IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.03.2016

Pronounced on : 14-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 3815 of 2016
and
W.M.P. No. 3153 of 2016

Alpha Helical Pumps Pvt Ltd
a company registered under the provisions
of the Companies Act, 1956
represented by its Chairman
Mr. Mohammed Saheer Sirajuddein
having office at No.2/131, Venkitapuram Road
Venkitapuram, Chinnaimpalayam
Coimbatore - 641 062 .. Petitioner

Versus

1. The Federal Bank Limited
   Coimbatore Branch
   Mulund Towers, Variety Hall
   Coimbatore - 641 001

2. Reserve Bank of India
   Fort Glacis
   No.16, Rajaji Salai
   Chennai - 600 001

3. P.V. Kutty
4. Sirajuddien Mohamed Subair .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing Federal Bank Limited, Coimbatore Branch, the first respondent to forthwith resume operational status of the petitioner's Account ODCC No.10925500007063.

For Petitioner : Mr. Vineet Subramani

For Respondents : Mr. S. Sathyanarayanan for R1
Mr. T.K. Bhaskar for R3
No appearance for R2 and R4

ORDER

The petitioner has come forward with this writ petition seeking for issuance of a Mandamus to direct the first respondent to forthwith permit the petitioner to operate the bank account bearing ODCC No.10925500007063 with them.

2. The brief facts which are necessary for disposal of this writ petition are as follows:-

(i) The petitioner is a small scale industry which is having it's factory at Coimbatore where 40 employees are working. The petitioner company is engaged in manufacture of helical pumpset which are meant to handle hazardous materials such as industrial wastes, abrasives, acids etc., During the course of such business, the petitioner opened a bank account with the first respondent and it was earlier operated by the chairman of the petitioner company, who is the deponent of the affidavit filed in support of the writ petition, along with the third respondent. While so, during 2014, due to an internal dispute, the third respondent, who was the Managing Director of the Petitioner company, attempted to take over the management of the company and also interfered with the operating of the bank account. In such circumstances, a resolution was passed by the petitioner company authorising the Chairman of the petitioner company alone to operate the bank account. The copy of the resolution was also sent to the first respondent bank. Subsequently, in the Board meeting of the company held on 08.08.2015, the third respondent was removed from the post of Managing Director of the company. Even this was also intimated to the first respondent bank on the same day viz., 08.08.2015. In connection with the acts of forgery and misappropriation of funds, the petitioner also filed a Private complaint based on which a case in Crime No. 71 of 2015 was registered on 18.11.2015 against the third respondent. Aggrieved by the above actions initiated by the petitioner company, the third respondent moved the Company Law Board by filing CP No. 40 of 2015 praying to prevent the Chairman of the petitioner company from operating the bank account. The Company Law Board, finding no merits in the petition of the third respondent, refused to grant any interim relief and the company petition is pending.

(ii) According to the petitioner, having failed in all his attempts, the third respondent issued a notice dated 05.01.2016 to the first respondent bank through his advocate in which the third respondent claimed himself to be the Managing Director of the petitioner company. As mentioned above, even as early as on 08.08.2015, the third respondent was removed from the post of Managing Director and it was also intimated to the first respondent bank. On the basis of such notice dated 05.01.2016, the first respondent has sent a letter dated

08.01.2016 intimating the petitioner that the bank account maintained with their bank has been freezed. In the above stated circumstances, the petitioner company has come up with this writ petition.

