

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2021

DELIVERED ON : 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

**W.P.No.12335 of 2020 &
WMP.Nos.15171 & 15172 of 2020**

Vani Vilas Finance Limited,
Rep. by its Director,
Sunil Kumar Patwa,
Shanthi Complex, Second Floor, Hosur – 635 109. ... Petitioner

VS.

1.General Manager,
Reserve Bank of India,
Department of Non Banking Supervision,
Fort Glacis, No.16, Rajaji Salai,
Chennai – 600 001.

2.Executive Director,
Reserve Bank of India,
Department of Registration,
Central Office, Mumbai. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of certiorari calling for the records on the file of the second respondent order dated 25.06.2020 received under covering letter DOS/Che No./002/13.23.502/2020-21 dated 06.07.2020 and quash the same as illegal, without

jurisdiction, contrary to the provisions of the Act and against the principles of natural justice and fair play.

For Petitioner : Mr.T.Pramod Kumar Chopda

For Respondents : Mr.C.Mohan,
for M/s.King & Patridge

ORDER

The petitioner was registered with Reserve Bank of India as a non-deposit taking Non-Banking Financial Company, in short “NBFC”. Originally the petitioner was registered in the name of “Sri Patwa Benefit Fund Limited” and subsequently, the name of the petitioner was changed to “Vani Vilas Finance Limited”. A fresh certificate of registration was issued by the respondents on 21.11.2007 in favour of the petitioner.

2. The petitioner has challenged the order dated 25.06.2020 passed by the second respondent cancelling its certificate of registration for not complying with various provisions of Reserve Bank of India Act, in short “RBI, Act” and its directions/regulations issued from time to time.

3. Aggrieved by the same, this writ petition has been filed primarily on the ground that (a) the second respondent without jurisdiction and contrary

to the provisions of RBI Act has passed the impugned order cancelling the petitioner's certificate of registration; (b) principles of natural justice has been violated by the second respondent before passing the impugned order cancelling the petitioner's certificate of registration.

4. A counter affidavit has been filed by the respondents denying the allegations of the petitioner and they would submit that the impugned order was passed only by the competent authority under the RBI Act. According to them, as per the standard operating procedure followed by RBI for cancellation of certificate of registration on supervisory grounds, the competent authority is made aware of all the material facts so as to enable the competent authority to take an informed decision. According to them, the impugned order only after the approval / signature of the competent authority was communicated to the petitioner by the Regional Office of the respondents located in Chennai.

5. In the counter affidavit, the respondents have also stated that principles of natural justice has been adhered to by them before passing the impugned order. They have stated that show cause notice was issued to the

petitioner in respect of the violations of RBI Act and other regulations committed by them and sufficient opportunity was also granted to the petitioner to give its explanation and only thereafter, the impugned order came to be passed. It is also their case that the petitioner has pleaded guilty to the various violations of the statute/circulars/master directions in its reply sent to the respondents. Therefore according to them, the impugned order has been passed only in accordance with law and there is no violation of principles of natural justice.

6. Heard Mr.T.Pramod Kumar Chopda, learned counsel for the petitioner and Mr.C.Mohan, learned counsel representing M/s.King & Patridge for the respondents.

7. Learned counsel for the petitioner at the outset would submit that the impugned order has been passed without jurisdiction. He drew the attention of this Court to the show cause notice dated 10.05.2019 issued by the first respondent seeking for explanation with regard to the alleged violations committed by the petitioner and he would point out that show cause notice was issued by the first respondent, but the impugned order

cancelling the petitioner's certificate of registration has been signed by the second respondent. Therefore, he would submit that the second respondent even without hearing the matter has passed the impugned order and therefore according to him, the impugned order has been passed without jurisdiction. In support of his submission, learned counsel for the petitioner drew the attention of this Court to the following authorities:

(a) Hon'ble Supreme Court Judgment in the case of Gullapalli Nageswara Rao and other vs. Andhra Pradesh State Transport Corporation and another : AIR 1959 SC 308; and

(b) Order of this Court dated 24.07.2017 passed in W.P.No.18094 of 2017 in the case of Alagesan vs. The Chief Commissioner of Income Tax – 3 and others.

Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit that only a person who has heard the matter will have to decide the same. According to him, since the matter relating to the cancellation of registration was heard only by the first respondent (General Manager), the impugned order passed by the second respondent (Executive Director) is without jurisdiction.

8. Learned counsel for the petitioner then drew the attention of this Court to Section 45-IA(6) of the RBI Act and would submit that the impugned order has been passed without specifying under which limb of the said section the same has been passed. He would further submit that section 45-IA(6) of the RBI Act contemplates five different circumstances as specified under sub clause – (i) to (v) by which the certificate of registration of NBFC may be cancelled subject to proviso 1 and 2 thereunder. Since the impugned order does not specify the same, he would submit that the impugned order is non est in law. Learned counsel for the petitioner also relying upon the first proviso to Section 45-IA(6) would submit that in case of violations of sub clause (ii) and (iii), the RBI shall given an opportunity to take necessary steps to comply with the provisions of the RBI Act. According to the learned counsel for the petitioner, the second respondent ought to have taken into consideration the fact that the petitioner had complied with and rectified all the contraventions of guidelines / directions / regulations / rules pointed out in the show cause notice issued by the first respondent much before passing of the impugned order.

9. Learned counsel for the petitioner would further contend that the petitioner caters to the needs of small shop owners and individuals by providing them with loans. He would also submit that the petitioner is a non deposit taking NBFC and therefore, public money is not involved and repayment of the depositors money will also not arise. According to him, the respondents ought to have taken note of this fact also. Therefore, according to him, the respondents ought not to have cancelled the certificate of registration that too when the petitioner has complied with all the requirements contemplated under the provisions of RBI Act including guidelines / directions / regulations / rules subsequent to the issuance of show cause notice. According to him, in a pre-determined manner, the second respondent has passed the impugned order which according to him, is ex facie illegal.

10. Per contra Mr.C.Mohan, learned counsel appearing for the respondents at the outset would submit that the writ petition is not maintainable, since there is an alternate efficacious statutory appellate remedy available to the petitioner before the Central Government. According to him, there is no violation of principles of natural justice before passing the

impugned order. He drew the attention of this Court to the reply dated 21.05.2019 submitted by the petitioner to the show cause notice dated 10.05.2019 sent by the respondents and would submit that as seen from the reply, the petitioner has admitted to the violations as enumerated in the show cause notice and further, personal hearing was also afforded to the petitioner. He also drew the attention of this Court to the impugned order and would submit that sufficient reasons have been given for cancellation of the petitioner's registration and an opportunity of hearing was also afforded to the petitioner. Hence, he would submit that there is no violation of principles of natural justice.

11. With regard to the second contention raised by the petitioner that the officer who heard the matter did not pass the impugned order is concerned, learned counsel for the respondents would submit that the decision to cancel the certificate of registration of the petitioner is an institutional decision. He drew the attention of this Court to the covering letter dated 06.07.2020 of the first respondent enclosing the impugned order dated 25.06.2020 passed by the second respondent and referring to the same, the learned counsel for the respondents would submit that being an

institutional decision, there is no infirmity in the order being signed by the second respondent, even though the enquiry was conducted by the first respondent. Hence, according to him, the second contention raised by the petitioner that the impugned order has been passed without jurisdiction is unsustainable.

12. Learned counsel for the respondents also drew the attention of this court to section 45-IA (7) of the RBI Act which enables the petitioner to file the statutory appeal before the Central Government if so aggrieved by the impugned order. Therefore, according to him, the present writ petition is not maintainable.

13. Learned counsel for the respondents would further submit that the impugned order has been passed by experts in the field of economic policy and hence, there can be no substitute for such expert bodies who have reached such conclusions as held under the impugned order. According to him, RBI was fully competent to take decisions in financial and economic matters and there can be no alternate view or suggestions to such decisions unless such decision taken was wholly unreasonable or violative of any

provisions of constitution or the governing statute. In support of his submissions, learned counsel for the respondents drew the attention of this Court to the following authorities:

(a) R.K.Garg vs. Union of India and others reported in (1981) 4 SCC 675

Relying upon the said decision, learned counsel for the respondents would submit that in tax and economic regulation cases, the court should show judicial self-restraint in interfering with the decisions taken by expert bodies like RBI.

