

MAT No. 613 of 2022

With

CAN 1 of 2022

Vedica Computer Private Limited & Anr.

Vs.

Kotak Mahindra Bank & Ors.

Mr. Souritro Ganguly,

Ms. Stuti Baid, Advocates

... for the appellants

Mr. Anuj Singh,

Mr. Ashok Kumar Singh,

Ms. Niharika Singh,

Ms. Shubhangini Singh,

Mr. Amar Agarwal

Ms. Trinisha De, Advocates

...for the respondents

By this appeal, the petitioner has challenged the order dated 30th of March, 2022 whereby WPA 4978 of 2022 has been dismissed by the learned Single Judge.

The appellant had filed the writ petition before the learned Single Judge with the plea that initially an overdraft facility was sanctioned by the respondent Kotak Mahindra Bank vide agreement dated 27.03.2015 thereafter the OD of limit was increased from time to time but the respondent bank had arbitrarily revised and reduced the limit which resulted into higher rate of interest. Aggrieved with the said action, the writ petition was filed.

Learned Single Judge, in the impugned order, has

found that the respondent Kotak Mahindra Bank is not the State within the meaning of Article 12 of the Constitution and that there are disputed questions of fact under the private contract which cannot be gone into in the writ jurisdiction.

Submission of learned Counsel for the appellant is that the writ petition against the private bank is maintainable and in support of his submission he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Ramesh Ahluwalia vs. State of Punjab and Others** reported in **(2012) 12 SCC 331**. He has further submitted that the bank is not justified in reducing the OD facility resulting into higher PLR rate.

Opposing the prayer, learned Counsel for the respondent bank has submitted that the Kotak Mahindra Bank is a private bank and it is not a State and that writ petition cannot be maintained in respect of a private contract. In this regard, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Federal Bank Ltd. vs. Sagar Thomas and Others** reported in **(2003) 10 SCC 733**.

We have heard the learned Counsel for the parties and have perused the records.

It is undisputed before this Court that the respondent Kotak Mahindra bank is a private bank. The

Hon'ble Supreme Court in the matter of **Federal Bank Ltd. (supra)** considering the similar issue about the maintainability of a writ petition under Article 226 against the private bank has taken note of the earlier judgments on the point and has culled out the position as under:

“**18.** From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

Examining the matter qua, a private bank in the light of the above principle, the Hon'ble Supreme Court in paragraph 28 to 33 of the judgment has held that:

“**28.** The six factors which have been enumerated in the case of *Ajay Hasia* and approved in the later decisions in the case of *Ramana* and the seven-Judge Bench in the case of *Pradeep Kumar Biswas* may be applied to the facts of the present case and see whether those tests apply to the appellant Bank or not. As indicated earlier, share capital of the appellant Bank is not held at all by the Government nor is any financial

assistance provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant Bank does not enjoy any monopoly status nor can it be said to be an institution having State protection. So far as control over the affairs of the appellant Bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant Bank nor is any one of them a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purpose of maintaining a healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by Reserve Bank of India under a statute or the Central Government. Even if it was with the Central Government in place of Reserve Bank of India it would not have made any difference, therefore, the argument based on the decision of All India Bank Employees' Assn. does not advance the case of the respondent. It is only in case of

malfunctioning of the company that occasion to exercise such powers arises to protect the interest of the depositors, shareholders or the company itself or to help the company to be out of the woods. In times of normal functioning such occasions do not arise except for routine inspections etc. with a view to see that things are moved smoothly in keeping with fiscal policies in general.

29. There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, maybe banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of *Ajay Hasia*. Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant company. For the sake of argument, even if it may be assumed that one or the other test as provided in the case of *Ajay Hasia* may be attracted, that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of

public nature. In this connection, observations made in the case of Pradeep Kumar Biswas quoted earlier would also be relevant.”

The Hon’ble Supreme Court has also examined the issue, if the private bank can be said to be an institution or a company carrying statutory or public duty as they are regulated by the banking policy of the RBI and has answered the question in negative by holding that:

“**32.** Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of

public character though it would be so for the acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.”

It is also worth noting that the grievance which the appellant has raised in the writ petition relates to pure commercial contractual transaction and there is no element of public duty involved therein.

The division bench of this Court also in the matter of **Standard Chartered Bank Pensioner's Association and Ors. vs. Standard Chartered Bank Officers' Pension Fund & Ors.** reported in **2007 SCC OnLine Cal 474** in a case where the writ petition claiming pension was filed by an employee against the Standard Chartered Bank after placing reliance upon the judgment of the Hon'ble Supreme Court in the case of **Federal Bank (supra)** has held that a writ petition would not be maintainable by observing that the bank cannot be said to be performing any public duty or a statutory duty.

So far as the judgment in the case of **Ramesh Ahluwalia (supra)** relied upon by the learned Counsel for the appellant is concerned, in that case the issue was about maintainability of a petition against the removal of a teacher serving in a private school performing the public duty and in that background it has been held that since the school performs public functions and it provides education to the children in the institution thus writ cannot be withheld merely on the ground of being a private educational institution. Hence, the said judgment stands on a different footing.

Hence in the aforesaid circumstance, we are of the opinion that the learned Single Judge has not committed any error in dismissing the writ petition.

Thus, no case of interference in this appeal is

made out which is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)