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IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2922/2021 & CM APPL 8807/2021

Date of Decision: 16.02.2023

IN THE MATTER OF:

SIMI DUA
A-3/703 PRINTER APARTMENT
SECTOR-13, ROHINI
NEW DELHI-110085

..... PETITIONER

Through: Mr. Manoj Chouhan & Mr. Ujjwal
Singh Parmar, Advocates
Versus

BANK OF BARODA
16, SANSAD MARG
NEW DELHI-110001

..... RESPONDENT

Through: Mr. Arun Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner has filed this petition against order dated 08.02.2021 passed by the respondent-Bank, whereby, the name of the petitioner has been included in Indian Bank Association (IBA) caution list.
2. The facts of the case are that the petitioner is an Advocate by profession and she is working for different Banks and giving search report since 2009. In the year 2016, the petitioner had submitted her search report and declared that mortgager property is marketable on the basis of documents submitted with respondent. According to the petitioner she has submitted more than 2,500 search report for

respondent-Bank since 2009 and she was found to be one of the best performing lawyer for respondent-Bank. On 06.07.2020, the petitioner was served with the Show Cause Notice as to why her name should not be included in the caution list of IBA because of her negligence in giving records in respect to the mortgage property. The petitioner has submitted her reply/clarification on 14.07.2020 and according to her the report of non-encumbrance was based on documents available with the office of sub-Registrar and DDA. She stated that there was no negligence and fault in her part.

3. Learned counsel for the petitioner submits that without considering the petitioner's reply and the averments made therein by impugned order the respondent has unilaterally decided to include her name in the IBA caution list. He, therefore, submits that the impugned order deserves to be set aside as the same is in violation of fundamental right.

4. Learned counsel appearing on behalf of the respondent vehemently opposed the submissions and submits that if the Show Cause Notice is perused, the same would clearly indicate the conduct of the petitioner. According to him, even the reply submitted by the petitioner if is carefully perused there is an admission in the part of the petitioner of her guilt. He, therefore, submits that the impugned action has been taken strictly in accordance with law. The respondent-Bank has to follow the mandatory rules and regulations applicable to the respondent issued by the Reserve Bank of India. While referring paragraph No. 10 of counter affidavit, he submits that the petitioner has caused huge loss to the respondent-Bank and the gross negligence

of the petitioner cannot be ignored. He, therefore, submits that the RBI guideline dated 16.03.2009 require the respondent-Bank to take appropriate action against the responsible. According to him, no interference in writ jurisdiction can be made and the entire facts and circumstances will have to be considered comprehensively. He states that the respondent-Bank has followed RBI Circular dated 16.03.2009 and has given ample opportunity to the petitioner to show cause. While placing reliance on IBA Circular dated 27.08.2009 he further indicates that the same has been followed.

5. I have heard learned counsel for the parties and perused the record.

6. Before proceeding further, it would be appropriate to consider impugned order dated 08.02.2021. The same is reproduced as under:-

***ZO/NDZ/Legal/2020-21/2820
08.02.2021***

***Mrs Simmi Dus
A-3/703, Printer's Apartment Sector-13
Rohini
Delhi-110085***

Madam

Re: - Inclusion of your name in IBA caution list as per recommendation of executive committee meeting held on 28.08.2020 at Mumbai

We refer to the captioned matter and our various earlier communications with you.

In this regard consequent upon your depanelment from the Bank's panel on 04.01.2019 the Bank's Executive Committee Meeting held at Mumbai on 28.08.2020 has now unanimously decided for the inclusion of your name in IBA caution list.

Please be informed regarding the aforesaid decision of Executive Committee.

Yours Faithfully

Dy Zonal Manager/Dy Zonal Head

7. The reading of the impugned order clearly indicates that the same does not assign any reason as to why the reply submitted by the petitioner is not acceptable. A perusal of the reply would show the various grounds were taken by the petitioner to exonerate her from any action. There is no consideration at all in taking the final decision. The respondent-Bank might have issued the Show Cause Notice and has indicated the roll of the petitioner, however, when the final order is passed, the authority concerned is under an obligation to assign the reason as to why such a decision was arrived at.

8. The Hon'ble Supreme Court in the case of ***Mohinder Singh Gill v. Chief Election Commr.***,¹ has held that the authority by way of supplementary affidavit cannot supplement the reason which does not find place in the main order. Various reasons have been sought to be agitated or explained by way of affidavit, however, the same cannot be considered.

9. In view thereof, this court finds it appropriate to set aside the order dated 08.02.2021 and direct the respondent-Bank to consider the reply filed by the petitioner and pass speaking order, in accordance with law.

¹ (1978) 1 SCC 405

10. Needless to state that the respondent-Bank would be well advised to consider the reply filed by the petitioner and take a pragmatic view in view of the fact that all *bonafide* mistakes may not necessarily result in punishment.

11. The petition stands disposed of alongwith pending application in the aforesaid terms.

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 16, 2023

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