$~94

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31.05.2024

\+ W.P.(C) 8496/2024 & CM APPL. 34954/2024, CM APPL. 34955/2024

ASCON DAIRY PVT LTD THROUGH DIRECTOR MR. DINESH TIWARI

..... Petitioner

Through: Mr. Mudit Jain, Mr. Rudraksh Nakra, Advocates (M:9868510397)

versus

STATE BANK OF INDIA AND ORS. ..... Respondents

Through: Mr. Rajiv Kapur, Mr. Akshit Kapur, Mr. Aditya Saxena, Advocates for SBI (M:6204864761)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J *(ORAL)*

CM APPL. 34955/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.

2. Application is disposed of.

W.P.(C) 8496/2024 & CM APPL. 34954/2024

3. The present petition has been filed seeking directions for setting aside Show Cause Notice ("SCN") dated 20th February, 2024, issued by respondent no. 1-State Bank of India ("SBI"), directing the petitioner to show cause as to why its account/name should not be categorized and reported as *'Fraud'*, as per Reserve Bank of India ("RBI") Guidelines. There is further prayer for directions to respondent no. 1-SBI, to allow inspection, and furnish all supporting/relied upon documents in the SCN dated 20th

February, 2024.

4. Learned counsel for the petitioner submits that the respondent bank has failed to substantiate the allegations in the SCN, without any evidence whatsoever supporting such allegations. The petitioner responded to the said SCN vide E-mail dated 11th March, 2024, thereby requesting the bank to furnish the copies of all documents, as relied upon by the bank, at the time of issuing the said SCN. The petitioner sent a follow up E-mail dated 14th March, 2024, requesting the bank to furnish relied upon documents. However, no response was received from the respondent no. 1 bank.

5. In furtherance of the aforesaid E-mails, the petitioner sent another E-mail on 01st April, 2024, thereby urging the bank to supply the supporting documents, relied upon by the bank, as the said documents were required to prepare an effective reply to the said SCN.

6. Vide letter dated 06th April, 2024, the respondent no. 1 bank replied to the said E-mail, wherein, the bank enclosed certain documents, thereby contending the bank has provided all the relied upon documents, in support of the SCN. However, it is submitted by learned counsel appearing for the petitioner that the bank failed to provide all the documents, such as Stock and Receivables Audit Report, since the bank had only attached the Stock and Receivables Auditor's Certificate. The complete report was not supplied to the petitioner.

7. Similarly, the bank provided only the comments by the Bank's Inspecting Official. However, the complete Inspection Report was not provided to the petitioner. Thus, an E-mail dated 20th April, 2024 was sent by the petitioner to the respondent no. 1-bank in this regard, requesting for supply of the missing documents that had been relied upon in the SCN.

8. The respondent no. 1-bank replied to the said E-mail on 08th May, 2024, providing some of the supporting documents, but failed to provide all the documents relied upon in the SCN. Thus, there were some more exchange of communications between the parties, wherein, the petitioner time and again requested for supply of all the requisite documents.

9. Thus, it is the case on behalf of the petitioner that the respondent no. 1-SBI has made several allegations against the petitioner, however, has failed to provide the petitioner, with all relevant documents, as relied upon in the impugned SCN. Learned counsel appearing for the petitioner relies upon the judgment of Supreme Court in the case of ***Indian Commodity Exchange Limited Versus Neptune Overseas Limited and Others***, *2020 SCC OnLine 967,* and judgment of this Court in the case of ***Shantanu Prakash Versus State Bank of India*** in *W.P. (C) 1730/2024,* to submit that, to file an effective reply to a SCN, all requisite documents are required to be provided.

10. Per contra, learned counsel for the respondent submits that all documents have been provided to the petitioner, vide E-mail dated 08th May. 2024. Further, the petitioner by their E-mail dated 16th May, 2024, iterated that the documents they have received are voluminous and, they require further time to file an effective reply.

11. He further submits that the present petition has been filed at a pre-mature stage, and the present writ petition would not be maintainable. In support of the same, he relies upon the judgment of Supreme Court in the case of ***Union of India and Another Versus Kunisetty Satyanarayana, (2006) 12 SCC 28***.

12. At this stage, learned counsel for the petitioner submits that the

underlying documents of the Stock and Receivable Report dated 05th August, 2023 and the Internal Investigation Report dated 18th January, 2024, which are mentioned on Serial Nos. 7 & 4 in the petitioner's E-mail dated 08th May, 2024, have not been provided, despite several correspondences.

