



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal No.728 of 2015

R.Anbazhagan

.... Appellant/Petitioner

vs.

1)The Central Bank of India,
Through its Regional Manager,
Regional Office,
Raja Muthiah Mandaram (1st Floor)
Dr.Ambedkar Road, Madurai-625 020.

2)The Central Bank of India,
Represented by its Assistant General Manager,
Regional Office,
Raja Muthiah Mandaram (1st Floor)
Dr.Ambedkar Road, Madurai-625 020.

.... Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P(MD)No.125 of 2015 dated 09.03.2015.

Prayer in WP(MD)No.125/2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned proceedings of the 2nd respondent dated 16.03.2012 in RO/RECV(LEGAL)/2011-12/595 and the impugned proceedings of the 1st respondent in RO/RECV/LEGAL/2014-15/313/ dated 04.09.2014 and quash the same and consequently direct the respondent to include the name of the petitioner in the panel of valuers and pass such further or other orders.

For Appellant : Mr.C.Arul Vadivel

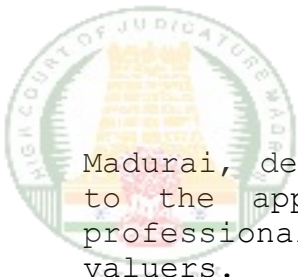
For 1st Respondent : Mr.R.Pandivel

For 2nd Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by Mr.Justice S.MANIKUMAR)

Challenge in this appeal is to an order, made in W.P.(MD)No.125 of 2015, dated 09.03.2015, by which, the Writ Court, while setting aside the order, dated 04.09.2014, of the Regional Manager, Central Bank of India, Madurai, 1st respondent herein, has declined to interfere with the order, dated 16.03.2012 of the Assistant General Manager, Central Bank of India, Madurai, 2nd respondent herein. Consequently, the petitioner has sought for a direction to the respondents to include his name in the panel of valuers.



Madurai, desired not to provide any valuation reports of its customers, to the appellant. Vide proceedings, dated 04.09.2014, for lack of professionalism, the appellant has been blacklisted from Bank's panel of valuers.

WEB COPY

3. Before the Writ Court, contentions have been raised by the appellant that he was only a valuer and he is not excepted to ascertain the ownership of the property. He was not given any details, regarding ownership. The Bank has not given any valid reason for deletion of his name. He has discharged his duties from 07.08.2004, as an empanelled valuer, ascertaining the value of the building, physical features and market value of the property, but not the title or ownership of the said building. Contentions have been raised that principles of natural justice was not followed. Though he had given a detailed representation on 16.09.2014, to include his name in the list of panel valuers, the same was not considered, nor any reply was given.

4. The appellant has further contended that the very allegation that he has not ascertained the true ownership of the property, is not tenable and as per the terms and conditions, he has to only value the property, belonging to the loanee, referred to, by the Bank. To cover up the proceedings, dated 16.03.2012, removing the appellant from the panel of valuers, the bank has blacklisted him, casting stigma on his professional conduct.

5. Opposing the prayer to set aside the proceedings, dated 16.03.2012 and 04.09.2014, before the writ Court, the respondents-Bank has contended that inclusion or exclusion of a person, in the panel of valuers, is the exclusive domain of the Bank and that the Court would not interfere, with the same. Blacklisting has been defended.

6. Upon hearing both parties and considering the facts and circumstances of the case, the Writ Court, at Paragraph 5, in W.P.(MD) No.125 of 2015, dated 09.03.2015, ordered as hereunder:

