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HARJIT SINGH AND ORS.

v.

UNION OF INDIA AND ORS.

DECEMBER 17, 1993

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[M.N. VENKATACHALIAH, CJ. AND S. MOHAN, J.]

Constitution of India—Articles 21 and 32—Central Interest Subsidy Scheme for November 1984 Riot Affected Borrowers issued by Reserve Bank of India—Directions issued to include all financial institutions within the definition of "bank" under the Scheme.

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A writ petition under Article 32 of the Constitution was filed by members of the Sikh Community who were victims of the communal carnage which took place in Delhi following the assassination of Prime Minister Indira Gandhi on 31 October 1984. The complaint of the writ petitioners was that while nationalised banks had advanced amounts to rehabilitate them with the assurance that they would be converted into grants, though termed as loans, they were subsequently seeking to recover the amounts advanced. Contending that the right to livelihood is part of the right to life under Article 21, the petitioner sought a direction to the authorities not to insist upon or claim further amounts from. The banks resisted the writ petitions contending that the transactions were loan transactions.

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In the Course of hearing of the writ petition various direction were given by this Court, giving relief in the matter of recovery proceedings. Ultimately the Reserve Bank of India by a circular RPCD.NO. PLFS/BS-22 PS-126D/90/91, dated 19 September 1990 framed the "Central Interest Subsidy Scheme for November 1984 Riot affected Borrowers" providing for relief in the matter of interest in deserving cases to persons who took assistance from "banks" as defined in the Scheme. IA 4 of 1992 was filed for a direction that all financial institutions should be included in the definition of "bank" under the Scheme, contending that the classification between those who took assistance from "banks" as defined in the Scheme and these who took assistance from financial institutions was unreasonable.

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Allowing the application, this Court

HELD : 1. This is as human problem. Humanity is above law. The petitioners are a pitiable lot and in plightful state. To them, the language of humanity must be spoken. In a normal case the Court may require the parties to abide by the terms of the contract, but not where such calamities have befallen and the petitioners are severely afflicted with adversity.

[1014-D-F]

2. It the petitioners are to be substantially helped, the benefit of the circular will to be extended vis-a-vis the loans advanced by the financial institutions, having regard to the circumstances in which the petitioners are placed. The spirit of the circular is to help the petitioners. Therefore it could hardly matter whether loans are from the Banks or financial institutions. The failure to refer to the financial institutions is an inadvertent omission. [1014-G-H]

CIVIL ORIGINAL JURISDICTION : I.A. No. 3 of 1991.

AND

I.A. No. 4 of 1992.

IN

Writ Petition (C) No. 457 of 1988.

(Under Articles 32 of the Constitution of India.)

R.S. Sodhi for the Petitioners.

H.S. Parihar, Ms. A. Subhashini, (NP), P. Parmeswaran, (NP), S.K. Gambhir, K.R. Nambiar S.K. Verma R.P. Kapur, C.P. Mittal and R.B. Mishra for Respondents.

The Judgment of the Court was delivered by

MOHAN, J. This writ petition under Article 32 out of which the contempt application arises came to the preferred by members belonging to Sikh community who were living in Delhi at the relevant time.

A tragic event - beyond belief - in the history of India took place on 31 October, 1984 when Smt. Indira Gandhi, the Prime Minister was assassinated. It was alleged that the assassins belonged to the Sikh community. This inflamed feelings. As a result, riots broke out all over the country. The

