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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No.21220 of 2023

M/s. Nag Chowdhury Associates & anr.
Vs.
Indian Bank Association & Ors.

Mr. Debasish Ghosh,
Ms. Antara Biswas
...for the petitioners

Ms. Sonal Shah,
Mr. Kushagra Shah
...for the South Indian Bank

1. The petitioner no. 1 is a valuer who used to work as an empanelled valuer for the respondent nos. 4 and 5, that is, the South Indian Bank.

2. Upon issuance of two show cause notices to the petitioner no. 1, the said Bank removed the petitioner no. 1 from its panel of valuers on the allegation of certain irregularities committed by the petitioner in his official work done for the Bank. Thereafter, apparently the name of the petitioner no. 1 was recommended by the Bank for being put up on the caution list of the Indian Banks' Association (IBA).

3. It is alleged that the Bank did not communicate its order to the petitioner no. 1 at any point of time but directly communicated the petitioner's name to the IBA for putting up in its caution list, thereby

affecting the petitioner's professional work and career.

4. Learned counsel argues that there was a prior expression of opinion by the Bank in its show cause notices which are annexed to the writ petition. It is alleged that since the Bank already prejudged the issues by forming an opinion, the subsequent action taken by the Bank on the basis of such show cause notice is bad in law.

5. That apart, it is argued that the Bank did not adhere to Clause 3.4 of the IBA Handbook with regard to the Bank valuation conflicts, since the composition of the committee which took the impugned decision against the petitioner no. 1 did not conform to the composition as provided in the said clause.

6. It is also argued that the IBA did not give any independent hearing to the petitioner no. 1 at any point of time before putting up the names of the petitioners on its caution list.

7. Learned counsel for the Bank seeks to justify the decision of the respondent-Bank, that is, the South Indian Bank. Learned counsel places reliance on a Circular dated March 16, 2009 issued by the Reserve Bank of India (RBI), which is annexed to the affidavit-in-opposition of the Bank. In the said Circular, the RBI advised the Banks

which function under its aegis to take action with regard to fraudulent practices resorted to by Third Party Entities (TPEs) which work for the Banks. In Clause 4 of the said Circular, it is stated that similarly valuers etc., also have been found to have facilitated perpetration of frauds by providing/certifying fake documents/certifying incorrect information/legal opinion on financial statements/statements of accounts of the borrowers/properties taken as security by the Banks, etc. While in certain circumstances the act of omission may be *bona fide*, on numerous other occasions they were the result of pure negligence or even *mala fide* action.

8. Learned counsel next places reliance on Procedural Guidelines for reporting names of TPEs involved in fraud circulated by the IBA for the purpose of inclusion in the caution list. The said guidelines were issued in terms of the RBI Circular dated March 16, 2009. It is argued that the Bank strictly followed the said guidelines in the instant case. In fact, the South Indian Bank itself has also its own third party entities policy, which provides for the formation of a forum consisting of five departmental heads from various control functions for the purpose of evaluating the role of a Third Party Entity (TPE) in a fraud/loss event. It is

argued that the said provisions were fully adhered to by the Bank while taking the impugned decision against the petitioner no. 1.

9. Learned counsel for the Bank also places reliance on the minutes of the meeting of its TPE Committee dated August 03, 2023, annexed to the affidavit-in-opposition as Annexure-G thereto. In the said minutes, it is contended, the action against the present petitioner no. 1 was fully justified by way of giving reasons for the said action.

10. In terms of the Circular of the IBA and the Guidelines of the RBI, the Bank reported the fact that the petitioner no. 1 had been terminated and was guilty of fraud to the IBA for the purpose of uploading in the caution list. Thus, it is argued that the Bank was not at fault.

11. A perusal of the IBA Handbook in conjunction with the Circular of the RBI dated March 16, 2009 shows that the two operate in different spheres. Whereas the entire focus of the RBI Circular is on involvement of third parties in fraud, Clause 3.4 of the IBA Handbook is more on the procedure for conflict resolution in respect of valuations.

12. In the present case, components of both are present.

13. The Bank, pursuant to its show cause notices and upon giving a hearing to the petitioner no. 1,

took the decision to terminate the petitioner no. 1, which acted as a valuer of the Bank, from its panel, which is one of the measures contemplated in Clause 3.4 of the IBA Handbook.

14. The Bank, while doing so, also came into conclusion that the petitioner no. 1 was guilty of fraud, prompting the Bank to recommend the name of the petitioner for being uploaded in the IBA caution list which, again, falls within the purview of the RBI Circular dated March 16, 2009.

15. Thus, in such scenario, Clause 3.4 of the IBA Handbook was to be adhered to by the respondent-Bank, since the respondent-Bank is one of the members of the consortium of banks comprising the Indian Banks' Association (IBA).

16. Although the said guidelines of the IBA do not have statutory force, for the ends of fairness and transparency, the respondent-Bank, that is, the South Indian Bank, ought to have adhered to the said guidelines in order to lend credence to its action of removal of the petitioner no. 1 from its panel, particularly since it is a member of the said consortium.

17. Clause 3.4 of the IBA Handbook provides that in every Bank, there shall be a Bank Valuation Conflict Resolution Committee for addressing "all conflicts and arriving at an amicable solution". The

composition of the committee is to be decided by the respective Banks but shall include, as per Clause 3.4, representatives from professional valuer associations/independent reputable valuers.

