

CONSTITUTIONAL WRIT

Present: The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgment on: March 25, 2010

**W.P. 3002 (W) of 2009
Saukat Ali Mondal & Others
Versus
Union of India and others
With**

**W.P. No. 2998 (W) of 2009
Jamena Bibi & Ors.
Versus
Union of India & Ors.**

**W.P. No.2999 (W) of 2009
Samir Mallik & Another
Versus
Union of India and Ors.**

**W.P. No.3001 (W) of 2009
Santosh Biswas
Versus
Union of India & ors.**

POINTS:

DEBT WAIVER-Scheme does not contain any declaration that everybody will be totally exempted from paying entire unpaid loan amount-Bank informed the borrower her name has been included in the list of beneficiaries published by the bank- Eligible amount whether distinguishable from the entire unpaid principal dues - Agricultural Debt Waiver and Debt Relief Scheme, 2008.S.3

FACTS:

The common issue involved in all these four writ petitions is to decide whether the petitioners are entitled to absolute waiver from paying any bank loan under the Agricultural Debt Waiver and Debt Relief Scheme, 2008.

HELD:

From a perusal of the Agricultural Debt Waiver and Debt Relief Scheme, 2008, it appears that the Scheme does not contain any declaration that everybody will be totally exempted from paying entire unpaid loan amount. So, under the scheme no right has accrued in favour of the writ petitioners for claiming total debt waiver. The principle laid down is that in exercise of power derived from the law –common or statute the court will be competent to and indeed would be bound to protect the right of the citizen. The Court conceives that in granting partial relief to the writ petitioners, the respondent bank have neither exceeded their power nor acted in a whimsical manner or arbitrarily which requires judicial review and as such, the above principle will not be applicable in the instant case.

Para-16

The bank informed the borrower that her name has been included in the list of beneficiaries published by the bank under the Scheme and requested her to appear within five days from the date of receipt of the notice before the bank authorities and to extend co-operation in waiving her debts. By such intimation the bank authorities had intimated the borrower that she is a beneficiary under the Scheme but such letter is not a commitment made on the part of bank authorities to exempt the borrower from making any further payment after the overdue amount is adjusted under the Scheme. Such type of intimation is a general information given to the borrower for assisting the bank authorities in settling her claim for which she is entitled to under the Scheme of 2008 and this does not exonerate her from making any further payment due after 31.12.2007. Similar interpretation is the effect of similar intimation issued to other writ petitioners seeking their assistance in the matter of waiving dues.

Para-18

Interpretation of the meaning and extent of the 'eligible amount' which is distinguishable from the entire unpaid principal dues with interest as on 29.2.2008. From a plain reading of said clause and averment made in the affidavit in opposition the petitioners are only entitled to get the waiver for 'eligible amount' and not the entire unpaid dues after 29.2.2008. Para-19

Mr. J. Islam
Ms. Husn-ara Begum.....for the petitioners

Mr.S.K.Sinha.....for the respondent nos.2&3.

THE COURT:

1) The common issue involved in all these four writ petitions is to decide whether the petitioners are entitled to absolute waiver from paying any bank loan under the Agricultural Debt Waiver and Debt Relief Scheme, 2008.

2) The circumstances leading to filing of above Writ Petitions are narrated below:-

In Writ Petition No.W.P.2999 (w) of 2009 the writ petitioners Samir Mallik and Pramir Mallik have challenged a notice issued to them on 7.7.08 followed by another notice dated 23.12.2008 issued by the Branch Manager of Axis Bank asking them to clear the outstanding dues to the tune of Rs.1,11,724/- within seven days from the date of receipt of such notice. In their affidavit in opposition the respondent bank has stated that they have sanctioned a term loan of Rs.5,50,000/- to the writ petitioners for purchase of tractors and its accessories repayable within a period of six years by half yearly instalment of Rs.45,834/- together with contractual rate of interest commencing from May, 2007. The said loan was disbursed on 18.11.2006. The borrowers paid in parts total amount of Rs.1,45,900/- only upto 29th February, 2008. The total overdue amount upto 31.12.2007 which remained unpaid till 29.12.2008 was Rs.13,764/-. According to their calculation under the Debt

Waiver and Relief Scheme the beneficiary will be eligible if the payment of overdue instalment and interest thereon was due and payable upto 31.12.2007 and not paid upto 29.2.2008. Therefore, in terms of the said scheme the respondent bank had given waiver of Rs.21,304.66 paise only being overdue amount of Rs.13,764/- together with interest accrued thereon for the period from 21.11.2007 to 31.12.2007 and credited to the account of the borrower on 28.6.2008 which would be evident from their statement of account. The petitioners being owners of 3.07 acre of land belong to the category of 'small farmers' and their demand for Rs.1,11,724/- was claimed being the amount due after 31st December,07 and after adjustment of deposits made after 29.2.2008 and the credit of relief of the waiver given which is accordingly valid.