''5.The only grievance of the petitioner is that in the show cause notice for blacklisting, it is stated that he has not considered the title to the property. The valuer has to ascertain the title as per the legal opinion. In this case, according to the petitioner, he was not given the legal opinion by the Bank. In any view of the matter, the reason for blacklisting the petitioner cannot be correct as it is not the case of the Bank that it is undervalued or overvalued nor it is the case of the Bank that the petitioner has given the legal opinion or violated the legal opinion. Therefore, it is still open to the Bank to issue fresh show cause notice not on this ground but the bank can issue show cause notice on the reasons best known to them regarding seeking blacklisting of the petitioner. As blacklisting can be done only after giving sufficient opportunity, the respondent shall afford sufficient opportunity to the petitioner and thereafter, pass appropriate orders in accordance with law. Therefore, this Writ Petition is dismissed insofar as the first notice is concerned viz., deletion of the petitioner as it is their prerogative as per the judgment of this Court. Insofar as the notice regarding



blacklisting the petitioner is concerned, the show cause notice is set aside with liberty to the Bank to issue a fresh show cause notice if they want to blacklist the petitioner. Since the respondents have also stated in the notice that it has paved way for defrauding it is open for the bank to issue fresh notice and initiate necessary proceedings in accordance with law for blacklisting the petitioner."

7. Being aggrieved by the portion of the order made in W.P.(MD) No.125 of 2015, dated 09.03.2015, the present appeal has been filed.

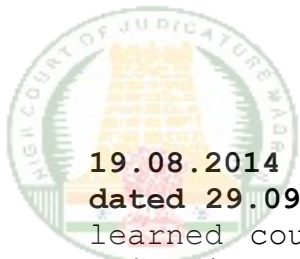
8. Seeking to set aside the order, dated 16.03.2012 of the Assistant General Manager, Central Bank of India, Madurai, 2nd respondent herein, Mr.C.Arul Vadivel, learned counsel for the appellant submitted that since the abovesaid order is a non-speaking order, passed without following the principles of natural justice, the same has to be set aside. He further added that when the order, dated 04.09.2014 of the Regional Manager, Central Bank of India, Madurai, 1st respondent herein, blacklisting the appellant, has been set aside by the Writ Court, the earlier order, dated 16.03.2012, deleting the name of the appellant, from the list of panel valuers also, ought to have been set aside, applying the very same yardstick, as done, while setting aside the subsequent order, dated 04.09.2014, as both the orders, cast stigma on the appellant.

9. Per contra, Mr.R.Pandivel, learned counsel for the 1st respondent submitted that the order, dated 07.08.2004, empanelling the appellant, as one of the valuers, is not an order of appointment, governed by any rules. He further reiterated that empanelment of panel valuers, is purely the discretion of the Bank and even in the said letter, dated 07.08.2004, it was made clear that the Bank is at liberty to remove name of the appellant from the panel, even during the period of one year, without assigning any reasons. He also submitted that the order, dated 16.03.2012, removing the appellant from the panel of valuers, does not cast any stigma, as it was not communicated to other Banks. For the abovesaid reasons, he prayed to sustain the order.

Heard the learned counsel for the parties and perused the materials available on record.

10. As engagement of a panel valuer, is purely contractual, with liberty to the Bank to remove the name of the panelist, during the contractual period, without assigning any reasons, this Court posed a question, as to how, a Writ Petition is maintainable, against the orders, impugned in the writ petition. Pointing out the terms and conditions of the order, empanelling the appellant, the Court also posed a question, as to whether, it would attract public duty, amenable to Article 226 of the Constitution of India.

11. Placing reliance on the decisions in **M/s.Erusian Equipment and Chemicals Ltd., v. State of West Bengal** reported in AIR 1975 SC 266; **Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R.Rudani** reported in 1989 (2) SCC 691, **Kumari Shrilekha Vidyarthi v. State of U.P.**, reported in 1991 (1) SCC 212, **Zonal Manager, Central Bank of India v. Devi Ispat Ltd.**, reported in 2010 (11) SCC 186, **V.Subramanian v. Union of India [W.P.(MD) No.5405 of 2011, etc., dated 02.11.2011]**, **W.P.No.22699 of 2014, dated**



19.08.2014 [Kishore Dutta v. Ratan Das] and W.P.(C)No.10647 of 2014, dated 29.09.2014 [M/s.Mohanty and Associates v. Office on Special Duty], learned counsel for the appellant submitted that the Writ Petition is maintainable, when the order, blacklisting a person, for lack of professionalism, is made, violating the principles of natural justice.

