

SUPREME COURT OF INDIA

Union of India

Vs.

Debts Recovery Tribunal Bar Association

C.A.Nos.617-618 of 2013

(D.K.Jain and H.L.DATTU JJ.)

22.01.2013

ORDER

1. Leave granted.

2. These appeals arise out of judgment dated 18th September 2008 in CWP No. 11742 of 2007, and order dated 21st August 2009 in Review Application 161 of 2009, rendered by the High Court of Punjab Haryana, whereby certain directions relating to provision for adequate space for the smooth functioning of the Debts Recovery Tribunals (for short “the DRTs”) at Chandigarh, have been issued. The circumstances that have led to the filing of these appeals are succinctly stated below.

3. A Bench of the DRT was established at Chandigarh by the Union of India (for short “the UOI”), vide notification dated 24th March 2000, in a rented building. Subsequently, a second Bench of the DRT was established, which was supposed to function from another premises. However, both the Benches continued to function from the same premises where the earlier Bench was functioning. By a communication dated 20th July, 2007, the UOI directed that the second Bench would function from the premises acquired for it. Thereupon, the respondent Bar Association made a representation to the Presiding Officers of both the Benches, requesting them to inter alia, continue to function from the premises from where the first DRT was functioning. However, in light of the aforesaid communication issued by the UOI, the request of the Bar Association was not acceded to.

4. Aggrieved, the Bar Association filed a Civil Writ Petition in the High Court of Punjab Haryana, seeking directions to the UOI, to inter alia provide adequate

accommodation for the functioning of both the DRTs; and to frame Rules for recruitment/appointment of the Presiding Officer the Recovery Officers. In light of the assurance on behalf of the UOI that adequate space would be taken on lease for the smooth functioning of both the Benches at the same place, and that further, land was also being acquired for housing the DRTs, the writ petition was disposed of with a direction that the construction of the building shall be completed within three years from the date of its order. However, the High Court did not examine the other issues referred to above on the ground that they were unrelated to the inadequacy of office space needed by the DRTs.

5. Having failed to get the said order reviewed, the UOI is before us in these appeals. In order to appreciate the issue involved in the matter before us, it would be useful to have a bird's eye view of the constitution of DRTs and their functioning.

6. Prior to the promulgation of the Recovery of Debts Due to Banking and Financial Institutions Act, 1993 (for short "the RDDBFI Act"), all banks and financial institutions were required to file their recovery cases in the form of suits before the civil courts, on the basis of their territorial and pecuniary jurisdictions. Due to delays in the disposal of such suits by civil courts on account of heavy dockets, the recovery of loans and enforcement of securities suffered. Thus, an urgent need was felt to work out a suitable mechanism through which, the dues of the banks and financial institutions could be realized expeditiously. This led to the establishment of DRTs and the Debts Recovery Appellate Tribunals (for short "DRATs") under the RDDBFI Act for expeditious adjudication and recovery of debts due to banks and financial institutions.

7. As per the information available, there are all in all 33 DRTs established in the entire country out of which Delhi, Mumbai, Chennai, Kolkata, Chandigarh and Ahmedabad have two or more DRTs each. However, there are only five DRATs, established in Allahabad, Chennai, Delhi, Kolkata and Mumbai, each covering multiple DRTs of a particular geographical zone. As a result, DRATs are overburdened and are also facing an acute shortage of infrastructure and staff.

8. Given the poor state of affairs as highlighted by the Bar Association, we were constrained to take cognizance and hence, vide order dated 15th November 2010, directed the learned Addl. Solicitor General to file an affidavit suggesting measures for improving the working of the said Tribunals. Subsequently, on 7th April 2011, this Court appointed Mr. Rajeev Mehra, Senior Advocate, as amicus curiae to assist the Court. Consequently, having considered the views of all DRTs,

DRATs as well as the Bar Associations, the learned Addl. Solicitor General and the learned amicus curiae have filed their responses, highlighting the core issues and respective suggestions to address the same. In light of the above, the UOI was directed to place on record their response on the issues so raised, in particular, on the criteria being adopted for appointment of the members, Recovery Officers etc. In pursuance thereof, the UOI has filed status reports, indicating the measures agreed upon by the Government to address the aforementioned issues. Before we proceed to list the same, it would be helpful to discuss the core issues in respect of which the suggestions have been made.

