IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CONTEMPT)
ORIGINAL SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

CC 67 of 2019

Raghunath Karfa
-Vs.-
Umesh Kumar Roy & Ors.

For the Petitioner	: Mr. Mainak Ganguly
For the Alleged Contemnor	: Mr. Joydip Banerjee Mr. Abhishek Banerjee Ms. Purna Roychowdhury
Heard on	: 27/09/2021
Judgment on	: 08/11/2021

Subrata Talukdar, J:

This Court is called upon to decide an action in contempt brought by the Applicant alleging wilful violation of its judgement and order dated 17th May, 2019 passed in WP 891 of 2016, *In Re: Raghunath Karfa vs. United Bank of India & Ors*. The Writ Petitioner is the Applicant in the Contempt Application. The Respondent/Bank in the Writ Petition is represented through its concerned officers impleaded as the Alleged Contemnors.

The Alleged Contemnors Nos.1, 2, 3, 4, 5 and 6 have answered the **Rule** issued by this Court. Each of the Alleged Contemnors have filed Affidavits of Compliance responding to the **Rule**. Counter Affidavits to the Affidavits of Compliance have been also filed on behalf of the Applicant.

It is not in dispute before this Court that the effective answering Alleged Contemnors are Nos. 2, 4 and 6 (for short *AC 2*, *AC 4* and *AC 6*) The next question to be considered is whether *AC*s 2, 4 and 6 have committed wilful disobedience of the Judgement and Order dated 17th May, 2019.

In order to consider the above noted question, it would be necessary to give a brief background to the facts and the discussion recorded by the Order dated 17th May, 2019 deciding the writ petition.

The challenge in the writ petition was thrown by the Applicant/the Writ Petitioner to the order of compulsory retirement issued against him by the Respondents/The United Bank of India (for short the Bank) in a Disciplinary Proceedings (*DP*). Prior to the order of compulsory retirement, the Applicant was working as an officer of the Bank.

Apart from the grounds taken of loss of forum, denial of natural justice in the *DP* including the perversity of concluding the *DP* on a single date of hearing, an important limb of the argument of the Applicant pertained to the nature of charges contained in the Charge Sheet (*CS*) to the *DP*. It would be relevant at this stage of the discussion to quote the *CS* itself which has been recorded by way of a separate paragraph in the Judgement and Order dated 17th of May, 2019.

"The CS:-

It is proposed to proceed against you under Regulation 6 of United Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976. The Articles of charge in respect of which the proceeding is proposed to be held are set out below. Besides, the statement of allegations on which the charges are based is also indicated herein below.

During the tenure of your service as Senior Manager at Bank's Dankuni Govt. Housing Complex Branch under Hooghly Region from 01.12.2011 to 31.07.2013, you had committed the following irregularities and thus, failed to take all possible steps to ensure and protect the interest of the Bank and discharge your duties with utmost integrity, devotion and diligence, in contravention of Regulations 3(1) and 3(3) of United Bank of India Officer Employees' (Conduct) Regulations, 1976; constituting misconduct in terms of Regulation 24 of the said Regulations.

The aforesaid nineteen transport loan accounts have turned NPA and due to your above irregular acts, the Bank is exposed to a financial risk of Rs. 8,43,72,318.78 plus applicable interest thereon.

Due to above mentioned negligence on your part while sanctioning, recommending and subsequently disbursing of all the aforesaid loan accounts, the Bank is exposed to an aggregate financial risk of Rs. 9,14,91,444.85 plus applicable interest thereon.

You are advised to submit your written statement of defence, if any, within 7 (seven) days from the date of receipt of this letter failing which it will be presumed that you have no defence to offer and under the circumstances, the Bank will be at liberty to proceed against you as would be deemed fit and proper."

Upon hearing the parties at length and considering the materials on record the Court concluded that the Applicant alone could not be held responsible for the 19 Transport Loans (for short *TLs*) being declared as Non Performing Assets of the Bank. This Court was pleased to notice the statement of the Presenting Officer (for short the *PO*) submitted in his Written Brief to the Enquiry Officer (for short the *EO*) to the effect that the Applicant was negligent in discharge of his functions by failing to carry out due diligence in respect of the *TLs* in issue and therefore could not avoid his contributory liability in respect of the whole issue. The Applicant was thus found not to be working with the integrity, devotion and diligence required of an officer of the Bank.

It would be useful at this juncture to place the Paragraph of the Order dated 17th may, 2019 by which this Court recorded the aforesaid facts.

