AD-11
Ct No.09
18.07.2023
TN

WPA No. 16291 of 2023

Amit Kumar Kejriwal
Vs.
Bank of India and others

Ms. Noelle Banerjee,
Mr. Abhidipto Tarafdar,
Mr. Dipak Dey

.... for the petitioner

Mr. Syed E. Huda,
Ms. Niharika Singh,
Ms. Shubhangini Singh,
Mr. Rupal Singh,
Mr. Ashok Kumar Singh

.... for the respondent no. 1

Learned counsel for the petitioner contends that the petitioner was an erstwhile Director of Swati Mining Private Limited which was classified, for its transactions as a borrower, as fraudulent under the relevant guidelines of the government.

It is contended that such classification, without giving a right of hearing to the petitioner, was palpably *de hors* the law and natural justice. Learned counsel places reliance on the judgment of the *State Bank of India and others vs. Rajesh Agarwal and others,* reported at *(2023) 6 SCC 1,* in support of such proposition. In the said judgment, the Supreme Court has read the principles of natural justice, particularly those of *audi alteram partem,* into the relevant guidelines, under which the petitioner as well as the concerned company were labelled as 'fraud'.

Learned counsel for the respondent-bank, at the outset, takes an objection as to the *locus standi* and maintainability of the writ petition. It is submitted that the petitioner has stated in the writ petition itself that the petitioner was an erstwhile Director of Swati Mining Private Limited as well as a previous Director in a connected company. As such, there is nothing at present to entitle the petitioner to maintain the present writ petition.

It is further contended that the present writ petition is barred on the ground of territorial jurisdiction. It is contended, by placing reliance on the cause title itself, that the addresses of all the respondents, apart from the RBI, are primarily at Ranchi. Merely because the Deputy Zonal Manager, Bank of India may also have an office in Kolkata, does not confer territorial jurisdiction on this court on such score, it is submitted.

That apart, by placing reliance on the relevant documents, including the First Information Report and other allied documents, as well as the intimation to the head of the concerned Branch, CBI, along with other documents annexed to the writ petition, it is submitted that the entire bundle of facts comprising the cause of action for the present writ petition arose at Ranchi, which falls within the territorial jurisdiction of the Jharkhand High Court. As such, it is submitted that the present writ petition ought to be rejected on such ground alone, even apart from the other grounds.

Learned counsel for the petitioner, while controverting such submissions on maintainability, cites *Shanti Devi alias Shanti Mishra vs. Union of India and others,* reported at *(2020) 10 SCC 766*, and *2014 SCC OnLine Cal 14154 (Sri Pankaj Panwar vs. Lalit Kala Akademi & Ors.)*, respectively a judgment of the Supreme Court and of a coordinate Bench of this court, in support of the proposition that, within the contemplation of Article 226(2) of the Constitution of India, any High Court within the territorial jurisdiction of which even a part of the cause of action arises, has the jurisdiction to take up and decide the issues raised in a writ petition.

Upon hearing learned counsel for the parties, a perusal of the annexures to the writ petition acquires relevance. It is clear from the First Information Report annexed at page-100 of the writ petition that the same was lodged at Ranchi.

Learned counsel for the respondent is also justified in arguing that the address of the respondent nos. 1 and 2 are substantially within the territorial jurisdiction of the Jharkhand High Court.

However, it is seen from the documents annexed to the writ petition, including the information furnished under Section 154(1) of the Criminal Procedure Code to the Head of the Branch, Central Bureau of Investigation (CBI), that in paragraph no. 12 thereof (at page-108 of the writ petition), it was specifically mentioned that the directors and promoters, including the present petitioner (at the time of sanction), were involved in the action sought to be indicted by way of the classification of fraud.

In several documents, allegations have been levelled against the petitioner, which led to the classification of fraud and comprise the basis of the bundle of facts giving rise to the cause of the action for the present writ petition.

It has been mentioned in a chart, which is also a part of the information given to the CBI (at page-107 of the writ petition) that the present writ petitioner created equitable mortgage by depositing his sale deed, thereby hinting that the petitioner was a guarantor, who has also been involved in the classification of fraud by virtue of being such guarantor at the relevant point of time.

Although, at present, the petitioner may not be directly associated with the borrower-company and/or have any *locus standi* to represent the company, since the company is in liquidation under a proceeding within the contemplation of the Insolvency and Bankruptcy Code, 2016, the petitioner has sufficient *locus standi* to present the instant writ petition, since the cause of action comprising the bundle of facts which gave rise to the present writ petition is primarily on the classification of fraud of the company and its guarantors, promoters, etc., within which broad ambit the petitioner also comes.

Since the petitioner's business in Kolkata is also hampered, as reflected in the affidavit supporting the present writ petition stating that the petitioner is in business in Kolkata, it cannot be gainsaid that at least a part of the cause of action arises within the territorial jurisdiction of this court.

Insofar as the *locus standi* is concerned, the petitioner has a strong argument on the assumption that the allegations of fraud pertaining to the company-in-question also pertain to the petitioner in the capacity of a guarantor and, in all probability, as a promoter at the time of sanction and/or the relevant point of time when the classification was made. Since the basis of the writ petition is the classification of fraud, and the petitioner was involved, as per the allegations of the respondents, in the said incident of alleged fraud, the petitioner definitely has *locus standi* to present the present instant writ petition.

As such, the ground of maintainability, on the score of lack of territorial jurisdiction and *locus standi*, taken by the respondents, is turned down.

Insofar as the respondents having not given any hearing to the petitioner prior to classification of the fraud, although it has been argued by the respondents that the relevant provisions of the Master Circular do not provide for the same, such principle of *audi alteram partem* has definitely been read into the said provisions in the elaborate judgment rendered by the Supreme Court in *State Bank of India and others vs. Rajesh Agarwal and others* (supra).

Learned counsel for the respondent-authorities further argues that since the classification in the present case was done in the year 2020 and the judgment in *State Bank of India and others vs. Rajesh Agarwal and others (supra)* was rendered only in 2023, the ratio of the judgment is not applicable to the present case. However, such argument cannot be accepted *ex facie,* since the judgment pertains to the Master Circular of 2016 and it is well-settled that a judgment rendered on the legality and legal effect of a particular Act or action of the respondent-authorities relates back to the date of the concerned Act, that is, to the year 2016 in the present case, when the Master Circular itself was published.

It is evident that the interpretation of the Master Circular of 2016, be it in the year 2023, relates back to the entire period starting from 2016 till date, and cannot be said to be a statute which is promulgated only in the year 2023.

Hence, such argument of the respondent is turned down as absurd.

As such, the impugned classification of fraud of the Bank as well as the petitioner, suffers from illegality and contravention of natural justice for non-grant of prior opportunity of representation and/or hearing to the petitioner before such classification having been effected. Hence, the impugned classification is vitiated on such score.

Accordingly, WPA No. 16291 of 2023 is allowed on contest, thereby setting aside the classification of the petitioner and the company, namely, Swati Mining Private Limited, as fraud as per the Master Directions on Frauds (Classification and Reporting by commercial banks and select Financial Institutions), 2016.

All consequential action taken by the respondent-authorities pursuant to such classification are also, accordingly, set aside. The respondent-authorities are directed to take immediate steps for reversal of the said impugned action, if necessary, by intimating to the concerned authorities, including the Investigating Agencies concerned, as regards the gist of this order, to enable such agencies to de-classify the petitioner as well as the company as fraud.

The parties shall act on the server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)