3) In Writ Petition No.3002 (w) of 2009 the writ petitioners (1) Saukat Ali Mondal (2) Moktar Ali Mondal (3) Hazrat Ali Mondal and (4) Rejaul Mondal have similarly challenged the propriety of demand notice dated 23.12.2008 by the respondent bank asking them to clear outstanding dues within seven days and claimed total waiver of the entire outstanding dues. In their affidavit in opposition the respondent bank has claimed that they had sanctioned a term loan of Rs.5,25,000/- to the writ petitioners for purchase of tractors and its accessories which was repayable within a period of six years at half yearly instalment of Rs.43,750/- together with contractual rate of interest commencing from July, 2007. The said bank also sanctioned agricultural loan upto the limit of Rs.1,50,000/- subject to renewal and review after 3 years and such repayment would be commenced from July, 2007 in accordance with terms of sanction letter. The borrowers paid in part a total amount of Rs.1,48,500/- up to 23.2.2008 i.e., before 29.2.2008 and there was no overdue amount in respect of such tractor loan as on 31.12.2007 and accordingly they are not entitled to claim any relief under this scheme on such account and their next instalment was payable on 5th June, 2008 after cut off date. The agricultural loan or production credit facility up to the limit of 1,50,000/- was

disbursed to them on 1.12.2006. The repayment was due in July 2007 and the borrowers repaid their outstanding dues on 11.05.2007 leaving the balance of Rs.148.39/- paise. They were allowed to avail the said facility again on 5.6.2007 to the tune of Rs.70,000/- i.e., well after the cut off date on 31.03.07. The petitioners got waiver of Rs.643.83 paise only being outstanding balance of Rs.148.39 paise only as on 11.05.07 together with interest accrued thereon upto 31.12.2007. The demand notice dated 2.3.2008 was issued in respect of third and fourth instalments of their tractor loan which became due and payable after 31.12.2007. The outstanding claim for the short term loan was in respect of future interest accrued after 31.12.2007. The said demand notice was issued in respect of dues payable upto the date of notice in relation to the amounts which became due and payable after 31.12.2007 and as such it is justified.

4) In Writ Petition No.2998 (W) of 2009 the writ petitioners Jamena Bibi and Jalil Mondal have challenged the propriety of similar notice dated 20.6.2008 demanding payment of outstanding dues amounting to Rs.76,531/- (Rs.43,750/- as capital, Rs.32,781/- as interest) within 7 days from the date of receipt of the notice and claimed total waiver of the said amount under the scheme. The respondent bank in affidavit in opposition on the contrary has stated that they sanctioned a term loan of Rs.5,25,000/- to the writ petitioners by its sanction letter dated 18.01.2007 for purchase of tractors and its accessories and the said loan was repayable within a period of six years by half yearly instalment of Rs.43,750/- together with contractual rate of interest commencing from July, 2007. They also sanctioned production credit facility upto the limit of Rs.2 lakh for the period of one year and the repayment was stipulated in January, 2008 in terms of their sanction letter. The said tractor loan was disbursed on 18.01.07. The said borrowers paid in part a total of amount of Rs.49,000/- upto 28th February, 2008 i.e., before 29.02.2008 and their total overdue amount upto 31.12.2007 which remained unpaid till 29.2.2008 was Rs.27,531/- and their second instalment was

due on 31st January, 2008 i.e., after the cut off date. According to the scheme the respondent bank had given waiver of Rs.57,644/- being overdue amount of Rs.27,531/- together with interest accrued thereon for the period from 26.7.07 to 31.12.2007 against tractor loan and the said amount was credited to the account of the borrower on 28.6.08. Similarly, agricultural loan or production credit facility upto the limit of Rs.75,000/- was disbursed to them on 18.01.2007 and the repayment was due in January, i.e., after the cut off date i.e., 31.12.2007. The half yearly interest accrued was already paid and as such the petitioners were not eligible for waiver under the scheme of production credit facility. The petitioners being the owners of 4.06 acres of land belonged to the category of 'small farmers' and their demand notice dated 24.12.2008 was made in respect of the total overdue amount against the tractor loan as on 30.11.2008 amounting to Rs.1,24,509/- and that of KCC loan as Rs.9,509/- after waiving the admissible amount under the scheme and the same is valid.