18. In the present case, there was no representation in the committee of the Bank, which decided against the petitioners, of any valuer or any valuers' association. Clause 3.4 goes on to contemplate in case of misconduct by any valuer, upon issuance of show cause notice and hearing the valuer and deliberation by the committee in case the committee opines that the charges against the valuer are serious, to remove the valuer from the panel and depending on the seriousness of the case, to empanel once against only after a gap of five years. The committee is also empowered to impose suitable fines depending on the severity of the case against the valuer.

19. Lastly, Clause 3.4 also contemplates names of the valuers to be placed in the caution list of the IBA.

20. Thus, the contemplation of putting the name of a particular recalcitrant valuer on the caution list of the IBA as per the Handbook of the IBA is in addition to the Circular of the RBI.

21. Whereas such provision of placement on the caution list in terms of Clause 3.4 might not have

any statutory force, in the present instance, the action taken against the petitioner no. 1 by the Bank fulfils all the ingredients of the situation envisaged in Clause 3.4 and, as such, the decision at the first instance ought to have been taken by a Bank Valuation Conflict Resolution Committee having a representation of valuers or valuers' association.

22. Non-representation of the valuers in the committee itself vitiates its decision on such count alone, on the principle of *coram non judice.*

23. On the other aspect of the matter, a perusal of both the show cause notices issued against the petitioners indicates that the allegations were of a nature that the petitioners had flouted norms and had given a valuation report on inflated and unrealistic basis.

24. However, it is well-settled that to establish an allegation of fraud, details and particulars of the exact acts of fraud or collusion are to be disclosed for the accused person to give proper defence to the same.

25. Having not done so in the show cause notices, in fact having not uttered anything regarding any alleged fraudulent act of the petitioner but only mentioned miscalculations and erroneous inflated reports having been filed by the petitioner no. 1, the

Bank could not have come to a conclusion that the petitioner no. 1 was guilty of fraud.

26. Neither of the show cause notices indicates any specific and particular allegation of fraudulent acts done by the petitioner no. 1 or the petitioners having colluded with any interested party in inflating the valuations as alleged.

27. Moreover, it is well-settled that a show cause notice also has to clearly mention the exact action to which the accused person is amenable in the event satisfactory answer cannot be given to the show cause. In the present instance, neither of the show cause notices clearly indicates that the petitioner no. 1 would be held guilty of fraud in terms of the RBI Circular and their name would be put up on the caution list of the IBA on such score. The action contemplated in terms of the show cause notice was that if the petitioner no. 1 fails to give proper explanation, it would be construed that the petitioner no. 1 had no explanation to offer and “appropriate action” would be initiated as per the Bank’s policy. Although the proposed action of reporting the name of the petitioner no. 1 for inclusion in the Caution List was mentioned, there was no mention of the RBI Circular pertaining to fraud in the said contemplated action and it was unclear whether such recommendation would be

for being put up on the IBA Caution List under the RBI Fraud Circular or under Clause 3.4 of the IBA Guidelines, both of which have similar provisions in that regard, but having different consequences.

28. In the absence of any specific particulars of fraud either in the show cause notices or the impugned decision, the Bank acted without jurisdiction in holding that the petitioner no. 1 was guilty of fraudulent action and referring the name of the petitioner no. 1 for being put up in the caution list of the IBA. In fact, the minutes of the committee decision, whereby the petitioner no. 1 was indicted, also does not show that any specific allegation of fraud was mentioned or substantiated in the said resolution.

29. Thus, the impugned action of holding that the petitioner no. 1 guilty of fraud as well as terminating the petitioner no. 1 and putting up the name of the petitioner no. 1 on the caution list of the IBA were *de hors* jurisdiction and against the law and relevant guidelines.

30. Accordingly, W.P.A. No.21220 of 2023 is allowed on contest, thereby setting aside the impugned termination of the petitioner no. 1 and directing the IBA to strike the name of the petitioner no. 1 off its Caution List immediately.

31. However, nothing in this order shall debar the respondent-Bank from initiating fresh proceedings against the petitioner. In the event a proceeding regarding the professional valuation of the petitioner no. 1 is taken by the Bank, an appropriate committee shall be formed with a representation of valuers/valuers' association in terms of Clause 3.4 of the IBA Handbook in the committee, which will take a decision against the petitioner upon issuing show cause and hearing the petitioner.

32. In the event the respondent-Bank, that is, the South Indian Bank, seeks to initiate an action in terms of the RBI Circular dated March 16, 2009 against the petitioner no. 1 on the allegation of fraud, the particulars of such fraud shall be disclosed in the show cause notice so as to give the petitioner no. 1 an opportunity to address those allegations comprehensively.

33. Only after such show cause having been issued and hearing being given to the petitioner no. 1, the Bank will be at liberty to take appropriate action against the petitioner no. 1 in accordance with law, both with regard to termination of the petitioner from the Bank's panel and holding the petitioner to be guilty of fraud and consequentially, if so held, to

refer the name of the petitioner no. 1 for being put up in the Caution List of the IBA.

34. There will be no order as to costs.

35. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)