

15.9.2022
Sl.No.58
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WPA 19189 of 2022

**Vishambhar Saran
Vs.
Bank of India & Ors.**

**Mr. Sabyasachi Chaudhury
Mr. Rajarshi Datta
Mr. Tridib Bose
Mr. Debjyoti Saha
..for the petitioner
Mr. S. Dasgupta
Ms. Niharika Singh
Ms. Shubhangini Singh
Mr. A.K. Singh ..for the Bank**

The petitioner has challenged the notices dated May 6, 2022 and July 25, 2022, being Annexure P/8 and P/12 to the writ petition respectively, issued by the Assistant General Manager on behalf of the Identification Committee.

It is submitted that subsequently the review committee also passed an order upholding the order of the identification committee declaring the petitioner as a wilful defaulter. Such order was communicated to the petitioner by a letter dated August 26, 2021. Such order has been produced before this Court by way of a supplementary affidavit.

The petitioner contends that the order of the identification committee was not supplied to the petitioner. By the impugned letter, the decision of the identification, declaring the petitioner to be a wilful defaulter, had been communicated. The

petitioner was the erstwhile Director of the Company in liquidation.

Mr. Chaudhury, learned advocate for the petitioner submits that the proceeding before the identification committee is vitiated for two reasons.

First, the documents relied upon by the identification committee were not supplied to the petitioner. Secondly, the order that was passed, had not been served.

Non-supply of the order, according to Mr. Chaudhury, was in violation of principles of natural justice and in disobedience to the order of the Hon'ble Apex Court in the matter of State Bank of India Vs. Jah Developers Private Limited & Ors. reported in (2019) 6 SCC 787. Reliance has further been placed on two decisions of this Court wherein it had been held that the persons against whom the proceedings under Clause 3 of the Master Circular on Wilful Defaulter dated July 1, 2015 were initiated, were entitled to copies of the documents and materials which were relied on by the identification committee.

It is urged that documents should be supplied when proceedings are initiated under Clause 3(b) of the Master Circular. The next contention is that even the order of the review committee was not supplied,

This is another irregularity which has been pointed out by the petitioner.

Learned advocate for the bank submits that the communication dated May 6, 2022 contains the findings of the identification committee and the said communication itself, would serve the purpose of supplying the order. It is further submitted that only the forensic audit report was relied upon by the identification committee. No other document had been relied upon by the committee while declaring the petitioner as a wilful defaulter. The forensic report was in possession of the petitioner and the question of supply of the same would not arise. Such report was also the subject matter of the proceedings before the N.C.L.T. and the petitioner had contested the said proceedings.

Having heard the learned advocates for the parties, this Court is of the view that any decision or order passed in any proceeding which visits a person with civil consequences, must be supplied to the concerned person. The documents which were relied upon by the authority while passing the order should have been supplied, before the reply to the show cause was filed by the petitioner.

In this case, the materials/documents relied upon by the identification committee were not

supplied. The order of the identification committee was not supplied.

As the contention of the identification committee is that only forensic report had been relied upon, the petitioner should be given an opportunity to deal with the same and file a supplementary answer/written statement before the identification committee and advance arguments on the basis thereof.

Secondly, non-supply of orders of the first and second committee vitiates the proceedings. A person, against whom orders have been passed, is entitled to know the reasons behind such order. Non-supply of the said orders, is in violation of principles of natural justice.

In the decision of ***Managing Director ECIL Hyderabad and others vs. B. Karunakar and others*** reported in ***(1993) 4 SCC 727***, the Hon'ble Apex court held that non service of any order passed pursuant to any enquiry or proceeding, upon the person affected by that order, would amount to violation of the principles of natural justice.

Thus, the proceedings before the review committee also stands vitiated for non-supply of the order of the identification committee. The petitioner could not be expected to approach the review committee in the absence of the order. The whole

purpose of review, in this case, was to assess the correctness of the order of the identification committee.

The Hon'ble Apex Court categorically held that the first committee after following paragraph 3(b) of the Master Circular dated July 1, 2015 must, supply the order to the borrower. In this case, no such order was supplied and as such the procedure under paragraph 3(b) and 3(c) were not followed. The orders passed by the identification committee and the review committee are set aside and cancelled. The communications are set aside.

The bank will proceed afresh. The petitioner shall file a supplementary reply to the show cause notice by dealing with the forensic report. As it is the specific contention of the bank that no other documents have been relied upon, further direction for supply of documents, is not given.

The petitioner is in possession of the forensic audit report. Such supplementary reply shall be filed within two weeks from date of communication of this order. The identification committee will proceed afresh, by hearing the petitioner and pass a reasoned order, which shall be supplied to the petitioner. Thereafter the proceedings shall continue in terms of paragraph 3(c) and the entire issue shall

be reached to its logical conclusion, in accordance with law.

It is made clear that the orders passed in the first and second stage, shall be supplied to the petitioner.

This order has been passed in view of the procedural irregularities. The merits of the decisions have not been gone into.

It is made clear that no unnecessary adjournments shall be given to the petitioner and the petitioner must cooperate.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)