

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2243 OF 2015**

Kingfisher Airlines Ltd.	... Petitioner
v/s	
Union of India and others	... Respondents

Dr Milind Sathe, Sr. Counsel with Mr Rohan Cama i/b M/s Bachubhai Munim and Co. for Petitioner.
Mr N.R. Prajapati for Respondent No.1.
Mr Praveen Samdani, Sr. Counsel with Mr Piyush Raheja, Mr Vikas Kumar i/b Mr Anil T. Agarwal for Respondent No.2.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 20TH OCTOBER 2015

P.C. :-

1. The Petitioner has been served with the notice to show cause, a copy of which is found in the paper-book. That notice dated 21st January 2015 is by the Respondent No.2 – IDBI Bank.

2. It is common ground that Respondent No.2 is a statutory body constituted under the Industrial Development Bank of India Act

1964. It is styled as Government Company and State within the meaning of Article 12 of the Constitution of India. It is stated that the Respondent No.3 is a Chairman and Director of the Petitioner Company and Respondent Nos.4 to 11 are the erstwhile Directors.

3. The Petitioner is a Company incorporated under the provisions of the Companies Act 1956. It was engaged in the business of operating a scheduled airline known as 'Kingfisher Airlines' until the suspension of its operating permit on 21st October 2012.

4. The Petitioner complains that on account of certain events and which are highlighted in paragraphs 3.1 to to 3.5, a letter of 31st January 2012 was addressed to the Reserve Bank of India by the State Bank of India, the lender's agent and lead bank of the consortium of banks, which includes the Respondent No.2 Bank, which adversely affects the Petitioner. A copy of that letter is at Annexure 'E' to the Petition. The Petitioner states that from 1st April 2012, as a direct result of the events narrated above and

incorporated in further paragraphs of the Petition, the Petitioner was forced to withdraw its international operations and severely curtailed its domestic operations. The financial stress led to the suspension of the permit and thereafter even the revival plans are set out but without reference to the same, it is urged that the Petition proceeds on the footing that a notice dated 20th August 2014 which was received on 27th August 2014 alleges that a purported Appropriate Committee had approved the purported proposal of the Respondent No.2 – Bank to include the names, inter alia, of the Petitioners and the proforma Respondents in the list of willful defaulters as per the guidelines of the Reserve Bank of India. The notice inter alia calls upon the Petitioner and those Respondents to submit their representations and Appeals in writing within a period of 15 days. A copy of the notice is at Annexure 'F'. Even in paragraph 3.12 of the Petition, what the Petitioner alleges is that on a report of Ernst and Young dated 11th August 2014, the Petitioner was sought to be proceeded against and in terms of this show-cause notice. The Petitioner states that a reference is made therein to the Reserve Bank of India's Master Circular. However, the repercussions

following from such a notice and impact of the declaration as a willful defaulter is that the Petitioner would face an economic death and no financial institution would render any assistance to the Petitioner. The Petitioner would therefore have to be dependent only on the outcome of this notice. Before the Petitioner faced such proceedings and in pursuance of such notice, it has insisted that the relevant documents on which reliance is placed in the show cause notice be furnished in advance and given the consequences and impact of the notice so also the legal issues, the Petitioner be given the facility of an Advocate or legal practitioner to defend itself at the hearing which may be held pursuant to such show cause notice.

5. We are not much concerned in this Petition with the larger controversy and which is taken care of by the Division Bench of this Court in the case of very petitioner viz. Kingfisher Airlines Ltd. v/s Union of India and others in Writ Petition No.1684 of 2015 decided on 15th July 2015. We are also mindful of the fact that Respondent No.2 in its affidavit in reply has clarified that it would be ready and willing to furnish all such documents as are referred and

relied upon in the show cause notice. Further, the Respondent No.2 has informed the Court that it is not averse to a representation being given to the Petitioner before it takes any decision in terms of the show cause notice, meaning thereby a facility of brief oral hearing but without any Advocate. The Petitioner was informed on 29th April 2015 itself that a personal hearing would be given to the authorised representative of the Petitioner and its Directors.