12. Before advertng to the factual aspects, this Court deems it fit to consider some of the decisions, relied on, by the learned counsel for the appellant.

13. **M/s.Erusian Equipment and Chemicals Ltd., 's** case (cited supra), is a case of public contract, where blacklisting has been done. There was a violation of principles of natural justice. However, it is worthwhile to consider, what the Hon'ble Apex Court has stated about, "Blacklisting" and its effect. Paragraphs 15 and 20 of the said judgment is extracted hereunder:

"15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

.....

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

14. In **Andi Mukta's** case (cited supra), the appellant was a Science College run by a Public Trust, affiliated to Gujarat University. The dispute between the University Teachers Association and the University about implementation of pay scales was referred to the Chancellor of the University for decision. Instead of implementing the award of the Chancellor, as accepted by the University and the State Government, the Trust served notice of termination on 11 teachers on the ground that they were surplus and applied to the University for permission to remove them. Since the Vice-Chancellor did not grant permission, the Trust took a decision to close down the college. Accordingly, affiliation of the college was surrendered and that the college was closed without approval of the University. The services of all academic staff were terminated and terminal benefits were not paid. A Writ petition was filed claiming terminal benefits and arrears of salary and that the writ petition was allowed. Hence, SLP was filed by the appellant-Trust. While considering the issue as to whether a Writ Petition would lie against the Management and College, a private body, the Hon'ble Supreme Court, at paragraphs 20 and 22, held as follows:

"The words "any person or authority" used in Article 226 are therefore not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What



is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.

Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by charter, common law, custom or even contract. Judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226."

While considering the objection regarding maintainability of the Writ Petition filed against the appellant, the Hon'ble Supreme Court, at Paragraphs 14 and 15, held as follows:

"There is no plea for specific performance of contractual service. The teachers are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and the arrears of salary payable to them. If the rights are purely of a private character, no mandamus can issue. If the management of the college is purely a private body, with no public duty, mandamus will not lie. These are two exceptions to mandamus. Once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. To the Trust managing the affiliated college, public money is given as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Governmental Institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such Institution is not devoid of any public character. So are the service conditions of the academic staff. Their service conditions are not purely of a private character and such service conditions has super-added protection by university decisions creating a legal right duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused.

15. In **Kumari Shrilekha Vidyarthi's** case (cited supra), Government of Uttar Pradesh, by general order, terminated the <https://hcoe.in/home/notice> all the Government Counsel (Civil, Criminal, Revenue) in all the districts of the State and directed preparation of fresh panels. Validity of the said action was challenged. The Hon'ble Supreme Court



framed two questions for consideration, viz., (i) Is the impugned circular is amenable to judicial review?; and (ii) If so, is it liable to be quashed as violative of Article 14 of the Constitution of India, being arbitrary? After considering various decisions and taking note of the fact that the functions of the Public Prosecutor relate to public purpose entrusting him with the responsibility of acting only in the interest of administration of justice and that the office of a Government Pleader is a public office, the Hon'ble Supreme Court set aside the Government Order. However, case of the appellant herein, a valuer, engaged by the Bank, cannot be compared to that of a holder of public office.

16. In **Devi Ispat Ltd., 's** case (cited supra), the Hon'ble Supreme Court observed that the Central Bank of India, being a public sector, discharges public functions and it is a State, amenable to Article 226 of the Constitution of India. In the said case, despite clearance of the amount due, the Bank has failed to return the title deeds and hence, the High Court at Calcutta issued a Writ of Mandamus. Though the parties therein were bound by a contract, holding that if the instrumentality of the State acts contrary to public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, a writ petition would be maintainable and in such circumstances, the Hon'ble Supreme Court is not inclined to accept the objection of the Bank, on the maintainability of the Writ Petition.

