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W.P.No. 15010 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2022

Pronounced on : 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 15010 of 2018

and

W.M.P.No.14460 of 2022

Sri Vijayaram Hire Purchase
& Leasing Finance Ltd.
Represented by its Managing Director,
S. Arunachalam,
No. 27/14,
Thayumanavar Street,
Attur Town,
Salem District.

... Petitioner

Vs

The General Manager,
Department of Non-Banking Supervision,
Reserve Bank of India,
Fort Glacis, Rajaji Salai,
Chennai – 600 001.

.... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari or any other appropriate writ or order or direction to call for the records relating to the issuance of show cause notice dated 10.05.2018 Ref.No. DNBS (Che) No. 1785/13.18.039/2017-18 issued under Section 45-IA(6) of the RBI Act and to quash the same as illegal, incompetent and ultra vires.

Amended Prayer by order dated 04.01.2023 by CVKJ in W.M.P.No. 14460 of 2022 in W.P.No. 15010 of 2018:

Writ of Certiorari or any other appropriate writ or order or direction to call for the records relating to the issuance of the show cause



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notice dated 10.05.2018 in Ref.No.DNBS (Che) No. 1785/13.18.039/2017-18 issued under Section 45-IA(6) of the RBI Act and the consequential Public Notice published by the respondent in English Daily "The Hindu" and Tamil Daily "Dhina Thanthi" and to quash the same as illegal, incompetent and ultravirous and pass such further or other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr. S.R. Rajagopal
For Respondent : Mr. C. Mohan
for King & Patridge
for Reserve Bank of India (R1)

ORDER

The writ petition has been filed in the nature of a certiorari seeking interference with a show cause notice dated 10.05.2018 issued under Section 45-I A (6) of the Reserve Bank of India Act, 1934 by the respondent, the General Manager, Department of Non-Banking Supervision, to the petitioner, Sri Vijayaram Hire Purchase and Leasing Finance Limited represented by its Managing Director, S. Arunachalam at Salem District.

2. When the writ petition was originally filed and had come up for hearing on 21.06.2018, the following orders had been passed:

" Notice of the respondent returnable in



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four weeks.

2. *The learned counsel appearing for the petitioner submitted that the show cause notice dated 10.05.2018 was issued under Section 45-IA(6) of the Reserve Bank of India Act, 1934, granting 15 days time to submit reply by the petitioner. However, the petitioner had immediately submit the reply on 25.05.2018 even prior to the completion of the 15 days time. But even on 24.05.2018, public notice has been issued by the RBI. The learned counsel further stated that the show cause notice dated 10.05.2018 was received by the petitioner only on 14.05.2018. The public notice has been issued even without considering the reply sent by the petitioner on 25.05.2018.*

3. *In view of the above, there shall be an order of interim stay."*

3. Subsequently, in view of the fact that the petitioner had complained about the public notice which had been issued by the respondent, the petitioner had filed W.M.P. No. 14460 of 2022 seeking an amendment of the relief sought by seeking interference with the show cause notice dated 10.05.2018 issued under Section 45 – I A (6) of the Reserve Bank of India Act, 1934 and also the consequential public notice in the English Daily 'The Hindu' and the Tamil Daily 'Dhina Thanthi' by the respondent and to quash the same.



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4. Even before examining the averments made in the writ petition and counter filed to the writ petition, let me examine W.M.P.No. 14460 of 2022.

W.M.P.No. 14460 of 2022:

5. In the affidavit filed to the said petition, A. Kannan, son of S. Arunachalam, who termed himself as the current Managing Director of Sri Vijayaram Hire Purchase and Leasing Finance Limited, stated that while the writ petition had been filed questioning the show cause notice, a public notice was issued by the respondent on 24.05.2018, in which, it had been announced that the respondent had prohibited the company, Sri Vijayaram Hire Purchase and Leasing Finance Limited from accepting deposits from the public in any form till further orders.

6. In the public notice, it was stated that any person depositing money with the company shall be doing so at his/her own risks and responsibility. It was therefore stated that the public notice was issued to caution the members of the public. It had been further stated in the affidavit that since in the writ petition that show cause notice had been challenged, an amendment is required since the public notice was opposed to statutory procedure and principles of natural justice and had caused disrepute and stigma to the petitioner company.



