

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition Nos.6704-6705 of 2012

Alhaj Md. Ali Abbas
...Petitioner in both the writ petitions
-Versus-
Government of the Peoples Republic of
Bangladesh and others
...Respondents in both the writ petitions

Mr. Mizanur Rahman, Advocate
... for the petitioner in both the writ petitions

Mr. Mahabubey Alam with Mr. Shah Md. Ejaj
Rahman, Advocates

... for respondent 2 in both the writ petitions

Mr. Md. Taherul Islam, Advocate
... for respondents 5-6 in Writ Petition 6704 of 2012

Judgment on 01.08.2013

Md. Ruhul Quddus,J:

These two writ petitions involving common questions of law and facts have been heard together and are being disposed of by one judgment.

Facts necessary for disposal of the Rules as it gathered from the records, in brief, are that the petitioner took composite loan of Taka 85.00 crore in total (both funded and non-funded) from Bangladesh Krishi Bank, Agrabad Corporate Branch, Chittagong (respondent 6 in writ petition 6704 of 2012) and Taka 73.00 crore in total from United Commercial Bank Ltd., Khatungonj Branch, Chittagong (respondent 6 in

writ petition 6705 of 2012). In both the cases the petitioner failed to adjust the loan despite the creditor-banks had issued him several letters for adjustment. The petitioner filed application dated 28.04.2012 to Bangladesh Krishi Bank and filed another application dated 16.05.2012 to United Commercial Bank Ltd. (hereinafter called UCBL) for rescheduling of the loans. In the said applications, the petitioner stated that the imported goods against the L C (letter of credit) and LTR (loan against trust receipt) were of poor quality. Under the circumstances, he applied to the banks for withholding the payment, but the banks did not consider his applications. As a result he incurred huge loss in business and could not adjust the loan in time. Meanwhile, Bangladesh Bank (respondent 2 in both the writ petitions) conducted a special inspection and issued Memo No. Boi: Mu: Po: Vi: Bi:/ 5024(C)/ 2012-2050 dated 25.04.2012 (annex-M in writ petition 6704 of 2012) asking the respondent-Krishi Bank for realization of the loan, to classify the petitioner's firm and include in the list of Credit Information Bureau (CIB), to initiate civil and criminal actions against the petitioner and also to take departmental action against the Manager of the respective branch. In response thereto the respondent-Krishi Bank informed Bangladesh Bank about its action taken/to be taken against the petitioner by a replying memo being No. A: Bi: 10 (442) 2011-12 dated 16.05.2012. The UCBL also issued memo No.UCBK/ FEX/ 2012/ 2335 dated 14.05.2012 asking the petitioner to adjust the loan. The petitioner after service of unsuccessful notices demanding justice, moved in this Court with the present writ petitions challenging the said memoranda

(annexes: M and M-1 in writ petition 6704 of 2012 and annexes: S and S-1 in writ petition 6705 of 2012) seeking direction upon both creditor-banks for rescheduling of the loan on the basis of his applications dated 28.04.2012 and 16.05.2012 respectively and obtained the Rules with interim orders of stay.

Respondent 2, Bangladesh Bank contests both the Rules by filing two separate affidavits-in-opposition. In the affidavit-in-opposition to writ petition 6704 of 2012 it is contended, *inter alia*, that the petitioner has been operating a current account with Bangladesh Krishi Bank, Agrabad branch since 10.03.2010. The said branch of Krishi Bank without checking the petitioner's performance recommended his application for composite loan of Taka 185.00 crore (both funded and non-funded) to its head office on 07.10.2010. The Board of Bangladesh Krishi Bank in its 527th meeting held on 31.01.2011 approved composite loan within the limit of Taka 85.00 crore [L C of Taka 50 crore + LTR of Taka 30 crore + Cash Credit (hypo) of Taka 5 crore] in favour of the petitioner. The petitioner withdrew Taka 4.95 crore against four cheques from 03.03.2011 to 08.03.2011 i.e. within five days and fully enjoyed the cash credit of Taka 5.00 crore. The major conditions of disbursing the CC (hypo) were that the petitioner would purchase the goods from local market firstly with equity-money then with the loan-money and keep it in his possession. He would adjust the loan from the sale proceeds and to take further loan for purchasing fresh goods in order to increase the stock, and would submit the stock report to the branch. The branch also

would have monitored over the stock. In the loan sanction letter, there was instruction of the head office to form a task force in order to monitor the cash credit from time to time. But nobody from the branch office obtained any stock report and monitored the loan account.

