**In the High Court at Calcutta**
**Constitutional Writ Jurisdiction**
**Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**WPA No.11563 of 2020**

**Uday Narayan Ghosh @ Uday N. Ghosh**
**v.**
**The State Bank of India and others**

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| For the petitioner | : | Mr. Saibal Acharjee,<br>Mr. Ambu Bindu Chakraborty |
| For the respondent-bank | : | Mr. Sudip Pal Choudhuri,<br>Mr. S. Roy Choudhuri,<br>Ms. Saswati Sikder |
| Hearing concluded on | : | 10.02.2021 |
| Judgment on | : | 19.02.2021 |

**Sabyasachi Bhattacharyya, J:-**

**1.** The petitioner is a legal practitioner and has been an empanelled advocate of different nationalized and private sector banks, including the State Bank of Bikaner and Jaipur (subsequently merged on April 1, 2017 with the State Bank of India) and other subsidiaries of the State Bank of India (Respondent no. 1).

**2.** The petitioner alleges that the State Bank of Bikaner and Jaipur had been engaging the petitioner in various legal assignments till its merger with the State Bank on April 1, 2017, without giving any indication to the petitioner of the report which allegedly led to the inclusion of the petitioner's name in the impugned caution list.

**3.** In the year 2018, it is alleged in the writ petition, the petitioner learnt of a letter, bearing no. FMC/2300 dated January 2, 2014, issued by the then State Bank of Bikaner and Jaipur to the Indian Banks' Association (IBA), being Respondent No. 5, with an advice to place the petitioner's name in the IBA Caution List of Third Party Entities involved in frauds. The petitioner wrote to ascertain the facts, on which the Deputy Chief Executive, IBA (Respondent no. 6) replied, vide letter no. OPR/MC-SEC/TPE/6311 dated November 15, 2018, informing that the petitioner had been so listed on the report of the State Bank of Bikaner and Jaipur (since merged with Respondent no. 1), which was circulated to all members of the IBA vide communication no. LEGAL/CIR/Fr/1/8664 dated January 16, 2014. The IBA asked the petitioner to approach the Respondent no. 1-Bank for removal of his name from the list.

**4.** The petitioner accordingly corresponded on several occasions with the Respondent no. 1-Bank but was supplied with no supporting document with regard to the enlistment. Rather, by a letter dated February 26, 2020, the Assistant General Manager (CPM) of the State Bank asked the petitioner to disclose why his name was included in the list and details of the case, correspondence, etc. as well as a copy of the reference made to the IBA on January 2, 2014 and other related documents.

**5.** Further correspondence followed between the petitioner and respondent no. 1 and the Deputy General Manager and CCO of the State Bank (Respondent No. 3), by a letter dated September 1, 2020, informed the petitioner merely that, in the light of three TIRs (Title Investigation Reports) authored by the petitioner for e-SBBJ and e-SBP, the bank was examining the petitioner's "appeal" and would revert back to the petitioner in the matter "in due course". However, the Bank did not revert back to the petitioner, upon which the petitioner again requested the Bank in writing to settle the issue at the earliest. The subsequent communications from the end of respondent no. 1 were evasive, reiterating the enlistment of the petitioner in the caution list without affording any explanation or supporting document, it is alleged.

**6.** Ultimately the petitioner served a demand notice dated November 17, 2020 on respondent no. 1, inter alia requesting removal of the petitioner's name from the caution list, but to no effect. Hence, the present writ petition.

**7.** Learned counsel for the petitioner contends that the inclusion of the petitioner's name in the caution list was done behind the petitioner's back, without any hearing being given to him. Even subsequent to such purported inclusion, nothing was communicated to the petitioner regarding the recommendation of the erstwhile State Bank of Bikaner and Jaipur and the consequent inclusion of the petitioner's name in the said list. Rather, the bank had been regularly assigning legal work to the petitioner till its merger with respondent no. 1 on April 1, 2017. The petitioner came to know of such inclusion only thereafter and as such had no occasion to move court earlier in that regard.

**8.** It is reiterated by counsel that the petitioner is a respectable man and has been in the legal profession, working with some repute for about 42 years. The enlistment of the petitioner's name in the caution list on vague grounds, without any prior opportunity of hearing and/or subsequent communication, it is submitted, was utterly unlawful and without reason.