3. The learned counsel for the petitioner vehemently contend that the notice dated 05.01.2016 sent by the third respondent to the first respondent contains false and frivolous allegations. According to the learned counsel for the petitioner, in the said notice, the third respondent not only claimed to be the Managing Director of the petitioner company but falsely stated that a case in Crime No. 817 of 2015 has been registered against the Chairman of the petitioner comapny. The fact remains that the said case has been registered only against the General Manager of the petitioner company. The learned counsel for the petitioner mainly contend that the bank account maintained by the petitioner company has been freezed mainly on the ground that the third respondent had sent the notice dated 05.01.2016 through his lawyer. However, before freezing the bank account, the first respondent has not furnished the copy of the notice dated 05.01.2016 sent on behalf of the third respondent to the petitioner or taken note of the resolution passed by the Board of Directors of the petitioner Company on 08.08.2015 removing the third respondent from the post of Managing Director. Therefore, according to the learned counsel for the petitioner, the first respondent has clearly violated the principles of natural justice before freezing the bank account maintained by the petitioner company, by reason of which the entire business activity of the petitioner company has come to a standstill. The learned counsel for the petitioner also submits that the first respondent has exceeded it's jurisdiction and freezed the bank account maintained by the petitioner company without following any of the procedures governing the freezing of the bank account. In this context, the learned counsel for the petitioner brought to the notice of this Court a reply given by the Public Information Officer, Reserve Bank of India wherein certain norms and procedures relating to freezing of the bank account have been mentioned. As per the information, in case of non-compliance of KYC (know your customer) requirements by the customers, despite repeated reminders by the banks or financial institutions, then the bank shall resort to partial freezing of the account. Such a procedure can be resorted to after giving notice of three months initially to the customers to comply with KYC requirements and by giving a reminder and extending the time by another three months. Therefore, according to the counsel for the petitioner, only in case of non-compliance of KYC requirement, the bank account can be freezed. In this case, before freezing of the bank account on the basis of the notice given by the third respondent through his lawyer, the first respondent has not even put the petitioner on notice regarding the notice received from

the third respondent, but only intimated the petitioner after freezing of the bank account. Such an act of freezing of the bank account of the petitioner by the first respondent is without authority of law. The learned counsel for the petitioner therefore prayed this Court for issuing appropriate direction to the first respondent to de-freeze the bank account.

4. The leanred counsel for the first respondent relied on the decision of a Division Bench of this Court in the case of (ICICI Bank Limited, Corporate Office, Chennai Unit vs. Lakshminarayanan) CDJ 2008 MHC 005 (Writ Appeal No.2245 of 2002 dated 04.01.2008) wherein the Division Bench of this Court set aside the order passed by a single Judge of this Court in issuing a direction to the Bank to pay pension to the respondent therein. The Division Bench categorically held that the appellant being a private company carrying on private banking business and not carrying on any statutory or public duty, the writ petition under Article 226 of The Constitution is not maintainable. It was further held that merely because the Bank has made provisions to grant pension on VRS under the relevant Pension scheme, the same cannot be a ground to hold that the Bank is performing a public duty or public function. By relying on the above decision, the learned counsel for the first respondent sought for dismissal of the writ petition.

5. The learned standing counsel appearing for the first respondent also opposed the writ petition on the ground that the first respondent is not performing any public duty and therefore, the first respondent will not come within the definition of Article 12 of The Constitution of India to maintain this writ petition. In this context, the learned counsel for the first respondent placed heavy reliance on the decision of the Honourable Supreme Court in (Federal Bank Limited vs. Sagar Thomas and others) AIR 2003 SC 4325 = (2013) 10 Supreme Court Cases 733 wherein it was held that the appellant bank is a private body and it will not fall within the definition of State or local or other authorities under the control of the Government. in that event, a writ petition would not be maintainable under Article of The Constitution of India.

6. As regards the averments raised in the writ petition relating to non-compliance of statutory provisions before freezing the bank account, the learned standing counsel appearing for the first respondent invited the attention of this Court to terms and conditions incorporated in the Customer Manual for Deposit Accounts released by State Bank of India to contend that as per clause 2.2, the bank reserves its right to freeze or suspend the account if it receives a letter from any of the account holders objecting to further transaction or it is made aware of a dispute. Therefore, the learned counsel for the first respondent justified the freezing of the bank account in

terms of the above Regulations and prayed for dismissal of the writ petition.

