

RAJASTHAN HIGH COURT

Shree Malikaarjun Marbles

Vs.

Rajasthan Financial

Civil Writ Petition No. 2214 of 2002

(Garg, J.)

27.04.2004

ORDER

Garg, J.

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India on 09.4.2002 against the respondents with a prayer that by an appropriate writ, order or direction the demand notice/letter dtd. 23.03.2001 (Annex. 12) by which demand was raised by the respondent No. 2 (Branch Manager, RFC, Rajsamand) stating that due to oversight mistake interest at the rate of 19.5% was charged, but as per the documents, interest should have been charged @20.5% and the petitioner-firm was directed to deposit the overdues upto 31.03.2001 and the order/letter dtd. 04.05.2001 (Annex. 14) issued by the respondent No. 2 (Branch Manager) by which demand of Rs. 2,18,945/- as over dues as on 30.04.2001 be quashed and set aside and further the respondents be directed to consider the case of the petitioner under the Interest Reduction Scheme (IRS) afresh and the respondents be further directed to execute necessary documents for applying reduced rate of interest of 15.5% p.a. with the petitioner and further it may be held that the petitioner was liable to pay interest @19.5% p.a. only.

2. The facts of the case as put forward by the petitioner are as under:

(i) That the petitioner set up a unit for marble cutting and processing by installation of a Gangsaw machine and commenced commercial production on 01.06.1997.

(ii) Further case of the petitioner is that petitioner was sanctioned a term loan by respondent RFC to the extent of Rs. 56 lacs vide sanction letter dated

12.12.1996 (Annex. 1) and the loan agreement (Annex. 1) was executed on 06.02.1997 and a token first disbursement cheques of Rs. 5,000/- was also given on that day.

(iii) Further case of the petitioner is that cut off limit for Small Scale Industries Sector was Rs. 60 lacs which was raised to Rs. 3 crores w.e.f. 10.12.1997 vide gazette notification (Annex. 2)

(iv) Further case of the petitioner is that in the provisional registration certificate (Annex. 3) issued by the Dist. Industries Centre, Rajsamand the category of the petitioner unit was shown as SSI and even in permanent registration certificate dtd. 22.08.1997 (Annex. 4), the category of the petitioner unit was shown as SSI.

(v) Further case of the petitioner is permanent registration certificate dated 28.03.2001 (Annex. 5) clearly reveals that for the period from 01.06.1997 to 10.12.1997, the petitioner unit was not in the category of SSI, but w.e.f. 11.12.1997, it has come in category of SSI and therefore, the petitioner unit after 11.12.1997 should be treated as SSI unit.

(vi) Further case of the petitioner is that rate of interest applicable on the term loan given by RFC was 20.5% p.a. For medium scale industries (MSI) and 19.5% p.a. for small scale industries (SSI).

(vii) Further case of the petitioner is that between the period from 01.06.1997 to 10.12.1997, the petitioner-unit was not in the category of SSI and though in the sanction letter dtd. 12.12.1996 (Annex. 1) and loan agreement (Annex. 1) the rate of interest was shown as 20.5%, but the fact is that the respondent charged interest @19.5% p.a. from the petitioner-unit treating the petitioner-unit as SSI unit as is evident from letter dtd. 25.03.2000 (Annex. 6)

(viii) Further case of the petitioner is that interest @19.5% was charged by the respondents consciously by the respondents and not by mistake and the same was being paid by the petitioner.

(ix) Further case of petitioner is that respondents issued a Scheme (Annex. 8) known as Interest Reduction Scheme (IRS) and the person concerned could get registered under that Scheme upto 31.01.2001.

(x) Further case of the petitioner is that the petitioner applied under the skid

Scheme through application dtd. 01.01.2001 (Annex. 9) and the petitioner paid the premium amount vide receipt dtd. 27.02.2001 (Annex. 10).

(xi) Further case of the petitioner is that the respondent No. 2 (Branch Manager) through letter dtd. 15.01.2001 (Annex. 11) informed the petitioner that since there were overdues against the petitioner, the benefit of IRS was not available to it and if the petitioner firm wanted the benefit of IRS, it had to deposit overdues of Rs. 1,50,529/-

(xii) Further case of the petitioner is that thereafter the impugned letter dtd. 23.03.2001 (Annex. 12) was issued by the respondent No. 2 (Branch Manager) to the petitioner firm stating that due to oversight mistake in the account of the petitioner-firm was being maintained @19.50% interest p.a., whereas interest should have been charged @20.50% per annum and therefore, the petitioner firm was advised to pay overdues upto 31.03.2001 and if the overdues were not paid, the benefit of IRS (Annex. 8) would not be applicable to the petitioner.

(xiii) Further case of the petitioner is that the petitioner-firm submitted a representation (Annex. 13) on 30.03.2001 to the respondents to decide its application under the IRS (Annex. 8).

(xiv) Further case of the petitioner is that through letter dtd. 04.05.2001 (Annex. 14), respondent No. 2 (Branch Manager) informed the petitioner that since rate of interest in the case of petitioner was @20.50% p.a., therefore, difference amount between the rate of 19.5% and 20.5% be deposited which comes to Rs. 2,18,945/-.

