

Constitutional Writ
Present : The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on : April 30, 2010
W.P.No.26584(W) of 2008
Prem Chandra Soni & Ors.
-vs-
Union of India & Ors.
with
C.A.N.No.212 of 2010

Points-

State: Whether a writ can maintainable against a non government organization like ICICI Bank- Even if the central government nominates directors to the board of the bank and monitors the bank whether the bank will attain the status of a state-Constitution of India, Art 12, 226

Facts-

All the petitioners were formerly working in Bank of Madura Ltd. In 1995 Bank of Madura Ltd. introduced a pension scheme. The scheme was made effective from November 1, 1993. Under the scheme employees of Bank of Madura Ltd. were entitled to exercise option in favour of pension. The petitioners did not exercise option within the stipulated period. On March 10, 2001 Bank of Madura Ltd. merged into ICICI Bank Limited. ICICI Bank Limited notified a voluntary retirement scheme. Accepting the terms and conditions of the scheme, the petitioners retired from service on June 17, 2003. They all accepted the benefits of the scheme and then contended that ICICI Bank Limited must give them the benefit of the 1995 pension scheme introduced by Bank of Madura Ltd. Since ICICI Bank Limited refused to oblige them.

Held:

Needless to say that if the Union of India is under any obligation to do anything regarding the petitioners' claim, then the petition will be maintainable. But Even if the central government nominates directors to the board of the bank and monitors the bank, the bank will not attain the status of a state within the meaning of art.12 of the Constitution of India. Para-11

The bank, a company registered under the Companies Act, 1956 and not discharging any public duty or obligation, is not a state within the meaning of art.12 of the constitution.

Para-13

Nonefor the petitioners
Mr. Hirak Kumar Mitra
Mr. Soumen Sen
Mr. Debdatta Sen
Ms. Suchishmita Ghoshfor ICICI Bank

The Court :

ICICI Bank Limited, the third respondent in the pending art.226 petition, has filed this application dated January 8, 2010 for an order disposing of the petition in terms of a division bench judgment and order dated December 19, 2008, Annexure P3 at p.259, of the Madras High Court.

2) The fifty-four petitioners in the petition dated October 1, 2008 are seeking a mandamus commanding the respondents to accept their options in favour of pension and to pay them pension arrears and current pension.

3) The four respondents in the case are these : 1. Union of India. 2. Additional Secretary, Ministry of Finance and Company Affairs (Banking and Finance). 3. I.C.I.C.I. Bank Limited. 4. Assistant General Manager, ICICI Bank Limited.

4)In para.26 of the petition the petitioners have stated that since the Government of India nominates some directors to the board of ICICI Bank Limited and monitors it, it is a state within the meaning of art.12 of the constitution and hence amenable to writ jurisdiction of the high court under art.226.

5) The third and fourth respondents have filed an opposition dated January 17, 2009 and in the several sub-paras. of para.4 thereof they have categorically taken the point that the third respondent, a private bank, not discharging any public duty or obligation, is not amenable to the writ jurisdiction of this court. In para.4(v) they have also stated that the first and second respondents have been impleaded “mischievously” only for the purpose of showing that the petition under art.226 is maintainable.

6) The real question in controversy between the parties is whether ICICI Bank Limited is under any obligation to accept the petitioners’ options in favour of pension scheme and pay them pension arrears and current pension.

7) The facts giving rise to the question are these. All the petitioners were formerly working in Bank of Madura Ltd. In 1995 Bank of Madura Ltd. introduced a pension scheme. The scheme was made effective from November 1, 1993. Under the scheme employees of Bank of Madura Ltd. were entitled to exercise option in favour of pension. The petitioners did not exercise option within the stipulated period. On March 10, 2001 Bank of Madura Ltd. merged into ICICI Bank Limited. ICICI Bank Limited notified a voluntary retirement scheme. Accepting the terms and conditions of the scheme, the petitioners retired from service on June 17, 2003. They all accepted the benefits of the scheme and then contended that ICICI Bank Limited must give them the benefit of the 1995 pension scheme introduced by Bank of Madura Ltd. Since ICICI Bank Limited

refused to oblige them, they brought this petition.

8) Involving the same question several art.226 petitions were filed in the Madras High Court. Finally, by the judgment and order dated December 19, 2008 a division bench of the Madras High Court dismissed the petitions holding that ICICI Bank Limited was not amenable to the writ jurisdiction of the high court under art.226, and that even on merits the petitioners in the petitions concerned, having not exercised their respective options according to provisions of the pension scheme, were not entitled to any pension under the scheme.

9)The petitioners have not filed any reply to the opposition of the third and fourth respondents. Affidavit of service has been filed stating that the application was served on advocate for the petitioners. None appears for the petitioners and no opposition to the application has been filed as well. Mr Mitra, counsel for the third and fourth respondents, has submitted that following the division bench decision of the Madras High Court this court should dismiss the petition.

10) I do not find any merit in the petitioners' case stated in para.26 of the petition. It seems to me that the Union of India and the Additional Secretary of the Ministry of Finance and Company Affairs of the Central Government have been impleaded as the first and second respondents respectively only for the purpose of arguing that the petition involving the above-noted question is maintainable.

11) Needless to say that if the Union of India is under any obligation to do anything

regarding the petitioners' claim, then the petition will be maintainable. But Even if the central government nominates directors to the board of the bank and monitors the bank, the bank will not attain the status of a state within the meaning of art.12 of the Constitution of India.

12) It is evident from the case stated in the petition that the first and second respondents have absolutely no role to play in the matter of enforcement of the petitioners' right claimed under the 1995 pension scheme of Bank of Madura Ltd. They are actually seeking enforcement of their right, if any, against ICICI Bank Limited.

13) The bank, a company registered under the Companies Act, 1956 and not discharging any public duty or obligation, is not a state within the meaning of art.12 of the constitution. The division bench of the Madras High Court, as will be evident from paras. 6 and 7 of the judgment, also held that the petitions concerned seeking enforcement of a private duty against a private bank were not maintainable.

I am, therefore, of the view that the petition brought by the petitioners is not maintainable. Accordingly, I allow the application and dismiss the petition. No costs.
Certified xerox.

(Jayanta Kumar Biswas, J)