



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 8672, 8673, 10110 and 10111 of 2018
and

W.M.P. Nos. 12067 and 12068 of 2018
and

W.M.P. Nos. 10594, 10595, 10597, 10599,
10603, 10606, 10609, 10630 and 10631 of 2019

K. Paramasivam ... Petitioner in W.P. No. 8672/2018

M/s. Sri Maharaja Refineries,
Rep. By its Partner, Mrs. Saradha,
125, Bhavani Road,
Erode - 638 004. ... Petitioner in W.P. No. 8673/2018

1. P. Parameshwari
2. P. Sathiyamoorthy ... Petitioners in W.P. No. 10110/2018

1. S. Saradha
2. P. Parameshwari
3. P. Sathiyamoorthy
4. K. Paramasivam ... Petitioners in W.P. No. 10111/2018

-vs-

1. The Reserve Bank of India,
RBI Main Building,
Fort, Mumbai 400 001.

2. Karur Vysya Bank,
Rep. By its Branch Manager,
No. 24, Muthurangam Street,
Erode 638 001. ... Respondents in all W.P.s

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records of the Second Respondent dated 28.03.2018 bearing Reference in Gen/WD/05/2017-18, Gen/WD/06/2017-18, Gen/WD/05/2017-18 and Gen/WD/06/2017-2018 respectively, quash the same as arbitrary, illegal, opposed to principles of natural justice and consequently, direct the Second Respondent to provide all documents sought for by the Petitioner in their letter dated 10.03.2018, permitting the



Petitioner to be represented by a lawyer and Auditor with assistant.

For Petitioner : Mr. G. Sankaran (in all W.P.s)

For Respondents: No appearance (For R1) in all WPs

Mr. N.P. Vijayakumar (for R2)
(in all W.P.s)

C O M M O N O R D E R

Heard Mr. G. Sankaran, Learned Counsel for the Petitioners and Mr. N.P. Vijayakumar, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petitions have been filed calling for the records of the Second Respondent dated 28.03.2018 bearing Ref. Nos. Gen/WD/ 05/2017-18, Gen/WD/06/2017-18, Gen/WD/05/2017-18 and Gen/WD/06/ 2017-2018 respectively, quash the same as arbitrary, illegal, opposed to principles of natural justice and to consequently direct the Second Respondent to provide all documents sought for by the Petitioners in their letter dated 10.03.2018, permitting them to be represented by a lawyer and Auditor with assistant.

3. The grievance sought to be ventilated by the Petitioners in these Writ Petitions is that the Forensic Audit Report, which has been sought by them from the Respondents in the proceedings initiated for declaring them as Wilful Defaulters as per the guidelines of the Reserve Bank of India in the Master Circular DBR No. CID.BC.22/20.16.003/2015-16 dated 01.07.2015, has not been furnished and that they are entitled to be represented by an Advocate/Chartered Accountant in those proceedings.

4. Learned Counsel for the Second Respondent, on instructions, has furnished a copy of the Forensic Audit Report as sought by the Petitioners and the Learned Counsel for the Petitioners has acknowledged its receipt. As such, that aspect of the matter does not survive any further for consideration.

5. As regards the claims to be represented by an Advocate/Chartered Accountant in the aforesaid proceedings initiated by the Respondents, the Hon'ble Supreme Court of India in State Bank of India -vs- Jah Developers Private Limited [(2019) 6 SCC 787], has declined to recognize any right to the defaulting borrowers to be represented by an Advocate/Chartered Accountant. Suffice here to refer to the relevant portions of the aforesaid decision, which is extracted below:-



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"14. Applying the aforesaid tests to the facts of the present case, it cannot be possibly said that either In-House Committee appointed under the Revised Circular dated 1-7-2015 is vested with the judicial power of the State. The impugned judgment's [SBI v. Jah Developers (P) Ltd., LPA No. 113 of 2015 sub nom Punjab National Bank v. Kingfisher Airlines Ltd., 2015 SCC OnLine Del 14128 : (2016) 154 DRJ 164] conclusion that such circulars have statutory force, as a result of which the State's judicial power has been vested in the two committees, is wholly incorrect. First and foremost, the State's judicial power, as understood by several judgments of this Court, is the power to decide a lis between the parties after gathering evidence and applying the law, as a result of which, a binding decision is then reached. This is far from the present case as the In-House Committees are not vested with any judicial power at all, their powers being administrative powers given to In-House Committees to gather facts and then arrive at a result. Secondly, it cannot be said that the circulars in any manner vests the State's judicial power in such In-House Committees. On this ground, therefore, the view of the Delhi High Court is not correct, and no lawyer has any right under Section 30 of the Advocates Act to appear before the In-House Committees so mentioned. Further, the said committees are also not persons legally authorised to take evidence by statute or subordinate legislation, and on this score also, no lawyer would have any right under Section 30 of the Advocates Act to appear before the same.

....

24. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 1-7-2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case...."

In view of that authoritative pronouncement of the Hon'ble Supreme Court of India, the question of granting any right to the Petitioners to be represented by a Lawyer/Chartered Accountant before the Committees in those proceedings during the personal hearing does not arise. Resultantly, there does not appear to be any infirmity in the decision-making process of the Respondents at this stage of the proceedings.

6. It is needless to add here that the Respondent while fixing fresh dates of personal hearing before the Wilful Defaulter Identification Committee and Review Committee shall ensure full



compliance of the directives of the Reserve Bank of India as interpreted in the aforesaid decision of the Hon'ble Supreme Court of India in State Bank of India -vs- Jah Developers [(2019) 6 SCC 787], and the relevant portions from that binding ruling is extracted below:-

"24.it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that Para 3 of the Master Circular dated 1-7-2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following Para 3(b) of the Revised Circular dated 1-7-2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-2015...."

7. In fine, these Writ Petitions are disposed with the aforesaid observations. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsa/vjt

To

1. The Governor,
Reserve Bank of India,
RBI Main Building,
Fort, Mumbai 400 001.



2. The Branch Manager,
Karur Vysya Bank,
No. 24, Muthurangam Street,
Erode 638 001.

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+1cc to Mr.G.Sankaran, Advocate, S.R.No. 94908
+2cc to Mr.N.P.Vijayakumar, Advocate, S.R.No. 94491

W.P. Nos. 8672, 8673, 10110 and 10111 of 2018

JP (CO)
GN (07/01/2020)