(xv) In this writ petition, letters dtd. 23.03.2001 and 04.05.2001 (Annex. 12 and 14) have been challenged by the petitioner.

3. In this writ petition, the main submission of the learned counsel for the petitioner is that respondents were not justified in denying benefit of IRS (Annex. 8) to the petitioner and when the interest was being charged consciously at the rate of Rs. 19.5% the case of the respondents that it was charged by mistake is wrong one especially when w.e.f. 10.12.1997, the petitioner firm came under the category of SSI and therefore, treating the petitioner firm in the category of MSI is wrong and arbitrary and hence this writ petition should be allowed.

4. Reply to the writ petition was filed by the respondents and their case is that on the date when the loan was sanctioned to the petitioner firm, the rate of interest as

contained in a Loan Agreement (Annex. 1) was 20.5% and the petitioner unit was treated as MSI and interest @19.5% was charged due to oversight mistake. It has also been submitted by the learned counsel for the respondents that no doubt IRS (Annex. 8) was introduced by the RFC for conversion of higher rate of interest into lower rate of interest, but since outstanding, dues were there against the petitioner because of difference in the rate of interest, therefore, the petitioner was not entitled to benefit of that Scheme (Annex. 8) and thus, the letter dtd. 23.03.2001 (Annex. 12) and letter dtd. 04.05.2001 (Annex. 14) were rightly issued by the respondents and since the petitioner did not deposit the amount as demanded through letters dtd. 23.03.2001 (Annex. 12) and letter dtd. 04.05.2001 (Annex. 14) up to o 31.03.2001 therefore, the petitioner-firm was not extended the benefit of IRS (Annex. 8) and hence no case is made out and the writ petition be dismissed.

5. Heard and perused the record.

6. There is no dispute on the point that as per the loan agreement (Annex. 1), the rate of interest was Rs. 20.5% when the loan was sanctioned in favor of the petitioner by the RFC.

7. There is also no dispute on the point that due to oversight mistake or otherwise as the case may be, rate of interest was charged from the petitioner firm @19.5%, but according to the respondents it was wrongly charged.

8. There is also no dispute on the point that in the provisional registration certificate (Annex. 3) and permanent registration certificate dtd. 22.08.1997 (Annex. 4), the petitioner-firm has been shown as SSI and further the permanent certificate dtd. 28.03.2001 (Annex. 5) also makes the position clear that from 01.06.1997 to 10.12.1997, the petitioner-firm was not in the category of SSI, but w.e.f. 11.12.1997, it came under the category of SSI.

9. There is also no dispute on the point that IRS (Annex. 8) was introduced by the respondents, but benefit of this Scheme (Annex. 8) was not extended to the petitioner because some overdue amount remained unpaid by the petitioner.

10. The question which arises for consideration in the facts and circumstances of the case is whether the petitioner-firm is entitled to the benefit of IRS (Annex. 8) or not.

11. It may be stated that the RFC is an independent autonomous statutory body.

12. The Hon'ble Supreme Court in the case of *Haryana Financial Corporation v. M/s.*

Jagdamba Oil Mills, reported in ¹ observed as under:

"The corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to Act, according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its perspective and calculations. Unless its action is *mala fide*, even a wrong decision by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however, more prudent commercial or business like it may, for the decision of the corporation."

13. Keeping in view the law laid down in the case of Haryana Financial Corporation (supra), it would not be proper to interfere in the rate of interest as put forward by the petitioner unit or as claimed by the respondents, but this Court can direct that the case of the petitioner-Unit may be considered by the respondents after giving an opportunity of hearing to the petitioner firm so that the petitioner can place its case and all the submissions which have been raised in this writ petition, before the concerned authority and but, if the petitioner-firm wants to avail the benefit of IRS (annex. 8), it must deposit the amount as claimed by respondent No. 2 (Branch Manager) through letters dated 23.03.2001 (Annex. 12) and letter dtd. 04.05.2001 (Annex. 14) and therefore, the letters dtd. 04.05.2001 (Annex. 14) cannot be said to have been issued without jurisdiction and hence no interference is called for in this writ petition.

14. For the reasons mentioned above, this writ petition is disposed of in the following manner (i) That the petitioner firm first would deposit the amount of Rs. 2,18,945 as contained in letter dtd. 04.05.2001 (Annex. 14) within one month from today and if the amount is deposited within one month, the respondents would pass appropriate order on the point whether interest is to be charged @19.5% or 20.5% from the petitioner w.e.f. 10.12.1997.

(ii) The respondents would also dispose of the application (Annex. 9) of the petitioner unit as to whether the petitioner-Unit is entitled to the benefit of IRS (Annexure 8) or not.

15. It is made clear that before passing any order in all respects just mentioned above, the respondents would give opportunity of personal hearing to the petitioner unit.

16. No order as to costs.

Petition disposed for.

Cases Referred.

1. 2002(1) JT SC 482: 2002 (1) ISJ (Banking) 612