

# Gajendra Sharma vs Union Of India on 27 November, 2020

Equivalent citations: AIRONLINE 2020 SC 863

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Bench: M.R. Shah, R. Subhash Reddy, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.825 OF 2020

GAJENDRA SHARMA

...PETITIONER(S)

VERSUS

UNION OF INDIA AND ANR.

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

By this writ petition filed under Article 32 of the Constitution, the petitioner has prayed for directions declaring the notification dated 27.03.2020 issued by Reserve Bank of India as ultra vires to the extent it charges interest on the loan amount during the moratorium period.

2. The petitioner's case and the pleadings in the writ petition briefly noted are:-

2.1 The petitioner has availed a home loan of amount of Rs.37,48,000/- from the ICICI Bank.

After declaration of Coronavirus (COVID-19) as a pandemic by World Health Organisation, the National Disaster Management Authority exercising the jurisdiction under Section 6 of the Disaster Management Act, 2005 to take effective measures to prevent the spread of COVID-19 across the country and for mitigation of the threatening disastrous situation has issued notification dated

27.03.2020 directing the Ministry, Departments of Government of India, State Governments and the State authorities to take measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country. Necessary guidelines were also issued under Section 10(2)(1) by the National Executive Committee.

2.2 The Reserve Bank of India on 27.03.2020 issued Statement of Development and Regulatory Policies where inter alia certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses. The notification dated 27.03.2020 was issued by the Reserve Bank of India for rescheduling of payments – Term Loans and Working Capital Facilities. Relevant part of the notification relevant for the present case is as follows:-

“(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-

India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments<sup>1</sup> falling due between March 1, 2020 and May 31, 2020.

The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.” 2.3 The petitioner’s case in the writ petition is that when all the means of livelihood have been curtailed by the Government of India by imposition of complete lockdown pan India, due to worldwide spread of COVID-19 pandemic, the petitioner has no way to continue to his work and earn livelihood. The petitioner’s case is that imposition of interest during the moratorium period is ultra vires and shall defeat the purpose of permitting the moratorium of loans.

2.4 Referring to notification dated 27.03.2020, petitioner pleads that Reserve Bank of India has by the notification made it clear that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Petitioner’s case is that the above action of imposition of interest during the moratorium period is completely devastating and causes hindrance and obstruction in right to life guaranteed by Article 21 of the Constitution. Petitioner’s case is that the additional interest burden for three months’ moratorium period is also equally divided in all future EMIs, which is to increase the monthly bill of the customer.

2.5 The petitioner’s case is that the notification qua payment of interest violates the principle of natural justice as the Government on one hand ceased the working of the individuals and on other hand asking to pay the loan interest during moratorium. The petitioner’s case is that although the initial lockdown was for a period of three weeks but it was extended further. The Reserve Bank of India by a subsequent notification dated 23.05.2020 due to the extension of the lockdown and due

to disruption on account of COVID-19 has directed all commercial banks to extend the moratorium by another three months, i.e., from 01.06.2020 to 31.08.2020 on payment of all installments in respect of term loans. The notification dated 23.05.2020 directed for repayment schedule for term loans as also the residual tenor will be shifted across the board. Notification further stated that “interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period”.

2.6 The petitioner in the writ petition has prayed for following reliefs:-

a) Issue an appropriate Writ, Order or Direction in the nature of mandamus or any other appropriate writ or Direction declaring the portion of impugned Notification dated 27.03.2020 issued by Respondent No.2 as ultra vires to the extent it charges interest on the loan amount during the moratorium period, which create hardship to the Petitioner being borrower and creates hindrance and obstruction in “right to life” guaranteed by Article 21 of the Constitution of India;

and

b) Issue a Writ, Order or Direction in the nature of Mandamus thereby directing the Respondents to provide relief in repayment of loan by not charging interest during the moratorium period declared by Notification dated 27.03.2020; and/or

c) Pass any other order or orders which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.” 2.7 Notices were issued in the writ petition. While hearing the matter on 17.06.2020 the submission of the learned counsel for the petitioner have been noted to the following effect:-

“We have heard learned counsel for the petitioner(s).

Learned counsel for the petitioner(s) submits that under the Disaster Management Act, 2005, the Central Government has ample power and jurisdiction to grant relief with regard to loan which is specifically provided for. It is submitted that the circular of the Reserve Bank of India dated 27.03.2020 although grant moratorium but substantially no relief is given to the borrowers.