5) In Writ Petition No.3001 (W) of 2009 the writ petitioner Santosh Biswas has challenged a notice dated 7.7.08 followed by further notice dated 15.10.2008 issued by the respondent bank for repayment of outstanding dues. The respondent bank on the contrary has claimed that they sanctioned a term loan of Rs.4,85,000/- to the petitioner on 22.2.07 for purchase of tractors and its accessories. The said loan was repayable within the period of six years by half yearly instalment of Rs.40,417/- together with contractual rate of interest commencing from August, 2007. The bank also sanctioned production credit facility upto the limit of Rs.1 lakh for a period of one year and the repayment was stipulated in August 2007 in terms of their sanction letter. The said tractor loan was disbursed on 23.2.2007 and first half yearly instalment was payable on 30.08.2007 while the second instalment was payable on 29.02.2008. The borrower paid in part a total amount of Rs.55,000/- upto 25.2.2008 i.e., before 29.2.2008 and total overdue amount upto 31st December, 2007 which remained unpaid till 29.2.2008 was only Rs.16,305/- . The second instalment was payable on

29.2.2008 i.e., after the cut off date. The respondent bank had given waiver of Rs.37,348/- only being overdue amount of Rs.16,305/- together with interest accrued thereon for the period from 1.9.2007 to 31.12.2007 and credited the said amount to the account of the borrower on 28.6.2008. The production credit facility upto the limit of 85,000/- was disbursed to them on 23.2.2007 and the repayment was due in August, 2007. The half yearly interest accrued was duly paid by the writ petitioner. The borrower was eligible for waiver under the Scheme of the production credit facility to the tune of Rs.90,148.89/- only including the overdue amount as on 31.12.2007 and unpaid till 29.2.2008. Accordingly the said total overdue amount of Rs.90,148.89/- was waived and credited to the account of the writ petitioner on 29.9.2008. The demand notice issued in respect of the dues payable after such waiver was made according to terms of contract and as such is not illegal.

- 6) The learned lawyer for the petitioners has claimed that in the paper publication, there is announcement of the Govt. of India that the marginal farmers will be totally exempted from paying any further loan amount which is overdue on December 31, 2007 and remains unpaid upto February 29, 2008. The respondent bank has already received according to such paper publication more than Rs.60 crores from the Govt. of India and thereafter they cannot demand any amount for liquidating the balance dues of the petitioners on account of the aforesaid loan. He has cited the rulings reported in A.I.R 1968 S.C 718 and (2009)1 SCC 150 in support of his contention.
- 7) The learned lawyer for the respondent bank on the contrary has refuted the argument and stated that by virtue of such waiver scheme, the writ petitioners were partly exempted from making any payment in respect of the overdue amount as on February 29, 2008 but they are liable to pay further amount as shown in their statement of account furnished in their affidavit-in-opposition. He has further contended that the court cannot rely upon in the news published in the paper but the contents of the relevant Govt. circular should be looked into and relied upon for determining the present issues. Thus,

the only point for consideration is to see whether the demand notices issued by the respondent bank asking the petitioners to make further payment is contrary to the Agricultural Debt Waiver and Debt Relief Scheme, 2008 published by the Chief General Manager in-charge concerned.

8) For the purpose of proper adjudication of the matter, the relevant provisions of the said

agricultural Debt Waiver and Debt Relief Scheme, 2008 are quoted below:-

* * * * *

“ 3.3 ‘Investment Loan’ means

- (a) Investment credit for direct agricultural activities extended for meeting outlays relating to the replacement and maintenance of wasting assets and for capital investment designed to increase the output from the land, e.g. deepening of wells, sinking of new wells, installation of pump sets, purchase of tractor/pair of bullocks, land development and term loan for traditional and non-traditional plantations and horticulture; and
- (b) investment credit for allied activities extended for acquiring assets in respect of activities allied to agriculture e.g. dairy, poultry farming, goatery, sheep rearing, piggery, fisheries, bee-keeping, green houses and biogas.