9. At present, DRTs and DRATs suffer from severe infrastructural constraints. Most of the DRTs are being run from rented premises and face acute shortage of space, exorbitant rents, limitations on non-renewal/extension of leases etc. It has been brought to our notice that where the DRTs have been allotted space of about 5000 sq. ft., the actual requirement is not less than 7,500 sq. ft. Similarly, the learned amicus curiae brought to the fore several other issues plaguing the smooth functioning of the Tribunals, the most significant being: that there is a need to increase the number of DRATs in the country to reduce the workload of the existing DRATs; that many serving Recovery Officers lack a judicial background or are appointed on deputation from those very banks or financial institutions which are filing recovery cases in DRTs, thereby raising serious questions about their independence, impartiality and fairness; that the time taken in filling up vacancies for the posts of senior officials of DRTs and DRATs is extremely long; and that the presence of modern and technological systems of administration continues to be elusive in the administration of justice in as much as many DRTs and DRATs do not even have websites or computerized systems. Suggestions made by the learned Addl. Solicitor General and learned amicus curiae

[S. Issue | Suggestions of the | Suggestions of the | | No | | learned Addl. | learned amicus | | | | Solicitor General | curiae | | 1. | Premises | All DRTs and DRATs | Concurring | | Physical | should be housed in | | | Infrastructure | suitable buildings. | | | Pending construction | | | of these buildings, | | | the Tribunals should | | | be housed in rented | | | premises having an | | | area of at least | | | 8000 sq.ft. where | | | suitable space for | | | records, etc. and | | | amenities for the | | | officers of the | | | court, staff, | | | litigants and | | | lawyers should be | | | provided. | | | 2. | Increase in | A DRAT must be | | Number of | established in each | | DRTs/DRATs | state where there | | |--- | is a DRT or | | | multiple DRTs. | | | DRATs may be | | | established in the | | | city where the | | | concerned High | | | Court of a State is | | | located. | | 3. | Appointment of | Qualifications for | Appointment of | | Recovery Officers | Recovery Officers | Recovery Officers | | |

should include at by way of the very least, a deputation from basic degree in law. Government If possible, Departments/Ministries, Banks and advocates with five Financial years standing at Institutions should the Bar may be discontinued. appointed as Instead, the person Recovery Officers. appointed must be a person of a judicial background, preferably a judicial officer of the rank below the designation of Addl. District and Sessions Judge on deputation, and should be given the same facilities and perks he/she enjoys in the parent cadre. |4. Vacancies and A select list of a. For posts other than Senior candidates should be than Presiding Officers of maintained to fill Officers and DRTs/DRATs the vacancies. The Recovery Officers, selections should be on-going process of made within a fixed sourcing time frame. staff/officers on deputation should be discontinued, and permanent cadres should be established. b. The post of Presiding Officers, Registrars and Recovery Officers should be filled up from the state cadre of Judicial Officers through deputations and rotations so that these posts do not remain vacant. c. Judicial officers must be provided the same facilities and perks as they enjoy in their parent cadres. Further, residential accommodation must be necessarily earmarked for Presiding Officers. |5. Information DRTs and DRATs must Concurring Technology and have a website. Computerisation Possibility of publication of notices and auctions on the website should be explored, keeping necessary safeguards in mind. The National Informatics Centre should be called upon to prepare appropriate software for computerization of processes in the DRTs, from filing to disposal, so that the time taken for disposal is reduced. |

10. We are pleased to note the positive and forthcoming response of the UOI to the suggestions of the learned Addl. Solicitor General and the learned amicus curiae. Having taken note of the urgent need to address the abject conditions prevailing in the Tribunals, the UOI, has agreed to:

- i. Provide adequate infrastructure to DRTs/DRATs on the following basis: a. If sufficient space as per requirement is available in the Government building, then space from the concerned department will be allotted on a permanent basis.
- b. If space is not available in the Government building but sufficient space is available in public sector undertakings' buildings, then the DRTs/DRATs may move to the same on a permanent lease/rental basis.

c. If (a) and (b) are not possible, then suitable land may be purchased for construction of a building, or a suitably constructed building may be purchased from public authorities. This may be completed in a phased manner. In the mean time, DRTs and DRATs may continue at their present locations or hire alternative suitable space as per norms.

