

GAHC010155232024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3880/2024

RASHTRIYA GRAMIN VIKAS NIDHI (RGVN)
A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT
XXI,1860. WITH ITS REGISTERED OFFICE AT OPP. BYE LANE NO. 8,
RAJGARH ROAD, GUWAHATI 781003 ASSAM INDIA, THROUGH ITS
EXECUTIVE DIRECTOR, DR. AMIYA KUMAR SHARMA, PHD

VERSUS

UNION OF INDIA AND 8 ORS
THROUGH THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF
FINANCIAL SERVICES, JEEVAN DEEP BUILDING, SANSAD MARG, NEW
DELHI 110001

1:A) FORMER CHAIRMAN OF THE GOVERNING BOARD OF RGVN
WHO WAS THE NOMINEE OF THE INDUSTRIAL FINANCE CORPORATION
OF INDIA (IFCI) LTD.
HOUSE NO. 55
RAJGARH ROAD
GUWAHATI 781003
DIST KAMRUP M ASSAM AND ALSO AT IFCI LIMITED
IFCI TOWER
61
NEHRU PLACE
NEW DELHI 110019

2:IFCI LIMITED
THROUGH THE CHAIRMAN CUM MANAGING DIRECTOR

IFCI TOWER
61
NEHRU PLACE
NEW DELHI 110019

3:SRI MANOJ MITTAL
FORMER CMD
IFCI LTD
CURRENTLY MD AND CEO
SIDBI LIMITED
SIDBI TOWER
15
ASHOK MARG
LUCHNOW
UP 226001

4:SRI PRASOON
EXECUTIVE DIRECTOR
IFCI LIMITED
IFCI TOWER
61
NEHRU PLACE
NEW DELHI 110019

5:SRI CHIRAG SAPRA
DGM
IFCI LIMITED
IFCI TOWER
61
NEHRU PLACE
NEW DELHI 110019

6:ICICI BANK

ICICI BANK TOWERS
BANDRA KURLA COMPLEX
MUMBAI 400051
MAHARASTRA

7:THE BRANCH MANAGER
ICICI BANK
BHANGAGARH BRANCH
GROUND FLOOR
SHANTI COMPLEX
G.S ROAD
BHANGAGARH
GUWAHATI 781005 ASSAM

8:THE STATE BANK OF INDIA
STATE BANK BHAWAN
VIDHAN BHAVAN MARG

NARIMAN POINT
MUMBAI MAHARASTRA 400021

9:THE BRANCH MANAGER

NEW GUWAHATI BRANCH
BAMUNIMAIDAM
NEW GUWAHATI DIST KAMRUP M GUWAHATI 781021 ASSA

Advocate for the Petitioner : J A MONDAL, MR. A. K. SARMA,MS. S SARMA,MR. B J TALUKDAR

Advocate for the Respondent : DY.S.G.I., MR. S SARMA(R-2, 4),MR. C TALUKDAR(R-2, 4),P BORUAH(R-2, 4),MR D K MEDHI(R-2, 4),A GAUTAM(R-2, 4),MR D GOSWAMI(R-9),MR P GOGOI(R-9),MR. W SHARMA(R-9),MR. A K SAHEWALLA(R-9),SC, I C I C I BANK,SC, SBI

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date : 05-09-2024

JUDGMENT & ORDER (ORAL)

1. Heard Ms. S Sarma, learned counsel for the petitioner. Also heard Mr. S Sarma, learned senior counsel assisted by Mr. A Gautam, learned counsel for the respondent Nos.2, 4 and 5 and Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M Dutta, learned counsel for the respondent No.3.

2. The present writ petition is filed seeking a writ of mandamus and/or certiorari and/or any writs of like nature restraining the respondents from interfering with the affairs of the petitioner society. It is further prayed that pending disposal of the writ petition, the respondents more particularly, respondent No.1(a) to 5 be restrained from interfering in the affairs of the petitioner

society, till contentions raised in Title Suit 605/2023, pending for disposal in the court of learned Civil Judge, Senior Division, Kamrup (M) at Guwahati, is decided and as an interim measure to direct the respondent Nos.6 to 9 to defreeze the accounts of the petitioner society.