3.5 ‘Marginal Farmer’ means a farmer cultivating (as owner or tenant or share cropper) agricultural land up to 1 hectare (2.5 acres).

3.6 ‘Small Farmer’ means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 1 hectare and up to 2 hectares (5 acres).

3.7 ‘Other Farmer’ means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 2 hectares (more than 5 acres).

Explanation:.....

2. In the case of a farmer who has obtained investment credit for allied activities where the principal loan amount does not exceed Rs.50,000, he would be classified as “small and marginal farmer” and, where the principal amount exceeds Rs.50,000, he would be classified as ‘other farmer’, irrespective in both cases of the size of the land holding, if any.

3. Eligible amount

3.1 The amount eligible for debt waiver or debt relief, as the case may (hereinafter referred to as the ‘eligible amount’) shall comprise of:

- (a) in the case of a short-term production loan, the amount of such loan (together with applicable interest)
 - (i) disbursed up to March 31, 2007 and overdue as on December 31, 2007 and remaining unpaid until February 29, 2008;
 - (ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government, whether overdue or not; and
 - (iii) restructured and rescheduled in the normal course up to March 31, 2007 as per applicable RBI guidelines on account of natural calamities, whether overdue or not.
- (b) in the case of an investment loan, the instalments of such loan that are overdue (together with applicable interest on such instalments) if the loan was:
 - (i) disbursed up to March 31, 2007 and overdue as on December 31, 2007 and remaining unpaid until February 29, 2008;
 - (ii) restructured and rescheduled by banks in 2004 and in 2006 through the special packages announced by the Central Government; and
 - (iii) restructured and rescheduled in the normal course up to March 31, 2007 as per applicable RBI guidelines on account of natural calamities.

Explanation: In the case of an investment loan disbursed up to March 31, 2007 and classified as non-performing asset or suit filed account, only the instalments that were overdue as on December 31, 2007 shall be the eligible amount.

4. Debt Waiver.

4.1 In the case of a small or marginal farmer, the entire 'eligible amount' shall be waived.

r classified as 'other farmer' eligible for OTS relief shall give an undertaking agreeing to pay his share (eligible amount minus the amount of OTS relief) in not more than three instalments and the first two instalments shall be for an amount not less than one-third of his share. The last dates of payment in the case of instalments will be September 30, 2008; March 31, 2009 and June 30, 2009.

9) Instalments of investment credit which fall overdue after 31.12.2007 shall be recovered by the lending institutions along with the applicable interest. Lending institutions may, however, in appropriate cases, reschedule these instalments in accordance with the normal policy of the lending institution concerned.....”

10) From a plain reading of the aforesaid scheme, it appears that all the writ petitioners belong to the category of 'small farmers' as defined in clause 3.6 above

11) The 'eligible amount' has been defined in para 4.1(a) as the amount of such loan which was disbursed upto March 31, 2007 and overdue as on December 31, 2007 and remaining unpaid until February 29, 2008 and distinguishable from total unpaid dues. 12) From paragraph 10 of the affidavit-in-opposition filed by the respondent Nos. 2 and 3, in W.P. 3002 (W) 2009 it appears that the petitioners were not entitled to any waiver in respect of the tractor loan as there was no overdue in their account as on December 31, 2007 but they were given waiver in short term production credit facility as per statement annexed therewith (annexure R-3). It appears from the said annexure R-3 that the petitioners regularly repaid the loan and

there was no overdue amount as on December, 2007. Therefore, they are not entitled to claim any waiver in respect of the tractor loan as claimed in the writ petition. As regards their account on agricultural cash credit, it appears that against entry dated 29.9.08 an amount of Rs.643.83 was shown as debt waiver and has been credited to their loan account (Annexure R-3) according to the aforesaid scheme.

13) Similarly as stated in para 3, in W.P. No.2999 (W) of 2009 the over due amount was Rs.13,764/- only and the Bank granted waiver amount of Rs.21,304.66 paise including interest payable from 21.11.2007 to 31.12.2007. The demand notice issued relates to the dues after 31.12.2007 which claim is beyond the purview of the Scheme and is liable to be recovered in terms of Clause 8.2. of the said Scheme.

