IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

W.P.O. 2768 of 2022

with

W.P.O. 772 of 2023

Nillesh Parrekh @ Nilesh Parekh

Vs.

Reserve Bank of India & Ors.

For the petitioner	:	Mr. Jishnu Chowdhury, Adv. Mr. Pranit Bag, Adv. Mr. A. Agarwalla, Adv. Mr. Souradeep Banerjee, Adv. Ms. D. Mukherji, Adv. Ms. P. Garain, Adv.
For the respondent no. 3 in W.P.O. 2768 of 2022 and respondent no. 4 in W.P.O. 772 of 2023	:	Mr. Ranojit Chowdhury, Adv.
Last Heard on	:	31.03.2023.
Delivered on	:	13.04.2023.

Moushumi Bhattacharya, J.

1. The petitioner has filed writ petition WPO 2768 of 2022 on 28.9.2022 and WPO 772 of 2023 on 29.3.2023. The first petition was filed challenging a show-cause notice issued by the respondent Union Bank of India on 27.6.2022 and an order passed by the Identification Committee of the said Bank on 8.9.2022. The second writ petition was filed thereafter challenging an order dated 28.2.2023 of the Review Committee of the Bank. Since the basis of challenge to the show-cause notice as well as the two orders are factually similar, both the writ petitions are being disposed of by this judgment.

2. Learned counsel for the petitioner submits that the impugned order of the Identification Committee dated 8.9.2022 was passed in violation of the principles of natural justice. Counsel submits that the Bank proceeded to pass the impugned order without furnishing copies of the documents referred to in the show-cause notice to the petitioner. Counsel submits that since the order of the Identification Committee dated 8.9.2022 is vitiated, the order passed by the Review Committee thereafter on 28.2.2023 should also be quashed and set aside.

3. Learned counsel appearing for the respondent Union Bank of India refers to the show-cause notice, the order of the Identification Committee and the order of the Review Committee to refute the charge of breach of principles of natural justice. Counsel submits that the Bank followed the dispute redressal mechanism under the Master Circular issued by the Reserve Bank of India and

that the petitioner was given sufficient notice and to make a representation to the show-cause notice and also to appear for personal hearing. Counsel submits that the argument of the petitioner not being supplied with relevant documents is factually incorrect since the "Forensic Audit Report" and the "CDR proceedings" were not referred to in the show-cause notice and hence the question of making these documents available to the petitioner did not arise.

4. The undisputed facts are as follows. The Identification Committee fixed the hearing on 5.8.2022; the petitioner however sent a letter through his advocate on 3.8.2022 in the form a representation which was received by the Identification Committee only on 10.8.2022. The petitioner did not deal with any of the points raised by the Bank in the impugned show-cause notice on the alleged defaults and specifically did not make any request for documents or evidence allegedly mentioned in the show-cause notice. The petitioner on the other hand asked for a copy of the Forensic Audit Report which was not even referred to in the show-cause notice. The petitioner remained absent on the date of hearing i.e. 5.8.2022.

5. The Identification Committee therefore proceeded with the hearing and intimated the impugned order passed by the Identification Committee to the petitioner by a letter dated 8.9.2022. The petitioner also chose not to approach the Review Committee from the order passed by the Identification Committee and did not ask for any documents mentioned in the show-cause notice or in the order passed by the Identification Committee. The Review Committee hence

passed the impugned order dated 28.2.2023 confirming the order of the Identification Committee.

6. The Mechanism for Identification of Wilful Defaulters under the Master Circular, 2015, provides for a 3-step process which is as follows:

7. The first step involves a 3-Member Committee consisting of two senior officers of the rank of General Manager, Deputy General Manager headed by an Executive Director or equivalent which examines the evidence of a willful default on the part of a borrower and its promoter / whole-time director. The second step consists of the conclusion arrived at by the First Committee that an event of willful default has occurred. If the First Committee / Identification Committee comes to such a conclusion, the First Committee issues a show cause notice to the borrower and its promoters/whole-time directors calling for their submission as to why they should not be declared as a "willful defaulter". Step 2 : The First Committee considers the submission/ representation made by the borrower and only thereafter passes an order recording or rejecting the fact of wilful default. The First Committee also gives an opportunity for a personal hearing to the borrower if the Committee feels that such an opportunity is necessary. Step 3 is of the Second Committee / Review Committee headed by the Chairman/ Chairman and Managing Director or the Managing Director and Chief Executive Officer (CEO) + two independent directors / non-executive directors reviewing the order of the First Committee.

8. In the present case, the petitioner filed WPA 2768 of 2022 challenging the order passed by the First Committee/ Identification Committee dated 8.9.2022. The complaint that the petitioner was not given an opportunity to defend or present its case against the show-cause notice or that any order was passed disregarding the representation made by the petitioner on merits is factually without basis. Significantly, the petitioner did not ask for any specific document referred to in the show-cause notice which the petitioner has raised for the first time before this Court. It is also clear from the Mechanism under the Master Circular that the order of the Identification Committee shall become final only after the order is confirmed by the Review Committee. WPA 2768 of 2022 which challenged the show cause notice and the order of the First Committee is hence premature and is dismissed without any order as to costs.

