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WP No.33121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.33121 of 2023

1.P.R.Shanmugam
2.Kolappan Ambujam Kalavathy : Petitioners

Vs

1.The Regional Manager,
Reserve Bank of India, Chennai
2.The Chief Manager,
Punjab National Bank,
Nungambakkam, Chennai : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 2nd respondent culminating in the order dated 22.06.2022 declaring the Petitioners loan account as fraud quash the same.

For the Petitioners : Mr.Satish Parasaran,
Senior Counsel,
for Mr.B.Harikrishnan

For Respondent No.2 : Mr.M.L.Ganesh



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ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.Satish Parasaran, learned Senior Counsel for the petitioners and Mr.M.L.Ganesh, learned counsel for the second respondent.

2. The petitioners are challenging the declaration of their account as 'fraud account'.

3. Though it is said that the account of the petitioners is declared as a fraud account on 22.06.2022, the order declaring the said account as a fraud account is not placed on record.

4. The learned Senior Counsel for the petitioners relies upon the complaint given by the Chief Manager Zonal Shastra Centre, Chennai to the Branch Head, CBI-ACB, Shastri Bhavan, Chennai wherein reference is made in paragraph 15 that the fraud angle was examined and accordingly, fraud has been declared by the bank on 22.06.2022 and was reported to the Reserve Bank of India on 23.06.2022.



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5. The learned counsel for the bank submits that the bank has declared the account of the petitioners as a fraud account. An affidavit is also filed by the bank admitting and accepting that the petitioners' account has been declared as a fraud account.

6. In normal course, we would not have entertained the writ petition and passed orders in the absence of the impugned order. However, as the respondent bank also accepts that the petitioners' account has been declared as a fraud account, and also accepts that no opportunity was given to the petitioners before declaring the account as a fraud account, we have considered the writ petition.

7. The Apex Court in the case of *State Bank of India vs. Rajesh Agarwal*, under its judgment dated 27.03.2023, has held that the application of *audi alteram partem* cannot be impliedly excluded under the Master Directions on Frauds. It has held as under:

“vi. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be



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allowed to represent by the banks/ JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order; and

vii. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness."

8. It is fairly conceded by Mr.M.L.Ganesh, learned counsel for the bank that the bank has not provided opportunity to the petitioners, nor any notice was issued to the petitioners before declaring the account as fraud.

9. We set aside the action and order of the bank declaring the petitioners' account as a fraud account. Our order would not preclude the bank from resorting to a proper procedure, in the event it wants to take steps for declaring the petitioners' account as fraud account.



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10. With this observation, the writ petition is allowed. There will be no order as to costs. Consequently, WMP Nos.32805 and 32806 of 2023 are also closed. As the petitioners have paid separate Court fees, WMP 32803 of 2023 is allowed and disposed of.

(S.V.G., C.J.)

(D.B.C., J.)

23.11.2023

Index : Yes/No
Neutral Citation : Yes/No
tar

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