

Present:

Mr. Justice Mohammad Bazlur Rahman

and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.8577 of 2010

Abed Hasan Mahmud

...Petitioner

-Versus-

Bangladesh and others

...Respondents

Mr. Raghiv Rouf Chowdhury, Advocate

... for the petitioner

Mr. Mohammad Forruk Rahman, Advocate

... for respondent 3

Judgment on 20.06.2013

*Md. Ruhul Quddus, J:*

This Rule at the instance of a borrower was issued challenging inclusion of his name in the report dated 10.10.2010 published by the Credit Information Bureau of Bangladesh Bank showing him as a defaulting-borrower.

Facts placed in the writ petition, in brief, are that the petitioner established an export oriented garments factory named Featherlite Limited at Dhaka Export Processing Zone (EPZ) in 2004 taking loan from Habib Bank (respondent 4), Dhaka Bank Ltd. (respondent 5) and Sonali Bank. Initially he was successfully carrying the business, but in 2007 the factory was damaged by some agitating workers and outsider-miscreants. Because of the incident he failed to make several shipments and incurred financial loss due to cancellation of some orders in hand. As a result he defaulted in repayment of the loan.

Subsequently Bangladesh Bank (herein respondent 2) made a circular being BRPD No. 3 dated 19.04.2009 giving instruction to all commercial banks and financial institutions to reschedule unpaid loan without any down payment considering global economic recession. Taking advantage of the circular, the petitioner applied to the creditor-bank for rescheduling of the loan on 19.10.2009 and again on 15.07.2010, but without any result. Subsequently the bank reported to the Credit Information Bureau of Bangladesh Bank (hereinafter called CIB) to classify him as a defaulting-borrower.

It is further contented in the writ petition that another creditor namely, Sonali Bank similarly refused to reschedule his loan and classified him as a defaulter, for which he moved Writ Petition No. 7612 of 2009 before the High Court Division and obtained a Rule with an order of stay. However, on the report of the creditor-Habib bank his name was included in the report of CIB, being aggrieved by which, the petitioner moved in this Court with the present writ petition and obtained the Rule with an order of stay.

The General Manager, Credit Information Bureau of Bangladesh Bank (herein respondent 3) contests the Rule by filing an affidavit-in-opposition denying the material allegations of the writ petition contending, *inter alia*, that Bangladesh Bank is under legal obligation to publish the report with name of all defaulting-borrowers; that the petitioner moved the instant writ petition on misconception of law and as such the Rule is liable to be discharged.

Mr. Raghib Rauf Chowdhury, learned Advocate for the petitioner at the very outset submits that the inclusion of the petitioner's name in the

report of CIB was made in clear violation of BPRD Circular No. 3 dated 19.04.2009. The petitioner made two applications, but the creditor-bank ignored it and forwarded his name to Bangladesh Bank for inclusion in the report. Moreover, before publishing his name, Bangladesh Bank did not give him any opportunity of being heard, although such inclusion adversely affected his reputation and business. In that view of the matter the inclusion of his name in the report of CIB was without lawful authority.

Mr. Mohammad Forrukh Rahman, learned Advocate for respondents 2-3 on the other hand submits that the petitioner falls within the definition of a defaulting-borrower and as such the creditor-bank namely Habib Bank within the mandate of section 27KaKa of the Bank-Company Act, 1991 forwarded his name to Bangladesh Bank and subsequently Bangladesh Bank published his name in the report of CIB, which was fully within the scope of law. There was nothing wrong which can be interfered with by this Court sitting in writ jurisdiction. In order to reply the point of natural justice, he refers to the case of Al-Amin Bread & Biscuit Ltd. and another Vs. Bangladesh Bank & others, 17 BLC 653, wherein another Bench of this Division held:

*“It was not necessary to issue any further show cause notice by the Bangladesh Bank. Moreover, the banks or financial institutions are to send the list of defaulting borrower to Bangladesh Bank under section 27KaKa (1) of the Act and the Bangladesh Bank is to send the said list of borrowers/companies to all financial institutions under section 27KaKa(2) of the Act.”(Para 14)*

We have considered the submissions of the learned Advocates, consulted the law and gone through the records including the circular dated

19.04.2009 (annex-A) and that dated 21.12.2009 as reproduced in the affidavit-in-reply, and also the applications of the petitioner (annexes: B and B-1).

It appears that the circular dated 19.04.2009 was issued to consider rescheduling of loan because of world rescission, while in the circular dated 21.12.2009 instruction was given to consider rescheduling of loan to the borrowers, who were in imprisonment or left the Country during the tenure of immediately past Caretaker Government. The two applications of the writ petitioner were filed stating the facts of political turmoil, workers unrest and accidental damage of the factory. Though the words "world rescission" were used in one application, but without any context. No prayer for rescheduling was made in the said applications. In paragraph 6 of the writ petition it is stated that during the period of Caretaker Government the petitioner's parents and sister were imprisoned, but it does not appear whether he himself was imprisoned or left the Country.

Admittedly the petitioner was a defaulting-borrower. The BPRD circulars did not create any mandatory legal obligation on the part of any bank or financial institution to reschedule each an every loan. It was absolutely its discretion on the facts and circumstances available and on its relation with the customer. In such situation, reschedule of loan on the ground of political turmoil, alleged workers unrest or damage to the factory cannot be claimed as a matter of right. Furthermore, there is nothing to show that the petitioner approached Bangladesh Bank for its interference into the alleged inaction of the creditor-bank to comply with the BRPD circulars. Under the circumstances, the High Court Division sitting in writ jurisdiction

cannot decide the correctness of the decision taken by the creditor-bank in the light of the circulars or its inaction to comply with the same.

Section 5(gaga) of the Bank-Company Act clearly defines a defaulting-borrower, while section 27KaKa mandates the banks or financial institutions to report to Bangladesh Bank the names of the defaulting-borrowers. The Bangladesh Bank is also under legal obligation to send the report to all bank and financial institutions. There was nothing wrong on the part of the Bangladesh Bank to include the petitioner's name in the impugned report.

In view of the above, we do not find any substance in the Rule. Accordingly, the Rule is discharged. The order of stay granted earlier stands vacated.

Mohammad Bazlur Rahman.J.

I agree.