17. In **V. Subramanian's** case (cited supra), while referring to the judgment of the Supreme Court in **Indian Bank v. Godhara Nagrik Co-operative Credit Society Ltd.**, reported in **2008 (12) SCC 541**, at Paragraph 40, this Court held that inclusion or exclusion of any name in the panel of valuers is a discretionary act of the banks and only when the discretion had been exercised improperly, this Court can go into the said issue, under Article 226. It is worthwhile to extract Paragraphs 37 and 38 of the judgment,

"37. Though nationalised banks are amenable to writ jurisdiction, it does not mean every action of such banks can be called in question for a judicial review by this court. In matters of contract, unless the orders are wholly arbitrary or unreasonable, the court will decline to exercise its jurisdiction. In this context it is necessary to refer to a judgment of the Supreme Court in **Indian Bank v. Godhara Nagrik Cooperative Credit Society Ltd.**, reported in **(2008) 12 SCC 541** and in paragraph 16, it was observed as follows:

"16. It is one thing to say that the public sector banks having regard to the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 should discharge their functions keeping in mind the larger public interest but ordinarily in the matter of enforcement of contract, they are to be governed by the terms thereof, which would not be amenable to writ jurisdiction of the High Court unless the actions of the banks are found to be wholly arbitrary and unreasonable."

38. In the very same case, when a complaint was made by the cooperative society about the unfair action of



nationalised banks, the Supreme Court took note of the role played by the cooperative banks themselves in the matter of fraud and as the matter was pending before the criminal court, it was opined that the High Court should not have gone into such issues. In paragraph 39 of the order, it was observed as follows:

"39. The question as to whether fraud has been committed by the officers of the bank is pending consideration before a competent criminal court. There are other various disputed questions which are required to be gone into in the said proceeding. The role played by some of the respondent-writ petitioners is also in issue. Such seriously disputed questions of fact, in our opinion, could not have been gone into by the writ court."

Hence the attempt by the petitioner to challenge the delisting by the respondent bank from the panel of valuers cannot be entertained. Hence W.P.(MD)No.5543 of 2011 will stand dismissed."

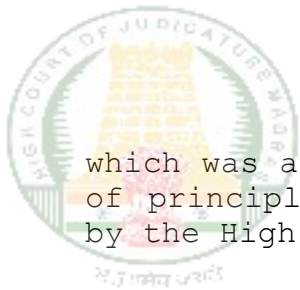
18. In **M/s. Mohanty's** case (cited supra), High Court of Orissa at Cuttack, has entertained a Writ Petition, challenging blacklisting of a firm. One of the grounds raised therein, was violation of the principles of natural justice. While considering, as to whether, blacklisting has the effect on the person's reputation, High Court of Orissa has considered a passage written by a jurist, Roscoe Pound and the same is reproduced hereunder:

"On the one hand there is the claim of the individual to be secured in his dignity and honour as part of his personality in a world in which one must live in society among his fellow men. On the other hand there is the claim to be secured in his reputation as a part of his substance, in that in a world in which credit plays so large a part the confidence and esteem of one's fellow-men may be a valuable asset." (See : "Interest of Personality" - 28 Harvard Law Review, pp. 445, 447).

High Court of Orissa at Cuttack has also considered a decision of the Apex Court in **M/s. Erusian Equipment and Chemicals Ltd., 's** case (cited supra), wherein, the apex Court, at para 20, held as follows:

"20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

Taking note of the judgments of the Hon'ble Supreme Court in **Joseph Vilangandan v. The Executive Engineer (P.W.D.), Ernakulam and others**, reported in **AIR 1978 SC 930** and **Raghunath Thakur v. State of Bihar and others** reported in **AIR 1989 SC 620** and finding force in the contention of the petitioners therein that an order, blacklisting them, casts stigma on the reputation, both in the interest of personality and in the interest of substance, as it would attract civil consequences and also finding that there was a violation of principles of natural justice, the High Court of Orissa, set aside the order, blacklisting a firm,



which was a registered valuer. Thus, it could be seen that for violation of principles of natural justice, a writ petition has been entertained by the High Court of Orissa.