The two-fold submissions have been made by learned counsel for the petitioner(s). It is submitted that if moratorium is being granted for a period of three months, the entire amount payable including principal and interest should not be charged during moratorium 3 period. Secondly, at least the demand of interest on interest should not be made and these reliefs can be extended by the Central Government and the Reserve Bank of India.” 2.8 In the writ petition, affidavits have been filed both by the Union of India as well as the Reserve Bank of India. In the affidavits filed on behalf of the Union of India, it was pleaded that the Central Government is fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors within the purview of the Ministry of Finance and other Ministries. It is further pleaded that Finance Ministry, after the

outbreak of the COVID-19 pandemic globally, has taken several measures of relief dealing with the potential problems faced by several sectors and in several spheres of all financial worlds. In the affidavit filed dated 31.08.2020, details of number of measures to mitigate financial suffering have been enumerated. It has been further pleaded that Finance Ministry took the initiative and interacted with Reserve Bank of India requesting the Reserve Bank of India to provide for various measures of relief to the borrowers. The affidavit also enumerates different reliefs and measures taken by Reserve Bank of India with regard to moratorium. Reference has been made to two circulars dated 06.08.2020 issued by Reserve Bank of India facilitating revival of real sector activities and mitigating the impact on the ultimate borrowers by enabling lenders to grant concessions to borrowers for COVID- 19-related stress in personal, MSME and corporate loans. The Union of India has filed further affidavits dated 09.10.2020, 23.10.2020 and 17.11.2020.

2.9 The Reserve Bank of India has also filed a counter affidavit, a consolidated counter affidavit dated 09.10.2020, additional affidavit dated 09.10.2020 and further additional affidavit dated 01.11.2020. Indian Bank Association has also filed affidavits bringing on record various circulars issued by Reserve Bank of India, State Bank of India etc.

3. We have heard Shri Rajiv Dutta, learned senior counsel for the petitioner. Shri Tushar Mehta, learned Solicitor General, Shri V. Giri, learned senior counsel and Shri Ramesh Babu M.R., learned counsel appearing for the Reserve Bank of India and some of the counsels, who had appeared for intervenors.

4. Hearing of this writ petition took place alongwith other writ petitions on different dates. When the matter was heard on 19.11.2020, learned counsel on behalf of the petitioner, Shri Rajiv Dutta submitted that in view of the affidavits, which have been filed in the present writ petition by the respondent No.1, this writ petition be disposed of. We, thus, proceed to decide the Writ Petition (C) No. 825 of 2020.

5. In course of hearing of these petitions, learned senior counsel for the petitioner, Shri Rajiv Duta has expressed satisfaction on the measures taken by the Government of India with respect to borrowers in which category the petitioner belongs. Learned senior counsel for the petitioner submits that the decision of the Central Government to forego interest on eight specified categories of loans paid upto Rs.2 Crores has come as a great relief.

6. Shri Tushar Mehta, learned Solicitor General submits that the Central Government is fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors and the Finance Ministry, after the outbreak of COVID-19, has taken several measures of reliefs dealing with the potential problems faced by several sectors and in several spheres of all financial worlds. Shri Mehta has referred to number of measures taken by the Central Government to mitigate the financial suffering as detailed in its affidavits as noted above. In its affidavit dated 23.10.2020, it is stated that the decision taken by the Central Government for granting various reliefs for the COVID-19 pandemic for benefit of waiver of interest upto Rs.2 Crores in eight categories has been approved by the Union Cabinet in its meeting dated 21.10.2020 and Ministry of Finance has issued directions dated 23.10.2020 on the subject, which has been brought on record alongwith the

affidavit. Shri Mehta submits that in pursuance of circular dated 23.10.2020, as a follow-up towards the implementation of the aforesaid decision, the State Bank of India has informed that as on 13.11.2020, as per provisional, unaudited information received so far from various lending institutions, such lending institutions have released ex-gratia amount of an aggregate exceeding Rs.4,300 Crores in over 13.12 Crore accounts of borrowers covered under the Scheme.