9. The second writ petition i.e. WPA 772 of 2023 which is against the order passed by the Second Committee / Review Committee on 28.2.2023, also does not disclose any reason for the interference of the Writ Court. The Master Circular and the Dispute Redressal Mechanism thereunder contains sufficient checks and balances to prevent an arbitrary exercise of power by the lender Bank. The borrower and the promoter / whole-time director of the borrower (the petitioner in this case) is given adequate opportunity to present its case including a personal hearing where the borrower has the opportunity to raise all the points taken by the First Committee in the show-cause notice or in the order passed by the First Committee. There is nothing on record to show that either the First / Identification Committee or the Second / Review Committee

abused their powers in taking the impugned decisions. Significantly, the petitioner did not make any representation to the First Committee on the specific points raised in the show cause notice and also failed to appear before the First Committee on the date fixed for hearing. As stated above, the petitioner did not take any steps to ensure that the petitioner's representation reaches the Identification Committee before 5.8.2022.

10. The decisions cited on behalf of the petitioners are distinguishable on facts. In *Indian Commodity Exchange Limited v. Neptune Overseas Limited; (2020) 20 SCC 106*, the Supreme Court held that a show-cause notice must be comprehensive with full supporting documents made over to the recipient of the show-cause notice. It was further held that the documents which have been relied upon in the show-cause notice must be sought for within the specified period of time and the recipient of the show-cause notice must be given an opportunity to respond. The Supreme Court came to a similar view in *Oryx Fisheries Private Limited v. Union of India; (2010) 13 SCC 427*, in that a quasi-judicial authority in exercise of its statutory power must act fairly and with an open mind while initiating a show-cause proceeding. It was further held that the show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. A Division Bench of the Bombay High Court in *Kailash Shahra v. IDBI Bank Limited; 2019 SCC OnLine Bom 3279* was also of the view that the Review Committee should provide the documents considered by the Identification Committee to the petitioner well in advance. In *Suresh*

Kumar Patni v. Punjab National Bank; MANU/WB/0818/2020 a Coordinate Bench came to a specific finding that the respondent bank failed to supply copies of the forensic report which was the very plinth of the orders of both the Identification as well as the Review Committees as also the show-cause notice.

11. The above decisions proceed on the finding of violation of the principles of natural justice as far as recipients of the show-cause notice/order of the Identification and Review Committee were concerned. In all these cases, the documents relied on by the Identification and Review Committees or even in the show-cause notice were not provided to the petitioner which deprived the petitioner from satisfactorily presenting his/her case. The facts before this Court are wholly different. The petitioner is crying foul for not being provided with a report which does not even feature or find mention in the impugned show-cause notice issued to the petitioner.

12. On the other hand, the Supreme Court in *State Bank of India v. Jah Developers Private Limited; (2019) 6 SCC 787* dwelt at length on the Grievance Redressal Mechanism issued by the Reserve Bank of India (RBI) and held that under the Revised Master Circular dated 1.7.2015, the borrower is given an opportunity to represent against an order of the First Committee/Identification Committee within a period of 15 days to the Review Committee which can be a full representation on facts and law. *Jah Developers* was considered by a judgment of this Court in *Sandip Kumar Bajaj v. State Bank of India; I.A. No. G.A. 1 of 2020 with WPO 236 of 2020* where the petitioners' challenge to a

show-cause notice dated 14.11.2019 and a subsequent notice for personal hearing dated 6.8.2020 was rejected. The Court found that the petitioners did not suffer any prejudice by the impugned show-cause notice. Another decision of the Court in *WPA 11867 of 2020; Om Prakash Agarwala v. Reserve Bank of India*, placed on behalf of the respondent Bank, is also relevant on the view taken by the Court that the question of adjudication starts only after the show-cause is issued followed by a reply of the alleged defaulter and there is no scope of furnishing copy of any order to the defaulter prior thereto.

13. Above all, the argument of breach of principles of natural justice which is the petitioner's only point of challenge to the impugned show-cause notice and the two orders, fails on the ground that the respondent Bank did not even refer to the Forensic Audit Report or the CDR proceedings in the show-cause notice. Naturally therefore, there was no question of the respondent furnishing these documents to the petitioner before the order was passed by the First Committee on 8.9.2022. The petitioner's argument would have succeeded had the respondent Bank mentioned the Forensic Audit Report or the CDR proceedings in the show-cause notice and not made these documents available to the petitioner before the personal hearing or the order passed by the First Committee.

14. This Court hence finds no basis in fact or in law, to interfere either with the impugned show-cause notice dated 27.6.2022 or the impugned orders dated 8.9.2022 and 28.2.2023 of the Identification Committee and the Review

Committee respectively. The petitioner has also not been able to show any infraction of the provisions of the Master Circular.

15. WPO 2768 of 2022 and WPO 772 of 2023 are dismissed without any order as to costs, in view of the above reasons.

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

(**Moushumi Bhattacharya, J.**)