14) In Writ Petition No.3001 (W) of 2009 the writ petitioners got waiver of Rs.37,348/- only as stated in Para-5 above being overdue amount of Rs.16,305/- together with interest against tractor loan and got waiver of Rs.90,148.89 paise being overdue amount as on 31.12.2007 including interest. The demand notice was issued in respect of dues payable thereafter and as such the claim is valid in terms of Clause 8.2 of the Scheme.

15) In the same way in W.P. No.2998 (W) of 2009 the writ petitioners got waiver of Rs.27,531/- in respect of tractor loan as stated in para 5 above and was not entitled to waiver in respect of agricultural loan. The demand notice was issued in respect of dues payable in respect of tractor loan and agricultural loan payable on account of dues after 31.12.2007 and in agreement with clause 8.2 of the Scheme.

16) From a perusal of the said scheme, it appears that the Scheme does not contain any declaration that everybody will be totally exempted from paying entire unpaid loan amount. So, under the scheme no right has accrued in favour of the writ petitioners for claiming total debt waiver. The principle laid down in A.I.R 1968 SC 718 is that in exercise of power derived from the law –common or statute the court will be competent to and indeed would be bound to protect the right of the citizen. I conceive that in granting partial relief to the writ petitioners, the respondent bank have neither exceeded their power nor acted in a

whimsical manner or arbitrarily which requires judicial review and as such, the above principle will not be applicable in the instant case.

17) The ratio in (2009) 1 SCC 150 has defined “the State” within the meaning of Article 12 of the Constitution and in view of the principle laid down therein, the respondent Axis Bank will also be treated as a State within the meaning of Article 12 of the Constitution which is a private bank but acting as an agent of the principal Reserve Bank of India which has issued the aforesaid Scheme, 2008 and asked the banks to implement it.

18) Learned lawyer for the petitioners has drawn my attention to a notice dated 7.7.08 given to the writ petitioner Jamena Bibi in W.P. No.2998 (W) of 2009 in which the bank informed the borrower that her name has been included in the list of beneficiaries published by the bank under the aforesaid Scheme and requested her to appear within five days from the date of receipt of the notice before the bank authorities and to extend co-operation in waiving her debts. This letter is a clear indication and admission on the part of the bank that the borrower is exempted from paying any further dues to the bank and after issuing such notice the bank cannot subsequently raise a plea that the borrower will have to pay further amount for liquidating the debts. Learned lawyer for the bank has refuted this argument and contended that by such intimation the bank authorities had intimated the borrower that she is a beneficiary under the Scheme but such letter is not a commitment made on the part of bank authorities to exempt the borrower from making any further payment after the overdue amount is adjusted under the Scheme. After careful consideration of such intimation (annexure P-3) and the submission so made by the learned lawyer for the bank I hold that such type of intimation is a general information given to the borrower for assisting the bank authorities in settling her claim for which she is entitled to under the Scheme of 2008 and this does not exonerate her from making any further payment due after 31.12.2007. Therefore, the argument so advanced by learned

lawyer for the petitioners cannot be accepted. Similar interpretation is the effect of similar intimation issued to other writ petitioners seeking their assistance in the matter of waiving dues.

19) In fact the entire claim of these writ petitioners hinges on interpretation of the meaning and extent of the 'eligible amount' which is distinguishable from the entire unpaid principal dues with interest as on 29.2.2008. From a plain reading of said clause and averment made in the affidavit in opposition I hold that the petitioners are only entitled to get the waiver for 'eligible amount' and not the entire unpaid dues after 29.2.2008.

20) Therefore, on consideration of all these aspects, I find that there is no illegality or impropriety in crediting the aforesaid amount in fragments by way of waiver under the aforesaid scheme in favour of the writ petitioners which in essence is an ad hoc relief to the eligible borrowers and there is no scope for interference or judicial review of the action so taken by the bank authorities for issuing Demand Notice for recovery of outstanding dues after 31.12.2007 in accordance with the scheme published by the RBI as per annexure R-1 to the A.O.

21) Considering all these aspects, I hold that there is no merit in all these four writ applications which are accordingly dismissed.

22) I make no order as to costs.

23) Urgent certified Photostat copy of this judgment be supplied to the party or parties, if applied for, upon compliance of usual formalities.

[Syamal Kanti Chakrabarti, J.]