(b) Peerless General Finance and Investment Co. Limited vs. R.B.I. reported in (1992) 2 SCC 343

Relying upon the said decision, learned counsel for the respondents would submit that RBI plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. He would further submit that in the aforesaid decision, the Hon'ble Supreme Court has held that with respect to enforcement by the courts, it was stated that the function of the courts is to see that lawful authority is not abused but the courts should not appropriate to itself the task entrusted to that authority.

(c) Regional Director, RBI vs. Nahar Finance & Leasing Limited
reported in MANU/TN/1498/2019

Relying upon the aforesaid decision, the learned counsel for the respondents would submit that section 45-IA of the RBI Act does not mandate affording a personal hearing and despite the same, personal hearing was afforded to the petitioner. According to him, in line with the aforesaid decision, the petitioner was afforded a fair hearing as Hon'ble Supreme Court held that principles of natural justice requires to be applied depending upon the facts and circumstances of each cases.

(d) State of U.P vs. Sudhir Kumar Singh reported in (2020) SCC Online SC 847

Relying upon this decision, the learned counsel for the respondents would submit that assuming principles of natural justice were not adhered to by the respondents, the petitioner cannot raise the ground of violation of principles of natural justice, since they have admitted to the guilt in their reply sent to the show cause notice.

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Discussion:

14. Section 45-IA(6) of the RBI Act, 1934 deals with instances, when the certificate of registration of an NBFC can be cancelled. Section 45-IA(6) reads as follows:

“45-IA. Requirement of registration and net owned fund:

....

(6) The Bank cancel a certificate of registration granted to a non-banking financial company under this section if such company—

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfill any of the conditions referred to in clauses (d) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the Bank under the provisions of this Chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its

books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfill any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such term as the Bank may specify for taking necessary steps to comply with such provision or fulfillment of such condition:

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.”

15. In the case on hand, the first respondent issued show cause notice

to the petitioner on 10.05.2019 listing out the contraventions to the provisions of the RBI Act, directions, regulations and rules committed by the petitioner and calling upon the petitioner to give its explanation within 15 days from the date of receipt of the said notice, failing which, the first respondent has warned the petitioner that RBI will be constrained to take action on the basis of the material in this regard. In the same show cause notice, the first respondent has afforded a personal hearing to the petitioner to explain their stand.

16. The show cause notice was issued as per the provisions of section 45-IA(6) of the RBI Act. The contraventions of the provisions of RBI Act, directions, regulations and rules alleged to have been committed by the petitioner are as follows:

(a) No name board of the petitioner's company was available at the place of registered office and another outlet with the name "Tuning Point Financial Services" was found to be functioning whose name board was displayed. The copy of certificate of registration was also found to be not displayed at a prominent place within the registered office as required in the terms and conditions for grant of Cancellation of registration. The total asset

size of the petitioner's company had remained constant at Rs.29.72 mn for both financial years 2016-17 and 2017-18 indicating non-conduct of active NBFBI business.

(b) The petitioner violated section 45-N(2) of the RBI Act by not producing the mandatory documents as requested by the inspecting officer of RBI.

(c) The petitioner has violated section 45-IC(1) of the RBI Act by not creating a reserve fund and not transferring therein a sum not less than 6.25 per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

(d) The petitioner could not produce the KYC policy duly approved by its board and furnish KYC documents of its customers for verification contravening the provisions of Sl.Nos.4 and 5 of chapter II, VI and VII of Master directions of RBI.

(e) The petitioner could not produce documentation for having captured KYC information and uploaded the KYC data to the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) contravening the provisions of para 57 of Master directions of RBI.

(f) The petitioner could not produce any documentation relating to the appointment of designation director and communication of his/her name to FIU-IND contravening the provisions of Sl.No.6(b) of chapter II of master direction of RBI.