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7. A counter had been filed to the said application. In the counter affidavit, it had been stated that under Section 45-S (1) of the RBI Act, 1934, individuals, partnership firms or unincorporated associations of individuals are expressly prohibited from accepting the deposits from the public. It was further stated that S. Arunachalam, the Managing Director of the Company cannot accept deposits in his individual capacity and a prohibitory order had been issued against the petitioner company from accepting deposits. It had been stated that the company had no justifiable clause for challenging the public notice.

8. In view of the fact that the publication is a direct consequence of the show cause notice which had been issued, I would grant the relief in W.M.P.No. 14460 of 2022 and direct necessary amendment.

9. Arguments were advanced both on the show cause notice and on the authority of the respondent, to issue such public notices in the newspapers. Since the arguments overlapped, I would allow this petition and direct necessary amendment to be carried out in the writ petition before any order copy is issued.



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10. In the affidavit filed in support of the writ petition, S. Arunachalam, the Managing Director, had stated that the petitioner, a Limited Company incorporated under the Companies Act had obtained a licence from the respondent/Reserve bank of India as a Non-Banking Financial Company in Certificate of Registration bearing No. 07.00251 dated 08.10.2003 and had been carrying on business with an unblemished track record.

11. It had been stated that a show cause notice dated 10.05.2018, had been received on 14.05.2018 and public notices were also issued in the newspapers on 24.05.2018 without conducting any enquiry or giving time and opportunity to provide necessary documents as required by the respondent. It had been stated that no personal hearing had been accorded and that the show cause notice had been issued without jurisdiction. It had also been stated that a reading of the show cause notice made it very clear from the sequence of events that the respondent intended to cancel the certificate of registration and that, issuance of the said show cause notice was only an empty formality.



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12. In the show cause notice, it had been alleged that S. Arunachalam, the Director had accepted funds by way of promissory notes and till June 30/2017 the outstanding balance payable under the promissory notes was Rs. 96.76 crores. It had been stated that though he had borrowed the money in his individual capacity, he had however termed himself as Chairman of Sri Vijayram Finance Group Companies. The petitioner company had repaid the deposits during April 2016 - January, 2017 to an extent of Rs.3.26 crores. It was stated that the monies collected did not fall under the category of exception as contemplated in Sections 45S (3)(iii) and 45 I (bb) (vi) of the RBI Act, as the relationship of the lender S. Arunachalam could not be established. It had also been stated that the Director, S. Arunachalam violated Section 45 S of the RBI Act. It had also been stated that the amounts collected were utilised as capital contribution in various partnership firms owned by S. Arunachalam and registered under Tamil Nadu Money Lenders Act, 1957. It was complained that there was no evidence that those who had lent the money were relatives and would come under the category of relatives under the RBI Act, 1934.



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13. It was further stated that an explanation had been called for on 26.04.2017 as to why the Director had borrowed the loans. A legal opinion had been submitted from two advocates by the petitioner. Both the opinions stated that the borrowals would come under the nature of capital contribution and cannot be deemed as deposits. However, it was stated in the show cause notice that it had been established that the monies collected by the Director did not fall under the exceptions to the provisions of the Act. In the show cause notice, the petitioner company was therefore called upon to show cause why the certificate of registration dated 08.10.2003 issued under Section 45 -I A of the Reserve Bank of India Act, 1934 should not be cancelled. Time was granted to reply.

14. A counter had also been filed to the writ petition. In the counter affidavit, it had been stated that the show cause notice was issued after various rounds of meeting had been conducted with the Board of Directors of the petitioner company and exchange of various emails and letters.

15. It was stated that it had come to the notice of the respondent by means of a scrutiny conducted, that the Director,



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S. Arunachalam was receiving deposits from the public in his personal name. He had taken loans from his relatives and friends amounted to Rs. 83.22 crores by signing promissory notes. He had represented himself as Chairman of Sri Vijayaram Group Finance Company and the amounts were utilized as capital contribution in various partnership firms owned by him. It was stated that the relatives did not fall under the category of 22 types of close relatives as defined under Section 45 S(3) (iii) of the Reserve Bank of India Act, 1934. It had been also stated that a meeting was also convened on 21.04.2017. S. Arunachalam had submitted the relationships with the various individuals from whom he had obtained the loans but the relationships were not covered under the definition of 45 S (3) (iii) of the Act.

16. It was also stated that S. Arunachalam had informed that the total number of creditors/depositors were 10,628 and he accepted that he had obtained loans from the same people multiple times. He had also submitted 60 declarations of the relationships but they were not covered under the definition of relatives as given under the RBI Act. It was specifically stated that he had violated Section 45-S of the Reserve Bank of India Act.