7. Shri Giri also submits that Reserve Bank of India has also taken follow-up action in pursuance of the policy decision taken by the Finance Ministry. He submits that the Reserve Bank of India has issued Circular dated 26.10.2020 to all commercial banks, all primary co-operative banks and all All India Financial Institutions and all non-banking financial companies and were advised to be guided by the Scheme announced by the Government of India dated 23.10.2020.

8. We have considered the submissions of the learned counsel for the parties and have perused the records.

9. The pandemic COVID-19 has not only caused serious threat to the health of the people but has also cast its shadow on the economic growth of the country as well as other countries in the entire world. Due to lockdown imposed by the Government of India in exercise of powers under the Disaster Management Act, 2005, there can be no denial that most of the businesses including private sector as well as public sector has been adversely affected. For several months, large number of industries were not allowed to function and exemptions were granted only to few of the industries to run and carry on its activities, which were found essential and necessary in the fact situation. Although, gradually, due to Unlock- 1, 2 and 3, the industries and other business activities have been restored and the economy of the country is on track although at a slow pace. The moratorium period as granted by the Reserve Bank of India vide orders dated 27.03.2020 and 23.05.2020 have continued from 01.03.2020 to 31.08.2020, i.e., for the period of six months. As submitted by the learned Solicitor General and reflected by the affidavits filed on behalf of the Union of India, it is clear that Central Government was fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors and different measures by Finance Ministry have been taken in the above reference, which has been detailed in the affidavits dated 31.08.2020, 09.10.2020 and 23.10.2020.

10. For the purposes of the present case, it is relevant to notice paragraphs 3 and 4 of the affidavit dated 23.10.2020 filed on behalf of the Union of India in which following has been stated:-

“3. I state and submit that as submitted in the previous affidavits, the Central Government took many Policy decisions for granting various reliefs for the Covid pandemic which is a 'disaster' within the meaning of the Disaster Management Act, including a policy decision whereby the following borrowers were declared eligible for the benefit of waiver of 'interest on interest':

(i) MSME loans up to Rs. 2 crore

(ii) Education loans up to Rs. 2 crore

(iii) Housing loans up to Rs. 2 crore

(iv) Consumer durable loans up to Rs. 2 crore

(v) Credit card dues up to Rs. 2 crore

(vi) Automobile loans up to Rs. 2 crore

(vii) Personal loans to professionals up to Rs. 2 crore

(viii) Consumption loans up to Rs. 2 crore It is submitted that the preparation of the Scheme in this behalf was under

contemplation and it was also necessary to formalise the said policy decision by following certain mandatory procedure required by law.

4. I state and submit that the aforesaid decision taken by the Ministry of Finance Government of India, has been approved by the Union Cabinet in its meeting held on 21.10.2020. Pursuant to approval by the Union Cabinet, the Ministry of Finance has issued Scheme providing for, broadly, the following mechanism,

(a) The eligible borrowers mentioned in the previous Affidavit [and described in detail in clause 4 of the Scheme annexed herewith and marked as Annexure R-1] will be "eligible beneficiaries" under the Scheme.

Under the Scheme, all lending institutions [as defined under clause 3 of the Scheme] shall credit the difference between compound interest and simple interest in the respective accounts of eligible borrowers for the period between 1.3.2020 to 31.8.2020.

This amount shall be credited by each of the lending institutions referred to in clause 3 of the Scheme, irrespective of whether such eligible borrowers have fully availed or partially availed or have not availed of the moratorium viz. deferment in payment of instalments as per the Circulars dated 27.3.2020 and 23.5.2020 issued by RBI.

(b) After crediting the said amount in the respective accounts of eligible borrowers, the lending institutions would claim reimbursement from the Central Government through the nodal agency of State Bank of India as stipulated under the Scheme.

It is submitted that the aforesaid decision is taken after careful consideration, keeping in mind the overall economic scenario, the nature of borrowers, impact on the economy and such other factors as a policy decision earmarking the above referred class of borrowers for grant of benefits.”