The petitioner opened two letters of credit amounting U S Dollar 46,64,000/= equivalent to Taka 33.95 crore on 08.02.2012 and U S Dollar 26,41,000/= equivalent to Taka 19.22 crore on 10.02.2011 to import white rice (25% broken) from Singapore within 19 (nineteen) days. The petitioner took shipping documents against the said letters of credit from the branch by creating four LTR amounting to Taka 29.98 crore. Subsequently he (petitioner) cleared the goods from the port and kept the same under his possession. In this deal the branch was unaware of the position of goods and failed to monitor the stock. Validity of the said LTR already expired on July, 2011, but the petitioner failed to adjust the liability.

The branch assessed the price of the mortgaged land and building at Taka 41.33 crore in total (28.16 crore+ 13.17 crore), whereas in the conveyance deed, price of the land was mentioned as Taka 1.00 crore only. Within a year, the price was intentionally shown much higher than that of the deed to enable the petitioner for getting higher amount of loan.

In its affidavit-in-opposition to writ petition 6705 of 2012, respondent 2 Bangladesh Bank states that the petitioner has been operating a current account with UCBL, Khatunganj Branch, Chittagong

since 31.07.2008. The said branch without checking/verifying the petitioner's capital analysis, credit risk grading etc recommended his application for composite loan (both funded and non-funded) to its head office on 07.01.2010. The Board of UCBL in its 31st meeting held on 08.10.2010 approved composite loan within the limit of Taka 73.00 crore [L C of Taka 45 crore + LTR of Taka 20 crore + CC (hypo) limit of Taka 5 crore and BG limit of Taka 3 crore] in favour of the petitioner. Validity of the LTR expired on 03.01.2012, but no adjustment was made. The validity of the CC (hypo), however, was extended from 30.06.2011 to 30.06.2012 to avoid classification of the loan account. The petitioner did not inform the branch about the stock of goods, sold out the same and transferred the amount elsewhere. But the concerned branch did not classify the loan account.

In a supplementary affidavit-in-opposition respondent 2 contends that its Foreign Exchange Inspection and Vigilance Department was constituted under Administrative Circular No.16 dated 06.06.2006. The Vigilance Team of the said department may conduct inspection/investigation in any bank or financial institution on the basis of allegations received from the general public, media report or at the instruction of higher authority and make necessary recommendation for prevention of fraudulent activities, misappropriation of money and other irregularities in the bank sector. In the instant case, the Foreign Exchange Inspection and Vigilance Department constituted a special team, which carried out special inspection to examine the loan account

of the petitioner at the instruction of higher authority after receiving some allegations from the public over telephone.

Bangladesh Krishi Bank and its Agrabad branch, Chittagong (respondents 5-6) contest the Rule in writ petition 6704 of 2012 by filing an affidavit-in-opposition stating, *inter alia*, that in compliance to the impugned memo dated 25.04.2012 it (respondent-krishi bank) took all necessary steps for realization of the loan and issued memoranda Nos.7107 dated 27.12.2011, 9961 dated 04.03.2012, 11132 dated 22.12.2011, 11949 dated 26.04.2012 to the petitioner to that effect. But the petitioner paid Taka 6.10 (six crore and ten lac) only and failed to pay the remaining outstanding loan. It (respondent-Krishi Bank) also published auction notice under section 12 (3) of the Artha Rin Adalat Ain, 2003 in *Dainik Kaler Kantha* on 07.06.2012 for selling the petitioner's mortgaged property towards realization of the loan amounting to Taka 31,01,72,066/= . Challenging the said auction notice, the petitioner moved writ petition 7200 of 2012 before the High Court Division and obtained Rule with an interim order of stay subject to payment of Taka 5 (five) crore within one month and payment of balance outstanding in four equal installments at interval of three months. The petitioner was also directed to file affidavit-in-compliance from time to time, which he did not comply with. The respondent-krishi bank filed an application for vacating the said order of stay. When the application was taken up for hearing, the petitioner got the Rule discharged for non-prosecution.

Mr. Md. Mizanur Rahman, learned Advocate appearing for the writ petitioner submits that the creditor-UCBL rescheduled the petitioner's loan and gave him time up to 30.06.2012 for repayment or adjustment. This was done because of bank and client relationship and mutual trust between them, but before expiry of the rescheduled time, a motivated inspection was conducted behind the back of the petitioner, wherein he was held liable for committing some illegal acts as alleged in the impugned memo. The inspection was done in arbitrary exercise of power and in issuing the impugned memo, Bangladesh Bank did not follow its own rules and serve any notice to show cause upon the petitioner and as such the whole action of Bangladesh Bank was illegal and without lawful authority. The petitioner, however, was willing to repay or adjust the loan and filed applications for rescheduling, which were pending before the creditor-banks.

