



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.232 of 2019

Date of Hearing: 06.05.2025

Date of Decision: 16.05.2025

Shri. Manik Dhar
 S/o (L) D.R. Dhar,
 R/o Laki Tori Building
 Keating Road, Shillong-793001
 East Khasi Hills District, Meghalaya

..... Petitioner

-VERSUS-

1. Indian Overseas Bank, a body corporate and duly constituted
 Under the banking companies (Acquisition & Transfer
 of Undertaking) Act, 1970 having its central office at 763,
 Anna Salai, Chennai-600002.

2. Branch Manager, Indian Overseas Bank, Shillong
 Morellow Building, M.G. Road
 Shillong -793001
 East Khasi Hills District, Meghalaya

..... Respondents

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Sr.Adv
 Mr. S. Thapa, Adv
 Mr. B. Snaitang, Adv

For the Respondent(s) : Mrs. T. Yangi B, Sr.Adv
 Ms. R. Gurung, Adv

Judgement and Order

This writ petition has been filed by the petitioner assailing the



impugned publication dated 19.06.2019 by the respondent Bank published in the local dailies on 21.06.2019 whereby the name and photograph of the petitioner was published declaring him as a ‘wilful defaulter’.

1. The fact of the case, as can be derived from the materials on record is that, in the year 2002, the petitioner had applied for credit facilities from the respondent Bank under the fund-based account namely Term Loan and working Capital Term Loan account with varying limits for setting up a Brick Kiln Unit at Dharmanagar, Tripura. On 28.09.2002 the respondent Bank sanctioned the credit facilities in favour of the petitioner on terms and conditions contained in the sanction letter. The credit facilities granted were enhanced from time to time by the respondent Bank. As the petitioner failed to repay the respondent Bank, his loan account was classified as Non-Performing Asset (NPA) on 01.07.2004. Thereafter, the respondent Bank initiated recovery proceeding against the petitioner. In addition, the respondent Bank vide publication dated 19.06.2019, published the name and photograph of the petitioner in the local dailies on 21.06.2019 declaring him as a wilful defaulter. Being aggrieved by the publication made by the respondent Bank, the petitioner has approached this Court by way of this writ petition.

2. Mr. K. Paul, learned Senior counsel assisted by Mr. S. Thapa, learned counsel appearing for the petitioner submits that the impugned publication was made by the respondent Bank by resorting to abuse of power and in complete violation of the mandatory guidelines issued by the Reserve Bank of India (RBI) vide Master Circular on Wilful Defaulters dated 01.07.2015. He submits that the photograph of the petitioner could not have been published by the respondent Bank by terming him as a wilful defaulter without following the binding instructions laid down in clause 2.1.3 and clause 3 of the said guidelines. He submits that no show-cause notice was issued to the petitioner and he was not afforded with any



opportunity by the respondent Bank before the impugned publication was made. He contends that the guidelines dated 01.07.2015 of the RBI has statutory force by virtue of provision of section 35A of The Banking Regulation Act 1949 and the decision of the Apex Court reported in (2020) 10 SCC 274, *Internet and Mobile Association of India vs. Reserve Bank of India* and hence, the respondent Bank could not have ignored the guidelines while taking a decision on the impugned publication. The learned Senior counsel submits that there is a deliberate attempt by the respondent Bank to mislead the Court inasmuch on the one hand, at para 12 of the affidavit-in-opposition, it is stated that notice was issued to the petitioner but the same could not be retrieved or recovered, whereas on the other hand, at para 18 it is affirmed that the statements made at para 12 are true to the information derived from official records. He further contends that failure of the respondent Bank to produce the related official record despite the order of this court would go to show that no procedure as mandated by the guideline dated 01.07.2015 was ever followed by the respondent Bank in the matter and prays for quashing of the impugned publication made by the respondent Bank.

3. Ms. T. Yangi B, learned Senior counsel assisted by Ms. R. Gurung, learned counsel appearing for the respondents, submits that the petitioner is a habitual defaulter in the payment of outstanding dues in his Loan Account and the loan became a Non-Performing Asset (NPA). She submits that since a publication has been made terming the petitioner as a wilful defaulter, there is a presumption that all the necessary procedures were followed before the publication was made. She further submits that inspite of sincere efforts, the related official record could not be placed before this Court and prays for taking of a lenient view of the matter considering the fact that the respondent Bank is a large establishment having number of branches throughout the country and the difficulty in maintaining large



number of files in proper order. She further submits that no vested right of the petitioner has been violated by the respondent Bank and there is no occurrence of any miscarriage of justice to the petitioner. She submits that there is no merit in the writ petition and the same deserves to be dismissed.

