

SUPREME COURT OF INDIA

Deposit Insurance & Credit Guarantee Corporation

Vs.

Ragupathi Ragavan & Ors.

C.A.No.1035 of 2008

(Anil R.Dave and Dipak Misra,JJ.,)

01.07.2015

JUDGMENT

Anil R.Dave,J.,

1. Judgment dated 20th November, 2006 delivered in Writ Appeal No.261 of 2006 by the Madurai Bench of the Madras High Court has been challenged in the main appeal. For the sake of convenience, we have considered facts of the main case for deciding the common issues which are involved in all these appeals.

2. The appellant, who has approached this Court, was not a party to the litigations before the High Court, but has been constrained to approach this Court as the direction given by the learned Single Judge as well as by the Division Bench of the High Court in the aforesaid writ appeal affects the appellant adversely and therefore, the appellant had submitted an application for permission to file the Special Leave Petition against the aforesaid judgment. Permission was granted to the present appellant and therefore, this appeal.

3. The appellant is Deposit Insurance and Credit Guarantee Corporation (hereinafter referred to as 'the Corporation'). The function of the Corporation is to insure deposits made by depositors with the banking companies and the said Corporation has been constituted under the provisions of Section 3(1) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (hereinafter referred to as 'the Act'). The Act had been enacted with a very laudable purpose. Normally a person deposits his savings or invests his money by way of a saving bank account or a fixed deposit with banking companies, including cooperative banks, without taking much care of ascertaining financial condition of the bank, possibly because of the trust reposed by him in the Reserve Bank of India, which regulates the banking business in the country.

4. In the event of any financial difficulty faced by the banking company, the depositors would generally lose substantial amount of their deposits, in whichever form made, because normally at the end of the winding-up proceedings, the unsecured creditors get very little amount. So as to safeguard the interest of such small depositors or investors, who have

parked their funds with banking companies, the Act had been enacted to insure the amount deposited by the depositors and to guarantee repayment of certain amount to such investors, when the banking company is in financial difficulty and is ultimately wound-up.

5. In the instant case, we are concerned with Theni Cooperative Urban Bank Ltd., doing its banking business mainly in District Theni of Tamil Nadu. The aforesaid Bank, which had been registered as an insured bank with the Corporation on 1st July, 1980, was in financial difficulties and therefore, the Reserve Bank of India had cancelled its licence to do banking business under Section 22 of the Banking Regulations Act, 1949 on 23rd May, 2002. However, the said order cancelling the licence was kept in abeyance for a period of six months by an order dated 7th June, 2002.

6. Ultimately, the said bank could not discharge its obligations and therefore, on 24th December, 2002, the Joint Registrar of the Co-operative Societies, Theni, was appointed as an Official Liquidator to carry out liquidation proceedings.

7. As stated hereinabove, the said bank had been insured with the Corporation and therefore, the Official Liquidator prepared a claim list of the depositors etc. as per the provisions of Section 17 of the Act and forwarded the same to the Corporation on 21st May, 2003.

8. As the Corporation had insured the bank, as per the provisions of the Act, the Corporation settled the statutory claims of the depositors by releasing a sum of Rs.3,26,87,846.12, and thereby maximum amount payable to each depositor had been paid. Thus, the amount which the Corporation was liable to pay to the depositors under the provisions of Section 16 of the Act had been paid by the Corporation through the Official Liquidator.

9. It is pertinent to note that the Corporation does not insure the entire amount paid by all the depositors. According to the provisions of Section 16 of the Act, at the relevant time the amount which was insured in respect of each depositor of the said bank was Rs.1 lakh and therefore, every depositor was paid the amount of deposit or a sum of Rs.1 lakh, whichever was less.

10. Though the aforesaid amount had been released by the Corporation, all the depositors could not be paid the entire amount they had deposited with the bank because the amount insured in respect of each depositor was only Rs.1 lakh. So, those who had deposited more than one lakh rupees with the bank, were not paid the amount to the extent to which their deposits exceeded Rs.1 lakh.