(g) The petitioner had submitted NBS-9 return for financial years 2016-17 and 2017-18 with delay on December 10th 2017 and October 29th 2018 respectively contravening the provisions of Master directions of RBI.

(h) The petitioner could not produce a copy of the Fair Practice Code (FPC) duly approved by its board. Adherence to the same by the petitioner could not be ascertained due to non availability of documentation.

(i) The petitioner has appointed Shri Chirayath Shine Konikkara Anotny as Independent Director with effect from April 23, 2018 but communicated the appointment to the bank on February 21, 2019 with delay contravening the provisions of paragraphs 60 and 23 of the Master directions of RBI.

(j) The petitioner company has violated paragraphs 84(1) and (2) of the Master directions of RBI by not becoming member of all Credit Information Companies (CICs).

17. For the aforementioned reasons contained in the show cause notice, the first respondent has called upon the petitioner as to why their certificate of registration should not be cancelled and as to why penal action should not be initiated against them and their directors in terms of provisions of section 58B(2) and 58B(5)(aa) read with section 58G(1)(b) of the RBI Act.

18. On receipt of the said show cause notice, the petitioner sent a reply on 21.05.2019 which reads as follows:

(i) The activities of the petitioner company had come to a virtual stagnation as the additional infusion of capital was not forthcoming from the existing shareholders. In the absence of required additional capital funds, the company was managing the existing portfolio by ensuring that collections are effected and disbursements were made while keeping the business moving. Further the business was being managed by the members of the same family. The activities of the company came in for further strain because of disputes within the family who also happened to be in managing positions at the organisation. The petitioner has regretted to the first respondent that they were unable to provide the documents requested by them earlier. They

have stated in the reply that due to unavoidable circumstances, they were unable to provide the documents sought for by the inspecting officials during the inspection, since a close relative of the Director was hospitalised for over a month. The petitioner has also apologised for not transferring 20% of net profit of Rs.1,57,508/- during the financial year 2017-18. The petitioner has also stated that its board has unanimously passed a resolution on 21.05.2019 to transfer Rs.31,501/- (20%) of Rs.1,57,508/- over and above the amount required to be transferred for financial year 2018-19. They have also pleaded that they will make precautionary measures to ensure such inadvertent mistakes do not repeat in the future.

(ii) Due to unavoidable circumstances, the petitioner could not provide the RBI with CERSAI documents at the time of inspection. The management of the organisation has been held up due to internal family dispute and other personal matters. The petitioner has also regretted for the lapses on their side in intimating the RBI with regard to appointment of Mr.Chirayath Shine Konikkara Antony. The petitioner has applied for registration with all the four Credit Information Companies which was intimated to RBI by them. At the end of the reply, the petitioner has once again apologised for non-compliance of the requirements mentioned in the show cause notice sent by

the first respondent and have requested the RBI to take a lenient view.

19. As seen from the aforesaid reply dated 21.05.2019, the petitioner has pleaded guilty of the contraventions to the provisions of RBI directions, regulations and rules which were pointed out to them in the show cause notice dated 10.05.2019 sent by the first respondent. After receiving the reply dated 21.05.2019 from the petitioner, the first respondent after giving due consideration to the same has passed the impugned order dated 25.06.2020 cancelling the certificate of registration issued to the petitioner as per the provisions of 45-IA(6) of the RBI Act.

20. The impugned order has been signed by the second respondent Executive Director, though the show cause notice was issued by the first respondent. The petitioner has challenged the impugned order on the following grounds:

(a) the impugned order has been passed without jurisdiction as the show cause notice was issued by the first respondent from Chennai but the impugned order was signed by the second respondent from Mumbai who according to the petitioner is altogether a different authority.

(b) the impugned order has been passed without affording opportunity of hearing to the petitioner and therefore, violates the principles of natural justice.

