IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 9219 of 2014

Kalidas s/o. Shivling Phulpagar,
Age : 55 years,
Occupation : Service,
(Now terminated)
R/o. 49, Ankur Nagar,
Near Old Post Office,
Taroda (Kh), Nanded,
Taluka & District : Nanded. .. Petitioner.

versus

1. The Deputy General Manager,
   Retail Banking Group,
   ICICI Bank Ltd.,
   ICICI Bank Towers,
   Bandra-Kurla Complex,
   Mumbai.

2. The Branch Manager,
   ICICI Bank Ltd.,
   Yoganand Market,
   Gandhi Park, Parbhani,
   Taluka & District : Parbhani. .. Respondents.

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Mr. J.M. Murkute, Advocate, for the petitioner.

Mr. P.M. Shah, Senior Advocate, instructed by Mr. M.S. Kulkarni, Advocate, for respondent nos.1 and 2.

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CORAM : S.S. SHINDE &
A.M. BADAR, JJ.

DATE : 14TH SEPTEMBER 2015

ORAL ORDER *(Per S.S. Shinde, J.)* **:**

1. Heard Adv. Mr. J.M. Murkute appearing for the petitioner and Sr. Adv. Mr. P.M. Shah i/b. Adv. Mr. M.S. Kulkarni appearing for the respondents.

2. This Writ Petition takes exception to the order of termination dated 3rd June 2014, passed by respondent no.1 i.e. Deputy General Manager of ICICI Bank Ltd., Mumbai.

3. At the outset, learned Senior Counsel appearing for the respondents raised preliminary objection about maintainability of this petition. In support of his contention, that the writ cannot be issued against the respondent - Bank, he pressed into service, exposition of the Supreme Court in the case of ***Federal Bank Ltd. Vs. Sagar Thomas & others***, reported in ***(2003) 10 SCC 733***. He has also relied upon judgment of Larger Bench of Rajasthan High Court, at Jaipur Bench, delivered in ***S.B. Civil Writ Petition No. 3248 of 2002***, dated 6th May 2009, in the case of ***Gopal Prasad Varshney Vs. Bank of Rajasthan Ltd.,*** and also two judgments of learned Single Judge of Rajasthan High Court, at Jodhar Bench and Jaipur Bench, respectively. in **(a)** ***S.B. Civil Writ Petition No. 1640/2013***, ***(Shivgiri Swami Vs. ICICI Bank Limited & others)*** decided on 27th February 2013 and **(b)** ***S.B. Civil Writ Petition No. 11820/2014***, ***(Yogendra Mundra Vs.***

ICICI Bank Ltd.) decided on 11-11-2014.

4. The learned Counsel appearing for the petitioner, relying upon judgment of the Supreme Court, in the case of ***Binny Ltd. and another Vs. V. Sadasivan and others***, reported in ***AIR 2005 SC 3202***, and in particular, paras 29 to 32 thereof, urged that the petition is maintainable. He submits that, the respondent - Bank is a Scheduled Bank controlled by the Reserve Bank of India. He has further invited our attention to the judgment of Division Bench of this Court, in the case of ***Ganesh Morto Naik Vs. Goa State Co-operative Bank Ltd. and another***, reported in ***1992(1) Bom.C.R. 610 (Panaji Bench)***, wherein it is observed that "*mandamus can be denied only if the concerned institution is a purely private one with no public duty. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied.* "

5. We have heard the learned Counsel for respective parties. We have also perused the pleadings in the petition and grounds mentioned in the petition, and annexures to the petition. We have also gone through the judgments cited, across bar, by the learned Counsel for respective parties.

6. We are of the opinion, that in view of the judgment of the Supreme Court, in the case of ***Federal Bank Ltd. Vs. Sagar Thomas & others (supra)***, and judgment of Larger Bench of Rajasthan High Court, in the case of ***Gopal Prasad Varshney Vs. Bank of Rajasthan Ltd. (supra)***, this petition, qua the respondents, is not maintainable. It is not necessary for us to reproduce the entire text of discussion. A useful reference can be made to paras 25 to 29 and paras 32 and 33 of the judgment of the

Supreme Court in the case of ***Federal Bank Ltd. Vs. Sagar Thomas & others (supra)***, wherein the Supreme Court has observed thus :