3. The brief facts of the case of the petitioner as urged by Ms. S Sarma, learned counsel and pleaded in the writ petition is to the effect that Rashtriya Gramin Vikas Nidhi (for short, RGVN), is a society registered under the Societies Registration Act, 1860. Such society was registered in the year 1990. According to the petitioner, the activities of the organization are currently carried out by a team of 20 regular and 188 contractual qualified professionals headed by its Executive Director. It is also the case of the petitioner that the Governing Body of the society has been headed by the Chairman nominated by Industrial Finance Corporation of India (IFCI), a Government of India undertaking and it was one of the initial sponsors of the society at the time of its inception in the year 1990. According to the petitioner, the respondent No.3 as Chairman of the Governing Body of the RGVN worked to the detriment of the RGVN in different manners, which are narrated in paragraph 5 of the writ petition.

4. According to the petitioner, for the illegal action of the respondent No.3, i.e., the Chairman, the society was not being able to upload the Annual Financial Accounts as the society had less than 7 Board Members. It was the further contention that for the fault of the Chairman, the numbers of Board fell below 7, which is the

minimum requirement as per the Memorandum of Association, the closure of the society was imminent inasmuch as in such an eventuality, the society would face with cancellation of the registration.

5. In the aforesaid backdrop of illegality, according to the petitioner, the independent members of the Board had expressed deep anguish. A suit was preferred by the RGVN, which was registered as Title Suit No. 605/2023. During the pendency of the suit, according to the petitioner, being faced with existential threat, the members of the Governing Board decided to increase the numbers of the members of the Governing Board and accordingly, an EOGM was called and the same was held on 27.09.2023, wherein the respondent No.3 did not attend and accordingly, the existing members therein unanimously chose that one Sri Gautam Baruah would be the Chairman of the Governing Board of RGVN. Thereafter, the new Board members of the Governing Board of the RGVN amended the Memorandum of Association of the RGVN and the same was uploaded on the website of Register of Societies for the purpose of ensuring the continued existence of the RGVN inasmuch as, the accounts of the RGVN could be uploaded on the website of the Income Tax authorities, only after uploading of such resolution in the portal of Register of Societies. However, according to the learned counsel for the petitioner, on 11.07.2024 the respondent No.5 (Branch Head of IDBI Bank) froze the accounts of the society. Thereafter, on 31.07.2024, the accounts of RGVN maintained in ICICI Bank, Bhangagarh Branch, and the accounts maintained in

SBI, New Guwahati Branch were also frozen. Such decisions are challenged in the present writ petition.

6. Ms. Sarma, learned counsel for the petitioner argues that such action on the part of the bank is unauthorized and illegal and void for violations of Principles of Natural Justice. Such actions are also in contravention of the provisions contained in section 45 ZB of the Banking Regulation Act, 1949 and the RBI Master Circular on Know Your Customer (KYC) norms/Anti Money Laundering (AML) Standards/Combating of Financing Terrorism (CFT)/obligations of the Banks under PMLA, 2002. According to the learned counsel, the condition precedent which empowers the banking authority under the aforesaid RBI Master Circular was not available in the case in hand and therefore, the action of the respondents are out and out illegal. Therefore, such actions are liable to be interfered with.

7. In addition to the aforesaid, Ms. Sarma, learned counsel for the petitioner argues that when the matter was sub-judice and was pending for adjudication before a competent court, the respondent authorities were not within its jurisdiction to act in the manner they have acted and on this count alone the impugned orders are liable to be set aside.

8. The respondent No.3 i.e the IFCI has filed an affidavit in opposition. Relying on such affidavit, Mr. S Sarma, learned senior counsel argues that though the writ petition has been filed in the name of the Society, however, the petitioner No.1 is having no sanction and authority in the name of RGVN. The society cannot be represented by the Executive Director nor the writ petitioner society

is the actual RGVN. According to him, the Executive Director is having no sanction and authority under law to file such a petition on behalf of the RGVN and the petitioner is a non entity in the eye of law. Further, the very existence of the society represented by the Executive Director is asserted to be illegal and according to Mr. Sarma, already the IFCI has filed a Title Suit against such entity.

9. It is further contended by Mr. Sarma that a bare perusal of the Title Suit preferred by the petitioner shall disclose that the suit was filed against the Chairman of the Governing Board and for a declaration that the Chairman nominated by the IFCI has no right to interfere with the activities of the plaintiff organization and a permanent injunction was also sought. However, the petitioner has suppressed such fact of seeking an injunction and non grant of any injunction till date by the trial court. Therefore, on this count alone the present writ petition is liable to be dismissed, contends Mr. Sarma, learned senior counsel.

