

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L.) NO. 508 OF 2017

1. M/s. Ruchi Soya Industries Limited & 5 Ors. ... Petitioners.

V/s.

1. IDFC Bank Limited & 3 Ors. ... Respondents.

Mr. Nitin Thakkar, Senior Counsel a/w. Mr. Gautam Ankhad,
Mr. C. D. Mehta, Mr. Lalan Gupta, Mr. Parshva Doshi i/by
Dhruve Liladhar & Co., for the Petitioners.

Mr. Prateek Seksaria a/w. Mr. Ameya Gokhale, Mr. Akash
Menon, Salonee Kulkarni, Mr. Umang Singh, Mr. Sapan Gupta
i/by Ameya Gokhale for Respondent No.1.

**CORAM : V. M. KANADE AND
P.R. BORA, JJ.**

DATE : 22nd FEBRUARY, 2017

P.C. :

1 Heard the learned senior counsel appearing on
behalf of the Petitioners and the learned counsel appearing on
behalf of Respondent No.1.

2 Petitioner No. 1 is a public company, incorporated
under the provisions of the Companies Act, 1956. The
Petitioner is challenging the order dated 4th February, 2017,

which, according to the Petitioners, was in fact passed on 22nd November, 2016, declaring the Petitioners as willful defaulters.

3 A preliminary objection is raised by the learned counsel appearing on behalf of Respondent No.1 that the present petition, as filed under Article 226 of the Constitution of India, is not maintainable inasmuch as Respondent No.1, being a private person/company, is not amenable to writ jurisdiction. Since this preliminary objection has been raised by the Respondents, we have decided to hear and decide this preliminary objection first. Therefore, both the parties are heard at length on this issue.

4 The Reserve Bank of India issued a notice, usually known as “Master Circular” on Willful Defaulters, on 1st July, 2015. By the said circular various instructions and guidelines were issued from time to time which were consolidating all matters relating to the willful defaulters. By virtue of the said circular a mechanism has been evolved and guidelines have been laid down, some of which are mandatory in nature, which have to be followed by the bank before declaring a borrower as a “willful defaulter”. The procedure which has to be followed before declaring a person as a “willful defaulter” has been enumerated under clause (3) of the said circular. Said clause clearly envisages that this has to be done in two steps. First step is where the bank examines the material and

some of the high rank officers of the bank, who are mentioned in the said circular, have to assess the material which is placed before them and to objectively arrive at a conclusion that the borrower, prima facie, appears to be the willful defaulter. After this decision is taken by the said Committee, a show cause notice is issued to the borrower and he is asked to show cause why he should not be declared as a “willful defaulter”.

5 In the present case, the Petitioners have approached this court earlier by filing a petition vide writ petition no. 2173 of 2016. This court had accordingly given directions to the bank to give relevant documents to the petitioners and, after giving hearing to the petitioners, to decide the question as to whether the petitioners should be declared as willful defaulters or not. A direction was also given by this court that even though the bank comes to the conclusion that the petitioners are willful defaulters, it should not communicate it to any other third party and that the said order shall not be implemented for a period of two weeks.

6 It is the case of the Petitioners that Respondent No. 1 had, in fact, passed the order on 18th November, 2016 in breach of the directions given by this court and in order to get over this lacuna, the impugned order is shown to have been passed on 04th February, 2017 by the Respondent No.2.

7 Shri Thakkar, learned senior counsel appearing on behalf of the Petitioners submitted that Respondent No.1 Bank was the instrumentality of the State Government and therefore, it is the “State” within the meaning of Article 12 of the Constitution of India. He further submitted that the President of India holds 16% shares of the holding company of Respondent No.1 Bank. The government had nominated a person to be a nominee/Director of the bank. He further submitted that, therefore, the Central Government has control over the said bank. Consequently, he submitted that the directions given by the Reserve Bank of India were binding on all the banks including Respondent No.1 bank and, as such, therefore, the said bank was under the public and statutory obligation to follow the directions given by the Reserve Bank of India in the said Master Circular. He, therefore, submitted that they were under an obligation to perform the public duties and therefore, writ of mandamus should be issued against the bank. In support of the said submission, learned senior counsel Shri Thakkar relied on the judgments of the Apex Court in the cases of **Ajay Hasia vs. Khalid Mujib Sehravardi, (1981) 1 SCC 722**, and **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology, (2002) 5 SCC 111**, and also tried to distinguish the judgment of the Apex court in **Federal Bank Ltd., vs. Sagar Thomas & Another, (2003) 10 Supreme Court Cases 733**, and also tried to distinguish the judgment of the Division Bench of the Gujarat High Court in the case of

Ionic Metalliks & Ors. vs. Union of India & Ors., 2014 SCC OnLine Guj. 10066 : (2015) 2 GLH 156, wherein the Division Bench of the Gujarat High Court had held that the writ petition could not be filed against a private bank.

8 On the other hand, learned counsel Shri Seksaria appearing on behalf of Respondent No.1 relied upon the judgment of the Apex Court in the case of **Federal Bank Ltd.** (cited supra) and invited our attention to various paragraphs of the said judgment and on the basis of the observations so made, the learned counsel submitted that Respondent No. 1 bank is not amenable to the writ jurisdiction of this court.

