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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.22980 of 2022
and W.M.P.No.21988 of 2022

S.Karthikeyan ... Petitioner

Vs.

1.Tamil Nadu Mercantile Bank Ltd.,
Rep. by its Chief Manager,
Coimbatore Region,
No.540, First Floor, D.B.Road,
R.S.Puram, Coimbatore-641 002.

2.The Indian Banks Association,
Rep. by its Chief Executive,
6th Floor, World Trade Centre,
Centre 1 Building,
World Trade Centre Complex,
Cuff Parade, Mumbai-400 005. ... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus, directing the second respondent to forthwith remove the name of the petitioner 'Er.S.Karthikeyan' from the Caution List uploaded by them in their web page dated 12.04.2022.

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For Petitioner : Mr.Sharath Chandran
for Mr.Gowtham Thelak

For Respondents : Mr.R.John Sathyan for R1

No Appearance for R2

ORDER

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner was a valuer attached to the first respondent, the Tamil Nadu Mercantile Bank Ltd. He was put under the caution list by the second respondent in its meeting, dated 22.02.2022. Pursuant to which, the first respondent has removed him from the panel. It appears that the allegation against the petitioner is that he has over valued certain immovable property at the time when the bank was proposing to accept those properties as security for advancing some loan to its customers.

3.1 Mr.Sharath Chandran, the learned counsel for the petitioner submitted that the petitioner was served with a show cause notice dated 16.10.2021

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and the petitioner too has responded to the same. There was no further enquiry and all that the petitioner receives is an intimation that he was put under the caution list, which resulted in removal of his name from the panel of valuers of all the banks. It also cast a smudge on its reputation, owing to which, he cannot engage in his profession as a valuer for any banks. This indefinite ban through a non-speaking order is in violation of both Article 14 and 19 (1) (g) of the Constitution of India.

3.2 The learned counsel also placed reliance on the order of this Court in W.P.No.14801 of 2022, dated 10.01.2023, wherein a learned Single Judge of this Court confronted an identical situation, and seeks that the said proceedings of the second respondent be quashed.

4.The respondents were served with notice, but none appeared for them. On the face of what the learned counsel submitted, this Court is satisfied that the impugned proceedings shall go for more than one reason: (a) that there is no denial from the respondents that the petitioner was given a fair hearing in the matter; (b) inasmuch as the impugned proceeding is non-speaking,

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necessarily it infests the proceedings with arbitrariness, and it is violative of Article 14 of the Constitution of India; and (c) assuming that the second respondent found reasons to include the name of the petitioner in the caution list is valid, yet to impose a life-ban on him will affect not only his right under Article 19 (1) (g) of the Constitution of India, but also his right to life under Article 21. It is not known under what authority, the second respondent has engaged in its proceeding of black listing valuers.

5.In ***Vitec consultancy vs. Indian Banks' Association and Others*** (W.P.No.14801 of 2022, dated 10.01.2023), a learned Single Judge of this Court has passed the following order:

> *"14. In that particular order which Writ Petition was also filed, ISC seeking the same relief, namely to remove the name of the petitioner therein from the Caution List, the learned Single Judge had extracted the following from the Hand Book:*

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"14. Clause 1.4 and 1.5 of the handbook on policy standards and procedures for real estate valuation by banks and housing finance institutions in India reads as follows:

"1.4 Removal

In extreme cases where the valuer has been found to be indulging in unfair practices, guilty of professional misconduct, violating the code of ethics and professional practice, he shall be removed from the panel. The procedure to be followed by the banks/housing finance institutions shall comprise of the following steps:

-issue of show cause notice

-hearing

-appropriate action, including removal from the panel for a period of five years, if charges are found serious.

1.5 Re-Empanelment

Valuers once removed from the panel of any

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> *bank or housing finance institution could be re-empanelled again after a specified period, based on the recommendations of the bank Conflict Resolution Committee. Names of valuers removed shall be to Indian Banks' Association which in turn shall place the names on its Caution List.*

15. A careful reading of the above shows that a Show Cause Notice has to be issued and a hearing has to be conducted and thereafter, appropriate action has to be done including removal from the panel for a period of five years if the charges are serious.

16. In the instant case, there was only one stray occasion, where the petitioner had unfortunately come to the adverse notice of the 2nd respondent on the charge of over-valuing a particular site in the year 2014.

17. A further perusal of the Clauses extracted above also shows that those who are removed from the panel can again be re-empanelled.

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18. Taking into consideration the fact that the name of the BC petitioner had been uploaded without any opportunity being given by the 1st respondent directly, I would, also taking into consideration the fact that the respondent had taken a conscious decision not to appear before this Court or be represented before this Court, and balancing that factor with the fact that by uploading the name of the petitioner, the petitioner has come to the adverse knowledge of all the banks which is an extreme step taken, interfere with the uploading of the name of the petitioner by the 1st respondent in their website, and issue a direction that this should be removed immediately.

19. All individual Banks are given freedom to independently engage the petitioner as a valuer on the basis of the confidence they have on the capabilities of the petitioner herein. But there cannot be a restraint of trade absolutely.

20. I am therefore compelled to pass an order, allowing the Writ Petition and directing that the name of the petitioner must be removed from the website of the 1st respondent. Any Bank and every Bank is given the freedom to engage the petitioner as a professional valuer subject."

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6.At least in that case, the Court had the benefit of ascertaining that there was just one stray instance where the petitioner's conduct before it deserves to be brought under the scanner, whereas in this case, there is hardly any material before the Court to ascertain that there was at all any material for the second respondent to come to the conclusion that the petitioner deserves to be put under the caution list.

7.To conclude, for the foregoing reasons, this Court is left with a little option but to set aside the impugned proceedings of the respondent with a further direction to remove the name of the petitioner from the official portal of the respondent, wherever the petitioner is shown to have been put under the caution list.

8.The writ petition stands disposed of accordingly with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

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Anu
Index : Yes / No
Neutral Citation : Yes / No

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