OD –4

ORDER SHEET

WPO/587/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. VINEET OILS (P) LTD. & ORS.
VS
INDIAN BANK & ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 30th July, 2024.

Appearance:
Mr. Prasenjit Pal, Adv.
Mr. Avirup Chatterjee, Adv.
Mr. Rishov Das, Adv.
...For the Petitioner

Mr. S. Pal Choudhari, Adv.
Ms. S. Paul, Adv.
Ms. T. Paul, Adv.
...for the respondent

The Court: The writ petition has been filed alleging that the Review Committee passed an order declaring the petitioner as wilful defaulter in its meeting dated May 25, 2022, holding that the petitioner was responsible for siphoning off funds. Such order was allegedly passed without granting an opportunity of hearing to the petitioner. It is further contended that the mechanism for identification of willful defaulters as per the Master Circular of the Reserve Bank of India July 1, 2015 had not been followed. In terms of Clause 3(b) of the Master Circular, opportunity of hearing had not been granted to the promoter/Whole Time Director. It further appears that an order was passed by the Review Committee headed by the Chairman and Managing Director of the Bank without there being any order of the Identification Committee. At least, the records do not reveal that an order of the Identification Committee was either passed or served upon the petitioner. Learned advocate for the bank has not been able to come up with an answer to the specific query of the Court as to whether the Identification Committee had passed any order and whether such order was served on the bank.

Under such circumstances, this Court is of the view that the principle of natural justice has not been followed. Section 3 of the Master Circular on Wilful Defaulters provides the procedure to be followed for declaring a person as a wilful defaulter. Here, Sections 3(a) and 3(b) have not been followed. The Identification Committee issued the show cause notice being satisfied that wilful default had occurred. The show cause was answered by the petitioner. Thereafter, the Committee was required by law to issue an order recording the fact of wilful default with reasons. It also provides that a personal hearing should be given to the borrower and the promoter/whole time director if the Committee feels such an opportunity is necessary. In this case, such complaince has not been established. The Review Committee passed the order also, without granting an opportunity of hearing. The petitioner was slapped with an order of the Review Committee in the absence of the order of the Identification Committee. Clause 3(c) provides that "if the Identification Committee does not pass an order declaring the borrower as an Wilful

Defaulter, then the Review Committee need not be set up to review such decision."

Under such circumstances, the steps taken by of the bank is contrary to the Master Circular. The order passed by the Review Committee and any observation of the Identification Committee in the form of any order or opinion, which has not been served upon the petitioner, are set aside.

The Identification Committee shall proceed afresh, in terms of Section 3(b) of the Circular, on the basis of the written submission filed by the petitioners and an opportunity of hearing shall be given to the petitioners. The Identification Committee will pass its order with reasons. If the Identification Committee holds that the petitioners are wilful defaulters, the Review Committee in terms of clause 3(c) shall be constituted and the Review Committee will also give an opportunity of hearing to the petitioners and pass necessary order, which shall be communicated to the petitioners.

WPO 587 of 2024 is disposed of.

All parties are directed to act on a server copy of this order.

(SHAMPA SARKAR, J.)

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