19. In **Kishore Dutta's** case (cited supra), the Calcutta High Court considered a case of blacklisting the petitioners therein, for an alleged dereliction of duty. Here also, the petitioners therein were removed from the panel. While setting aside the said order, the Calcutta High Court ordered that the Bank ought to have taken a considered decision, before taking such a drastic step against the petitioners therein, as it would affect their right to life and livelihood, guaranteed under Article 21 of the Constitution of India.

20. Reverting back to the case on hand, it is seen that when the appellant was empanelled as one of the valuers, for the purpose of valuation of the properties to be sold, under the provisions of SARFAESI Act, 2002, it has been made clear that inclusion in the panel is subject to certain conditions and removal would be done, without assigning any reasons. Proceedings, dated 16.03.2012, of the Assistant General Manager, Central Bank of India, Regional Office, Madurai, 2nd respondent, removing the appellant from the panel, is extracted hereunder:

"As your name is deleted from Bank's existing panel of valuers, we desire you not to provide any Valuation Report to any of Bank's customers, until you further hear from us."

21. The abovesaid proceedings is simpliciter and it does not cast any stigma, as contended by the appellant. More so, the said proceedings is purely an internal correspondence and not communicated to others. As rightly contended by the respondents, when it is the exclusive domain of the Bank to include or remove any person from the panel of valuers, no show cause notice need be given, while de-panelling him, moreso when the order does not cast any stigma. The subsequent proceedings, dated 04.09.2014 of the Regional Manager of the Central Bank of India, is extracted hereunder:

"That while finalizing and submitting above valuation reports in borrowal account of Mr.M.Mohan of Ellis Nagar Branch, you have not ascertained the true ownership of the properties and valuation reports were submitted and this has paved way of facilitated defrauding Bank's funds. In this connection, we would like to know within 15 days of receipt of this letter your comments as to why this should not be taken as lack of professionalism and you be blacklisted from Bank's panel of valuers."

22. Reading of the order, dated 04.09.2014, shows that the Bank had found certain deficiencies in the functioning of the appellant-valuer and for lack of professionalism, the appellant has been blacklisted from the panel of valuers. During the course of hearing, learned counsel for the respondents-Bank submitted that an order, blacklisting the appellant, valuer, would be communicated. Communication of the proceedings of blacklisting, on the finding of lack of professionalism and deficiencies in the work, without calling upon the valuer, would certainly affect the reputation of the valuer. Therefore, at this juncture, the words of immortal jurist, Roscoe Pound, on whose 'Jurisprudence' will surpass all



ages said of reputation, extracted supra, assume importance. Similarly, the passage, extracted from the judgment of the Hon'ble Supreme Court on blacklisting and its effect on one's reputation in the profession and as to how, it would attract civil consequences, also requires to be taken note of.

23. Though this Court on its own raised a question of maintainability of the writ petition, challenging de-panelling and blacklisting, taking note of the abovesaid decisions, considered in the forgoing paragraphs, this Court is not inclined to reverse the impugned order made in W.P(MD)No.125 of 2015 dated 09.03.2015. This Court is not inclined to accept the prayer to set aside the proceedings, dated 16.04.2012, de-panelling the appellant from the list of valuers. Insofar as blacklisting is concerned, the order made in W.P(MD)No.125 of 2015 dated 09.03.2015, is sustained.

24. In the result, the Writ Appeal is dismissed. No costs.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1)The Regional Manager,
Central Bank of India,
Regional Office,
Raja Muthiah Mandaram (1st Floor)
Dr.Ambedkar Road, Madurai-625 020.

2)The Assistant General Manager,
Central Bank of India,
Regional Office,
Raja Muthiah Mandaram (1st Floor)
Dr.Ambedkar Road, Madurai-625 020.

+1cc to M/S.C.Arul Vadivel @ Sekar, Advocate in SR.No.25267

+1cc to M/S.R.Pandivel, Advocate in SR.No.25221

W.A (MD) No.728 of 2015
29.04.2016

NBI/skm

PA/GSV-PM/10.06.2016/9P/5C