**9.** Learned counsel for the petitioner submits that such action was the fallout of a previous dispute between the petitioner and the bank, which arose due to the petitioner asking for his huge outstanding professional fees from the bank. It is contended that the petitioner has been rendering services as empanelled advocate for the respondent no. 1-bank since 1987 and the outstanding dues on account of his professional fees exceeded Rs.15,00,000/-. As soon as the petitioner asked for such legitimate dues, the bank started humiliating the petitioner, by lodging an FIR and a complaint with the West Bengal Bar Council against the petitioner on frivolous pretexts. The Disciplinary Committee of the Bar Council, however, discharged the petitioner vide Order No. 6 dated January 19, 2009 in Case no. 26 of 2006. The police have filed a charge sheet in respect of the FIR and the consequent criminal case in pending for adjudication before the Judicial Magistrate, Second Court at Barasat. A criminal revision, bearing C.R.R. No. 3439 of 2013, is also pending at the petitioner's instance in this court, for quashing of the FIR.

**10.** The petitioner, on the other hand, filed a complaint case against respondent no. 1 before the District Consumer Disputes Redressal

Forum, Kolkata Unit-II, bearing C.C. No. 19 of 2011, which was allowed on contest vide order dated October 30, 2013, directing costs assessed at Rs. 2,000/- and compensation of Rs. 5,000/- to be paid by respondent no.1 to the petitioner. A further sum of Rs. 5,000/- was imposed against the bank on account of unfair trade practice resorted to by the bank. The said order is annexed to the petitioner's exception, as Annexure P-11 thereof.

**11.** The petitioner, thus, alleges that the inclusion of the petitioner's name in the caution list was a mala fide and vindictive action on the part of the respondent no.1, on the basis of a purported report issued by its erstwhile subsidiary, the State Bank of Bikaner and Jaipur (now merged with respondent no.1), no copy of which report is available even with the bank.

**12.** The respondent no.1-Bank, on the direction of this court, has filed a report in the form of an affidavit, seeking to disclose relevant particulars with regard to the impugned enlistment, to which the petitioner has filed an exception.

**13.** The report discloses, inter alia, a letter dated July 29, 2020 wherein the Circle Credit Officer, Local Head Office, Jaipur reported that no correspondences with regard to the matter are available with them.

**14.** The Bank also relies on its internal communications and produces copies of information slips in support of its contention that suits were filed against the respondent no.1 on the ground of erroneous Title Investigation Reports authored by the petitioner, which resulted in loss for the bank.

**15.** The bank also relies on the charge sheet filed by the police against the petitioner, bearing no. 110 dated June 30, 2007, annexed to its report filed in this court, which shows that the police found prima facie charges under Sections 403/406/420/468 of the Indian Penal Code having been "well established" against the petitioner.

**16.** Learned counsel appearing for the respondent no. 1-bank argues that there are, thus, sufficient grounds for inclusion of the petitioner's name in the impugned caution list on the basis of the incriminating material available against the petitioner.

**17.** Counsel contends that it is the discretion of the bank authorities, on the basis of such material, to apprehend jeopardy to public interest if the petitioner continues to get work from nationalized banks. As such, the inclusion of the petitioner's name in the caution list was justified and ought not to be interfered with by the writ court.

**18.** That apart, learned counsel appearing for the bank submits, communication was sent to the petitioner and the petitioner was given fair opportunity to explain his position/justify his action, before the inclusion of his name in the caution list. In support of such contention, counsel places reliance on the concluding paragraph, following the list of third party entities allegedly involved in frauds, dated January 2, 2014, which was circulated amongst the member-banks of the IBA on January 16, 2014 by the IBA. Copies of the circulation and the list are annexed collectively at page 15 (Annexure R-4) to the bank's report.

**19.** Upon hearing counsel for the contending parties, the first self-evident discrepancy that appears in the bank's version is that the complaints lodged against the petitioner, which are claimed to be the basis of the inclusion of the petitioner's name in the caution list, were lodged by the State Bank of India, Habra branch. However, the ground for such inclusion, as all along disclosed by the respondent no. 1 bank as well as the IBA, was a report by the erstwhile State Bank of Bikaner and Jaipur. It begs logic as to what prompted the State Bank of Bikaner and Jaipur to level serious allegations against the petitioner by espousing the cause of the Habra branch of the respondent no. 1, which was the complainant in the said cases, even before its merger with respondent no. 1.

**20.** The specific averment of the petitioner, that the erstwhile State Bank of Bikaner and Jaipur had been assigning legal work regularly to the petitioner, even after having allegedly recommended inclusion of the petitioner's name in the caution list of the IBA, till its merger with respondent no. 1 in 2017, has not been specifically denied by the respondents.