- A members of this community were the target of attack throughout India. Particularly, in Delhi, several gruesome incidents took place resulting in large scale arson, looting, systematic violence, attacks on Gurudwaras. The duration of violence different in various areas. Many Sikhs were killed, houses were burnt. It was an unprecedented carnage which rendered many
- B Sikhs homeless; many families lost their kith and kin and bread-winner. The details of these incidents are set out in the affidavit in the writ petition. A Commission was appointed, headed by Justice Ranganath Mishra, (a Judge of this Court) to go into the causes of these riots. The affidavit further proceeds that Government agencies subsequently went about as-
- C assessing damage and gave out that aid was being provided to the affected persons for re-settlement. In the grab of such re-settlement efforts, the petitioners were directed to fill up forms specifying the damages and further be provided with loans from banks which would subsequently be converted into grants and to start a life afresh. The petitioners who had
- D witnessed and were victims of a horrendous carnage took the administration as having a genuine desire to see the victims through their difficult times and applied for grants/loans as directed. The banks which are nationalised banks, released the amounts to the petitioners for the purposes of purchase of trucks or for setting up businesses. Although singatures were taken on various documents, yet it was always held out that the money advanced was
- E in fact a grant and would be converted into the same in due course. However, contrary to the assurances held out, bank have started initiating course of processes for recovery of the amounts so advanced. It is further submitted that the petitioners who have started life of the third time afresh, namely, once having been rendered homeless in 1947 during the partition
- F of this country and now having lost all means of livelihood as also most of the wordly possessions besides having suffered the traumatic experience of loss of human lives of their near and dear ones, once again started life from scratch and now are being threatened with another disastrous situation which will again render them destitutes and without means of livelihood.
- G This has led the petitioners to move this Court for protection of rights to life and livelihood. If the right to livelihood is not treated as part of the constitutional right to life, the easiest way of depriving the person of his right to life would be to deprive him of his means of livelihood. Such deprivation would not only denude the life of its facts and meaningfulness
- H but it would make life impossible to live. The right to livelihood is a part

of life to live, as that, alone makes it possible to live. On these averments, a writ of mandamus is prayed for to direct by an appropriate writ, order or direction that Article 21 of the Constitution of India which guarantees the right to life also guarantees right to means of livelihood be enforced and by an appropriate writ, order or direction direct that the deprivation of means of livelihood be put an end to and further direct the respondents not to insist upon nor claim further amounts from the petitioners.

Various banks have filed counter-affidavits. It is enough to refer to the affidavit of Punjab and Sind Bank which stands as follows :

"The loans granted by the answering respondents were not intended to be grants and it was never held out to the petitioners that the loans granted by the answering respondent bank will not be recovered from the petitioners and that the petitioners will not be required to repay those amounts or the interest accrued thereon.

There is no fundamental or legal right of the petitioner and none has been claimed against the answering respondent bank and had in the normal course of banking granted to the petitioners loan facilities for their business or for purchase of vehicles. The said loan was granted on the terms and conditions, set out in the documents and executed by the said petitioners in favour of the answering respondent bank. The relation between the petitioners and the answering bank is governed by the said agreements and no duty is cast on the respondent bank, alleged or at all.

The answering respondent bank further submits the vehicle/machinery/goods for the purchases of which loan was granted by the bank are still being plied/used by the said borrowers. The said vehicles/machinery/goods are the security of the respondent bank. Therefore, no writ order of direction ought to be issued restraining the bank from taking necessary steps for recovery and/or safeguarding the security, viz., vehicles in question etc."

Thus, it is submitted that where the monies borrowed were utilised for purchases of vehicles and the petitioners are having the benefit of vehicles, it is not open to them to refuse re-payment.

A On 25.8.1989, this Court passed the following order :

"Mr. R.S. Sodhi, learned counsel for the petitioners in these writ petitions has no objection to pay the principal amount borrowed by them but he is only asking for same relief with regard to the rate of interest and the time of re-payment. List the matters on 12.9.1989."

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Again on 7.11.1989, the following order came to be passed :

"Learned Attorney General has made the following statement in respect of the recovery of loans advanced to riot victims of 1984 following the assassination of Mrs. Indira Gandhi :

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"The banks will be advised to consider the case of each loan on its merits and to give such relief as may be considered just, fair and reasonable based on the facts of each case. Reserve Bank of India is requested to advise the banks accordingly."

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In view of the above statement we direct the banks not to have recourse to recovery proceedings until the banks decide the case of each individual concerned in accordance with the advise of the Reserve Bank of India. This order does not concern those persons who are not victims of the above aforesaid riots. The order of stay of recovery made by us relates only to the aforesaid category of persons. This does not prevent any bank from instituting a suit in Court if it is felt that the suit is about to be barred by time. Even if any such suit is filed it shall be kept pending until the relief to be granted is determined by the banks as per the advise of the Reserve Bank of India. This order applies to the entire class of riot affected victims referred to above whether they have filed a petition in this Court or not. All these cases are disposed of.