10. On merit Mr. Sarma argues that the IFCI is the sponsor and founder of RGVN and therefore the basic structure of the society cannot be changed, in the manner the same has been done at the behest of the Executive Director. It is contended that only to have a control over the society, the Executive Director in collusion with others have altered the basic structure of RGVN including its Memorandum of Association and such alteration is under challenged in the Title Suit preferred by the IFCI. Therefore, the IFCI being the sponsoring and controlling authority of RGVN, it has every right to ask banking authorities to freeze the account so as to protect public

money and to ensure that such money do not go to the hands of certain people who are not having any authority under law to run the affairs of the RGVN. According to Mr. Sarma, learned senior counsel the RBI guidelines is not applicable in the given facts of the present case, inasmuch as the petitioner represented by its Executive Director is not the society in whose name the accounts are being maintained.

11. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties.

12. As the argument revolves around the structure of the society and also as regards the question who is the actual society, let this court first consider the Memorandum of Association of the society.

13. The Memorandum of Association of the society defines IFCI as Industrial Finance Corporation of India. "Other Central Financial Institutions" is defined as IDBI, ICICI, NABARD and such other institutions as may be recognized by the Governing Board. As per the MOA, the Governing Board is a Board constituted for the purpose of General Superintendence, Management and Control of the affairs of the society. "Sponsors" are being defined to mean IFCI and such other Central Financial Institutions as may be recognized as sponsors by the Governing Board. The MOA further defines management as the Management of Affairs of the society in accordance with rules of the society by a Governing Board.

14. A Rule has also been framed. Rule 2 of the rules of the society deals with funds of the society. Amongst others, the funds of the society shall consist of grants received from the Sponsor or any

member of the society.

15. Rule 4 prescribes that General Body of the society shall consist of Permanent Members and Institutional Members. Permanent Members are the sponsors and the Institutional Members will be Financial Institutions, Banks, Corporate Bodies, Charitable Trust, Benevolent Societies, Academic Bodies, Research Institutions, Institute or Bodies organized or set up by Central Government or State Government.

16. Thus ,from the aforesaid it is clear that IFCI is the sponsor of the society as well as Member of the Society along with other financial institutions like IDBI, ICICI etc.

17. Rule 6 of the Rules prescribes that Governing Board shall consist of not less than 7 and not more than 21 members excluding the Executive Director and nominees of sponsor. It further provides that the IFCI shall have right to nominate 2 members and each of the sponsor shall have a right to nominate one member and the other members may be co-opted by the Governing Board from amongst eminent personalities. It further prescribes that a nominee of the IFCI shall be the ex-officio Chairman of the Governing Board and the society.

18. Thus, from the original rule, it is prima facie seen that the Board can consist of only permanent and institutional members with a provision of co-opting two members from amongst the prominent personalities and that the ex-officio chairman shall be nominee of IFCI.

19. Therefore, this court is of the view that the IFCI is having a

dominant control over the affairs of society being one of the major sponsors of the society and IFCI itself is a Central Government Organization and the other sponsors are ICICI & IDBI.

20. The function of the Executive Director is detailed in Rule 14 of the Rules and Executive Director is responsible for proper administration of the society and for conduct of the staff and such Executive Director is to perform under direction and control of the Governing Board.

21. Rule 30 prescribes for procedure of alteration of rules and such procedure mandates that a majority of the members of the society present and voting at the General meeting of the society can do it by vote. The members are defined to be the permanent members and institutional members as discussed hereinabove. Thus as per MOA the Rule can be altered by Permanent and Institutional Members.

22. It is also on record that a proposal was made on 16.05.2023 by the Executive Director addressed to the Chairman to co-opt five persons. It is also on record that the 97th Meeting of the Governing Board was held on 23.06.2023, wherein the nominee of the IFCI, NABARD, two members and Ex-Officio Chairman and the Executive Director were present. The issue of co-opting Governing Board members as made by communication dated 16.05.2023 was withdrawn, which finds a mention under agenda item No.5 of the meeting. Thereafter, on 04.08.2023, the Executive Director again proposed five names to be co-opted as Board Members of the society, which was responded by the IFCI to the effect that as the

subject matter was already taken up in Board of Governors meeting dated 23.06.2023, no response is required from the IFCI. Thereafter, another meeting was purportedly held on 15.09.2023, to be 98th meeting of the Governing Board consisting of one Chairperson of the meeting, one member, Executive Director, three Directors and one Assistant Director, Accounts and in the said meeting five members were co-opted.