21. Insofar as the first contention raised by the learned counsel for the petitioner that enquiry was conducted by the first respondent but the order was passed by the second respondent and therefore is non est in law is concerned, the said contention is unsustainable as the hearing afforded to the petitioner prior to the passing of the impugned order is an institutional hearing. Section 45-IA(6) of the RBI Act does not specify a particular officer of the RBI who shall hear the matter with regard to the cancellation of certificate of registration issued to any NBFC. Any competent officer of the RBI can hear the matters involving cancellation of registration of an NBFC. Both the first respondent as well as the second respondent are competent to hold enquiry under section 45-IA(6) of the RBI Act involving cancellation of registration of NBFC.

22. It is not the case of the petitioner that the first and second respondents do not have the authority to pass the impugned order. But the only contention raised by the petitioner is that the matter was heard by the

first respondent but the impugned order was signed by the second respondent. Infact, the impugned order signed by the second respondent was communicated to the petitioner only by the first respondent. Therefore, a collective decision has been taken by RBI for cancellation of registration of the petitioner under the impugned order.

23. The Hon'ble Supreme Court in a similar kind of situation where an enquiry was conducted by the Joint Secretary to the Central Government, but the order was passed by the Deputy Secretary to the Central Government, held that being an institutional hearing, the order does not suffer from any legal or procedural infirmity. The relevant paragraphs of the Hon'ble supreme Court judgment referred to supra are as follows:

“ 70. We also do not find much substance in the submission made by Mr. Krishnan that the order dated 27.09.2001 is vitiated as it has been passed by an officer who did not give a hearing to the parties. This is clearly a case of an institutional hearing. The direction has been issued by the High Court for a hearing to be given by the Central Government. There was no direction that any particular officer or an authority was to give a hearing. In such

circumstances, the orders are generally passed in the relevant files and may often be communicated by an officer other than the officer who gave the hearing.

71. *The legality of institutional hearing has been accepted in England since the case of Local Government Board Vs. Arlidge (supra). The aforesaid judgment was quoted with approval by this Court in Pradyat Kumar Bose (supra). This Court approved the following passage from the speech of Lord Chancellor in the aforesaid case:*

“My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work

entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

In view of the aforesaid settled position of law, it is difficult to accept the submissions of Mr. Krishnan that the order dated 27th September, 2001 suffers from any legal or procedural infirmity."

24. The Hon'ble Supreme Court in the aforesaid decision has also considered the decision relied upon by the learned counsel for the petitioner in Gullapalli Nageswara Rao and other vs. Andhra Pradesh State Transport Corporation and another : AIR 1959 SC 308 referred to supra and only thereafter has come to the conclusion that being an institutional decision, it is not necessary that a same person who conducted the enquiry will have to

pass the order.

25. Further, the respondents are not quasi judicial authorities and the impugned order also does not arise out of quasi judicial proceedings and hence, the decision relied upon by the learned counsel for the petitioner in Gullapalli Nageswara Rao and other vs. Andhra Pradesh State Transport Corporation and another referred to supra which dealt with Quasi judicial proceedings is not applicable to the facts of the instant case. The other decision relied upon by the learned counsel for the petitioner namely Alagesan vs. The Chief Commissioner of Income Tax – 3 and others rendered by a learned Single Judge of this Court in W.P.No.18094 of 2017 on 24.07.2017 is also not applicable to the facts of the instant case as that case also dealt with an order passed by the Chief Commissioner of Income Tax and pertains to quasi judicial proceedings. The institutional decisions are the decisions taken by large number of people in the organization who take part in collective decision making process and therefore the first contention raised by the petitioner that the impugned has been passed without jurisdiction is rejected by this Court.

26. The RBI Act has not designated a particular officer to conduct the enquiry under section 45-IA(6) in a cancellation of registration proceedings.

Therefore, the various departments of RBI take a collective decision whenever the NBFC registration is required to be cancelled.

27. Insofar as the second contention raised by the learned counsel for the petitioner that principles of natural justice has been violated by the respondents before passing the impugned order is concerned, the same will necessarily have to be rejected for the following reasons:

(a) The petitioner has pleaded guilty in its reply dated 21.05.2019 to the violations pointed out by the first respondent in its show cause notice dated 10.05.2019. As seen from the reply dated 21.05.2019, none of the deficiencies (irregularities and violations) pointed out by the petitioner have been denied by the petitioner. In the reply, after admitting their guilt have stated that they have rectified the irregularities.

