

Supreme Court of India

Bari Doab Bank Ltd. vs Union Of India (Uoi) And Ors. on 31 March, 1997

Equivalent citations: 1997 89 CompCas 462 SC, (1997) 6 SCC 417

Bench: S Agrawal, G Nanavati

ORDER

1. The petitioners in these petitions for special leave to appeal against the judgment of the Delhi High Court dated March 20, 1997, in Letters Patent Appeals Nos. 57 and 56 of 1997, are banking companies governed by the Banking Regulation Act, 1949 (hereinafter referred to as "the Act"). On September 30, 1996, the Central Government, in exercise of its power under Section 45(2) of the Act, made orders of moratorium in respect of the petitioner-banks.

2. The writ petitions filed by the petitioners in the Delhi High Court to challenge the said orders were dismissed by the learned single judge and Letters Patent Appeals filed against the said judgment of the learned single judge have been dismissed by the impugned judgment.

3. The learned judges of the Division Bench of the High Court have held that having regard to the purpose of a moratorium the petitioners could not claim a right to be heard at a stage prior to the passing of an order under Section 45(2) but have held that the petitioners will have post-decisional opportunity at the stage of filing objections to the draft scheme framed under Section 45(4) when forwarded by the Reserve Bank of India under Section 45(6) of the Act.

4. We do not find any infirmity in the said view of the High Court.

5. The submission of learned Counsel for the petitioners in these petitions is that the draft scheme was forwarded by the Reserve Bank of India to the petitioner-banks on March 6, 1997, and that objections to the draft scheme as well as the order dated September 30, 1996, for moratorium have been submitted on March 20, 1997. The submission further is that since the order of moratorium under Section 45(2) of the Act was passed by the Central Government the post decisional hearing against the said order should be by the Central Government and that the consideration of the objections of the petitioners by the Reserve Bank of India would not satisfy the object of a post-decisional hearing in respect of the order of moratorium passed by the Central Government.

6. The learned Attorney-General appearing on behalf of the Central Government and the learned Solicitor-General appearing on behalf of the Reserve Bank of India have submitted that the objections submitted by the petitioners against the order of moratorium dated September 30, 1996, as well as the draft scheme framed by the Reserve Bank of India under Section 45(4) have to be considered by the Central Government under Section 45(7) of the Act in the light of the comments that are made by the Reserve Bank of India on the said objections and that the apprehension of the petitioners that the said objections will not be considered by the Central Government is unfounded. In view of the said submission urged on behalf of the respondents, we are of the opinion that no fault can be found in the matter of post-decisional hearing in respect of the order of moratorium passed under Section 45(2) of the Act.

7. Learned counsel for the petitioners have stressed that one of the objections that was raised by them is that they are prepared to pay of the dues of all the creditors and depositors and that after paying the same they would cease to function as banking companies and would like as continue as non-banking companies. The submission is that the said objection should be considered by the Central Government.

8. The learned Attorney-General states that at present he is not in a position to say whether the Central Government has passed an order under Section 45(7) on the draft scheme. We, would, however, like to make it clear that, while considering the objections submitted by the petitioners, the Central Government should give due consideration to the aforementioned submission that has been made by learned Counsel for the petitioners about their being allowed to continue as non-banking companies after they have paid off the dues of all depositors and creditOrs. In case the Central Government has not passed an order under Section 45(7) so far they will give due consideration of the said submission of the petitioners and, if they have already passed an order, it will be open to the Central Government to pass a supplementary order in the light of this order. Since the moratorium is to expire today and the time available for consideration of the objections submitted by the petitioners was short, we consider it appropriate to extend the time for the Central Government to consider the objections and pass an order till April 7, 1997, if an order has not been passed till now. In order to enable the Central Government to pass order by that date we direct that the moratorium that has been imposed under the orders dated September 30, 1996, shall remain operative till April 7, 1997.

9. This order would not preclude the petitioners from challenging the validity of order passed by the Central Government under Section 45(7) of the Act on all the grounds available under the law.

10. The special leave petitions are disposed of accordingly.