained in them, the wording of the Board Approved policy is vague, there being no manner of ascertaining if the actions of Respondents 5 to 7, more particularly Respondent No. 5 is or is not in accordance with the board approved policy.”

It has been further observed at paragraph 25.4 as under;

“25.4. In view of the above, it is held that no directions could be issued to Respondent 1 and 2 – Union of India or Respondent No. 3 – State of Karnataka, to in turn issue directions to Respondent No.4- RBI for the implementation of the Circular. The contentions of the RBI that the dispute is between the Petitioner and Respondents No.5 to 7 is not acceptable since the dispute arises out of the implementation or not of a Circular issued by the RBI. RBI is therefore directed to monitor the implementation of the Circular, including verification of whether there are Board-approved policies formulated by each of the lenders, direct all the banks to submit the Board-approved policies for approval to the RBI, to approve such board-approved policy, verify if such a board-approved policy contains objective criteria, set up a proper and effective grievance redressal forum for any aggrieved borrower to approach on account of the improper or non-implementation of the Policy and/or Circular etc.,”

Thus, these observations are crystallized in paragraph 26(i) of the order impugned, which reads thus;

“i) A mandamus shall ensue to Respondents No.4 directing Respondent No. 4 – RBI to enforce the recovery package as contained in Circular dated 27.03.2020 issued by it and as detailed in para 26.4 above.”

12. These observations/directions made by the learned Single Judge runs contrary to the dictum enunciated by the Hon'ble Apex Court in ***Small Scale Industrial Manufacturers Association (Registered)***, referred to supra.

13. As could be seen, RBI can issue only broad guidelines for mitigating the Covid 19 crisis as done in the Circular dated 27.3.2020. Based on these paragraphs 23.5 and 25.4, the direction issued to the appellant to enforce the recovery package as per paragraph 26(i) of the impugned order cannot be

approved. More particularly, no such relief was sought by the petitioner/respondent No.1 and some discretion is necessary for lending institutions to take decisions which are essentially commercial decisions based on financial considerations. The Circular dated 27.3.2020 itself being a guideline, cannot be construed as a mandatory requirement, creating a right in favour of respondent No.1 to avail moratorium, which certainly has to be decided from case to case considering the terms and conditions of different types of loans/advances extended by the lending institutions. Hence, paragraphs 23.5, 25.4 and 26(i) of the order dated 08.07.2020 passed in W.P.No.6775/2020 call for interference and deserve to be set aside.

14. For the reasons aforesaid, we pass the following:

ORDER

- (i) The appeal is allowed in part.

- (ii) Paragraphs 23.5, 25.4 and 26(i) of the impugned order dated 8.7.2020 passed in W.P.No.6775/2020 are set aside.
- (iii) No order as to costs.

In view of the disposal of the appeal, pending interlocutory application stands disposed of accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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