OD-3

IN THE HIGH COURT AT CALCUTTA
CONSITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

APO/48/2022
WITH
WPO/1984/2022
IA NO.GA/1/2022

VISHAMBHAR SARAN
-Versus-
STATE BANK OF INDIA & ANR.

BEFORE:
The Hon'ble T.S. SIVAGNANAM, ACTING CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th May, 2023.

Appearance :
Mr.Sabyasachi Chaudhury, Adv.
Mr.Rajarshi Dutta, Adv.
Mr.Tridib Bose, Adv.
Mr. Debjyoti Saha, Adv.
..for the appellant.

Mr. A.K. Routh, Adv.
Ms.Smruti Mishra, Adv.
…for the respondent.

The Court : This intra-Court appeal filed by the writ petitioner is directed against the order dated 27th April, 2022 in WPO No.1984 of 2022. The writ petition was filed by the appellant praying for issuance of a Writ of Mandamus to recall, rescind and/or cancel the show cause notice dated 28th May, 2020 and the order dated 9th April, 2021 as communicated by the notice dated 25th March, 2022. By virtue of which, the name of the appellant was included in the CIC list as a wilful defaulter pursuant to Minutes of Meeting conducted by the Wilful Defaulter Identification Committee (WDIC) dated 9th April, 2021. The appellant also sought for issuance of Writ of Certiorari to quash those proceedings. The learned Single Judge in the impugned order held that there is no violation of principles of natural justice inasmuch as the appellant did not plead such a case in the writ petition and the so-called grounds in the writ petition are vague and the appellant solely proceeded on the merits of the matter and, in such circumstances, the Court was not inclined to interfere with the decision taken by the WDIC. However, taking note of the fact that there is a Review Committee in terms of the guidelines issued by the Reserve Bank of India which would consider the correctness of the decision of the WDIC, the learned Single Bench was of the view that the appellant should be allowed to file a representation before the Review Committee with a direction to grant a personal hearing fully being conscious of the regulations issued by the RBI which does not provide for an opportunity of personal hearing by the Review Committee.

Aggrieved by the order and/or direction issued in the writ petition, the appellant is before us by filing the present appeal.

The learned Advocate appearing for the appellant would submit that the appellant is not questioning the correctness of the decision of the WDIC on the merits but the challenge is on the ground of violation of the principles of natural justice. During the pendency of this appeal, a decision has been taken by the Review Committee on 11th August, 2022 which was communicated to the appellant by the respondent-bank by letter dated 8th March, 2023. These documents have been brought on record by way of a supplementary affidavit sworn to by the appellant on 16th March, 2023. The first issue is to be considered is whether the appellant had adequate opportunity to put forth their submission before the WDIC. The respondent bank would state that three opportunities were granted to the appellant to appear for a personal hearing on 31.10.2020, 9.12.2020 and 9.4.2021 but the appellant failed to avail any one of the three opportunities. The correctness of this contention advanced by the respondent/bank needs to be examined for which purpose it would be sufficient to refer to the first notice which was issued to the appellant on 28.10.2020 fixing the date for personal hearing before the WDIC on 30.10.2020. On receipt of the said notice the appellant had sent a reply on 30.10.2020. The perusal of the reply shows it is touching upon the merits of the matter and in the penultimate paragraph of the said letter the appellant had requested that he may be afforded of an opportunity of personal hearing through virtual platform and he would seek to present his case from his residence. This request has been made in the light of the fact that the respondent bank in their notice dated 28.10.2020 directed the appellant to attend the personal hearing by coming over to their office stating that a facility has been provided in the ground floor of the premises. The appellant's specific request was that he should be permitted to have the personal hearing through virtual platform from his residence and also sought for permission for his advocates and advisors to attend the hearing and in the event the respondent bank refuses to accede such a request, the appellant prayed for adjourning the personal hearing to a date after 17.11.2020 on the ground that the High Court was on Vacation and he will not be able to avail to his lawyers/advisors. We find that there is no specific reply given by the respondent bank either acceding to such request or rejecting the same. However, this has been followed by a second notice fixing the date of personal hearing on 9.12.2020 at 11 AM at the State Bank of India, Stress Assets Management Branch, Kolkata. The appellant had sent a representation on 7.12.2020 reiterating his earlier stand and requested for postponement of the personal hearing stating that he is a senior Citizen, aged about 73 years and during peak of Covid, he would not be in a position to physically come over to office of the respondent bank on the date fixed. Furthermore, the appellant pointed out that calling upon the appellant to appear for a personal hearing in the office of the respondent bank is against the advisories issued by the Central Government in respect of senior citizens. Once again, the appellant reiterated his request that he may be permitted to join video conferencing from his residence. Thereafter, the appellant had sent Advocate's notice on 7.7.2020. It is thereafter the third notice was issued fixing the date of personal hearing on 9.4.2021, for which the appellant had submitted a similar representation. As pointed out earlier none of these representations were considered either positively or negatively, and no decision was communicated to the appellant but ultimately WDIC took a decision on 9.4.2021 including the name of the appellant in the CIC list of wilful defaulters. This decision was communicated to the appellant on 24/25th March, 2022. The concept of virtual hearing which has come to stay. The person, who seeks to avail the virtual platform will be situated at remote point and this will avoid travelling long distances, more particularly, to avoid exposure to infection etc. When this was expressed to the learned Advocate appearing for the respondent, it was submitted that at that point of time the respondent bank had the facility of hearing to be conducted from the ground floor of the said building and the appellant was not called upon to come to the branch which was situated in a higher floor. If that is the case, then it is not a virtual hearing facility but a facility by which a camera is fitted in the ground floor premises and the monitor will be available in the branch where the officers will interact with the appellant. Therefore, the words 'virtual hearing' used in the notice issued by the respondent bank is a misnomer. As pointed out earlier the three representations given by the appellant requesting for postponement of the hearing, request for permitting his advocates and advisers to appear and in the event his advocates and advisers are not permitted to appear the appellant prayed for adjournment of the hearing beyond the vacations of the High Court and consistently reiterated his requests that he should be permitted to attend virtual hearing from his residence considering his age and the risk of being infected with Covid. Since the respondent bank did not have such a facility, they cannot state that opportunity of virtual hearing was granted to the appellant.