> *"It would be further profitable at this juncture to note the conclusion of the PO in his Written Brief submitted to the EO, which is reproduced below:-*
> *"There is no dispute as regards Management exhibits or witness. It has been vividly argued in the brief here in above ingredient wise, supported by documentary evidences produced and proved through witness. All the ingredients, on which the charges are based, have been proved under section "5" of this brief.*
> *While summing up the written brief it deserves mention that CSO was negligent in applying due diligence and utmost care in the affairs of the sanctioning and recommending the Transport Loans. CSO has exceeded hid Discretionary Power limit while sanctioning the second loan to M/s Saha Transport Agency. In his reply dated 15.05.2015 (ME-26(2)) he has admitted the guilt that he has exceeded hid DP limit. But most surprisingly, in his reply dated*

> *03.12.2015 (ME-26(1)) it was mentioned by him that he has nothing further to add, save & except what he has replied earlier (ME-26(2)) and therefore he has enclosed the copy of his earlier letter. But he has intentionally deleted the 1st paragraph of the letter dated 15.05.2015 regarding crossing of DP limit. It is a fact that the nineteen (19) numbers of proposals were recommended by CSO to Hooghly RO for sanction. So, before according recommendation, the Branch ought to have checked the proposals for any inherent defects, shortcomings etc. further, CSO vide his letter dated 15.05.2015 (ME-26) has mentioned that recommendation of the loan proposals were a matter of routine formality only, as all work was completed earlier by RO, which is not at all acceptable from a senior official of the Bank. Thus the onus is on CSO and which cannot be shifted to others. The CSO cannot avoid his contributory liability in the entire episode. The CSO is thus found not working with utmost integrity, devotion and diligence and thereby acted in contravention of Regulations 3(1) and 3(3) of United Bank of India Officer Employees' (Conduct Regulations), 1976 amounting to misconduct in terms of Regulation 24 of the said Regulations. All the ingredients of the charges thus stands proved beyond any iota of doubt."*

The report of the *EO*, which has also been taken notice of by this Court in its Order dated 17th May, 2019, mentioning the specific fact that the *TLs* in issue could have been sanctioned at the Branch level of the Bank due to pressures exerted by the immediately superior Regional Office have been discussed as follows:-

> *"Finally, this Court must notice the EO's Report which makes specific mention of the fact that*

> *the TLs in issue could have been sanctioned due to the pressure exerted by his superior authority. The Report of the EO dated the 12th of April, 2016 is extracted below:-*
>
> *"The CSO was negligent by way violating Bank's extant guidelines. He should have been more careful while discharging his duties to protect the interest of the Bank. It is fact that RO had sanctioned the 19 proposals despite a number of irregularities and in some cases the sanction was accorded on the same date of recommendation. There might be pressure from the higher authority but recommending without proper analysis and appraisal is an act of negligence. Apart from the 19 proposals sanctioned by RO, the CSO was in discharging his duties as pointed out in charge A-1 to A-3 which was sanctioned by him. Bank has suffered loss for such act on his part."*

This Court ultimately found by the order dated 17th May, 2019 the *DP* to be foundationally unsustainable. The order of compulsory retirement along with all other connected orders and proceedings were consequently set aside. The Applicant was directed to be forthwith reinstated in service with all past and present benefits.

Learned Counsel for the Applicant submits that the Judgement and Order dated 17th of May, 2019 was communicated to the Bank/represented by the Alleged Contemnors on the 24th of May, 2019 and 25th of June, 2019 by letters. Evidence of such communication and acknowledgement is annexed to the contempt application being CC 67 of 2019. The communication of the Judgement and Order as aforesaid is not denied by the Alleged Contemnors. The Applicant submits that inspite of the direction for his reinstatement forthwith, such direction of the Court issued on 17th of May, 2019 has been wilfully violated by the Alleged Contemnors, i.e. *ACs* 2, 4 and 6. The Alleged Contemnors are continuing to treat the Applicant as compulsorily retired and such position has been continuing on and from 2019 till date.

Appearing on behalf of the Alleged Contemnors, Learned Counsel took several adjournments on the ground that an appeal against the Order dated 17th May, 2019 is pending and such has been recorded by the preceding orders of this Court passed in this Contempt Application.

Prior to conclusion of hearing, certain startling facts connected to the filing and carriage of the appeal have been brought to the notice of this Court. The facts are as follows. This Court is informed by the parties that although the appeal was filed on the 18th of August, 2019, the stay application connected to the appeal has been affirmed after the expiry of two years therefrom on the 22nd of September, 2021. In the meantime, as recorded by orders in the Contempt Application, the Alleged Contemnors kept on taking time citing pendency of the appeal.