11. In the aforesaid background, Writ Petition Nos.6768 and 7372 of 2005 had been filed in the Madurai Bench of the Madras High Court by some of the depositors praying that the amount which had remained unpaid on their fixed deposits be directed to be paid to them by the Joint Registrar of the Co-operative Societies, who had been appointed as the Official Liquidator. In the said petitions, the aforesaid officer, i.e. the Official Liquidator as well as the Special Officer, Theni Co-operative Urban Bank Ltd. were impleaded as respondents. After hearing the concerned parties, by an order dated 27th July, 2005, the learned Single

Judge was pleased to direct the Special Officer to pay the amount deposited by the depositors with accrued interest thereon within 8 weeks from the date of receipt of a copy of the said order by the Special Officer. Upon perusal of the said order, it appears that the said petitions had been disposed of at an admission stage and even before any reply was filed on behalf of the Official Liquidator.

12. Be that as it may, the said order was challenged by the respondents by filing Writ Appeal No.261 of 2006. At the time of hearing of the appeal, the learned counsel appearing for the Official Liquidator had submitted before the High Court that the bank had been ordered to be wound-up on 24th December, 2002, and an Official Liquidator had been appointed, who had disbursed the amount received from the Corporation. It had also been submitted before the High Court that upon disbursement of the amount received from the Corporation, the balance amount at the disposal of the Official Liquidator was to be refunded to the Corporation as per the provisions of the Act as the Corporation had a preference over the claim of the depositors, who had already received Rs.1 lakh from the Corporation. Ultimately, after hearing the learned counsel, the High Court came to the conclusion that the Corporation had no preferential right and the amount which was with the Official Liquidator should have been distributed among the depositors. The Official Liquidator as well as the Special Officer had been directed to carry out the said instructions within a particular period and thus the writ appeal had been disposed of.

13. The Corporation was not a party before the High Court, but the right of the Corporation to get back the amount in preference over other depositors in pursuance of the provisions of the Act was adversely affected by virtue of the impugned judgment and therefore, the Corporation filed the Special Leave Petition which has now been converted into this appeal. These are the circumstances in which this appeal has been placed before us for hearing.

14. According to the learned counsel for the Corporation, the directions given by the learned Single Judge as well as the Division Bench in appeal by the High Court are contrary to the provisions of the Act. The learned counsel had taken us through the provisions of the Act, more particularly, the provisions of Sections 16, 17, 21 and 22 and the provisions of the Banking Regulations Act, 1949, so as to establish the case of the Corporation to the effect that after payment by the Corporation to the depositors to the extent to which the deposits had been guaranteed, the surplus should be put at the disposal of the Corporation subject to the provision of Section 21 of the Act. Till the said surplus is paid to the Corporation, subject to the provisions regarding making payment of winding up expenditure, dividend to be paid as per the provisions of Section 21 of the Act, the depositors could not have been given any further amount. Any payment to depositors at that stage would be contrary to the provisions of the Act and by virtue of the orders passed by the High Court, the Official Liquidator was directed to act contrary to the provisions of the Act.

15. It had been submitted by the learned counsel that the High Court did not consider any of the provisions of the Act or the provisions of the Banking Regulations Act, 1949 before passing the impugned order. According to him, once each depositor is paid the amount deposited or Rs.1 lakh, whichever is less, the Official Liquidator of the Bank should have

given the amount to the Corporation as per the provisions of Section 21 of the Act. In view of the aforesaid legal position, the High Court committed an error by giving a direction to the Official Liquidator that the amount which he had, should be distributed among the depositors. Doing so would be absolutely contrary to the Scheme and spirit of the Act. The learned counsel had narrated the object with which the Act had been enacted and the Corporation had been set-up, which has been narrated hereinabove.