> "25. In view of the provisions indicated above under the Companies Act and the Industries (Development and Regulation) Act, it is submitted that the nature and the control over the companies is more or less of the same degree and nature as the control exercised over the banking companies under the Banking Regulation Act. There is control and supervision over the functioning, working and the conduct of business of the companies. A watchful eye is kept over the interest of the shareholders, the interest of the company itself as well as over the production of the company, even the Managing Director can be removed by the Central Government. It has also the powers, as indicated above, to take over the management of a company. Such powers are drastic; nonetheless, they remain regulatory in nature in the interest of the industry, the company, the shareholders and in the general interest since production of goods of importance is most essential for proper economic growth and stability of the country.
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> 26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though the case of nationalized banks stands on a different footing. There may well be companies, in which majority of the share capital may be contributed

out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case, we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities, may be manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. Care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951, that their production, which is important for the economy, may not go down, yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs / companies.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981, or the Water (Prevention and Control of Pollution) Act, 1974, etc. or statutes of the like nature which fasten certain duties and

responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event, a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

28. The six facts which have been enumerated in the case of *Ajay Hasia Vs. Khalid Mujib Sehravardi [(1981) 1 SCC 722]* and approved in the later decisions in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India [(1979) 3 SCC 489]* and the seven-Judge Bench in the case of *Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology [(2002) 5 SCC 111]* may be applied to the facts of the present case and see whether those tests apply to the appellant Bank or not. As indicated earlier, share capital of the appellant Bank is not held at all by the Government nor is any financial assistance provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant Bank does not enjoy any monopoly status nor can it be said to be an institution having State protection. So far as control over the affairs of the appellant Bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the

appellant Bank nor is any one of them a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purpose of maintaining a healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by Reserve Bank of India under a statute or the Central Government. Even if it was with the Central Government in place of Reserve Bank of India, it would not have made any difference, therefore, the argument based on the decision of *All India Bank Employees' Association Vs. National Industrial Tribunal [AIR 1962 SC 171]* does not advance the case of the respondent. It is only in case of malfunctioning of the company that occasion to exercise such powers arises to protect the interest of the depositors, shareholders or the company itself or to help the company to be out of the woods. In times of normal functioning such occasions do not arise except for routine inspections etc. with a view to see that things are moved smoothly in keeping with fiscal policies in general.

29. There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession

in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of *Ajay Hasia (supra).* Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant company. For the sake of argument, even if it may be assumed that one or the other test as provided in the case of *Ajay Hasia (supra)* may be attracted, that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection, observations made in the case of *Pradeep Kumar Biswas (supra)* quoted earlier would also be relevant.

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32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty.

These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under

> Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed. "

7. The Larger Bench of Rajasthan High Court, at Jaipur Bench, in the case of ***Gopal Prasad Varshney Vs. Bank of Rajasthan Ltd. (supra)***, in paras 65 to 68 of the judgment, has observed thus :-

> "65. Thus, a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging a public duty or positive obligation of a public nature; and (viii) a person or a body under a liability to discharge any function under any statute, to compel it to perform such statutory function.
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> 66. The respondent Bank is a Scheduled Bank and included in the Second Schedule and Sub-Section (6) of Section 42 of the RBI Act has been referred to indicate the control which is exercised by Reserve Bank of India on the banking companies, the same reads as follows :-
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> > "42(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,
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> > > (a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in India and which

(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and

(iii) is a State cooperative bank or a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or an institution notified by the Central Government in this behalf or a corporation or a company incorporated by or under any law in force in any place outside India;

(b) direct the exclusion from the Schedule of any scheduled bank,

(i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or

(ii) which is, in the opinion of the Bank after making an inspection under Section 35 of the Banking Regulation Act, 1949 (10 of 1949), conducting its affairs to the detriment of the interests of its depositors, or

(iii) which goes into liquidation or otherwise ceases to carry on banking business. "

67. Hon'ble the Supreme Court in the case of *Federal Bank Ltd. Vs. Sagar Thomas & others (supra)*, was of the view that a private company

> carrying on banking business as a scheduled bank cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.
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> 68. Thus, in view of ratio decided by the Hon'ble Supreme Court in the case of *Federal Bank Ltd. Vs. Sawgar Thomas & others (supra)*, merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. "

8. Apart from what is discussed herein above, the Rajasthan High Court, at Jaipur Bench, in the case of ***Gopal Prasad Varshney Vs. Bank of Rajasthan Ltd. (supra)***, while considering the point of maintainability of the Writ Petition, qua the Bank of Rajasthan Ltd., relying upon judgment of the Supreme Court, in the case of ***Federal Bank Ltd. Vs. Sagar Thomas & others (supra)***, has ruled that the Bank therein i.e. Bank of Rajasthan Ltd. is not an institution or a company carrying on any statutory or public duty. The ultimate conclusion reached was that, the respondent therein i.e. Bank of Rajasthan Ltd. is not a State within Article 12 of the Constitution of India and is not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

9. In that view of the matter, in the present case also, we are of the opinion that the Writ Petition as against respondent - Bank is not

maintainable.

10. Hence, the Writ Petition is rejected on the ground of maintainability. However, rejection of this petition is not an impediment for the petition to take appropriate remedy available to him in law.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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