Further, in the mean time *AC 2* is said to have retired from the service of the Bank. However, *AC 4* and *AC 6* are stated to be continuing in service. Learned Counsel for the Alleged Contemnors takes comfort in the fact that the Bank is still honouring its obligations *qua* the Applicant by treating him as compulsorily retired. It is submitted that benefits commensurate to the compulsory retirement of the Applicant are being regularly paid to him.

Next, from the Affidavits of Compliance filed on behalf of *ACs* 2, 4 and 6, the following identical statements in all three Affidavits appear.

These identical statements, which are reproduced hereinbelow from Paragraphs 5 and 6 of the Affidavit of Compliance of *AC 2* read as follows:-

> *"5. That challenging the aforesaid orders the instant applicant preferred a Writ Petition being W.P No. 891 of 2016. Your Lordship was pleased to pass his final order on 17.05.2019. i humbly state that the applicant herein has misappropriated a huge amount of money and not only bank was exposed to a financial risk but at the same time public money suffered at large and for the said reason an appeal being no. A.P.O 80 of 2019 has been preferred and the same is still pending.*
> *6. I humbly state and submit that due to the outbreak of pandemic the Appeal herein could not be taken up till date."*

This Court finds that there is a contradiction in the statement made in the Affidavits of Compliance (*supra*) inasmuch as while on the one hand *ACs* 4 and 6 acknowledge the existence of irregularities in recommending, sanctioning and disbursing the *TLs* in issue, on the other hand, by a subsequent statement all the three Alleged Contemnors namely, *ACs* 2, 4 and 6 state that the Applicant herein has *misappropriated a huge amount* of *money* and, not only the Bank has been exposed to financial risk but, at the same time, public money suffered at large. For the said reason an appeal being A.P.O. No. 80 of 2019 has been preferred and the same is still pending.

If the above stand on misappropriation made by *ACs 2, 4 and 6* is to be accepted, such a stand would be entirely inconsistent with the *CS* in the *DP* as well as the *DP* itself. From the *CS*, the Written Brief of the *PO* and the Written Submission of the *EO* which have been discussed above in this order, it would be hard to miss the point that the Applicant was only charged with negligence, contributory liability and failure to carry out due diligence in the matter of the *TLs* in question. There is an acknowledgement by the *PO* and the *EO* that there were other contributory factors, apart from the alleged role of the Applicant in rendering the *TLs* in issue as Non Performing Assets.

Nowhere from the four corners of the *DP* there is a charge of *misappropriation*. Therefore the stand of the *ACs 2, 3 and 4* taken by way of formal affidavits that the Applicant has committed *misappropriation* which is the reason for filing an appeal, is clearly a concoction of *ACs 2, 3 and 4* to defeat the implementation of the solemn order dated 17th May, 2019 and thus undermine the dignity of this Court. Such concoction is beyond the stand of the Respondent/ Bank in the writ petition.

This Court is further informed that the Applicant is scheduled for normal retirement upon the expiry of the month of January, 2022.

This Court therefore finds the action of the *ACs 2, 3 and 4* to be in wilful non-compliance of the order dated 17th May, 2019.

The **Rule** is accordingly made **absolute** against ***ACs 2, 4 and 6***.

The Bank shall take steps within a week from the date of communication of this order to recover a sum of Rs. 10 lacs each from *ACs 2, 4 and 6* and pay the total sum of Rs. 30 lacs to the Applicant within a week thereafter.

In the event of non-payment of the amount as directed above, *ACs 2, 4 and 6* shall suffer simple imprisonment for a period of one month.

Let a copy of this order be endorsed to the office of the **Deputy Sheriff**, **High Court at Calcutta** for necessary compliance.

The Office of the Deputy Sheriff shall file a Report before the Learned Registrar General, High Court at Calcutta.

The **Rule** stands **discharged** against ***ACs* 1, 3 and 5**.

Registry to take the formal steps.

CC 67 of 2019 stands accordingly **disposed of**.

Parties to act on a server copy of this order downloaded from the official website or this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Subrata Talukdar, J.)

<u>Later:-</u>

Ms. Purna Roychowdhury, Learned Advocate appearing on behalf of the Alleged Contemnors, prays for stay of operation of the order.

The prayer for stay is considered and refused.

(Subrata Talukdar, J.)