Mr. Mahabubey Alam appearing with Mr. Shah Md. Ejaj Rahman, learned Advocate for respondent 2 submits that Bangladesh Bank being the central bank has got authority to regulate, supervise and control all the commercial and scheduled banks. The Bangladesh Bank Order, 1972 and other statutes relating to bank and financial institutions confer such authority on Bangladesh Bank for the security of public money and to preserve the interest of the depositors. Bangladesh Bank received specific allegations against some borrower including the writ petitioner whereupon its Foreign Exchange Inspection and Vigilance Department conducted a special inspection properly following the inspection

guideline. It furnished report and made the impugned recommendation on the basis of findings of the inspection. There was nothing wrong rather it was necessary for securing the interest of the depositors and to maintain discipline in the banking sector. Mr. Alam further submits that the impugned letter being internal correspondence between Bangladesh Bank and the creditor-banks under its control and supervision cannot be subject matter of judicial review.

Mr. Alam referring to the supplementary affidavit-in-opposition, lastly submits that according to the Inspection Guideline of Bangladesh Bank prepared in December, 2008 an inspection team is not required to serve any notice upon the concerned borrower or to give him any opportunity to explain his position while conducting special inspection in any bank for the purpose of examination of the books of accounts and financial documents/records relating to a particular loan. Since no action has been taken against the petitioner on the basis of the recommendation made in the impugned memo, there is no reason yet to be aggrieved thereby. If any action whether civil or criminal is ever commenced against the writ petitioner, he will get ample opportunity to defend himself in that particular action. At this stage there is no scope to raise the question of natural justice only because of demanding repayment of loan from a defaulting borrower.

We have gone through the records, consulted the relevant law and considered the submissions of the learned Advocates. It appears that same memo i.e. Memo No. Boi: Mu: Po: Vi: Bi:/ 5024(C)/ 2012-

2050 dated 25.04.2012 issued to Bangladesh Krishi Bank has been challenged in both the writ petitions. We bring it into the notice of the learned Advocate for the petitioner, but he failed to make any satisfactory reply as to how the same memo can be subject matter in a subsequent writ petition between the same parties. However, Mr. Shah Md. Ezaz Rahman, learned Advocate for respondent 2 makes it clear that after holding the inspection Bangladesh Bank issued another memo being No. Boi:Mu:Po:Vi:Bi:/ 5038(C)/ 2012-2049 dated 25.04.2012 with similar allegation and directions upon UCBL in respect of the petitioner's loan taken from that bank. He also produces the said memo before the Court, copy of which is kept in record. It may happen, that the petitioner mistakenly challenged the same memo in the second writ petition. But we find the learned Advocate of the petitioner reluctant to cure the defect by taking necessary step.

The Bangladesh Bank Order, 1972 and the Bank Company Act, 1991 confer authority on Bangladesh Bank to control and supervise all commercial banks and financial institutions. In the present case Bangladesh Bank on receipt of specific allegations in respect of the petitioner's loan, held an inspection and recommended necessary departmental/legal actions. We do not find any illegality in holding such inspection and issuing the impugned memo in conclusion thereof. Admittedly the petitioner is a defaulting borrower for reasons whatsoever. So the creditor-banks in usual course of its business can also ask the borrower to repay or adjust the loan.

The petitioner approached the creditor-banks by filing two separate applications on 28.04.2012 and 16.05.2012 respectively for rescheduling of the loans. It does not appear that the petitioner made any down payment as stipulated in BPRD Circular No. 8 dated 14.06.2012 to make him eligible for rescheduling of the loan. Any defaulting borrower without making any down payment cannot claim for rescheduling of loan as a matter of right. Moreover, the applications for rescheduling of the loan were filed on 28.04.2012 and 16.05.2012 praying one year time for adjustment (annexes-K and Q in writ petitions 6704-6705 of 2012 respectively). Even if those applications were allowed, he could have been given one year time ending on 27.04.2013 and 15.05.2013 respectively and in that case he was supposed to repay/adjust the loan within that period, but it does not appear that within that period or thereafter the petitioner repaid or adjusted the loan. In such a position, those applications have lost their force.

For the reasons stated above, we do not find any substance in either part of the Rules. Accordingly, both the Rules in Writ Petition No.6705 and 6705 of 2012 are discharged, however, without any order as to cost. The orders of stay granted earlier stand vacated.

Communicate a copy of the judgment.

Mohammad Bazlur Rahman, J:

I agree.