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17. It was stated that in the interests of the general public and to protect the public, and in the interests of the depositors and in exercise of the powers under Section 45 MB (2) of the Reserve Bank of India Act, 1934, the respondent had prohibited the company from accepting deposits. Further, they had issued public notices in the newspapers on 24.05.2018 to caution the public. It was stated that the writ petition should be dismissed. It was stated that the petitioner should answer the show cause notice and thereafter necessary orders can be passed.

18. Heard arguments advanced by Mr S.R. Rajagopalan, learned learned counsel for the petitioner and Mr. C. Mohan, learned Counsel for the respondent.

19. Mr. S. R. Rajagopalan, learned Counsel for the petitioner pointed out show cause notice, which had been issued to the petitioner. He stated that it revealed that the allegation is that the Managing Director, S. Arunachalam had collected monies under promissory notes from various individuals. It was stated by the learned counsel that monies were collected only as capital contribution of other partnership firms and not towards the petitioner company.

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20. Learned counsel stated that though documents had been produced, the show cause notice had been issued which had been received only on 14.05.2018.

21. Learned counsel stated that even before the time specified for giving a reply had expired, public notices were issued by the respondent in the Hindu newspaper and in the Dina Thandhi newspaper on 24.05.2018 thereby directly affecting the reputation of the petitioner company.

22. In this connection, learned counsel also took the Court through Section 45-S in Chapter III C of the RBI Act, 1934, relating to prohibition of deposits by unincorporated bodies and stated that the respondent had used this particular provision in conjunction with Section 45-I A (6), under which the certificate of registration of a non-banking financial company can be cancelled.

23. Learned counsel read out the provisions under which such cancellation can be done and stated that the reasons given by the respondent do not come under any of those provisions.



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24. Learned counsel pointed out that no opportunity was given to properly present the case of the petitioner herein. He stated that since the public notices were published in the newspapers, necessary amendment was required and therefore that particular application had been filed. It was also brought to the notice of this Court that the Managing Director S. Arunachalam, had unfortunately died pending the writ petition.

25. Mr. C. Mohan, learned counsel for the respondent however disputed every contention raised. It is the contention of C. Mohan, learned counsel that the respondent had a duty to protect the public from deposits invited by a company which had no such authority to accept deposits. It was pointed out that the Managing Director, S. Arunachalam had borrowed more than Rs. 83 Crores from various persons whom he termed relatives but did not fall under the definition of relatives in Section 45 S (3) (iii) of the Act.

26. Learned counsel insisted that the petitioner should be called upon to give an explanation to the show cause notice that thereafter necessary order would be passed by the respondent.



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27. Learned counsel further stated that there was no indication in the show cause notice that a decision had already been taken. It was only a notice which had been issued and learned counsel pointed out that the court should not interfere at this stage but rather insist that the petitioner replies to the show cause notice.

28. With respect to the amendment, it was specifically pointed out that the order of the respondent prohibiting the company from collecting deposits had not been challenged but only the public notices had been challenged.

29. Learned counsel stated that the respondent has every right to protect the public from companies which unauthorizedly invited deposits. Learned counsel insisted that the writ petition should be dismissed.

30. I have carefully considered the arguments advanced and also perused the necessary records.

31. Before proceedings further, a few provisions of the Reserve Bank of India Act, 1934 will have to be extracted.



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“45B. Power of Bank to collect credit information.

The Bank may—

(a) collect, in such manner as it may think fit, credit information from banking companies;

and

(b) furnish such information to any banking company in accordance with the provisions of section 45D

45I A. Requirement of registration and net owned fund.

(1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without—

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:

Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twenty-five lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a non-banking financial institution—

(i) for a period of three years from such commencement; or



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(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend, subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this subsection shall in no case exceed six years in the aggregate.

(4) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled:—

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.

(5) The Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it



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may consider fit to impose.

(6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company—

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the Bank under the provisions of this chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months;

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfillment of such condition;

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.



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“45 I (c) (vi)

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, 2[but does not include any institution, which carries on as its principal business,—

(a) agricultural operations; or

aa) industrial activity; or]

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;]

1[Explanation.— For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964;]

45S. Deposits not to be accepted in certain cases.

(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit—

(i) If his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner;

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.