7. The learned counsel for the third respondent also relied on the the very same decision of the Honourable Supreme Court in the case of (Federal Bank Limited vs. Sagar Thomas and others) AIR 2003 SC 4325 = (2013) 10 Supreme Court Cases 733, which was also relied on by the counsel for the first respondent, wherein it has been held 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 bank 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. When such conditions are not fulfilled in respect of a private company carrying on a commercial activity of banking, merely regulatory provisions have been made to ensure such activity carried on private bodies work within a discipline, it will not be a ground to maintain a writ petition under Article 226 of The Constitution of India against such private banks. As regards the merits of the case, the learned counsel for the third respondent submitted that the dispute between the parties is pending between the Company Law Board and the petitioner has to work out his remedy only before the Company Law Board. The writ petition is therefore not maintainable before this Court. Therefore, the learned counsel for the third respondent would strenuously contend that the writ petition filed by the petitioner as against the first respondent is not maintainable and he prayed for dismissal of the writ petition.

8. The learned counsel appearing for the third respondent would submit that the writ petition as against the first respondent bank, which is a private bank, is not maintainable invoking Article 226 of the Constitution of India.

9. I heard the learned counsel for the petitioner, the learned standing counsel for the first respondent as well as the learned counsel for the third respondent. I had carefully considered the rival submissions made and perused the entire materials on record.

10. Before dealing with the various averments raised on behalf of the petitioner, this Court is of the view that it is just and necessary to examine as to whether the writ petition is maintainable as against the first respondent bank. It is pertinent to mention that the petitioner has prayed for issuance of a Mandamus as against the first respondent only and no relief is sought as against the respondents 2 to 4 and they were arrayed as formal parties to this writ petition.

11. The first respondent is a private bank incorporated under the Indian Companies Act, 1956. It's activities are regulated by the provisions of Banking Regulation Act, 1949. The entire shareholding of the company is held by private individuals and entities. The finances of the banks are raised by its own resources and efforts and the profits of the bank are utilised by the bank themselves for its own purposes. It does not perform any sovereign function nor does it exercise any authority over a third person. The nature of the activity of the bank is that of a commercial undertaking which receives deposits from the individuals and advances loans to borrowers. The Bank is managed by private individuals as Board of Directors and it is the Board of Directors who supervisors and monitors the affairs of the first respondent bank. While so, the first respondent being a private entity is not amenable to the writ jurisdiction of this Court under Article 226 of The Constitution of India. It is well settled that a body or organisation, which is instrumentality or agency of the State or a company owned and controlled by the State can only come within the purview of the definition "State" given under Article 12 of the Constitution of India. While so, the first respondent, being a private financial institution will not come within the purview of Article 12 of the Constitution of India.

12. In the decisions rendered by the Honourable Supreme Court mentinoed supra, which were relied on by the learned counsel for the first respondent, relating to the cases filed by the first respondent bank itself, it was categorically held that the first respondent bank is not amenable to writ jurisdiction under Article 226 of The Constitution of India. Therefore, I hold that the writ petition filed by the petitioner, as against the first respondent bank, is not maintainable.

13. In view of the findings rendered above regarding maintainability of the writ petition, this Court is not inclined to go into the veracity or correctness of the several other contentions raised on behalf of the petitioner relating to the dispute with the third respondent or the authority or power of the first respondent to freeze the bank account.

14. In the result, the writ petition filed by the petitioner is dismissed as not maintainable as against the first respondent bank. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Federal Bank Limited
   Coimbatore Branch
   Mulund Towers, Variety Hall
   Coimbatore - 641 001

2. Reserve Bank of India
   Fort Glacis
   No.16, Rajaji Salai
   Chennai - 600 001

+1 cc to Mr.Vineet Subramani Advocate sr.17244
+1 cc to Mr.Sathiyanarayanan Advocate sr.16859
+1 cc to Mr.K.Bhaskar Advocate sr.16108

WP No. 3815 of 2016

aa28/03/2016