16. On the other hand, the learned counsel appearing for the depositors had submitted that it was the duty of the Official Liquidator to distribute the amount which he had with him among the depositors as it is done in insolvency/winding-up proceedings. According to him, the Corporation having paid the amount which it had guaranteed to pay, had no right to get any amount from the Official Liquidator as the bank had been paying premium to the Corporation in accordance with the provisions of the Act and therefore, it was the duty of the Corporation to disburse the amount guaranteed among the depositors. After paying the said amount, the Corporation had no right of whatsoever type to get any amount from the Official Liquidator or the Special Officer.

17. We have heard the learned counsel at length and have also considered some judgments referred to by them and the provisions of the Act and the Banking Regulations Act, 1949.

18. Upon hearing the learned counsel appearing for the parties and looking at the facts of the case, we are of the view that this appeal deserves to be allowed. We note the fact that Writ Petition Nos.6768 of 2005 and 7372 of 2005 had been finally disposed of at an admission stage. In the said petitions, the present appellant Corporation was not made a party, though it was stated before the learned Single Judge that according to the statutory provisions of the Act, the Official Liquidator had to make payment to the Corporation. In view of the said submission, in our opinion, it would have been better if the Corporation had been impleaded as one of the respondents. In that event, the stand of the Corporation and the provisions of the Act could have been known in detail by the learned Single Judge.

19. Be that as it may, now we are concerned with a direction given by the High Court to the Official Liquidator and the Special Officer of the Bank, which is in liquidation, whereby they have been directed to pay the unpaid amount to the depositors instead of paying the same to the Corporation.

20. The object with which the Act has been enacted has been stated hereinabove in a nutshell. The object was to insure the depositors so that they may not have to stand in a queue before the Official Liquidator for every paisa deposited by them with the concerned bank. As on today, as per the provisions of Section 16(1) of the Act, a sum of Rs.1 lakh is being insured or guaranteed in respect of each depositor. So a depositor is safe and he has not to wash his hands off his deposit if the amount deposited by him is less than Rs.1 lakh. The Official Liquidator, as per the provisions of the Act, has to give details about the depositors and the amount deposited by them in a prescribed form within three months from the date on which the liquidation order is passed or from the day on which he takes charge, whichever is later and within two months from the date on which the details are submitted to the

Corporation, the Corporation has to make payment to the above extent either to the depositors directly or to them through the Official Liquidator.

21. Thus, as per the above-referred Scheme, each depositor, including each original petitioner, must have received Rs.1 lakh from the Official Liquidator. Initially, upon the bank being ordered to be wound-up, the original petitioners and other depositors had a right to recover Rs.1 lakh or the amount deposited, whichever was less, from the Official Liquidator and the said amount must have been paid to them when the petitions were filed.

22. According to the provisions of the Act, after payment to the above extent is made to each depositor, if any amount is available at the disposal of the Official Liquidator, which he might have recovered from the borrowers or from other sources, he has to pay the said amount to the extent to which the amount had been paid by the Corporation as per the provisions of Section 21 of the Act. Section 21 of the Act reads as under :-

"21. (1) Where any amount has been paid under section 17 or section 18 or any provision therefor has been made under section 20, the Corporation shall furnish to the liquidator or to the insured bank or to the transferee bank, as the case may be, information as regards the amount so paid or provided for.

2) On receipt of the information under sub-section (1), notwithstanding anything to the contrary contained in any other law for the time being in force, -

(a) the liquidator shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any payable by him in respect of any deposit such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit;

(b) the insured bank or, as the case may be, the transferee bank, shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in section 18, such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit."

23. It is pertinent to note that when the Corporation had paid to the depositors as per the insurance scheme under the Act, the Corporation gets a right under the aforesaid Section 21 of the Act to get money from the Official Liquidator.

24. One has to look at sub-Section (2) of Section 21, which in unequivocal terms, directs the Official Liquidator to make the payment to the Corporation as it has been stated in the said sub-section, notwithstanding anything to the contrary contained in any other law for the time being in force. Thus, the Official Liquidator, as per clause 2(a) of Section 21 of the Act, has to repay the amount to the Corporation.

