

27th June, 2022
(D/L No.36)
(SKB)

W.P.A. 12955 of 2021

Sujit Kumar Jha and another
Versus
HDFC Bank and others

Mr. Farooque Ali,
Mr. Shahrukh Raja,
Mr. Afsar Ali

... for the petitioners.

Mr. Siddhartha Banerjee,
Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee,
Mr. Soumojit Majumder

... for respondent nos.1 to 3.

The limited prayer of the writ petitioners is for a direction on the HDFC Bank to provide reasons for the freezing of the petitioners' bank account amounting to Rs.50,000/-.

Learned counsel appearing for the petitioners submits that the Bank may be suitably directed to give such reasons.

Point of maintainability has been taken by the Bank and is being accordingly answered.

Learned counsel appearing for the Bank submits that the writ petition is not maintainable since the relief is directed against a private bank, namely, HDFC Bank.

Learned counsel appearing for the petitioners submits, on the other hand, that the Bank owes a positive obligation to the petitioners that it will come out

with clean hands and act in fair manner and the Bank is amenable to the writ jurisdiction of this court. Counsel also rely on decisions in support of and against the argument of maintainability.

Federal Bank Ltd. Vs. Sagar Thomas and others reported in (2003)10 SCC 733, the Supreme Court in paragraph 28 of the Report referred to the six factors of *Ajay Hasia Vs. Khalid Mujib Sehravardi* (1981)1 SCC 722 and the later decision of the Supreme Court for ascertaining whether the tests applied to the appellant Bank before the Supreme Court. The Supreme Court was of the view that both in terms of constitution as well as functions, the Federal Bank and the private Banks in the nature of the appellant before the Supreme Court did not fulfil the tests for the State or an authority in Article 226 of the Constitution of India. While the constitution of the Bank and its governance is managed by a Board of Directors elected by the shareholders, there is no perspective of the State in the regular day to day functions undertaken by the Bank. The Supreme Court further opined that the nature of functions is in the realm of regulatory measures for the purpose of maintaining healthy economic atmosphere that are in the nature of purely private and commercial activities. The Supreme Court also noted that a number of other companies also carried out the profession of banking

and cannot be equated with governmental functions. *Federal Bank* was followed by the Bombay High Court in *Vasanti Commodities Ltd. Vs. HDFC Bank Ltd.* reported in 2017 SCC OnLine Bom 3508 and in *Kailashi Devi Vs. Branch Manager and another* reported in 2020 SCC OnLine All 1415. The facts in both the cases are very similar to the facts in the present case.

This court is of the view that whether an authority fits into the definition of Article 226 of the Constitution would have to be determined by not only the form but also the functions carried on by the authority. The functions should either have a direct nexus to the State or indicate some sort of State intervention or should be in the nature of a public function or duty for the benefit of the public at large. Bank services are admittedly for the benefit of individuals that form a contractual relationship with the particular Bank. There is no hint of any State intervention or role in the functions of the HDFC Bank and it cannot be said to be that the HDFC Bank is carrying on public functions or is under any public obligation.

Besides the answer to the argument of the maintainability of the writ petition, the writ petitioners also do not have any satisfactory answer to the alternative forum available to the writ petitioners. The pleadings in paragraph 11 reflect that the petitioners

have made an application under Section 6 of The Right to Information Act, 2005 but have chosen not to go beyond that stage and exhaust the remedies available to the petitioners under The Right to Information Act, 2005. The petitioners have very well gone before the R.T.I. to seek the answer for relief which is now sought before the writ court.

In view of the above reasons, this court accepts the argument that the writ petition is not maintainable.

W.P.A.12955 of 2021 is accordingly dismissed.

(Moushumi Bhattacharya, J.)