4. Before embarking into the factual aspect of this case, it is imperative to take notice of section 35A of the Banking Regulation of 1949 which lays down as under: -

“[35A. Power of the Reserve Bank to give directions. - (1)

Where the Reserve Bank is satisfied that-

(a) in the [public interest]; or

[(aa) in the interest of banking policy; or]

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally,

It is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2)”

5. Further, the Apex Court in the case of *Internet and Mobile Association of India (supra)*, at para 150 observed: -

“150. Law is well settled that when RBI exercises the powers conferred upon it, both to frame a policy and to issue directions for its enforcement, such directions become supplemental to the Act itself. In Peerless General Finance & Investment Co.Ltd. v. RBI, this Court followed the decisions in State of U.P. v. Babu Ram Upadhyya and D.K.V. Prasada Rao v. State of A.P. to hold that Rules made under a statute must be treated as if they were contained in the Act and that therefore they must be governed by the same principles as the statute itself. Useful reference can also be made in this regard to the following observations in ICICI Bank Ltd. v. Official Liquidator: (SCCp. 25, Para 40)

“40. When a delegate is empowered by Parliament to enact a policy and to issue directions which have a statutory force and when the delegate (RBI) issues such guidelines (policy) having statutory force, such guidelines have got to be read as supplement to the provisions



*of the BR Act, 1949. The “banking policy” is enunciated by RBI. Such policy cannot be said to be ultra vires the Act.”
(emphasis supplied)”*

6. It emerges from above that where the RBI is satisfied that it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions or guidelines as it deems fit and the banking companies are bound to comply with such directions. It is also clear that when the RBI issues such directions or guidelines, it must be treated as if they were contained in the Act and therefore, must be governed by the same principles as a statute itself. Such directions or guidelines have got to be read as supplement to the provisions of the Banking Regulation Act, 1949. It is, therefore, apparent that the guidelines dated 01.07.2015 has a binding effect requiring strict adherence by the banks and financial institutions functioning under the supervision and control of the RBI.

7. In the present case, the petitioner in his writ petition has asserted that the impugned publication dated 19.06.2019 published by the respondent Bank in the local dailies on 21.06.2019 classifying the petitioner as a wilful defaulter was made in total contravention of the guidelines issued vide the Master Circular on Wilful Defaulters dated 01.07.2015 containing mandatory instructions on matters relating to wilful defaulters. The petitioner also contended that no show cause notice was ever issued to him and he was not given any opportunity by the respondent Bank before the impugned publication was made in the local dailies.

8. The respondent Bank in its affidavit-in-opposition has not made any specific disclosure as to the initiation of any process in terms of the Master Circular on Wilful Defaulters dated 01.07.2015 against the petitioner in relation to the impugned publication terming the petitioner as a wilful defaulter. There is no mention of any date and place of initiation of any such process and the designation of the official authority of the respondent



Bank who initiated the process. The averments made in the affidavit-in-opposition is entirely centered around the fact that the petitioner had taken a huge amount of loan from the respondent bank and has defaulted in repaying the loan amount. There is only one statement at paragraph 12 of the affidavit in opposition in so far as the question of adherence to the guidelines dated 01.07.2015 is concerned. The relevant statement reads as follows: -

“12. It is denied that the respondent Bank has not complied with the mandatory RBI guidelines as alleged. In fact, the Respondent Bank through its Head Office in Chennai has issued notice to the petitioner in this regard some time back, as per the RBI Guidelines but unfortunately the same could not be retrieved or recovered.”

9. As pointed out by the learned Senior counsel for the petitioner, the statement of affirmation made at paragraph 18 of the affidavit in opposition discloses that the statements made at paragraph 12 of the affidavit in opposition are made on the basis of the information derived from official record. Thus, it becomes difficult for this court to comprehend as to how a statement with regard to issuance of notice to the petitioner was made in the affidavit-in-opposition on the basis of official record when the very notice was not traceable in the record and that the deponent had no personal knowledge of the same. Hence, the very statement is questionable and not worthy of acceptance by this court.

