

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO 915 of 2022

SHYAMA AGARWAL AND ANR.
VERSUS
ICICI BANK LIMITED

AND

WPO 916 of 2022

SHYAMA AGARWAL AND ANR.
VERSUS
ICICI BANK LIMITED

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 15th March, 2022.

Appearance:

Mr. Anuj Singh, Adv.

Ms. Rashmi Singhee, Adv.

Mr. Aman Agarwal, Adv.

Ms. Trinisha De, Adv.

...for the petitioners.

Mr. Subhankar Chakraborty, Adv.

Ms. Saptarshi Bhattacharjee, Adv.

...for the ICICI bank.

The Court: Two writ petitions have been filed seeking remedies against the ICICI bank. The petitioners allege that they did not borrow any sums of money from the bank. A housing loan was applied for and sanctioned. The loan, however, was not availed by the petitioners. Notwithstanding this, the ICICI bank has wrongfully and illegally, according to the petitioner, encashed and appropriated four postdated cheques towards alleged installments from the petitioners. The actions of the bank are stated to be in violation of the contract between the parties, apart from being utterly dishonest. The petitioners seek refund of the four instalments wrongfully appropriated by the ICICI bank.

Counsel for the respondent bank raises objection to the maintainability of the writ petitions and submits that a writ under Article 226 of the Constitution of India cannot be issued against the ICICI bank. The bank is not State or other authority within the meaning of Article 12 of the Constitution. It is argued that no financial assistance has been provided by the State to the bank. The ICICI bank does not enjoy any monopoly status in the banking industry and does not have State protection either. The State has no role in the management of the Bank. The entire shareholding of the Bank is privately held. Despite the functions of the ICICI bank being regulated under the Banking Regulations Act, 1949 and the Reserve Bank of India Act, 1934, the transactions with the public at large are governed by private contracts.

In support of his argument, counsel for the bank has relied upon the decision of the Supreme Court in the case of ***Federal Bank Ltd. –Vs- Sagar Thomas and Others*** reported in ***(2003) 10 SCC 733***, particularly paragraph 8 thereof.

Reliance has also been placed on the decision in the case of ***Pradeep Kumar Biswas –Vs- Indian Institute of Chemical Biology*** reported in ***(2002) 5 SCC 111***. It is alternatively argued that even assuming for the sake of argument that a writ petition can be maintained against the ICICI Bank, the same should not be entertained for availability of efficacious alternative remedy in the form of a complaint under the Banking Ombudsman Scheme, 2006 or under the Consumer Protection Act, 1986. It responds to the demurrer raised.

Counsels for the petitioners argue that the ICICI bank is under the control and regulation of the Reserve Bank of India. The said bank is also required to function under the regulatory mechanism prescribed by the Central Government under the Banking Regulation Act, 1949. It is also submitted that since the ICICI bank is a

banking company within the meaning of Section 5C of the 1949 Act, its officials are public servants under the provisions of the Prevention of Corruption Act and/or the relevant provisions of the Indian Penal Code. It is also argued that the ICICI Bank is regarded as one of the 3 banks in the Country along with State Bank of India and the HDFC Bank which cannot be allowed to fail and hence specially monitored by the State and its instrumentalities.

Reliance is also placed on the decision of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others –Vs- V.R. Rudani and Others*** reported in **(1989) 2 SCC 691**. The decision of a Co-ordinate Bench of this Court in the case of ***Pearson Drums & Barrels Pvt. Ltd. –Vs- General Manager, Consumer Education & Protection Cell of Reserve Bank of India and Others*** reported in **2021 SCC Online Cal 503**, is also placed. There are other decisions relied upon by the parties which not referred to.

Having carefully considered the rival submissions of the parties, this Court is of the view that the test to determine as to whether a body or institution is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India has already been laid down in the decision of the *Federal Bank (supra)* particularly in paragraph 18 thereof.

“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.”

It is a combination of one or more of such factors that would have to be satisfied for the purpose of attracting jurisdiction under Article 226 of the Constitution of India.

Indeed, as held in ***Andi Mukta Sadguru (supra)***, particularly paragraph 17, 18 and 19, the writ Court under Article 226 of the Constitution of India has extremely wide powers to issue writs against any authority. There should however, be some public element attached to such function. Writs can also be issued for failure to perform any statutory function or duty.

It would be appropriate in the instant case that the transaction between the petitioners and the ICICI bank is purely in the realm of a private contract. The allegation of the petitioners, if summarized, can be a grievance for breach of contract and or damages. There may be other claims under other laws. However, unless there is a statutory function discharged by a respondent and there is infraction of such statutory duty in course of such statutory function, the writ Court's jurisdiction is not attracted. Even when an action of a "State or other authority" is challenged, a public element is required to be involved in such transactions.

We may now look into some of the other decisions of the Supreme Court in the context of invoking writ jurisdiction to address acts and/or omissions of certain authorities who appear to be performing a public duty/function.

In ***Pradeep Kumar Biswas -Vs- Indian Institute of Chemical Biology*** reported in **(2002) 5 SCC 111** while reaffirming the Six-factor test formulated in ***Ajay Hasia & Ors. vs. Khalid Mujib Sehravadi & Ors*** reported in **(1981) 1 SCC 722**, the Supreme Court observed as follows:

" 40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

In ***Thalappalam Service Cooperative Bank Vs. State of Kerala & Ors*** reported in **(2013) 16 SCC 82**, the apex Court in answering whether a body, allegedly controlled by the Government can be considered as State under Article 12 or even in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India, observed that :

“44. We are of the opinion that when we test the meaning of expression “controlled” which figures in between the words “body owned” and “substantially financed”, the control by the appropriate Government must be a control of a substantial nature. The mere “supervision” or “regulation” as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate Government, the control of the body by the appropriate Government would also be substantial and not merely supervisory or regulatory. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act.”

Useful reference may also be made to paragraph 28 of the ***Federal Bank (supra)*** decision in the context.

“28. The six factors which have been enumerated in the case of Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] and approved in the later decisions in the case of Ramana [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] and the seven-Judge Bench in the case of Pradeep Kumar Biswas [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] 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. [AIR 1962 SC 171 : (1962) 3 SCR 269] 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.”

In view of the aforesaid, this Court is of the clear, unequivocal view that a writ under Article 226 of the Constitution of India does not lie and cannot be issued against the ICICI bank. Reserving the right of the petitioners to approach any forum, statutory or otherwise, the writ petitions shall stand dismissed.

Since affidavits have not been invited, none of the allegations in this writ petition shall be deemed to have been admitted by the respondents.

There shall however, be no order as to costs.

(RAJASEKHAR MANTHA, J.)