25. The aforesaid Section 21 not only makes it obligatory on the part of the Official Liquidator to repay the said amount to the Corporation, but it also clarifies that there shall not be any other preferential creditor who would be getting any amount from the Official Liquidator till the amount payable under Section 21 of the Act is paid to the Corporation.

26. In view of the aforesaid clear legal position, in our opinion, the High Court was not right when it directed the Official Liquidator to determine the mode of payment by ignoring the aforesaid statutory provision.

27. The Corporation was not represented before the learned Single Judge, but at least before the Division Bench, the learned counsel appearing for the Official Liquidator had drawn attention of the Bench to the aforesaid legal provisions of the Act. Moreover, provisions of Regulation 22 of the Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961 (hereinafter referred to as 'the Regulations') had also been referred to by the learned counsel. The said Regulation 22 reads as under :

"22. The amounts repayable to the Corporation under sub-section (2) of section 21 of the Act shall be paid from time to time by, -

(a) the liquidator as soon as the realisations and other amounts in his hands, after making provision for expenses payable by that time, are sufficient to enable him to declare a dividend of not less than one paisa. in the Rupee to each depositor.

(b) the insured bank or the transferee bank, as the case may be, as soon as the realisations and other amounts in its hands, after making provision for expenses payable by that time in respect of such realisations or other amounts in its hands are sufficient to enable it after the date of coming into force of the scheme referred to in section 18 of the Act, to pay or credit in respect of each depositor a sum not less than one paisa in the Rupee."

28. The aforesaid Regulation 22 also provides that the Official Liquidator, after making necessary provision for the expenses in relation to the liquidation proceedings and for declaration of dividend, as prescribed in the Regulations, has to make payment to the Corporation.

29. In view of the aforesaid statutory legal provision, in our opinion, the High Court should not have given the direction which, if complied with, would run contrary to the statutory provisions incorporated in the Act.

30. Even if one looks at the entire issue from different point of view, one would believe that all the depositors have by and large equal right. If the amount deposited is less than Rs.1 lakh, each depositor gets the amount in full, but if the deposit is exceeding Rs.1 lakh, then only the amount which is in excess of Rs.1 lakh may not be given to the depositor, unless the bank in liquidation is having sufficient funds which can be given to all on pro-rata basis after providing for expenditure in the liquidation proceedings and after repaying the amount to the

Corporation as per the provisions of the Act. The Act in a way guarantees repayment of Rs.1 lakh to each depositor. The High Court or any other authority has no power to direct payment in excess of Rs.1 lakh by ignoring statutory provisions of the Act and the Regulations made thereunder.

31. For the aforestated reason, we are of the view that the High Court had exceeded its authority while giving a direction to the Official Liquidator, which is not in consonance with the statutory provisions and therefore, we set aside the judgment and order delivered by the learned Single Judge as also by the Division Bench and direct the Official Liquidator and the Special Officer to act in accordance with the statutory provisions.

32. The appeal is, accordingly, allowed with no order as to costs.

CIVIL APPEAL NOS.1116, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1934 AND 1935 OF 2009

33. So far as Appeal No.1116 of 2009 and similar matters are concerned, we record the fact that they have been filed at an interlocutory stage and therefore, the said appeals are disposed of with a direction to the High Court to decide the matters, which are pending before it, in the light of the law laid down hereinabove. CIVIL APPEAL NOS.5333, 5334, 5335, 5336 AND 5337-5339 OF 2012

34. In all the aforestated appeals, some compromise had been arrived at among the parties before the learned Single Judge, but the same had been challenged before the Division Bench. The Division Bench had quashed and set aside the order, whereby the litigants had entered into a compromise and the matters had been remanded to the learned Single Judge. We dismiss the aforestated appeals as the matters have been remanded to the learned Single Judge. However, we direct that the present appellant shall be impleaded as a party-respondent before the learned Single Judge so that all Writ Petitions can be decided afresh after considering the provisions of the Act and after hearing the present appellant.

35. The appeals are, thus, disposed of with no order as to costs.