

In the High Court of Punjab and Haryana at Chandigarh.

**CWP- 2310 of 2016
Decided on 27.9.2017.**

Harpreet Singh

--Petitioner

Vs.

Bank of Maharashtra and others

--Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. H.C.Arora, Advocate,for the petitioner

Ms.Priyanka Dalal,Advocate, for the respondents

Rakesh Kumar Jain,J: (Oral)

The petitioner was appointed as a Registered Valuer, in terms of Section 34- AB of The Wealth Tax Act, 1957 by the Bank of Maharashtra, who is the member of Indian Bank Association (IBA). The petitioner was informed vide letter dated 19.5.2014 by respondent No.2 that he has been removed from the panel of bank valuer on the ground of fraud in respect of borrower A/C M/s. NKH Enterprises because the valuation of the property, in the name of Jagjit Singh son of Hira Singh, situated at Village Gill-I, Khata No.1512/2046, Khasra No.8591/721/1

could not be located and on fresh valuation of the property at village Mundian Kalan, H.B.No.179, GTB Nagar, Opposite Atma Ram Jain Hospital, it was found that the valuation is approximately 50% less than market value. Respondent No.2, thus, found that the report of the petitioner has caused huge loss to the bank.

The Indian Bank Association circulated the same to the Members Bank, depaneling of the petitioner by respondent No.2. as a result thereof, he was not to be appointed as a Registered Valuer by any member bank. The petitioner also referred to a letter dated 21.11.2015, purported to have been issued by the Bank of Maharashtra to the Indian Bank Association, on the subject of Third Party Entity to be included in cautionary list. In the said list, name of the petitioner also finds mention amongst other persons who were also depanelled. A note appended in the said letter reads as under:-

“We confirm that the above names are reported after following necessary procedures as detailed in the above mentioned RBI circular and procedural guidelines issued by IBA in this regard. Necessary correspondence have been carried out with the concerned entities in this respect and were given opportunity to explain in this regard”.

Learned counsel for the petitioner has submitted that, firstly, no correspondence took place between respondent No.2 and the petitioner in respect of his depanelment and secondly, it is submitted that the guidelines of the IBA were issued in July, 2009 known as Procedural Guidelines for Reporting Names of Third Parties involved in Frauds to IBA for inclusion in the Caution List. It is submitted that role of a Third Party Entity in case of fraud/loss has to be adjudged by a Forum and the said Forum has to be constituted in terms of Clause 5 of the said Guidelines

which reads as under:-

“5. Forum to evaluate the role of a Third Party Entity in a fraud/loss event. It is proposed that an independent and empowered forum be set up to evaluate the role of TPEs in fraud case.

a. Composition of the Forum

The Forum could consist of 3 to 5 members of sufficient seniority from various control functions. One person from the above members will play the role of coordinator. This could typically be the ground which reports frauds to RBI. The group which had used the services of TPE shall also be the part of the Forum to decide on the particular case. While the Chief Vigilance Officer of the bank could be a member of the forum, the forum shall not have any of the persons who investigated the case.

b. Quorum

The Forum meetings would have a quorum of any 2/3 members.

c. Periodicity of meetings.

The Forum would meet as and when the fraud investigation team of the bank presents a fraud/loss event investigation report in which there is an evidence-based conclusion about the involvement of a TPE in the perpetration of the fraud. As soon as the investigation team presents this report, the meeting of the Forum will need to be convened, not later than 10 working days after the submission of the report by the investigation team. The proceedings of the meeting may be recorded and kept in file”.

The functions of the Forum also prescribe in Clause 5 (d) which reads as under:-

“Functions of the Forum.

i. To receive investigation reports containing the details of involvement of TPEs in frauds, from the investigation team.

ii. To seek explanation in writing from the TPEs, in order to provide an opportunity to the TPE to present his case.

iii. To discuss and evaluate the responses and seek further clarification, if any.

iv. To decide on the involvement or otherwise of the TPEs in the fraud.

v. To recommend inclusion of the TPE in the 'cautionary list'.

(the working Group did not find it feasible to provide for a personal hearing to the TPE to defend his action considering logistics involved. However, banks could take a case specific view in the matter, depending on the gravity of the case)".

It is further submitted that as per Clause 6 (f), the Forum is to be guided by the principle of natural justice and act independently and impartially.

The sum and substance of the arguments of learned counsel for the petitioner is that before putting the Third Party Entity like the petitioner in the cautionary list, the petitioner should have been at least given a notice. In this regard, he has referred to the note appended to the letter dated 21.11.2015 in which the respondents have alleged that necessary correspondence have been carried out with the concerned entities which, in fact, has not taken place.

After notice, respondent Nos.1 and 2 have filed reply and admitted that the Forum has not been constituted in terms of Guidelines on the ground that action has been taken on the basis of policy of the bank and has also referred to Clause 18.2 of the said policy in which it is provided:-

"The zonal head is authorised to delete the name of any empanelled valuer from the list by recording the reasons for such deletion and giving due intimation to the valuer concerned".

Learned counsel for the respondents has very fairly submitted that no correspondence took place between the petitioner and the respondent bank before intimating the petitioner on 19.5.2014 that the bank has removed his name from the panel of valuer. She has also submitted that insofar as the issue regarding constitution of forum is concerned, the same is pending in CWP-6214 of 2016, filed by the Valuers Association in the

form of P.I.L, for seeking a direction in respect of constitution of Forum.

I have heard learned counsel for the parties and perused the record.

At present, I am not deciding the issue about the Forum but the issue whether the petitioner could have been removed from the panel of the Forum without giving him an opportunity of hearing much less in violation of the rule of '*Audi Alteram Partem*' being considered for adjudication. Way back in 1967, the Supreme Court in the case of **State of Orissa Vs. Dr. (Miss) Binapai Dei and others**, 1967 AIR 1269 SCR (2) 625 has authoritatively held that even an administrative order, which involves civil consequence, should be passed after following the principles of natural justice.

The petitioner is a registered valuer. He has been empanelled by the respondent bank. There are serious allegations against him by the bank on the basis of which his name has been removed from the panel of Registered Valuers but without giving him any opportunity of hearing. This fact is admitted by the respondents and, thus, I am of the considered opinion that principles of natural justice require that not only the petitioner should have been given opportunity of hearing but also reasons should have been assigned in the impugned order while removing him from the panel of Registered Valuers.

Consequently, the impugned order dated 19.5.2014 passed by the respondent No.2 and also the orders dated 21.11.2015 and 4.12.2015 circulated by the Indian Bank Association to the Member Bank, Cautionary List which includes the name of the petitioner are hereby set aside.

Liberty is granted to the bank to proceed against the petitioner

after following the principles of natural justice.

27.09.2017
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(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned: Yes/No.

Whether Reportable: Yes/No.