d. Further, on the basis of a spot study conducted by the Department of Financial Services on 11th December 2011, the existing space authorization of 5000 sq. ft. for DRTs and 3600 sq. ft. for DRATs was examined. In light of the study and requirements of additional facilities, the same has been increased to 7200 sq. ft. and 4500 sq. ft. respectively. In case more than one DRT is accommodated in one building, space would be saved for common facilities such as bar room, consultation chamber, reception, canteen, washrooms, etc. In such a case, the space requirements for the second and third DRT (if located in the same building) may be around 6000 sq. ft. and 5500 sq. ft. respectively.

e. Preference is to be given to buildings where parking facility is provided either within the building premises or in the vicinity.

ii. Consider the feasibility of establishing more DRTs/DRATs and redefining the jurisdiction of some DRTs on the basis of data showing pendency of cases and existing workload of all the DRTs and DRATs.

iii. Fill all anticipated vacancies for the posts of senior officers, as and when they arise, with candidates who have already been selected according to the stipulated rules.

iv. Extend the facility of General Pool of Accommodation of the type entitled to Group A officers upto April 2013 to the Presiding Officers. In the meantime, the Ministry of Finance and Ministry of Urban Development will examine all issues to finalise modalities for either buying or construction of flats/houses for use of the members of the Tribunals. Further, in case this proposal does not materialize, then the possibility of hiring accommodation shall be considered at the appropriate stage.

v. Implement the “e-DRT Project” to automate and improve DRT services by building IT systems as expeditiously as possible.

vi. Carry out the recruitment of Recovery Officers by promotion, failing which, by deputation, in accordance with the eligibility criteria as defined in the recruitment rules of each DRT. Keeping in mind the profile of the post of a Recovery Officer, it may not be possible to appoint judicial officers of a rank below that of an Additional District and Sessions Judge, as suggested by the learned amicus curiae. However, the UOI shall give preference to only those candidates who either have legal experience or hold a degree in law. Further, with respect to improving the selection procedure of Recovery Officers, the Departmental Promotion Committee (DPC), provided for in the recruitment rules, shall be expanded to include the Presiding Officer of any DRT as a member of the DPC to take part in the selection of the Recovery Officers. At the same time, the level of representation of the Reserve Bank of India in the DPC will also be raised from the rank of Deputy Legal Advisor to Joint Legal Advisor, RBI.

vii. Hold regular training programmes for Recovery Officers/Assistant Registrars/Registrars to give them minimum working knowledge of the procedures followed in DRTs, the provisions of the RDDBFI Act, the SARFAESI Act, the Rules made thereunder, and the provisions of Schedules II and III of the Income Tax Act, 1961.

11. We are confident that the aforementioned measures proposed by the UOI, shall go a long way in improving the administration of justice in these Tribunals. We are in agreement with these proposals and hope that they will be implemented efficiently and expeditiously by the concerned authorities. Having said that, it is necessary that the exercise undertaken by this Court must reach its logical end sans any delays and glitches or any other hindrances in the implementation of these suggestions. To this effect, we issue the following directions:

i. All the aforementioned proposals and measures agreed upon by the UOI in response to the suggestions made by the learned amicus curiae and the Addl. Solicitor General shall be implemented expeditiously within a suitable time frame. In the event that the UOI or the concerned authority fails to comply with the aforesaid assurances, it will be open to the learned amicus curiae to bring the same to this Court's notice for appropriate directions.

ii. Further, we believe that the High Courts are empowered to exercise their jurisdiction of superintendence under Article 227 of the Constitution of India in order to oversee the functioning of the DRTs and DRATs. Section 18 of the RDDBFI Act leaves no scope for doubt in this behalf. It reads thus:

18. Bar of Jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

Article 227 of the Constitution stipulates that every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction. This power of superintendence also extends to the administrative functioning of these courts and tribunals [Shalini Shyam Shetty Anr. Vs. Rajendra Shankar Patil[1]]. Hence, in light of the above, we expect that all the High Courts shall keep a close watch on the functioning of DRTs and DRAT, which fall within their respective jurisdictions. The High Courts shall ensure a smooth, efficient and transparent working of the said Tribunals. We are confident that through the timely and appropriate superintendence of the High Courts, the Tribunals shall adhere to the rigour of appropriate standards indispensable to the fair and efficient administration of justice.

12. Before parting, we place on record our deep appreciation for the able assistance rendered to us by Mr. Sidharth Luthra, the learned Addl. Solicitor General, Mr. Rajeeve Mehra, the learned amicus curiae and Mr. Arjun Kapoor, Law Clerk-cum-Research Assistant.

13. These appeals stand disposed of in the above terms.

[1] (2010) 8 SCC 329