

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5609 of 2017

Date of Decision: 06.04.2017

Gaurav Mahajan

...Petitioner

Vs.

HDFC Bank Limited & others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kanwar Pahul Singh, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The Housing Development Finance Corporation limited is non-banking financial institution doing business like any other ordinary private body. It performs no public duty or sovereign function of State to make it amenable to writ jurisdiction under Article 226 of the Constitution since it does not qualify as instrumentality of the State or other person or authority. State under Article 12 of the Constitution, it is most certainly not. More certainty carries to hold that HDFC is a private organization against which a writ is not maintainable.

2. The law in this regard has been stated in Federal Bank Ltd. v. Sagar Thomas and Ors., (2003) 10 SCC 733. The Supreme Court held that the appellant institution may come under regulatory laws like the Banking Regulation Act, 1949 or within the purview of control by regulatory authority like Reserve Bank of India but still it remains a private financial institution performing commercial activities.

3. In this case, the petitioner has approached this Court seeking a

direction to the respondent-HDFC to decide a representation filed by him which is pending with the respondent asking it to give him a No Objection Certificate. The prayer may be innocuous but the question is of jurisdiction. Since the respondent is not a statutory body created by an act of Parliament or State Legislature it has no statutory obligation which can be enforced by the writ Court. It is only when a statutory obligation is cast and is sought to be enforced against the HDFC can a writ lie in exercise of jurisdiction under Article 226 of the Constitution. The State has no financial or administrative control over HDFC.

4. There is a case in point dealing with a similar body like the HDFC which is the ICICI Bank Ltd., which is also a non-banking financial institution carrying on business on the lines of the HDFC. It fell for consideration before the division bench of the Madras High Court in ICICI Bank Limited v. Lakshminarayanan, (2009) 1 CTC 22 as to whether the Bank was amenable to writ jurisdiction in a service matter, like the present case, and the answer was in the negative. The writ jurisdiction could not be invoked by Lakshminarayanan. The Court applied, inter alia, the law declared in *Sagar Thomas* (supra) including the judgment in M/s Zee Telefilms Ltd. and another vs. Union of India and others, (2005) 4 SCC 649 wherein the legal tests applicable have exhaustively been discussed by the Supreme Court and the principles culled out on the subject.

5. Nevertheless, the learned counsel relies to salvage the case on an ex parte order passed in a case involving HDFC in CWP No. 11813 of 2015 in M/s Emm Emm Fuels v. HDFC Bank Limited and another disposed of on July 15, 2015, ex parte HDFC Bank Limited, in which a direction was

issued by single bench without commenting on the merits of the case, to the respondent corporation to consider and decide the representation of the petitioner therein in a time-bound manner. This order most certainly has not been passed in a service law related issue as the petitioner's name suggests otherwise. Nothing can be hazarded on the factual matrix in which the direction was issued, but in any case the order does not contain any ratio and thus cannot be treated as a binding precedent on maintainability of the petition. The order decides nothing and therefore, I am not persuaded to issue a similar direction blindly when the question of jurisdiction is present in the mind of the Court to act differently and within the identified limitations placed by past precedent and the well accepted confines of writ applications.

6. Learned counsel has relied also upon the decision in M/s A-One Mega Mart P. Limited and others v. HDFC Bank and another, (2013) 1 PLR 688 to contend that writ is maintainable against the respondent-Corporation. The perusal of the order shows that it has been passed in a debt recovery matter. The division bench of this Court was conscious that ordinarily no writ would lie against the private Bank but when the Bank is a Scheduled Bank and is regulated by the Reserve Bank of India Act, 1934 as the Banking Regulations Act, 1949, it shall be amenable to writ jurisdiction of Court where the Scheduled Bank takes recourse to the provisions of SARFAESI Act. But the judgment is not an authority that a writ petition simpliciter under Article 226 of the Constitution in a service law related dispute involving HDFC would be maintainable.

7. Lastly, learned counsel relies on the judgement in Shri Anandi

Mukta Sadguru Shree Muktajee Vandasjiswami Survarna Jayanti Mahotsav

Smarak Trust and others v. V.R. Rudani and others, AIR 1989 SC 1607

where the Supreme Court first expanded the law in Article 226 but hedged it in, while considering the amplitude of the words “any person or authority” used in Article 226 of the Constitution holding that the constitutional provision is not to be confined only to statutory authorities and instrumentalities of the State. It may cover any other person or body performing public duty and statutory obligations. The ratio in *Rudani* is on the entrustment of public duty on private body to be amenable to mandamus etc. But in the case law noticed above the Supreme Court have held that private banks and financial institutions do not perform public duties and do only private business for profit like any other person. Therefore, reliance on *Rudani* is of no assistance.

8. Therefore, I am not inclined to entertain the petition even for the “small” direction, as put by the learned counsel pleading for a “just a simple” direction which will save time, which if issued by itself would amount to interference and will presuppose maintainability and as a result of the foregoing reasons, the petition is dismissed by exercising self-restraint.

9. The dismissal of the petition would not render the petitioner without remedy which he is free to seek legal recourse. And for which, the petitioner is always at liberty to access justice in accordance with law, but only before a proper forum, which is outside the sphere of writ jurisdiction.

10. This Court can be of no help to the petitioner howsoever innocent or slight the prayer is for a writ, order or direction to dispose of the case to decide his representation or request for release of a 'no-objection

certificate' which the petitioner desperately requires for his future career.

11. The remedy against every apparent unfairness is not the writ Court. Having stated the law as above, I can only suggest that the petitioner may still approach his former employer with a reminder request which, if made, this Court trusts, that the fair name of HDFC in the market will protect his rights and freedom.

(RAJIV NARAIN RAINA)
JUDGE

06.04.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>