IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

WPO 2385 of 2022

Smt. Bimla Devi Kabra & Ors.

Vs

Reserve Bank of India & Ors.

For the Petitioners	:	Mr. Swatarup Banerjee, Adv. Mr. Avishek Guha, Adv. Mr. Shaunak Ghosh, Adv. Ms. Debarati Das, Adv. Ms. Akansha Chopra, Adv.
For the Respondent no. 2	:	Mr. Shiv Mangal Singh, Adv. Ms. Jahan Ara Kulsum, Adv.
Last Heard on	:	14.11.2022
Delivered on	:	15.11.2022.

Moushumi Bhattacharya, J.

1. The petitioners seek quashing of an order dated 12th July, 2022 communicated by the Branch Manager of the respondent Bank on behalf of a Wilful

Defaulter Screening Committee. The petitioners assail the impugned order on the ground that the impugned order does not follow the requirements of the Master Circular dated 1st July, 2015 framed by the Reserve Bank of India. The respondent Bank seeks to defend the impugned order on the ground that the Bank has followed the step-wise requirements of the Master Circular and the Branch Manager of the Bank has simply communicated the impugned order on behalf of the Wilful Defaulter Screening Committee. The respondents also rely on an order passed by a Division Bench of this Court in CAN 5340 of 2019 in MAT 787 of 2019 (*Union Bank of India & Ors. Vs Sudhir Kumar Patodia & Anr.*) with CAN 5342 of 2019 in MAT 788 of 2019 (*Union Bank of India & Ors. Vs. Pawan Kumar Patodia & Ors.*) in this regard.

2. The dispute before this Court relates to Clause 3 of the Master Circular – "Mechanism for Identification of Wilful Defaulters". It is to be seen whether the impugned order communicated to the petitioners by the Branch Manager of the respondent Bank dated 12th July, 2022 follows the sequential requirements of Clause 3 of the Master Circular.

3. First, although the impugned order records that it has been passed by the Wilful Defaulter Screening Committee, the contents of the impugned order show that the impugned order is actually confirmed by the Review Committee under Clause 3. This is by reason of the fact that the impugned order records the fact of a meeting held by the Wilful Defaulter Screening Committee on 20th January, 2022 followed by a show-cause notice of 7th February, 2022 and a reply of the petitioners to the show-cause notice of 24th March, 2022. The impugned order further records

that a meeting of the Review Committee was held on 25th May, 2022 wherein the Screening Committee order of 20th April, 2022 was confirmed, resulting in the impugned order of 12th July, 2022. Hence, by no means can it be said that the impugned order is by the Screening Committee, whatever may be the recording at the end of the impugned order.

4. Second, Clause 3 of the Master Circular makes it clear that the mechanism for identification of Wilful Defaulters will consist of the following steps:

i. A Screening Committee will examine the evidence of wilful default on the part of the borrowing company under 3(a).

ii. If the Screening Committee concludes that wilful default has occurred, a show-cause notice shall be issued by the Screening Committee to the concerned borrower and promoter/whole-time director and their submissions must be considered.

iii. The Screening Committee should give an opportunity to the borrower/promoter for a personal hearing at the time of considering their submissions.

iv. The Screening Committee shall pass an order considering the submissions of the borrower.

v. The order of the Committee should be reviewed by a Review Committee under 3(c) in the constitution specified therein.

vi. The order of the Screening Committee shall only become final once the Review Committee confirms the order of the Screening Committee.

5. The above sequence shows that the borrower is required to be heard between issuance of the show-cause and passing of an order by the Screening Committee under 3(b) of the Master Circular. In the present case, the impugned order records that only the reply of the petitioners dated 24th March, 2022 to the show-cause was considered before the Screening Committee passed its order on 20th April, 2022. This is not the specified procedure under Clause 3 as the Screening Committee cannot jump one step and pass its order by depriving a borrower of an opportunity of a personal hearing. The lacuna in the procedure adopted persuades this Court to hold that the impugned order is contrary to the mechanism outlined in Clause 3 of the Master Circular.

6. Further, communication of the impugned order by the Branch Manager is also not in consonance with Clause 3. The word 'it' has been used both under Clause 3(b) as well as Clause 3(c) indicating that the Screening and Review Committees must communicate the order in compliance with the constitution specified under the two Clauses. A Branch Manager of a bank can in no circumstances be delegated with the power to do so.

7. The question before the Division Bench in *Pawan Kumar Patodia* was whether the show-cause notice issued by the Bank suffered from want of jurisdiction. The issue in the present writ petition is entirely different since the petitioners have not

raised any jurisdictional objection to the show-cause notice which is part of records. The decision, hence, does not assist the respondent Bank.

8. In view of the above reasons, this Court is inclined to accept the contentions made on behalf of the petitioners and hold that the impugned order dated 12th July, 2022 suffers from an inherent lack of jurisdiction.

9. The impugned order is quashed for that and the other reasons stated above.

10. WPO/2385/2022 is disposed of in view of the above.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.)**

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