OD 10

WPO/2853/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANDIP BOSE
VS
STATE BANK OF INDIA AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 15th June, 2023.

Appearance:
Mr. Shuvasish Sengupta, Adv.
Mr. Soumyajit Mishra, Adv.
Mr. Balarko Sen, Adv.
...for the petitioner

Mr. Uttiyo Mallick, Adv.
Mr. Hiranyak Gangopadhyay, Adv.
...for the respondents

The Court: Learned counsel for the petitioner contends that the petitioner was an erstwhile director of the defaulting company but was roped in for declaration that the petitioner is also a willful defaulter. It is submitted that although the petitioner was given a personal hearing and the petitioner had filed a specific and detailed reply to the show-cause notice, the same was not considered at all in the impugned decision of the Willful Defaulter Identification Committee.

It is contended that in the said reply, the petitioner has categorically elaborated as to why the petitioner was not connected in any manner with the alleged act of default. However, such detailed statements are not even reflected in the order of the Identification Committee. In so far as the petitioner is concerned, as such, it is argued that the decision of the Identification Committee was devoid of any reason whatsoever. It is contended that the legal proposition, as held by the Supreme Court as well as this High Court and several other High Courts, is well-settled that reason is the soul of a judgment. In the absence of such reasons, the declaration of the petitioner as a willful defaulter is vitiated and ought to be set aside.

Learned counsel for the petitioner also places reliance on the relevant Master Circular of the Reserve Bank of India dated July 1, 2015. The mechanism for identification of willful defaulters as stipulated in Clause - 3 thereof is also placed by counsel. Sub-clause (b) stipulates that the Identification Committee shall, only after considering the submissions of the directors, issue an order recording the fact of willful default and the reasons for the same. The impugned decision, it is argued, is devoid of any such reason against the petitioner.

It is also pointed out that the entire considerations of the Identification Committee were on the premise of submissions of another director and not the petitioner.

Learned counsel appearing for the respondent authorities submits that even in the petitioner's reply to the show-cause, it has been categorically admitted that the petitioner was a director during the relevant period, when the act of default was committed. That apart, it is argued that even in the said reply, the petitioner's role as a part of the Finance Committee of the defaulting company and his role in the accounts of the company at the said juncture have been admitted.

The consideration of the other director's version in the decision revolved around the default committed by the company and, as such, also covers the liability of the petitioner as one of the directors at the said point of time.

The consideration of the impugned decision of the Identification Committee dated September 14, 2022, reveals that the Identification Committee gave detailed reasons, after taking into consideration the question as to whether the borrower company was a willful defaulter or not. It is reflected in the said decision that the submissions of one Rahul Tantia, another Director, and not the petitioner, were considered at length. However, insofar as the plinth of the considerations is concerned in such an adjudication, the primary question is the involvement of the borrower in the act of the willful default.

Apart from the fact that the petitioner was indeed a director of the company at the relevant juncture, it is also seen from his reply to the show-cause that the petitioner admitted that he was a part of the Finance Committee of the defaulting company at the relevant juncture and had participated in several meetings of the said company. The petitioner has also admitted in his reply that he was monitoring the closure of accounts but alleged that the same did not warrant any expertise.

However, the responsibilities to be discharged by the Finance Committee, as disclosed in the reply by the petitioner himself, clearly shows that the same cannot be entirely divorced from the functioning of the company vis-à-vis the alleged act of default.

Hence, insofar as the limited scope of the writ petition is concerned, there is nothing to indicate that there was a patent fallacy in the decision-making process of the Identification Committee and/or that the impugned decision was devoid of any reason on the cardinal questions involved in such adjudication. Hence, there is no scope of interference in the present writ petition.

However, it is made clear that the petitioner, in law, has the remedy of approaching the Review Committee to ventilate its grievances. The petitioner is given the liberty to so approach and, if such approach is made, the Review Committee shall decide the grievances raised by the petitioner, including those raised herein, without being unduly prejudiced or influenced by any of the observations made therein.

Accordingly, WPO/2853/2022 is disposed of in the light of the above observation.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

B.Pal