

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

**+ WRIT PETITION Nos.25891 of 2010, 25894 of 2010,
25999 of 2010 and 3823 of 2012**

% 14.02.2023

Between:

M/s. SKS Micro Finance Limited

Petitioner

VERSUS

The State of Andhra Pradesh,
Rep. by the Chief Secretary, A.P. Secretariat,
Hyderabad & 3 others

Respondents

! Counsel for Petitioners

: Mr. D.Prakash Reddy,
learned Senior Counsel
representing Mr. Lokirev
Preetham Reddy, learned
counsel for the petitioner in
W.P.No.25891 of 2010.

Mr. L.Ravi Chander, learned
Senior Counsel representing
Mr. Keshav Bhoopal, learned
counsel for the petitioner in
W.P.No.25894 of 2010.

Mr. Saurabh Bindal, learned
counsel representing Mr.
Keshav Bhoopal for the

petitioners in W.P.Nos.25999
of 2010 & 3823 of 2012.

^ Counsel for the respondents: Mr. A.Sanjeev Kumar,
learned Special Government
Pleader attached to the office
of learned Additional
Advocate General
representing State of
Telangana.

Mr. Govind Reddy, learned
Special Counsel representing
State of Andhra Pradesh.

Mr. B.Nalin Kumar, learned
counsel representing Reserve
Bank of India (RBI).

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? Cases referred

¹ 2022 SCC OnLine SC 588

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**WRIT PETITION Nos.25891 of 2010, 25894 of 2010,
25999 of 2010 and 3823 of 2012**

COMMON ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This order will dispose of Writ Petition Nos.25891 of 2010, 25894 of 2010, 25999 of 2010 and 3823 of 2012.

2. We have heard Mr. D.Prakash Reddy, learned Senior Counsel representing Mr. Lokirev Preetham Reddy, learned counsel for the petitioner in W.P.No.25891 of 2010; Mr. L.Ravi Chander, learned Senior Counsel representing Mr. Keshav Bhoopal, learned counsel for the petitioner in W.P.No.25894 of 2010; and Mr. Saurabh Bindal, learned counsel representing Mr. Keshav Bhoopal for the petitioners in W.P.Nos.25999 of 2010 & 3823 of 2012. We have also heard Mr. A.Sanjeev Kumar, learned Special Government Pleader

attached to the office of learned Additional Advocate General representing the State of Telangana; Mr. Govind Reddy, learned Special Counsel representing State of Andhra Pradesh; and Mr. B.Nalin Kumar, learned counsel representing Reserve Bank of India (RBI).

3. Initially the present batch of writ petitions were filed questioning the constitutional validity of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 on the ground that it was beyond the legislative competence of the Andhra Pradesh Legislature. We may mention that petitioners are Non-Banking Financial Corporations (NBFCs) registered under the Reserve Bank of India Act, 1934 (briefly referred to hereinafter as 'the RBI Act') and regulated by the RBI.

4. The above writ petitions were disposed of by this Court *vide* the judgment and order dated 11.02.2013 taking the view that on the same subject matter, a Central Bill of 2012 was pending before the Union Parliament.

5. This was assailed by the NBFCs before the Supreme Court by filing Special Leave Petitions which was admitted into civil appeals, being Civil Appeal No.4244 of 2019 and batch.

6. In the meanwhile, the Andhra Pradesh Reorganization Act, 2014 came into effect from 02.06.2014 bifurcating the composite State of Andhra Pradesh into the States of Telangana and Andhra Pradesh. Resultantly, the Andhra Pradesh Micro Finance Institutions (Regulation and Money Lending) Act, 2011 (was adopted by the State of Telangana whereafter a new enactment being Telangana Micro Finance Institutions (Regulation of Money Lending) Act, 2011 came to be enacted.

7. In Civil Appeal No.4244 of 2019 and batch, Supreme Court passed an order on 25.11.2019 taking the view that the High Court could not have abdicated its responsibility of deciding on the legislative competence of the Andhra Pradesh Micro Finance Institutions (Regulation of Money

Lending) Act, 2011 (briefly referred to hereinafter as ‘the 2011 Act’) merely on the footing that a Central Bill of 2012, allegedly on the same subject matter, was pending before the Union Parliament. Resultantly, Supreme Court set aside the judgment and order dated 11.02.2013 and restored the writ petitions to file. The High Court of Telangana at Hyderabad was directed to dispose of the writ petitions as early as possible.

7.1. This is how the writ petitions are again before this Court.

8. Though the initial challenge to the 2011 Act was on the ground of lack of legislative competence, during pendency of the writ petitions, Supreme Court in **Nedumpalli Finance Company Limited v. State of Kerala**¹, Civil Appeal No.5233 of 2012 decided on 10.05.2022, since reported in 2022 SCC OnLine SC 588, has upheld the Gujarat High Court judgment

¹ 2022 SCC OnLine SC 588

declaring the Gujarat Money Lenders Act, 2011 (briefly referred to hereinafter as 'the Gujarat Act') as unconstitutional.

9. We may mention that legislature of the State of Kerala had enacted the Kerala Money Lenders Act, 1958 (briefly referred to hereinafter as 'the Kerala Act') to regulate the interest to be charged by money lenders and to provide protection to borrowers. A batch of writ petitions was filed before the Kerala High Court questioning the validity of the Kerala legislation. A learned Single Judge of the High Court of Kerala had dismissed the batch of writ petitions, which order was confirmed by the division bench of the Kerala High Court. It was thereafter that NBFCs operating in the State of Kerala filed civil appeals before the Supreme Court.

