IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

238

CWP-23708-2023 (O&M).
Date of Decision: 17.11.2023.

MOHINDER SINGH

... Petitioner

Versus

PUNJAB AND SIND BANK AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Pankaj Gupta, Advocate, for the petitioner.

Mr. Ranjit Singh Kakkar, Advocate,
for respondents No.1 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the letter dated 31.03.2023 (Annexure P-1) and the list Annexure P-5 whereby respondent bank has not only depanelled the petitioner as an Advocate but has also referred the name of the petitioner to the Indian Bank Association (hereinafter referred to as 'IBA') for inclusion of the name of the petitioner in the 'caution list' for onward circulation to all banks and financial institutions, without providing any opportunity of hearing. The procedure has not been followed and principles of natural justice have been violated.

Reply filed on behalf of respondents No.1 to 4 today in the Court is taken on record. A copy thereof has been supplied to the learned counsel for the petitioner.

Learned counsel for the petitioner contends that he does not wish to raise any serious claim for fresh empanelment of the petitioner with the respondent bank and is confining his prayer only to the decision/action of the respondents to refer the name of the petitioner to the Indian Banks Association for inclusion of his name in the 'caution list' for onward circulation.

It is argued that the petitioner had passed his LLB Course from Panjab University, Chandigarh in the year 1998 and thereafter, was enrolled as an Advocate. He is actively practising for the last more than 25 years and has specialized in the field of banking laws. The petitioner was empanelled by the respondent Panjab and Sind Bank about 15 years ago to conduct cases on behalf of the said bank. The petitioner was, however, shocked to know from the office of the AXIS Bank that the name of the petitioner had been included in the 'caution list' prepared by the IBA and that the AXIS bank was left with no option other than to terminate the contract with the petitioner and to depanel him with immediate effect. Subsequently, such communication/information was also received by the petitioner from certain other banks whose cases he was conducting and representing. An enquiry was thereafter made by the petitioner and he was informed of the above said decision which is subject matter of challenge herein.

Learned counsel for the petitioner contends that the respondent bank has not complied with the principles of natural justice and has not extended any opportunity of hearing to the petitioner to put forth his claim. He further contends that the procedural guidelines for reporting the names of third parties involved in discrepancies/negligence/fraud to IBA and for inclusion of the name of such third parties in the 'caution list' has not been followed by the respondent bank. It is contended that Clause 5 of the above said procedural guidelines mandate constitution of a Forum comprising of 3 to 5 members of sufficient seniority from various control functions and excluding the persons who investigated the case. The relevant clause reads thus:-

> *"5. **Forum to evaluate the role of a Third Party Entity in a fraud /loss event**. - It is proposed that an independent and empowered forum be set up to evaluate the role of TPEs in fraud cases.*
>
> ***a. Composition of the Forum***
>
> *The Forum could consist of 3 to 5 members of sufficient seniority from various control functions. One person among the above members will play the role of coordinator. This could typically be the group which reports frauds to RBI. The group which had used the services of TPE shall also be part of the Forum to decide on the particular case. While the Chief Vigilance Officer of the bank could be a member of the forum, the forum shall not have any of the persons who investigated the case.*
>
> ***b. Quorum***
>
> *The Forum meetings would have a quorum of any 2/3 members.*
>
> ***c. Periodicity of meetings***

The Forum would meet as and when the fraud investigation team of the bank presents a fraud /loss event investigation report in which there is an evidence-based conclusion about the involvement of a TPE in the perpetration of the fraud. As soon as the investigation team presents this report, the meeting of the Forum will need to be convened, not later than 10 working days after the submission of the report by the Investigation team. The proceedings of the meeting may be recorded and kept in file.

d. Functions of the Forum

i. To receive investigation reports containing the details of Involvement of TPEs in frauds, from the investigation team.

ii. <u>To seek explanation in writing from the TPEs, in order to provide an opportunity to the TPE to present his case</u>.

iii. To discuss and evaluate the responses and seek further clarifications, if any.

iv. <u>To decide on the involvement or otherwise of the TPEs in the frauds</u>.

