

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2019

Pronounced on : 28.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 2478 of 2018
and
W.M.P. No. 3019 of 2018**

R. Asaithambi

... Petitioner

-vs-

The Deputy General Manager,
M/s. State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, First Floor,
No. 1112, Avinashi Road,
Coimbatore - 641 037.

... Respondent

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to quash the notice dated 19.01.2018 bearing No. SAMB/CBE/CLO-I/2707 and consequently direct the Respondent to hand over the documents relied upon by it to the Petitioner and permit the Petitioner to be represented by a Lawyer/Chartered Accountant.

For Petitioner : Mr. A.L. Somayaji, Senior Counsel for
Mr. P.J. Rishikesh

For Respondent : Mr. P. Illayarajkumar for
M/s. Ramalingam Associates

ORDER

Heard Mr. A.L. Somayaji, Learned Senior Counsel assisted by Mr. P.J. Rishikesh, Learned Counsel for the Petitioner and Mr. P. Illayarajkumar, Learned Counsel appearing on behalf of the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a Director of M/s. Summer India Textile Mills Private Limited at Tiruchengode in Namakkal District of Tamil Nadu, which had availed credit facilities from the Respondent, viz., State Bank of India. A show cause notice dated 20.08.2016 was issued to the Petitioner by the Respondent calling upon him to make submissions in writing within 30 days from its receipt as to why his name should not be included in the list of Wilful Defaulters as per 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. The Petitioner submitted an explanation dated 20.09.2016 in reply to the said show cause notice. Thereafter, the Respondent by notice No. SAMB/CBE/CLO-I/2707 dated 19.01.2018 informed the Petitioner that he could avail the opportunity of personal hearing before the Wilful Defaulter Identification Committee, which had been fixed at 01.30 p.m. on 05.02.2018 at the Stressed Assets Management Branch, Coimbatore of the

State Bank of India. On receipt of the same, the Petitioner has sent a letter dated 27.01.2018 claiming that certain documents that had been required by the Petitioner on 20.09.2016 had not yet been furnished and that the personal hearing proposed on 05.02.2018 shall be deferred till the same are handed over to him. The Respondent immediately sent a reply dated 30.01.2018 to the said letter to the Petitioner. At that stage, the Petitioner has filed this Writ Petition challenging the aforesaid notice dated 19.01.2018 and for consequential direction to the Respondent to hand over the documents relied by the Petitioner and permit the Petitioner to be represented by a Lawyer/Chartered Accountant.

3. When the matter came up for admission before this Court on 05.02.2018, this Court taking into account the decision of the Division Bench of the Delhi High Court in ***Punjab National Bank -vs- Kingfisher Airlines Limited*** [(2015) SCC OnLine Del 14128], directed *status quo* to be maintained for a period of three weeks. The Hon'ble Supreme Court of India in ***State Bank of India -vs- Jah Developers Private Limited*** [(2019) 6 SCC 787], has now reversed the aforesaid decision of the Delhi High Court and 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:-

“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 be represented by a Lawyer/Chartered Accountant during the personal hearing does not arise.

4. Insofar as the claim of the Petitioner for requiring the Respondents to furnish the documents mentioned by him in his explanation dated 20.09.2016 and letter dated 27.01.2018 is concerned, it is noticed from the annexures to the show cause notice dated 20.08.2016 and the reply dated 30.01.2018 that the contentions of the Petitioner have been satisfactorily

regard. It requires to be pointed out here that in view of the *de facto* doctrine, the claim made by the Petitioner to furnish particulars of the officials of the Bank constituting the Committees in terms of the Circulars of the Reserve Bank of India, are in no way germane to determine the validity of the decision to declare the Petitioner as 'Wilful Defaulter'. The Hon'ble Supreme Court of India in ***Gokaraju Rangaraju vs- State of A.P.*** [(1981) 3 SCC 132], has succinctly explained the legal position in this regard as follows:-

"4.The doctrine is now well-established that "the acts of the officers *de facto* performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers *de jure*" (*Pulin Behari v. King-Emperor*[(1912) 15 Cal LJ 517, 574 : 16 IC 257 : 16 Cal WN 1105 : 13 Cri LJ 609]). As one of us had occasion to point out earlier "the doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office *de facto* are not so easily undone and may have lasting repercussions and

confusing sequels if attempted to be undone. Hence the de facto doctrine."

It is hastened to clarify here that though refusal to give particulars of the identity of the officials constituting the Identification and Reviewing Committees would not amount to invalidation of the proceedings initiated for declaring the Petitioner as 'Wilful Defaulter', it ought not to be construed that the Respondent is immune from disclosing the same, if otherwise bound to provide the same under any law such as the Right to Information Act, 2005.

5. In that view of the matter, there does not appear to be any infirmity in the decision-making process of the Respondent at this stage of the proceedings. It is needless to add here that the Respondent while fixing a fresh date of personal hearing before the Wilful Defaulter Identification 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...."

6. In fine, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.08.2019
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Index : Yes/No

To

The Deputy General Manager,
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P.D. AUDIKESAVALU, J.

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