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45S (3) (iii)

the one is related to the other in the manner indicated in the List of Relatives below:—

List of relatives—

1. Father, 2. Mother (including step-mother), 3. Son (including stepson), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including stepbrother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.] "

32. The issue raised against the petitioner is that the Managing Director, S. Arunachalam is said to have collected deposits from his relatives by executing promissory notes wherein he had described himself as Chairman of Sri. Vijayram Finance Group of Company. As a matter of fact, it is the assertion of the respondent that those who had lent him money do not fall under the category of relatives as stated under Section 45 S (3) (iii) of the RBI Act. A preliminary enquiry had been conducted consequent to information received by the respondent about this collection of money. In the show cause notice, after stating various aspects relating to the collection of such money, it had been further stated that an explanation had been called for on 26.04.2019 from the company as to why S. Arunachalam had accepted deposits.



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-In paragraph No. 6, it had been stated as follows:

" 6. It is therefore, **established** that the monies collected by the Director did not fall under the category of exceptions as contemplated in terms of Section 45S (3)(iii) and 45I(bb)(vi) of RBI Act, as the relationship of the lenders with the Director could not be established and declarations to the effect that the money lent were their own funds, were not provided and the lenders were not inconclusively proved to be authorized money lenders registered under any Act relating to money lending in force in the State of Tamil Nadu. It is, therefore, construed that the Director had accepted deposits from public in violation of Section 45S of RBI Act."

-In paragraph No. 8, it had been stated as follows:

" 8. In view of what has been stated above, it is **established** that the Director, Shri S. Arunachalam, has violated Section 45S of the RBI Act, and thus the general character of the management of the non-banking financial company is not in the public interest or the interest of its depositors. This constitutes one of the violations of Certificate of Registration."

-In paragraph No. 9, it had been stated as follows:

" 9. In view of the above mentioned facts and taking into account the failure of the company to comply with directions issued under the various provisions of the RBI Act, from time to time, the company has failed to fulfil the conditions subject to which the CoR was issued to it. **Thus the functioning of the company and the general character of the management of the company is deemed**



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as detrimental to the interest of the public."

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33. The justification of the respondent that the show cause notice does not reveal a decision had been taken, is questionable because a reading of the above extracted portion shows that the respondent had already taken a decision and had already decided that the actions of S. Arunachalam, the Managing Director in receiving such deposits, violates specific provisions of the Act. Therefore, it is evident that even if any explanation is given by the petitioner herein, the respondent would not be able to go behind those assertions in the show cause notice. They had already taken a decision that the acts **establishes** a violation of specific provisions of the Reserve Bank of India Act, 1934. The show cause notice, cannot in itself give a conclusion for the reasons for which the show cause notice had been issued. There must be an indication that the explanation would be examined in their true light.

34. In ***Oryx Fisheries Pvt.Ltd vs Union Of India & Ors***, reported in ***(2010) 13 Supreme Court Cases 427***, the Hon'ble Supreme Court of India had held as follows:

25. Expressions like "a reasonable opportunity of



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making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India and others*, reported in AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26 Chief Justice S.R. Das speaking for the unanimous Constitution Bench in *Khem Chand* (supra) held that the concept of 'reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is: "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;"

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29.....

30.....

31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it



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must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it

34. A somewhat similar observation was made by this Court in the case of [Kumaon Mandal Vikas Nigam Limited v. Girja Shankar Pant & others](#), (2001) 1 SCC 182. In that case, this court was dealing with a show cause notice cum charge-sheet issued to an employee. While dealing with the same, this Court in paragraph 25 (page 198 of the report) by referring to the language in the show cause notice observed as follows:

"25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete."



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After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in para 35 (SCC p.201 of the Report), the true test of bias is:

“ 35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom- in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained.”

35. In the instant case, the relevant portion of the show cause notice had been extracted, wherein the respondent had very clearly stated that the offences have been **"established"**

36. It is thus seen that any reply given by the petitioner would be an empty formality since a conclusion had already been reached by the respondent.