V. To recommend inclusion of the TPE in the 'cautionary list.

("the Working Group did not find it feasible to provide for a personal hearing to the TPE to defend his action considering logistics involved. However, banks could take a case specific view in the matter, depending on the gravity of the case)."

He further refers to Clause 5 d (ii) and (iv) of the aforesaid provisions and contends that the case of the petitioner was never put up before the said forum and no opportunity of hearing was extended to him. It is argued that it was only after a considered decision taken by the Forum that the name of the petitioner could have been forwarded to the IBA and after recording that the explanation tendered by a member was not satisfactory. He further submits that a specific plea in this regard had been raised by the petitioner in the writ petition in paragraph No.16 which read thus:-

> *"16. That the common thread of all the clauses of the IBA circular dated 27.08.2009 is that the names of such Third Party Entities ('TPE') involved in a fraud or gross negligence in rendering service should be included in the caution list and circulated to other members of IBA, after giving due opportunity of hearing to the TPE and the evaluation of the role of a TPE in fraud/loss by a Forum, which should consist of 3 to 5 members of sufficient seniority from various control functions."*

He submits that the case of the petitioner was not put to the Forum and that in the reply filed by the respondents to the above para they have not denied or disputed the said assertion and had in fact have responded as under:-

> *"16. That contents of the para No.16 of the writ petitioner are legal and needs no reply, however, the acts, conduct, omissions, lapses, gross negligence resulting into financial loss."*

It is thus argued that the respondent bank has not followed the procedure prescribed in the guidelines and forwarded the name of the petitioner to be included in the caution list which has caused prejudice to the petitioner and has serious ramification so far as his future prospects are concerned.

Learned counsel for the respondent-bank, on the other hand, contends that a letter was sent on 27.9.2022 to the petitioner to respond to the allegations of gross negligence, however, no reply was filed thereto whereupon a decision was taken by the respondent bank to forward the name of the petitioner for being included in the caution list a per law.

Responding to the above, counsel for the petitioner contends that the above said letter dated 27.09.2022 had been forwarded to an address which the petitioner had vacated way back in the year 2016 which such fact is also specifically stated in the writ petition and that notwithstanding the same, other documents giving the details of the residence and the addresses of the petitioner were available with the respondent bank but they never sent any communication at the address bearing House No.1115, Sector 91, Mohali and instead directed the communication to House No.3333/2, Sector 40-D, Chandigarh. It is also argued that the respondent bank was also in possession of the Email I.D. of the petitioner and that there was no reason as to why the respondent bank chose not to forward any communication on the said email especially when a lot of correspondence between the parties used to exchange place through the emails as well.

I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition.

A perusal of the pleadings and the response filed by the respondent bank shows that the guidelines specifically provide for constitution of a Forum as per the requirements prescribed therein. Before any case pertaining to a third party involved in gross negligence/fraud is forwarded to the IBA, the Forum has to take a conscious decision thereupon and an opportunity is required to be extended to the third party and it is only after a dissatisfaction is recorded by the Forum about the reply, that the case of the third party is forwarded to the IBA. The documents available on record do not reflect that the aforesaid procedure prescribed in the 'Procedural Guidelines for Reporting Names of Third Parties involved in Frauds' notified by the IBA in July 2009 had been followed and adhered to in the present case.

Under the given circumstances, I find that the inclusion of the name of the petitioner in the caution list Annexure P-5 was in breach of the procedure provided. The decision of the respondent bank in forwarding the name of the petitioner for inclusion in the caution list is accordingly set aside. The respondents are directed to delete the name of the petitioner from the caution list. The respondents Banks, however, shall be at liberty to pass a fresh order, after following the procedure as prescribed under the Procedural Guidelines for Reporting Names of Third Parties involved in Frauds notified by the IBA in July 2009. Communication about deletion of name of petitioner from caution list shall be sent by the respondent Panjab and Sind Bank to the IBA expeditiously and preferably within a period of 02 weeks from the date of receipt of a certified copy of the order

The present petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

November 17, 2023.
raj arora

Whether speaking/reasoned *: Yes/No*

Whether reportable *: Yes/No*