23. From the records, it is seen that in the aforesaid meeting (15.09.2023) none of the Permanent Members and Institutional members were present. The MOA or Rules were also not amended in such meeting, which was, however, subsequently done by the new Board of Directors selected on the meeting dated 15.09.2023. Subsequently, certain Rules were amended which are under challenge in the civil suit preferred by IFCI. The IFCI preferred the suit challenging the aforesaid decisions to amend the Rules and MOA to be illegal and unauthorized which is still pending disposal.

24. From the records and pleadings made available, this court has also arrived at a prima facie view, subject to determination in the suit that the Board of Directors can consist of permanent members and institutional members with provisions of inclusion of co-opted members and as recorded herein above, the Chairman is to be the nominee of the IFCI and that the rules can be amended with a General Body Meeting with a prior written proposal.

25. Therefore, this court is also of the prima facie view, subject to the decision that may be made in the pending suit between the parties, that the institutional members were not part of such

meeting when decision to choose the Chairman was taken and the meeting altering the Rules of the society.

26. Therefore, in the given facts of the present case, to allow the operation of the bank account, which has been frozen on the request of IFCI, this court is to make a determination as regards the right of the present petitioner to operate such bank account, which in the considered opinion, cannot be a subject matter of a writ petition inasmuch as the same is pending adjudication before the trial court and above that, still an injunction seeking similar relief by the petitioner is pending before the trial court for adjudication.

27. The Master Circular 2002 upon which heavy reliance is being placed, was introduced in the context of recommendations made by the Financial Action Taskforce on Anti Money Laundering standards and on Combating Financing of Terrorism and the aim of such circular is to consolidate all the instructions/guidelines issued by RBI in this regard. The learned counsel for the petitioner has argued that reading of clause 2.18 (a), 2.18 (d)(ii), 2.18(d)(V) and 2.18(e) (i) & (ii) permits that only persons involved in terrorists activities and who comes within the provision of section 51(a) of the U.A.P.A Act 1967 would be liable to have their account frozen. It is the further contention of the learned counsel for the petitioner that in terms of section 45 ZB of Banking Regulation Act, 1949 the Bank accounts can be frozen only on the basis of any order issued by a court of competent jurisdiction. This court is of the view that to apply the aforesaid provisions, it is to be established that the bank account already frozen belongs to the petitioner inasmuch as it is recorded

that the dispute as regards ownership of the account is still under adjudication. This court for the reasons as recorded hereinabove of is also having a prima facie satisfaction, on the basis of MOA and the Rules of the society that IFCI is having a better right as on date compared to the right of the petitioner.

28. That being the position, the guidelines, Rules and provisions of law upon which the petitioner has placed heavy reliance, cannot be made applicable, more particularly, until and unless, it is determined who is the actual account holder of the bank accounts and whether the present petitioner is the actual society represented by its Executive Director. Such determination is pending adjudication before the competent court of law and an injunction application is also pending in this regard.

29. The respondent Nos.8 and 9 has also filed an affidavit and according to them, as the Rules of RGVN specifically states that a nominee of the IFCI shall be the Ex officio Chairman of the Governing Board and the IFCI has directly written a letter to the bank praying for freezing the account and also considering the interest of all the parties, the bank has taken a recourse of freezing the bank account. Such reason given by the bank, in the considered opinion of this court, more particularly in the given facts of the present case, cannot be treated as arbitrary, unreasonable, or illegal decision to warrant an interference at the hands of this court in exercise of its power of judicial review.

30. Therefore, this court, for the reasons recorded herein above, finds no merit in this writ petition and accordingly, same stands

dismissed. Parties to bear their own cost.

31. While parting with the record, it is made clear that the observations made in this order is for the purpose of considering the legality of the action of freezing the bank account, and any observations made herein shall not influence the learned trial court in determining the issues raised before it by the parties in their respective suits and in the miscellaneous applications.

JUDGE

Comparing Assistant