37. Learned counsel for the respondent relied on a judgment of a Division Bench of this Court, in the case of "***The Regional Director, Reserve Bank of India and Ors. vs Nahar Finance & Leasing Limited and Ors*** reported in ***(2019) 5 MLJ 334***". The observations of the Hon'ble Division Bench, setting aside the order of the learned Single Judge were as follows:

33.The next aspect to be considered is



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whether an opportunity of personal hearing ought to have been granted to the respondents before the order impugned in the writ petitions were passed. Admittedly, the respondents have not sought for any personal hearing and had they done so, in all probabilities, personal hearing would have been offered, in the light of the stand taken by the respondents in the counter affidavit in paragraph 33. However, we are to examine the statutory framework as to whether the statute mandates an opportunity of personal hearing. The second proviso in sub-Section (6) of Section 45-IA of the RBI Act states that before making any order of cancellation of CoR, such company shall be given a reasonable opportunity of being heard. This expression has been subject matter of interpretation in several decisions, since the principles of natural justice is not a straight jacket formula as held by the Hon'ble Supreme Court in N.K.Prasada vs. Government of India reported in (2004) 6 SCC 299 and Union of India vs.Tulsiram Patel reported in (1985) 3 SCC 398.

34.Principles of natural justice requires to be applied depending upon the facts and circumstances of each case. Therefore, a common yardstick cannot be made applicable to all cases and whenever a statute provides for a reasonable opportunity of being heard, will not necessarily mean an opportunity of personal hearing. Therefore, to that extent, we are not in agreement with the finding rendered by the learned Single Bench.

35. Be that as it may, the respondents/writ petitioners did not seek for any opportunity of personal hearing and have not stated as to how they were prejudiced in not being heard in person when admittedly in the reply to the show cause notice, they have candidly admitted that they



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have not fulfilled the NOF requirement before the cut of date April 1, 2017. Thus, in our considered view, no useful purpose would have been served, if the respondents/writ petitioners had been granted an opportunity of personal hearing, as nothing more could not have been pleaded by them having accepted their failure to comply with the requirements under the notification dated 27.03.2015. Therefore, the appellants were justified in stating that it would be an empty formality to provide an opportunity of personal hearing. If it had been a case where technical issues were involved on account of Court orders or any other circumstances or vis majeure or force majeure conditions prevailed, then probably, such persons would be in a position to explain better the factual matrix in a personal hearing. The cases before us cannot be placed in the said pedestal, since the respondents/writ petitioners have admitted non-compliance. The respondents should bear in mind that they are engaged in the business of financing. Therefore, it would be not acceptable for such a finance company to plead that they are unable to achieve the NOF. It may be a different matter, if the line of business was something other than financing. Thus, the very right of the respondents/writ petitions to operate is based on a licence issued under Section 45-IA of the Act. The licence comes with conditions. In terms of Section 45-IA of the RBI Act, it is the duty of the respondents to furnish the statements, information or particulars called for and to comply with any direction given to it under the provisions of Chapter III- B of the RBI Act. Therefore, there is no escape from the statutory requirement. The respondents can claim no vested right to carry on business without complying with the condition of licence or the directions issued by RBI.



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38. It is seen that in that particular case, there was no request made for personal hearing.

39. This judgment was pointed out by the learned counsel for the respondent by stating that a preliminary enquiry was conducted, explanation was received and thereafter, the show cause notice was being issued.

40. However, a reading of the show cause notice makes it crystal clear that the respondent had already come to a definite conclusion about the nature of the order to be passed and that a violation had been made out. Once that conclusion is evident in the show cause notice, it would not be appropriate to call upon the petitioner to give any explanation.

41. It is also seen that, as on date, the Managing Director, S. Arunachalam is dead. The effect of that particular aspect will have to be examined and re-examined by the respondent herein.



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42. Therefore, taking into consideration the said fact also, I would strike down the show cause notice, allow the writ petition and also striking down the public notices. It is stated by learned counsel for the petitioner that the Public notices were the result of an earlier order and that order was consequent to the show cause notice. Therefore, every order passed consequent to the show cause notice will necessarily have to be interfered with by this Court.

43. The respondent may re-examine the entire issue and re-issue a fresh show cause notice. While re-issuing the show cause notice, they must also keep in mind that S. Arunachalam had died. The show cause notice complained in the writ petition and every order consequent to the same are struck down.

44. The respondent is given an opportunity to once again issue a fresh show cause notice, after following due process. Giving that liberty to the respondent, the writ petition stands allowed. No costs. Consequently, connection W.M.P.Nos. 17765 of 2018 and 6556 of 2022, are closed.

04.01.2023

Index: Yes/no
mrn

27/29



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To
The General Manager,
Department of Non-Banking Supervision,
Reserve Bank of India,
Fort Glacis, Rajaji Salai,
Chennai – 600 001.

Note: Registry is directed to carry out the necessary amendment



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C.V.KARTHIKEYAN, J.
(mrn)

P.D. Order in
W.P.No. 15010 of 2018

04.01.2023