10. The Bombay Money Lenders Act, 1946 which was applicable to the State of Gujarat was invoked by the Registrar against NBFCs operating in the State of Gujarat in the year 2009. Challenging such action, the NBFCs operating in the State of Gujarat approached the High Court of Gujarat.

During pendency of the writ petitions before the Gujarat High Court, the decision of the Kerala High Court came. A learned Single Judge of the Gujarat High Court did not agree with the view taken by the Kerala High Court and quashed the notices issued to the NBFCs under the Bombay Money Lenders Act, 1946. Thereafter, legislature of the State of Gujarat enacted the Gujarat Act. A fresh batch of writ petitions were filed before the Gujarat High Court seeking a declaration that the provisions of the Gujarat Act are not applicable to NBFCs registered under the RBI Act. Division bench of the Gujarat High Court allowed the writ petitions holding that the Gujarat Act was *ultra vires* the constitution for legislative incompetence to the extent that it sought to have control over NBFCs registered under the RBI Act. Against the aforesaid decision of the Gujarat High Court, a number of civil appeals were filed by the State of Gujarat before the Supreme Court.

11. Both sets of civil appeals were heard together in **Nedumpalli Finance Company Limited** (supra). Question for consideration before the Supreme Court was whether NBFCs

regulated by the RBI in terms of the provisions of Chapter III-B of the RBI Act could also be regulated by State enactments, such as, the Kerala Act and the Gujarat Act. At the outset, Supreme Court made it clear that legislatures of the States of Kerala and Gujarat had the competence to enact a law for regulation of the business of money lending which is traceable to Entry 30 of List II of the Seventh Schedule to the Constitution. Therefore, what was considered by the Supreme Court was whether after enactment of a law by the Parliament for incorporation and regulation of NBFCs, such NBFCs would continue to be regulated by the State enactments also on the ground that those may fall within the definition of the expression “money lenders” under the State enactments. After a thorough examination of all relevant aspects of the matter including Chapter III-B of the RBI Act, Supreme Court held as follows:

“6.19 Once it is found that Chapter III-B of the RBI Act provides a supervisory role for the RBI to oversee the functioning of NBFCs, from the time of their birth (by way of registration) till the time of their commercial death (by way of

winding up), all activities of NBFCs automatically come under the scanner of RBI. As a consequence, the single aspect of taking care of the interest of the borrowers which is sought to be achieved by the State enactments gets subsumed in the provisions of Chapter III-B.”

11.1. Thus, it has been held that the aspect relating to protecting the interest of the borrowers which is sought to be achieved by the State enactments gets subsumed in the provisions of Chapter III-B of the RBI Act. Thereafter Supreme Court adverted to the *doctrine of eclipse* and observed that while the RBI Act is traceable only to the entries in List-I, the State enactments are traceable only to entries in List-II. Therefore, question of repugnancy under Article 254 of the Constitution would not arise. Nonetheless Supreme Court held that Section 45-Q of the RBI Act confers overriding effect upon Chapter III-B of the RBI Act over other laws. Besides, Chapter III-B is a complete Code in itself. Rejecting the contention of the States of Gujarat and Kerala that the laws enacted by them are in addition to the provisions of Chapter III-B, Supreme Court held that provisions of Chapter III-B would eclipse the

provisions of the State enactments insofar NBFCs are concerned. Finally, Supreme Court held that the Kerala Act and the Gujarat Act would have no application to NBFCs registered under the RBI Act and regulated by the RBI Act. Consequently, all the appeals filed by NBFCs against the judgment of the Kerala High Court were allowed and all the appeals filed by the State of Gujarat against the judgment of the Gujarat High Court were dismissed.

11.2. While pronouncing the above judgment, an application for impleadment was filed before the Supreme Court by a person claiming to have lodged a criminal complaint against an NBFC in the State of Tamil Nadu. Supreme Court clarified that though it had not examined provisions of the Tamil Nadu Pawn Brokers Act, 1943 and the Tamil Nadu Money Lenders Act, 1957, the principles of law laid down in **Nedumpalli Finance Company Limited** (supra) would equally apply to these State enactments also.

12. In the hearing today, we have examined the scheme and provisions of the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011 as well as the Telangana Micro Finance Institutions (Regulation of Money Lending) Act, 2011 and we find that both the enactments are *pari materia* to the Kerala Act as well as to the Gujarat Act.

13. That being the position, while we decline the relief sought for in the writ petitions i.e., to declare the above two Acts as unconstitutional, however following the decision of the Supreme Court in **Nedumpalli Finance Company Limited** (supra), we hold that NBFCs operating in the States of Telangana and Andhra Pradesh registered with the RBI would be excluded from the purview of the above two enactments. In other words, the two enactments will have no application to NBFCs operating in the two States of Telangana and Andhra Pradesh which are registered under the RBI Act and regulated by RBI.

14. The Writ Petitions are disposed of accordingly.
However, there shall be no order as to costs.

15. Miscellaneous applications pending, if any, in these
Writ Petitions shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 14.02.2023

Note: L.R. copy to be marked.
(B/o.)
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