6. It is this letter and the statements made therein with which the Petitioner is aggrieved. The Petitioner states that the notice is issued on the basis of the report referred above. The notice was issued because the consortium of banks led by the State Bank of India had extended credit facilities. The State Bank of India as the lead Bank had already issued such a notice. The Respondent No.2 being a part and parcel of the consortium, the Petitioner's fate is virtually sealed. The Petitioner therefore desires to have legal assistance and that issue is still open.

7. Dr Milind Sathe, learned Senior Counsel appearing on

behalf of the Petitioner invited our attention to the Division Bench judgment of this Court and particularly the facts as narrated therein and the legal submissions. He would submit that this Court has not concluded the legal question. It is still open inasmuch as the consequences of issuance of such notice and the determination in terms thereof have been highlighted in the judgment and they are accepted and to that extent the present arguments of the Petitioner are covered by the same. However, Dr Sathe would urge that from paragraphs 20, 23 and 25 of this judgment it is apparent that the issue of legal representation is not concluded.

8. After having heard Dr Sathe at some length and perusing with his assistance the Petition, judgment of Division Bench of this Court, we are of the firm opinion that this Petition is filed with a view to stall the further proceedings and in pursuance of issuance of show cause notice. Prayer clause (a) would denote as to how the Petitioner insisted on appearing before the appropriate Committee constituted by the Respondent No.2 – Bank only through an Advocate. Prayer clause (b) states that all the letters and reports

should be quashed and set aside. The third prayer is that the Bank should not proceed in furtherance of the fresh Circular styled as Master Circular. The Master Circular on willful defaulters was issued by the Reserve Bank of India and published on 9th September 2014, which is challenged in this Petition.

9. We are of the opinion that despite clarifying to the Petitioner that all questions sought to be raised before us can be kept open and for being raised at an appropriate stage but the Petitioner must appear before the Committee under protest and without prejudice to their rights and contentions, its refusal to do so would enable us to deny any equitable relief in our extraordinary jurisdiction under Article 226 of the Constitution of India.

10. The Petition is clearly premature. The hearing in terms of the show cause notice is yet to be held. The Petitioner refused to appear before the Committee through its authorised representative but insisted on appearing only through an Advocate. That aspect of the matter stands concluded against the Petitioner by the Division

Bench judgment of this Court.

11. Surprisingly, the question concession was recorded in that Division Bench judgment and on a brief hearing of one day through the Advocate was not accepted by the State Bank of India, it carried the matter to the Hon'ble Supreme Court of India by filing a Special Leave Petition. On 18th September 2015, that Petition came to be disposed off with following order :-

“We are not inclined to entertain these special leave petitions, as we find that in the peculiar facts of this case the High Court while declaring the law relating to one's right to be represented before the Redressal Committee through a lawyer in favour of the petitioners, however permitted the respondents herein to be represented by a lawyer making it clear that the hearing before the Redressal Committee will be concluded in one day.

In the light of the above observations of the High Court, the special leave petitions stand dismissed.

It is needless to state that this cannot be treated as a precedent.”

Perusal of this order would indicate that the Hon'ble Supreme Court of India has not only refused to interfere with the

judgment and order of this Court but clarified that the facility to be represented by a lawyer before the Redressal Committee is not to be treated as a precedent, meaning thereby such concession nor any relaxation, does not create a vested right which could be claimed repeatedly. The legal position is set out in the judgment and order of this Court. Judicial discipline requires that we should follow the judgment of the Coordinate Bench of this Court, particularly when there is no reason not to follow it. There is no statutory prescription or provision or any binding precedent which is ignored. The judgment is not per in-curium. Once we agree with the conclusion therein and there is no right of legal representation in the Petitioner, then, we need not go against the settled principle.

12. If the Petitioner appears before the Appropriate Committee and without prejudice to its contentions, that it is denied a reasonable opportunity of being heard, that all the materials that are relied upon are not furnished or that the Master Circular will not enable the Authority to declare that the Petitioner is a willful defaulter and by clarifying that each one of them are kept open, we

dispose off this Petition.

13. We equally clarify that disposal of this Petition does not mean that this Court has expressed any opinion on the merits of the allegations in the show cause notice nor this Court has concluded in any manner that the Petitioner is a willful defaulter. Petition is disposed off. No costs.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)