9 In our view the question as to whether “a private party” is amenable to the writ jurisdiction of this court or not, is no longer *res-integra*. The Apex Court in the latest judgment in the case of **Federal Bank Ltd.,** (supra) has laid down the parameters which decide whether a writ of mandamus can be issued in such a situation to a private person. Initially, in the case of **Praga Tools Corporation vs. C. V. Imanuel & Ors., AIR 1969 Supreme Court 1306**, the Apex Court held that though the government had some stake in the shareholdings of the said company, the said company being a private company and was conducting the business which was managed by the Committee/Board of Directors of the said Company, it was not amenable to the writ jurisdiction

of the High Court. Later on in **Ajay Hasia's case**, supra, the Apex Court has laid down various parameters which are to be taken into consideration before coming to a conclusion whether a private party is amenable to the writ jurisdiction or not. **Ajay Hasia's case** In para 9 of laid down six tests for the purpose of deciding the issue - whether the Respondent No. 1 is a State. These tests are as under :

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government.

10 Thereafter, the Apex Court in the case of **Pradeep Kumar Biswas**, cited supra, has followed the decision in the case of **Ajay Hasia** where the observations made in para 40 are as under :

“40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 112. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively

dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

11 There are other decisions also given by the Supreme Court on the said issue. However, we would like to refer the judgment in the case of **Federal Bank**, the ratio of which is directly applicable to the facts of the present case. In the said case, the services of a branch manager were terminated after he was found guilty of the charges which were levelled against him and a punishment of dismissal was awarded to the said branch manager. The single Judge of the High Court held that the Appellant-Federal Bank Ltd., was performing a public duty and, therefore, it comes under the definition of “other authority” within the meaning of Article 12 of the Constitution of India and held that the writ petition is maintainable. The Apex Court after taking into consideration the earlier judgments of the Apex Court in the cases of **Ajay Hasia** and **Pradeep Kumar Biswas** has observed in para 27 as under :

“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 Air (Prevention and Control of Pollution) Act, 1981 or 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 of those provisions. For instance, if a private employer dispense 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 have 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 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.

Finally in paras 32 and 33, the Apex Court in **Federal Bank's** case came to the conclusion that a private bank, carrying banking business as a scheduled bank, cannot be termed as an institution or a company having a statutory or public duty. The said observations read as under :

“32. Merely because the 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 of 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. 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 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 acquiring authority.

34. 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 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 puts 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. 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.”

12 In our view, the ratio of the judgment in Federal Bank's case squarely applies to the facts of the present case. It is not in dispute that Respondent No.1 bank is a subsidiary of IDFC Limited, which is a holding company and the government has 16% shareholdings in the said company. The company is not under any control, financially or otherwise of the State Government nor it is an instrumentality of the State. The Bank, therefore, is carrying on its private banking business and is not under any public duty or obligation which is imposed on it by any statute. It is a settled position in law that mandamus lies to secure the purpose of the public or statutory duty.

13 Shri Thakkar, learned counsel appearing on behalf of the petitioners laid much emphasis on Master Circular issued by the Reserve Bank of India and submitted that the said special guidelines, being mandatory in nature, Respondent No.1 Bank was under legal and public obligation to perform its duty and non-compliance of which could be

challenged by way of a writ petition in this court. He submitted that the consequence of a person if declared as willful defaulter, apart from he having to face civil consequences, makes him mandatory to face a penal action at the hands of the State. This submission, in our view, cannot be accepted since in paras 32 and 33 of the judgment in Federal Bank's case, the Apex Court has made it clear that merely because the Reserve Bank of India lays down the banking policy in the interest of the banking system, it does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty.

14 On consideration of all the cases which have been cited before us, we have no hesitation in coming to the conclusion that the ratio of the **Federal Bank's case** squarely applies to the facts of the present case. We are, therefore, of the view that the present petition which is filed under Article 226 of the Constitution of India is not maintainable. We are fortified of the view taken by us by the view taken by the Gujarat High Court in **Ionic Metalliks' case**, cited supra, wherein the Division Bench of the Gujarat High Court has also taken a similar view as the one taken by us, holding that the Standard Chartered Bank is not amenable to the writ jurisdiction.

15 From the facts and the observations made in the impugned order, it is apparent that it is passed only against Petitioner No.1 company.

16 The Writ Petition is, therefore, dismissed on the ground that it is not maintainable and we, therefore, do not propose to go into the legality or otherwise of the Petitioners' case. We had granted the petitioners leave to amend so as to take the additional grounds. The petitioners are permitted to amend the petition within a period of one week and supply those additional grounds to the Respondents.

17 While dismissing this Writ Petition, we reserve the right of the Petitioners to challenge the impugned order before appropriate forum. We, however, direct Respondent No.1 not to give any effect to the impugned order dated 4th February, 2017 and/ or to the orders dated 18th November, 2016 and 22nd November, 2016 for a period of four weeks from the date on which this order is uploaded. It is clarified that no further coercive steps shall be taken by the Respondent Bank for the period of four weeks on the basis of the impugned order dated 4th February, 2017 which was in fact passed on 18th November, 2016 and 22nd November, 2016.

(P.R. BORA, J)

(V.M.KANADE, J)