10. Perusal of the guidelines issued vide Master Circular on Wilful Defaulters dated 01.07.2015 indicates that the same was formulated to put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them. Clause 2.1.2 thereof defines the term ‘unit’ to include individuals besides other entities mentioned therein. Clause 2.1.3 lays down the events when a ‘wilful default’ would be deemed to have occurred. The clause reads hereunder: -



“2.1.3 Wilful Default: A ‘wilful default’ would be deemed to have occurred if any of the following events is noted:

- (a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has a capacity to honour the said obligations.*
- (b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.*
- (c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.*
- (d) The unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank/lender.*

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents. The default to be categorized as wilful must be intentional, deliberate and calculated.”

In the instant matter, nothing has been brought into the record of this court to show that the petitioner has defaulted to discharge his obligation of repayment inspite of having the capacity to honor the said obligation. There is also no material to show that the default in payment was because of the fact that the petitioner has not utilized the loan amount for the specific purpose for which loan was availed of but has diverted the funds for other purposes. No finding has been recorded by the respondent Bank that the petitioner has defaulted in repayment and siphoned of the funds so that funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the petitioner in the form of other assets. Further, there is no assertion that the default of payment by the petitioner was for the reason that he has disposed of or removed the movable fixed assets or immovable property given for the



purpose of securing the loan without knowledge of the respondent Bank. Moreover, no supporting material was placed before this Court by the respondent Bank to project that the identification of the petitioner as a wilful defaulter was made keeping in view his track record and that the petitioner defaulted in repayment intentionally and deliberately in a calculated manner. Hence, there remains no iota of doubt that the respondent Bank has not followed the procedure prescribed in the guidelines dated 01.07.2015.

11. Clause 2.5 of the guidelines dated 01.07.2015 lays down procedure for initiation of panel measures by the bank and financial institutions against the wilful defaulters identified as per the definition of paragraph 2.1.3 of the guidelines. Clause 3 stipulates mechanism for identification of wilful defaulters. The relevant portions of clause 3 of the guidelines reads as follows: -

“3. Mechanism for identification of Wilful Defaulters.

The mechanism referred to in paragraph 2.5 above should generally include the following:

- (a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank GM/DGM.*
- (b) If the committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the committee feels such an opportunity is necessary.*
- (c) The Order of Committee should be reviewed by another committee headed by the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEOs and consisting, in addition, to two independent directors/ non-executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the identification Committee does not pass*



an Order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions.

(d)

(e) ”

There is no averment in the affidavit-in-opposition of the respondent Bank that any committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM/DGM was ever constituted in accordance with sub-clause (a) of Clause 3 of the guidelines and that a review committee was formed in terms of sub-clause (c) of Clause 3 thereof to look into the matter of wilful default pertaining to the petitioner.

12. During the proceeding of this writ petition, by order dated 19.08.2024 the respondent Bank was directed to produce the related official record of the matter. After availing extension of time on many occasions for production of the official record, a submission was made on behalf of the respondent Bank on 08.04.2025 that the record could not be traced and the matter may proceed for hearing without the production of the official record. The aforesaid fact, coupled with the averment made in the affidavit-in-opposition at paragraph 12, is sufficient for this court to infer that the respondent Bank had never initiated any process in terms of the guidelines dated 01.07.2015 to identify the petitioner as a wilful defaulter before the impugned publication was made.

13. For what has been discussed above, this writ petition succeeds. The impugned publication dated 19.06.2019 by the respondent Bank published in the local dailies on 21.06.2019 is set aside and quashed. Looking at the manner in which the respondent Bank has handled the entire matter, the petitioner is found entitled to some costs. Accordingly, the respondent Bank is directed to pay an amount of Rs.30,000/- as cost of litigation to the petitioner within a period of 1 (one) month. It is made clear that the observations and findings made above are specific to the issue of



identification of the petitioner as a wilful defaulter and will not have any bearing on the merits of the recovery proceedings initiated by the respondent Bank against the petitioner.

14. The writ petition stands allowed in the aforesaid terms.

Judge

Meghalaya

16.05.2025

"Shrity,PS"