(b) Admittedly the petitioner was also afforded a personal hearing by the first respondent despite their being no statutory requirement under the provisions of Section 45-IA(6) of the RBI Act. Section 45-IA(6) of the RBI Act mandates only an opportunity of hearing before cancellation of registration. In the case on hand, opportunity of hearing was granted to the petitioner and infact, personal hearing was also afforded to the petitioner.

(c) Under the impugned order, the second respondent has considered

the reply dated 21.05.2019 sent to the show cause notice and has observed in paragraph 5 as follows:

“5.The total asset size had remained constant at Rs.2.97 crore as on March 31, 2017 and March 31, 2018 and Rs.2.98 crore as on March 31, 2019. the company was given multiple opportunities to furnish loan policy, bank account statement and other loan documents which would have helped in establishing that the company was involved in active NBFI business. However, as it failed to submit the documents, the Bank concluded that the company had ceased to function as an NBFC. As regards the violation of Bank's directions/instructions in respect of non-display of CoR, not being member of all CICs and delayed intimation of appointment of independent Director to the Bank by not adhering to the time frame as stipulated in the Master Directions, the explanation of the company was not found satisfactory. Further the company did not furnish any response on delayed submission of annual NBS-9 return. The company was provided adequate opportunity to comply with the directions/instructions of the Bank. However, the company has failed to rectify the violations.”

As seen from the impugned order, adequate opportunity was granted to the petitioner by the respondents to comply with the directions/instructions of

the RBI and only thereafter, the petitioner's certificate of registration was cancelled.

28. As rightly contended by the learned counsel for the respondents by relying upon the decisions of R.K.Garg vs. Union of India and others reported in (1981) 4 SCC 675 and Peerless General Finance and Investment Co. Limited vs. R.B.I. reported in (1992) 2 SCC 343, courts should show judicial self-restraint in interfering with the decisions taken by expert bodies like Reserve Bank of India. The case on hand does not call for any interference to the impugned order on the ground that the said order is not arbitrary, irrational or illegal and it also does not suffer from any violations of principles of natural justice. In the case of State of U.P vs. Sudhir Kumar Singh reported in (2020) SCC Online SC 847 relied upon by the learned counsel for the respondents, the Hon'ble Supreme Court held that when a person does not dispute the admitted facts on account of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, violation of principles of natural justice cannot be taken by such a person. The relevant paragraph of the aforesaid decision is extracted hereunder:

39. An analysis of the aforesaid judgments thus

reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

29. The aforesaid decision of the Hon'ble Supreme Court squarely applies to the facts of the instant case. Here also, the petitioner has pleaded guilty to the charges levelled in the show cause notice sent by the first respondent. In terms of section 45 IA(6) of the RBI Act, opportunity of hearing was also granted to the petitioner by the respondents. The reply sent by the petitioner to the show cause notice sent by the respondents has also been considered in the impugned order. Therefore as per the aforesaid decision of the Hon'ble Supreme Court, no principles of natural justice have been violated.

30. Admittedly, a statutory appellate remedy was available to the petitioner aggrieved by the impugned order under section 45-IA(7) of the RBI Act before the Central Government. Without exhausting the said statutory appellate remedy, the petitioner has filed this writ petition. Since the impugned order has been passed only under the authority as per law and there is no violation of principles of natural justice, the only remedy available to the petitioner is to prefer the statutory appeal as against the impugned order before the Central Government under section 45-IA(7) of the RBI Act.