We find from the grounds raised in the writ petition, more particularly in the ground No. 3 that appellant has specifically stated that non consideration seven representations dated 7.7.2020, 23.10.2020, 30.10.2020, 7.12.2020, 14.1.2021, 7.3.2021 and 6.4.2021 are in violation of the principles of natural justice. Therefore, in our view the learned Single Bench was not right in coming to the conclusion that no specific ground of violation of principles of natural justice was pleaded by the appellant. That apart in appellant's own case APOT/121/2021 dated 11.3.2022 identical issue was considered by the Hon'ble Division Bench and direction was issued to the WDIC to give an opportunity of hearing to the writ petitioner and in the said case the appellant herein was the second writ petitioner. Learned Advocate appearing for the respondent bank submitted that the said judgement can have no application to the case on hand as it is factually different. As pointed out earlier we have not gone into the merits of the matter and the ratio which can be culled out from the decision of the Division Bench dated 11.3.2022 in APO/121/2022 is that declaration of a person as a wilful defaulter is serious consequences and in this regard Hon'ble Division Bench noted the decision of the Hon'ble Supreme Court in *State Bank of India Versus M/s. Jah Developers Pvt. Ltd.* ; (2019) 6 SCC 787 and thereafter took note the age of the writ petitioner and the request made by the writ petitioner to appear for the hearing from his residence having been declined, the Court was of the view that WDIC should give an opportunity to the appellant. Thus in our view , the decision of the Hon'ble Division Bench in APOT/121/2020 will apply with full force to the case on hand. The learned Advocate for the respondent bank would strenuously contend that despite the regulations specifically stating that no opportunity of personal hearing will be granted by the review committee, the learned Writ Court had granted such an opportunity, which the appellant did not avail. Consequently, the review committee has taken a decision on 11.8.2022 and affirmed the decision of the WDIC on 9.4.2021. In our view the opportunity of personal hearing granted at the first instance is vital and opportunity at the appellate stage or a stage of review cannot replace the opportunity granted at the first instance. This is precisely the reason the regulation of the RBI has provided for such an opportunity. The Hon’ble Supreme Court in the case of *Tin Box Company Vs. Commissioner of Income Tax*; 2001(9) SCC 725, has held that failure to afford an opportunity of hearing at the first instance cannot be cured by providing an opportunity at an appellate stage. Therefore, when there is a fundamental error committed by WDIC in not providing an effective and adequate opportunity to the appellant it has to be necessarily held that decision of the WDIC suffers from serious violation of the principles of natural justice. Therefore, this Court is of the firm view that the decision of the WDIC dated 9.4.2021 and the consequential decision of the review committee dated 11.8.2022 are to be set aside and accordingly they are set aside. The matter stands remitted back to the WDIC and the appellant is directed to appear before the WDIC on the date fixed by the respondent bank which shall be fixed within thirty days from the date of receipt of the server copy of this order. After affording an opportunity of personal hearing to the appellant, or his authorised representative, the WDIC shall take a reasoned decision on merits and in accordance with law.

With the above observations, the appeal stands allowed. Consequently, the connected application [GA/1/2022] stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/GH/PKD.