11. The case of the present petitioner, who has taken housing loan is fully covered by the decisions of the Union of India as noted above, since the benefit has been extended to the housing loan upto Rs.2

Crores, i.e., in pursuance of the aforesaid decisions of the Government of India, the Ministry of Finance had issued order dated 23.10.2020 – Operational Guidelines with regard to COVID-19 Reliefs, details of order dated 23.10.2020 contains a heading “COVID- 19 Relief”, relevant portion of the Scheme is to the following effect:-

“COVID-19 Relief Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020) Operational Guidelines

1. Name of the scheme This scheme shall be called "Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020)".

2. Object of the scheme In view of the unprecedented and extreme COVID-19 situation, the object of the Scheme is to provide ex-gratia payment of difference between compound interest and simple interest by ways of relief for the period from 1st March 2020 to 31st August 2020 to borrowers in specified loan accounts. Such payment does not constitute a contractual, legal or equitable liability of the Central Government and is only an ex-gratia payment to the following designated class of borrowers in view of the COVID-19 pandemic.

3. Applicability of the scheme This scheme shall apply to all lending institutions, which must be either a banking company, or a Public Sector Bank, or a Co-operative Bank [i.e., an Urban Co-

operative Bank or a State Co-operative Bank or a District Central Co-operative Bank], or a Regional Rural Bank, or an All India Financial Institution, or a Non- Banking Financial Company or a Housing Finance Company registered with Reserve Bank of India (RBI) or National Housing Bank as the case may be. A Non-Banking Financial Company—Micro Finance Institution should be a member of a Self- Regulatory Organisation (SRO) recognised by RBI.

4. Eligibility criteria under the scheme (1) Borrowers in the following segments/classes of loans, who have loan accounts having sanctioned limits and outstanding amount of not exceeding Rs. 2 crores [aggregate of all facilities with lending institutions] as on 29.2.2020, shall be eligible under the Scheme:

(i) MSME loans

(ii) Education loans

(iii) Housing loans

(iv) Consumer durable loans

(v) Credit card dues

(vi) Automobile loans

(vii) Personal loans to professionals

(viii) Consumption loans Any borrower whose aggregate of all facilities with lending institutions is more than Rs. 2 crores (sanctioned limits or outstanding amount) will not be eligible for ex-gratia payment under this scheme.

XXXXXXXXXXXXXXXXXX”

12. The decision of the Government of India dated 23.10.2020 has also been communicated to all the banks and other financial institutions. The Reserve Bank of India has also issued necessary instructions in the above regard. In the affidavit filed on 17.11.2020 on behalf of the Union of India, in paragraphs 3 and 4 following has been stated:-

“3. It is submitted that as a follow-up towards the implementation of the aforesaid Scheme, the nodal agency, i.e. State Bank of India, has informed that as on 13.11.2020, as per provisional, unaudited information received so far from various lending institutions, such lending institutions have released ex-gratia amount of an aggregate exceeding Rs. 4,300 crore in over 13.12 crore accounts of borrowers covered under the said Scheme. The data received is subject to final reconciliation and audit. Information from some remaining lenders are still being received.

4. It is further submitted that various lending institutions have put in place Board-approved policies for restructuring of accounts as per RBI circular dated 6.08.2020. Restructuring/resolution of eligible accounts are being undertaken by lending institutions on case-by-case basis. Resolution plans in respect of eligible personal, MSME and corporate loans are to be invoked by 31.12.2020, and time is still available to the account holders for such invocation.”

13. Learned Solicitor General referring to above measures taken by the Union of India submits that above measures have been taken by the Government of India in exercise of jurisdiction under the Disaster Management Act, 2005 to mitigate the hardships and miseries of few sectors. Shri Mehta submits that with regard to other specified sectors, different other measures have been taken, which we need not note for the purposes of this case and which shall be separately considered while considering writ petitions raising such issues.

14. As noted above, Shri Rajiv Dutta, learned senior counsel for the petitioner has expressed its satisfaction on the measures taken by the Government of India redressing grievances of the petitioner to the extent as noted above. The Union of India having taken specific measures vide its circular dated 23.10.2020, which has



been brought on the record and follow-up measures have also been taken in consequence thereof, we dispose of the present writ petition with directions to the respondents to ensure that all steps be taken to implement the decision dated 23.10.2020 of the Government of India, Ministry of Finance so that benefit as contemplated by the Government of India percolates to those for whom the financial benefits have been envisaged and extended.

All IAs, impleadment applications stand disposed of.

.....J. ( ASHOK BHUSHAN ) .....J. ( R. SUBHASH REDDY ) .....J. ( M.R. SHAH ) New Delhi, November 27, 2020.