

11.04.2025
Item No.06
Court No.551
Avijit Mitra

WPA 28563 of 2024

Anirban Mukherjee & anr.
- Versus -
Punjab National Bank & ors.

Mr. Siddhartha Banerjee,
Mr. Souradeep Banerjee,
Ms. Sanjana Sinha,
Mr. S. K. Banerjee
...for the petitioners
Ms. Parna Roy Chowdhury
...for the PNB

The writ petitioners assail the show cause notice dated April 22, 2024 and the order dated September 17, 2024 passed by the respondent no.3, i.e. Identification Committee of the Punjab National Bank.

Mr. Banerjee, learned advocate appearing for the writ petitioners submits that the show cause notice dated April 22, 2024 has referred to several documents on the basis of which the Committee has arrived at the decision to issue the show cause notice.

While the other documents have been provided to the petitioners albeit upon their representation therefor, the notices dated May 21, 2023 and September 01, 2023 that find mention in the show cause notice were never provided to the two petitioners despite the said petitioners' having specifically asked for the same by the petitioners' letter dated May 17, 2024 and August 06, 2024.

Mr. Banerjee further submits that the show cause notice addressed to the petitioners is without jurisdiction since the same has not been issued following the guidelines prescribed in paragraph 2.6 of the Master Circular on Wilful Defaulters dated July 01, 2014 (as updated on January 7, 2015).

Mr. Banerjee further submits that since the impugned order dated September 17, 2024 has been passed on the basis of the impugned show cause notice, which according to the petitioners, is without jurisdiction and inadequate therefore the order dated September 17, 2024 passed by the respondent no.3 is also bad in law.

Mr. Banerjee further submits that the order suffers from the vice of violation of principles of natural justice inasmuch as the same has been passed without affording the petitioners an effective opportunity of hearing since all the documents which form the basis of the impugned show cause notice were not supplied to the petitioners despite the petitioners request therefor.

Mr. Banerjee further submits that the petitioners do not fall within the scope of the expression 'wilful defaulters' especially in the light of the fact that none of the petitioners are Directors of the Borrowing Company and the impugned show cause notice also addressed the petitioners only as guarantors.

Ms. Roy Chowdhury, learned advocate appearing for the Bank opposes the submission of Mr. Banerjee and

submits that there is no jurisdictional error in the notice to show cause as that has been issued by the Identification Committee. She submits that the requirement that has been laid down by the said Master Circular in paragraph 2.6 thereof is that if a guarantor fails to make repayment of the debt upon demand being raised by the Bank to the guarantor, such guarantor becomes liable to be declared as wilful defaulter. Relying on a notice dated April 21, 2023 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 addressed to the borrowers and its guarantors including the writ petitioners herein, Ms. Roy Chowdhury submits that the said notice that had been served on the writ petitioners fulfils the requirement of a demand being made and since repayment of the debt has not been made by the guarantor despite such notice having been issued, the requirement of paragraph 2.6 of the Master Circular is clearly met.

She further submits that the two prior notices dated May 22, 2023 and September 01, 2023 referred to in the impugned show cause notices (which have not been supplied to the petitioners) were not addressed to the petitioners.

She further submits that the petitioners in any case had an alternative remedy before the Review Committee but the petitioners did not avail of such remedy inasmuch as the writ petitioners did not make any representation

before the Review Committee within the prescribed time. It is submitted that the petitioners have chosen to approach this Court by way of a proceeding under Article 226 of the Constitution of India prematurely before exhausting the alternative remedy.

Ms. Roy Chowdhury further submits that the petitioners have urged such points before this Court which were never raised by them before the Identification Committee. Taking this Court to the reply given by the petitioners in response to the notice to show cause she submits that replies given by the petitioners are absolutely vague and they do not demonstrate any defence at all to the charges levelled against them.

Mr. Banerjee, in reply, submits that the petitioners were prevented from giving an effective reply to the impugned notice to show cause in the absence of the complete set of documents that had been relied on in the said notice to show cause. He repeats his submission by saying that the petitioners could only have given effective reply if the entirety of the documents mentioned in the show cause notice had been made available to the petitioners, in terms of the requests made by them repeatedly.

Without entering into the merits of the submissions made by either of the parties, this Court is of the view that since it is evident that the two notices dated May 22, 2023 and September 01, 2023 that have been mentioned in the

impugned notice to show cause have not been provided to the petitioners, therefore as at the present stage, equity would be balanced if the petitioners are given an opportunity to make a representation against the impugned show cause notice dated April 22, 2024 dealing with the points made/charges levelled against the petitioners in the said notice. Such representation/reply to the show cause notice should be given by the petitioners within a period of seven days from date, given the fact that copies of the said two notices have been made over to Mr. Banerjee, learned Advocate for the petitioners by Ms. Roy Chowdhury in Court today.

The respondent no.3 being the Identification Committee of the Bank shall consider the reply given by the petitioners to the impugned show cause notice afresh in terms of this order and shall afford an opportunity of personal hearing, if the Identification Committee so feels in terms of the Master Circular. The Identification Committee shall take a decision on the replies given by the petitioners within a period of two weeks from the date of submission thereof by the petitioners.

It is made clear that the Identification Committee shall be free to take any decision that it can in accordance with law. The issue as to lack of jurisdiction of the Identification Committee as has been raised by Mr. Banerjee in course of arguments today shall also be decided by the Identification Committee while disposing of

the petitioners' replies to the show cause notice as aforesaid.

The Identification Committee shall be free to either alter or modify or reverse or annul its own decision or to even reach the same conclusion that it did by the impugned order dated September 17, 2024. For a period of three weeks from date the impugned order dated September 17, 2024 passed by the Identification Committee herein shall be kept in abeyance only insofar as the petitioners herein are concerned. Consequently, the Review Committee shall also not deal with the case of the petitioners for a period of three weeks from date.

Upon the order being passed by the Identification Committee in terms of this order of the Court the parties hereto shall next be guided by the procedure prescribed in the relevant Master Circular, which will also include the opportunity to be given to the petitioners to represent against the order of the Identification Committee before the Review Committee.

It is clarified that this order is only restricted to the writ petitioners before this Court and the order of the Identification Committee as well as the order of the Review Committee, if any passed in the meantime shall not be affected by the order of this Court as regards the other persons whose names find mention in the impugned show cause notice dated April 22, 2024 or the impugned order

dated September 17, 2024 passed by the Identification Committee.

It is clarified that this Court has not gone into the merits of the matter.

With the aforesaid observations the writ petition being WPA 28563 of 2024 stands disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Om Narayan Rai, J.)