**21.** In fact, the contention of the petitioner, that the report leading to the impugned inclusion might have been a backlash against the petitioner due to the petitioner's demand for due fees, finds support from the materials on record. The consumer forum passed an award of compensation on the ground of unfair trade practice of the respondent no. 1 against the petitioner. Even the Disciplinary Committee of the West Bengal Bar Council had dropped the complaint lodged by respondent no. 1 against the petitioner upon due enquiry. On a preponderance of probabilities, it appears probable that the bank officials, having thus failed in several forums, resorted to oblique means to harass the petitioner and to justify their failure.

**22.** Mere filing of a charge sheet and pendency of a criminal case against the petitioner cannot be a ground to hold the petitioner guilty of any offence. It is a well-established principle in Indian criminal jurisprudence that an accused cannot be held guilty before being convicted in due course of law.

**23.** The information slips regarding suits filed against the bank *ipso facto* do not establish that the bank suffered any loss due to any fault on the part of the petitioner. The bank, in fact, acted as a judge, jury and executioner in its own cause, to unilaterally hold the petitioner liable on that score.

**24.** In view of the State Bank of India being the lead bank among the members of the IBA and enjoying the sponsorship of the State behind it, it would not be an improbable presumption that the IBA was compliant to such harassment by putting the petitioner's name on the caution list. In fact, the subsequent stand of the IBA, as reflected from its communications available on record, was rather neutral. It merely asked the petitioner to approach the concerned complainant bank for removal of the petitioner's name from the list, thus playing Pontius Pilate and relegating liability on the concerned member-bank.

**25.** It is circular logic that the recording of prior communication and opportunity of hearing in the impugned caution list itself, without any corroborating material, was sacrosanct and justified its own veracity.

**26.** The inability to find relevant records due to delay on the part of the petitioner, as pleaded by the bank, is belied by its prompt production of several documents pertaining to the petitioner's other disputes with the bank's Habra branch. There was no occasion for the petitioner to challenge his inclusion in the caution list before the petitioner first came to know of the matter in 2018, since the erstwhile State Bank of Bikaner and Jaipur (at whose behest the petitioner was incriminated by the IBA) had been assigning work to the petitioner till its merger with the respondent no. 1 on April 1, 2017. The merger apparently gave a further handle to the respondent no. 1 to heckle the petitioner due to the past disputes between the two, on the basis of a much prior enlistment of the petitioner in the caution list by the IBA, which was never disclosed even in the complaints lodged by the respondent no. 1 against the petitioner before several forums.

**27.** No iota of evidence is found on record to establish, even *prima facie*, that any prior communication or right of representation/hearing was given to the petitioner before inclusion of his name in the caution list, apart from such claim being made in the caution list itself. Despite having been given sufficient opportunity in this writ petition, neither the IBA nor the respondent no. 1 have been able to come up with a single piece of incriminating evidence against the petitioner justifying the inclusion of his name in the caution list in 2014 or the recommendation for such inclusion issued by the erstwhile State Bank of Bikaner and Jaipur.

**28.** Hence, such circulation of the petitioner's name in the caution list and the elusive communication leading to it were patently illegal, arbitrary and mala fide. There is absolutely no material on record to justify the serious consequence, on the professional, financial and individual fronts, suffered by the petitioner due to the stigma attached with such enlistment. Thus, such action on the part of the respondents is fit to be set aside.

**29.** Accordingly, WPA No.11563 of 2020 is allowed on contest. The impugned caution list dated January 2, 2014 and the circulation of the same, dated January 16, 2014 (Collective Annexure "R-4" to the report on affidavit of the bank dated January 25, 2021), are quashed and set aside, only in so far as those relate to the present writ petitioner. The IBA (Respondent No. 5) shall duly circulate this order and the removal of the writ petitioner's name from the said caution list among its members within 30 days from date.

**30.** However, the observations made in this order shall not prejudice the rights and contentions of the parties in other pending legal proceedings, including the criminal case(s) against the petitioner, which will be decided on their own merits, independently and in accordance with law.

**31.** Respondent Nos.1 and 5 shall pay costs of Rs.25,000/- each to the petitioner, for the unnecessary harassment caused to the petitioner, also within 30 days from date. The said respondents shall be free to hold departmental/internal inquiries, in accordance with law, to fix liability for such harassment and to take appropriate action, including recovery of the amount of costs paid pursuant to this order, against the guilty officers.

**32.** Parties are to act on communication of learned advocates and/or server copies of this order for the purpose of due compliance, without insisting upon prior production of certified copies.

**33.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**