OD-1

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1839/2023

AASHISH JHUNJHUNWALA
VS
UCO BANK

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 12th December, 2023.

*Appearance:*
*Mr. Ranjan Bachawat, Sr. Adv.*
*Mr. Suman Kumar Dutt, Adv.*
*Mr. Arijit Bardhan, Adv.*
*Mr. Satyaki Mukherjee, Adv.*
*Mr. D. Manna, Adv.*
*Mr. S. Karmakar, Adv.*
*...for the petitioner*

*Mr. Rahul Sarkar, Adv.*
*Ms. Dipika Sarkar, Adv.*
*Mr Siddhart Srivastava, Adv.*
*...for the Respondent*

The Court: Affidavit of service filed in Court today be taken on record.

Learned Senior Counsel for the petitioner contends that the petitioner's account has been declared to be a fraud purportedly in terms of the governing Master Directions on Frauds of RBI, in gross violation of the provisions of the same.

It is submitted that despite the petitioner having specifically asked for a personal hearing, the same was not granted to the petitioner. That apart, the petitioner took several objections in its written response to the show cause notice by the Bank, none of which issues were adverted to by the respondent authorities while passing the impugned declaration.

It is argued that a purported forensic audit report was relied on by the Bank while passing the impugned declaration, which did not contain any ingredient sufficient to label the petitioner's account as fraud.

That apart, it is argued that the impugned declaration is palpably cryptic and does not contain any iota of reason.

Learned Senior Counsel appearing for the petitioner places reliance on *State Bank of India and Others Versus Rajesh Agarwal and Others* reported at *2023 6 SCC 1* in support of the proposition that a right of personal hearing as enshrined in the principle of *audi alteram partem* has to be read into the concerned Master Directions on Frauds issued by the RBI.

In the present case, such hearing having not been given by the respondents, the impugned declaration is required to be set aside on such score alone.

Learned Senior Counsel also cites a judgment of this Court dated October 17, 2023 passed in WPA No.21123 of 2023 on the same proposition.

Learned Counsel for the Bank seeks to impress upon the Court by placing reliance on paragraph No.29 of the judgment of the Supreme Court cited by the petitioner that the Bank is permitted to use external auditors before taking a final call on RFA status. However, within six months the Bank is required to either lift the RFA status or classify the account as fraud in accordance with the investigation or forensic audits.

Learned Counsel also relies on the concerned provisions of the Master Directions, in particular Clause 8.8 of the same, to highlight the time constraints of an outer limit of six months for deciding on such issue.

Thus, it is argued that the Bank acted well within its authority under the Master Direction to declare the petitioner's account as fraud.

A bare perusal of the impugned declaration dated November 28, 2023 shows that the same is as cryptic as possible. By the said order, it was observed that the response of the petitioner to the show cause notice was taken cognizance of and "after due examination of the same", it was concluded that sufficient reasons have not been provided by the petitioner to explain the non-adherence to the agreed terms and conditions of the loan document or the irregularities observed in the conduct of the petitioner's account to the satisfaction of the Bank. Not only was non-adherence to the purported agreed terms and conditions of the loan document not a ground in the show cause notice, no details whatsoever as to the purported irregularities on the part of the petitioner finds place in the said order.

Even in the show cause notice, it is found that reliance has been placed solely on a Forensic Audit Report excerpts of which, as appearing from the documents annexed to the writ petition, clearly indicate that even the said report does not indict the petitioner on the high pedestal required to declare the petitioner's account as fraud under the concerned Master Directions.

The Supreme Court, in *Rajesh Agarwal's case*, clearly observed that the principle of *audi alteram partem* has to be read into the provisions of the Master Directions on Frauds by giving an opportunity of hearing to the borrowers before classifying their account as fraud.

In the present case, the said condition has been blatantly violated as well.

Learned Counsel for the Bank, during arguments, seeks two days' time to file a report disclosing relevant facts.

However, it is well-settled that in the event originally sufficient grounds were not disclosed for passing an adverse or penal order against the petitioner, subsequently the respondents cannot furnish such further reasons in order to support its original decision.

In the present case, as observed above, the classification of the petitioner's account as fraud is not in consonance with the RBI Master Directions and is palpably violative of the principals of natural justice.

Hence, no report or other document which can be filed by the Bank at this juncture could improve the Bank's case as it stood on the date of the impugned order.

In such view of the matter, such adjournment is refused to the Bank.

In view of the above observations, WPO/1839/2023 is allowed on contest, thereby setting aside the declaration of the petitioner's account as fraud under the concerned Master Directions of the RBI dated November 28, 2023, as annexed at page 380 of the writ petition.

The show cause notice dated August 30, 2023 annexed at page 123 of the writ petition, on the basis of which the said order was passed, is also set aside, in view of being in contravention of Clause 4.4.1 of the concerned Mater Directions of the RBI.

However, nothing in this order shall prevent the respondent authorities from issuing a fresh show cause notice adhering to the governing provisions of the RBI Master Directions afresh. If any action has been taken in the meantime pursuant to or in terms of the impugned classification of the petitioner's account as fraud, the same stands hereby automatically revoked and reversed.

(SABYASACHI BHATTACHARYYA, J.)

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