13. He further submits that only the certificate of the Stock and Receivable Report dated 05th August, 2023 consisting of three pages was provided. As regards the Internal Investigation Report dated 18th January, 2024, only the conclusions were provided. Therefore, he submits that the petitioner ought to be provided all the underlying documents, as relied in the SCN, and comply with the Principles of Natural Justice.

14. I have heard learned counsels for the parties and have perused the record.

15. The main grievance as raised by the petitioner, in the present petition is with regard to non-supply of relevant documents that have been relied by the respondent no. 1-bank, at the time of issuance of the impugned SCN. The said dereliction is a serious one, as without supplying the documents that have been relied upon in the said SCN, it would not be possible to give an effective and proper reply to the said SCN by the petitioner. Non-supply of the underlying documents, at the time of issuance of a SCN, would have the effect of directly impinging upon the right of representation of a party in terms of Principles of Natural Justice. The Principles of Natural Justice have to be strictly followed, in order to give a party an efficacious opportunity to represent its case suitably and adequately. The same cannot be reduced to an empty formality by not affording an appropriate opportunity to a party, by not giving access to the relevant documents, that form the basis of issuance of a SCN.

16. Thus, this Court in the case of ***Shantanu Prakash v. State Bank of India and Others, 2024 SCC OnLine Del 3870***, has held as follows:

> *"xxx xxx xxx*
>
> ***9.*** ***It is settled law that fair procedure and the Principles of Natural Justice require that the requisite documents, which form the basis of a SCN, ought to be provided to the concerned party in order to enable such party to submit a proper reply to answer all the allegations raised against it. If the relevant documents are not provided to a party, then, the whole procedure of issuance of a SCN and filing a reply thereto, would be reduced to an empty formality. No party can be expected to respond to a SCN in an effective manner, in the absence of the underlying documents, which form the basis of the said SCN****. Thus, Supreme Court in the case of Natwar Singh v. Director of Enforcement*[1]*, has held as follows:*
>
>> *"xxx xxx xxx*
>>
>> *31. The* ***concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain*** *as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules.* ***Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him*** *though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.*
>>
>> *xxx xxx xxx"*
>
> ***10.*** *Similarly, in the case of T. Takano v. Securities and Exchange Board of India*[2]*, the Supreme Court has held in categorical terms that* ***it would***

Signature Not Verified
Digitally Signed By:CHARU CHAUDHARY
Signing Date:05.06.2024 18:56:30

be fundamentally contrary to the Principles of Natural Justice, if the relevant materials were not disclosed to the noticee. *Thus, it has been held as follows:*

"xxx xxx xxx

C.2. Duty to disclose investigative material

27. While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest.

28. An identification of the purpose of disclosure would lead us closer to identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:

28.1. Reliability: ***The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information***.

28.2. Fair trial: ***Since a verdict of the Court has far-reaching repercussions on the life and liberty of an individual, it is only fair that there is a legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings***.

28.3. Transparency and accountability: ***The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity—principles that are antithetical to transparency.*** *It is of utmost importance that in a country* *grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability. The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgment or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order.* ***<u>Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the party concerned and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry.</u>***

29. ***<u>The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.</u>***

xxx xxx xxx"

11. ***<u>In view of the aforesaid, it is imperative that the relevant documents that form the basis of issuance of a SCN, ought to be provided to the concerned party in order to enable such a party to raise its defense effectively. Such fundamental right of a party cannot be taken away by denying a proper opportunity to submit an efficacious reply, which would not be feasible in the absence of requisite documents that form the core foundation of a SCN. This assumes all the more importance, as on the basis of the defense raised by such a party, proceedings thereto, against the said party, may be dropped in appropriate cases.</u>***

xxx xxx xxx"

(Emphasis Supplied)

17. Thus, it is imperative that the petitioner is supplied the complete underlying documents, as relied upon in the SCN dated 20th February, 2024,

to allow the petitioner to make an effective reply.

18. Accordingly, it is directed as follows:

I. The respondent-bank shall provide the Investigation Report dated 18^{th} January, 2024, along with full Annexures, to the petitioner.

II. The respondent-bank shall also provide the Stock and Receivables Audit Report, along with full Annexures, to the petitioner.

III. The aforesaid documents shall be provided to the petitioner within a period of one week, from today.

IV. After receipt of the aforesaid documents, reply to the SCN shall be filed within a period of four weeks, thereafter, by the petitioner.

V. The petitioner is also at liberty to request the respondents for personal hearing, which request, shall be considered by the respondents.

19. The present petition is disposed of, in the aforesaid terms, along with pending applications.

MINI PUSHKARNA, J

MAY 31, 2024
AU