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Liberty to mention".

For the violation of this order, contempt proceedings have been taken out in Contempt Petition No. 62/1991.

Pursuant to this order the Reserve Bank of India, advised the banks by its circular RPCD No.PLFS.BC67/PS-126(D)-89/90 dated 23rd Decem-

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ber, 1989 as under :

"(i) The banks should make a review of the credit facilities granted to all the November, 1984 riot affected borrowers taking into account their repaying capacity, the operations in their accounts, the nature and type of the securities available, the present condition of the securities, other assets, if any, owned by them and all other relevant factors.

(ii) On the basis of the review, banks should decide the case of each loanee on merits and afford such relief as may be considered reasonable. The reliefs may include further extension of time for repayment of dues, entering into compromise arrangements and in cases where there are no reasonable chances of recovery of dues, write off of the amounts due from the borrowers concerned."

Thereafter a decision was taken by the Government of India to extend relief in deserving cases by way of reduction of interest on bank loans to six per cent per annum in the case of borrowers affected by the November, 1984 riots. Accordingly, a 'Central Interest Subsidy Scheme for November, 1984 Riot Affected Borrowers' was prepared and issued by Reserve Bank of India, vide its circular RPCD No. PLFS/BC-22/PS-126D/90/91 dated 19th September, 1990. The main features of the Scheme are as under :

"(i) The banks shall charge interest at six per cent per annum on all eligible outstanding loans in a deserving case, as on 31st December, 1989, for the period from 1st November, 1984 if the loan is granted on or before 1st November, 1984 or from the date of grant of loan, if granted subsequently, to 31st December, 1989.

(ii) The borrower shall be advised by the bank in writing about the extent of relief provided in each account as also the balance outstanding in the accounts as on 31st December, 1989 and the date on which relief is provided.

(iii) The relief granted by the banks shall be re-imbursed to the banks by the Central Government.

(iv) The entire interest that has accrued on the outstanding

- A loan amounts after 31st December, 1989 shall be borne by the borrowers."

Presently I.A. No. 4 of 1992 has been preferred. It is submitted that this is hardly a reasonable classification so as to classify victims of 1984 riots into those that took assistance from the bank as defined under the Scheme and those that took assistance from the financial institutions.

- B Accordingly a direction to this effect is prayed for which is extracted below :

- C "direct the Union of India as also the Reserve Bank of India to include all financial institutions in the definition of 'banks' - both State and Central - in its 'Central Interest Subsidy Scheme for November, 1984 - Riot Affected Borrowers'."

- D We have carefully considered the above prayer. This is a human problem. Humanity is above law. The petitioners are a pitiable lot and in plightful state. To them, the language of humanity must be spoken. To quote the eloquent lines of Rabindra Nath Tagore in "Kadi and Komal"

- E 'Into the hearts of these
Weary and worn, dry and forlorn
We have to minstrel the language of humanity.'

- F In a normal case, the Court may require the parties to abide by the terms of the contract; but not where such calamities have befallen and the petitioners are severely afflicted with adversity. As stated by H.K. White in 'Lines on Reading'.

"Preach to the storm, and reason with despair,
But tell not Misery's son that life is fair."

- G If the petitioners are to be substantially helped the benefit of the circular will have to be extended vis-a-vis, the loans advanced by the financial institutions, having regard to the circumstances in which the petitioners are placed. The spirit of the circular is to help the petitioners. Therefore, it could hardly matter whether loans are from the Banks or financial institutions. To us, it appears, the failure to refer to the financial institutions, is an inadvertant omission. We find the prayer to be just and

reasonable.

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Accordingly, it is directed that the Union of India as also the Reserve Bank of India shall include all financial institutions in the definition of 'bank' - both State and Central - in its 'Central Interest Subsidy Scheme for November, 1984 - Riot Affected Borrowers'.

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In view of the Circular of Reserve Bank of India bearing RPCD No. PLFS.BC.67/PS-126(D)-89/90 dated 23rd December 1989 no further order is required in I.A. No. 3 of 1991.

I.A. No. 4 of 1992 disposed of in the above terms.

R.R.

Appeal allowed.

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