ORDER SHEET

WPO 2197 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

VISHAMBHAR SARAN AND ANR.
VS.
CENTRAL BANK OF INDIA & ANR.

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date: 20th May, 2022

Mr. Sabyasachi Choudhury, Mr. Rajarshi Dutta, Mr. Tridib Bose, Debjyoti Saha, Ms. V. Sharma, Advocates for the petitioners.

Mr. Bishwambhar Jha, Advocate for respondent bank.

The Court : The writ petitioners are aggrieved by a notice dated 31st December, 2020, issued by the Central Bank of India, which has asked the petitioner No. 1 to represent before the Competent Authority/Committee against the identification of the account and its director(s) as wilful defaulter, which reads as follows:

> *"If, you want to represent himself and/or yourself before the Competent Authority/Committee against the identification of the account and its director(s) as Wilful Defaulter, you can appear in person before the Competent Authority/Committee within 15 days from the receipt of this intimation letter/notice. If, no request received from you for Personal Hearing, the above name(s) will be reported accordingly to RBI/CICs."*

It appears clearly from the above, that the same is an order of the Review Committee under the guidelines contained in the Master Circular of the Reserve Bank of India dated 1st July, 2015 ('Master Circular') for identification of wilful defaulters. Admittedly, the Review Committee is the second committee. Counsel for the petitioners would argue that the Review Committee could not have issued any notice under Clause 3(c) of the aforesaid guidelines, since the Identification Committee in terms of Clause 3(b) has not taken any decision after dealing with the petitioners' representation.

The facts are that on 7th October, 2020, as corrected on 8th October, 2020, a show cause notice was issued to the petitioners by the Bank , under Clause 3(b) of the aforesaid Master Circular, seeking cause as to why they should not be declared as wilful defaulters on the ground stated therein. Enclosed along with the show cause was a minutes of the meeting of the wilful defaulters by the Identification Committee under stage-I.

The petitioners thereafter, on 4th November, 2020, showed cause and also asked for certain documents. The Identification Committee did not either deal with or pass any order on the cause shown by the petitioners. Instead on 20th November, 2020 the Deputy General Manager, Stressed Asset Management Branch ('SAM'), Kolkata, replied to the petitioners' objection.

Counsel for the bank, however, submits that the communication dated 20th November, 2020, issued by the Deputy General Manager, SAM, Kolkata construed sufficient compliance of the requirements under Clause

3(c) above, since each of the grounds urged by the petitioners, on 4th November, 2020 have been dealt with.

This Court is of the view that the same cannot constitute sufficient compliance under Clause 3(b) of the aforesaid guidelines. Reference in this regard is made to the decision of the Supreme Court in **State Bank of India vs. M/s Jah Developers** reported in **(2019) 6 SCC 787**, as follows:

> *" **8.** It will be noted that whereas the earlier Master Circular dated 1-7-2013 granted a hearing before the Grievance Redressal Committee headed by the Chairman/Managing Director, and also provided that the borrower should be provided 15 days' time for making a representation against the preliminary decision of the First Committee, this situation does not now obtain. <u>Under Para 3 of the Revised Circular dated 1-7-2015, it is only at the first stage that the First Committee is to issue a show-cause notice and to consider the submissions of the borrower, a discretion being left with the aforesaid Committee to give or not to give a personal hearing.</u> It may be noticed that the Review Committee consisting of the higher officials and independent Directors is completely in-house. Neither does the order of the First Committee have to be given to the borrower, nor is any representation required against the aforesaid order, nor is there any personal hearing before the Review Committee, which goes through the First Committee's order by itself and then comes to a conclusion without involving the borrower at all."*

(emphasis supplied)

Curiously the bank under the impugned order has called upon the petitioners to make a representation and show cause as to why they should not be declared as wilful defaulters. The Review Committee need not have granted any personal hearing to the petitioners in terms of clause 3(c) above. It is quite possible that the bank having realised that the First Committee did not deal with the petitioners' reply to the show cause, has chosen to give a further opportunity to the petitioners.

It is now well settled that when a Statute or rules have prescribed something to be done in a particular way, it must only be done in such a way, and no other way or not at all. In any event, the Deputy General Manager, SAM, Kolkata, cannot alone act as part of the Identification

Committee which is required to be comprised in three senior officers of the Bank not less than the rank of General Manager/ Deputy General Manager, and headed by an Executive Director.

In that view of the matter, the matter is remanded back to the Identification Committee to consider the representation of the petitioners dated 4th November, 2020 being annexure "P-11" to the writ petition. The Identification Committee shall pass a reasoned order on each of the grounds urged in the letter dated 4th November, 2020. Any order that may be passed after such consideration shall be communicated to the petitioners.

The Review Committee may, and if necessary thereafter take further steps in terms of Clause 3(c) of the aforesaid guidelines. The Identification Committee shall comply with the aforesaid order within a period of one month from date. If the Identification Committee feels, at its sole discretion, it may call the petitioners for any personal hearing.

The writ petition is disposed of accordingly.

(RAJASEKHAR MANTHA, J.)

S,chandra/pa