The statutory appeal ought to have been filed within 30 days from the date of the impugned order. The impugned order was passed on 25.06.2020 and this writ petition was filed on 19.08.2020. The contention of the learned counsel for the respondents that the petitioner having failed to file the statutory appeal under section 45-IA(7) of the RBI Act on time has approached this Court under Article 226 of the Constitution of India belatedly only to circumvent the limitation prescribed under section 45-IA(7) of the RBI Act. Since the impugned order impinges on the fundamental right of the petitioner to carry on its business as an NBFC and that too, when it has submitted before this Court that it caters to the needs of small traders, this Court exercising its wide powers under Article 226 of the Constitution of India deems it just and necessary to permit the petitioner to file a statutory appeal before the Central Government as against the impugned order as provided for under section 45-IA(7) of the RBI Act.

31. No prejudice will be caused to the respondents, if such an appeal is entertained by the Central Government within a time frame to be fixed by this Court. Excepting for granting this concession by this court, the grounds raised by the petitioner in this writ petition does not deserve any merit. Accordingly, the writ petition is dismissed. However, the petitioner is

permitted to prefer the statutory appeal as against the impugned order dated 25.06.2020 before the Central Government as prescribed under Section 45-IA(7) of the RBI Act within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the same, the Central Government shall entertain the statutory appeal and pass appropriate orders on merits and in accordance with law.

02.03.2021

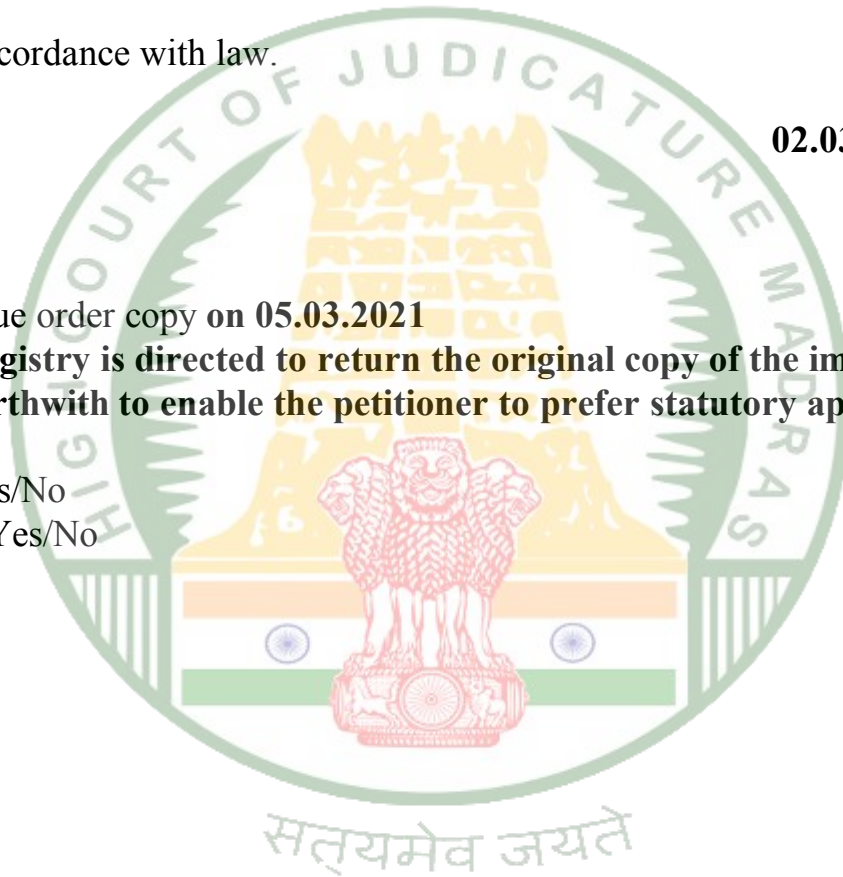
nl

Note: Issue order copy on 05.03.2021

Registry is directed to return the original copy of the impugned order forthwith to enable the petitioner to prefer statutory appeal.

Index:Yes/No

Internet:Yes/No



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ABDUL QUDDHOSE, J.

nl

To

1.General Manager,
Reserve Bank of India,
Department of Non Banking Supervision,
Fort Glacis, No.16, Rajaji Salai,
Chennai – 600 001.

2.Executive Director,
Reserve Bank of India,
Department of Registration,
Central Office, Mumbai.

W.P.No.12335 of 2020



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