18-03-2025
Item No.3
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.29044 of 2024
M/s. Gupta Power Infrastructure Limited & Ors.
-vs-
Canara Bank & Ors.

Mr. Suddhasatva Banerjee, adv.
Mr. Ishaan Saha, adv.
Mr. Tanay Agarwal, adv.
Mr. Shivam Bhimsaria, adv.
Ms. Akansha Singhania, adv. ...for the petitioners

Mr. Ratnanko Banerji, sr. adv.
Mr. Supriyo Mahapatra, adv.
Mr. Kishwar Rahaman, adv.
Mr. Preetam Majumdar, adv.
Mr. Rishav Mazumdar, adv. ...for the bank

1. The show-cause notice dated September 6, 2024 issued by Canara Bank asking the petitioners to reply with regard to the declaration of their account as fraud and the subsequent order dated November 29, 2024 declaring the petitioners' account as fraud are impugned in the instant writ petition.
2. The primary ground for challenge is that the show-cause notice does not disclose the basis relying on which the authority sought to declare the account of the petitioners as fraud. The documents relied upon by the bank to arrive at a conclusion that the petitioners' account is to be declared as fraud were neither forwarded nor disclosed. The forensic audit report relied in the show-cause notice was not forwarded prior to the

issuance of the show-cause notice. Opportunity of hearing was not given to the petitioners prior to final declaration of the account as fraud.

3. Learned advocate for the petitioners relies upon the judgment delivered by the Hon'ble Supreme Court on March 27, 2023 in Civil Appeal No.7300 of 2022 in the matter of **STATE BANK OF INDIA & ORS. V. RAJESH AGARWAL & ORS**. and the clarificatory order dated May 12, 2023 in the matter of **RAJESH AGARWAL** (supra).

4. Reliance has also been placed on the judgment of a co-ordinate Bench of this Court in WPA No.10601 of 2024 (**SWETA AGARWAL V. STATE BANK OF INDIA)** on August 7, 2024.

5. It has been submitted that the bank ought to have provided the petitioners the detailed data and the reasons relying upon which the bank proceeded to declare the account of the petitioners as fraud. For want of relevant data and the supporting documents, the petitioners were not in a position to give a proper reply to the show-cause notice issued by the bank.

6. Prayer has been made to set aside the show-cause notice and the subsequent order of the bank declaring the petitioners' account as fraud.

7. Learned senior advocate for the bank has placed before this Court several correspondences between the petitioners and the bank in support of the submission that all relevant and necessary details and data were made known to the petitioners prior to the issuance of the show-cause notice. The petitioners were in know of every particular detail relied upon by the bank to arrive at a conclusion that the account of the petitioners was fraud. As the petitioners did not

approach the bank seeking an opportunity of personal hearing, accordingly, personal hearing has not been given to the petitioners.

8. It has further been submitted on behalf of the bank that a civil suit being C.S. No. 2118 of 2024 had been filed by the petitioners before the Court of the learned Senior Civil Judge, Khurdah, Bhubaneswar challenging the forensic audit report and the said case is pending consideration. The fact of pendency of the civil suit has been suppressed in the instant writ petition.

9. The figures involved in the present proceedings runs to several crore of rupees which the petitioners have defaulted in payment. The forensic audit report was duly served upon the petitioners and thereafter further opportunity of hearing was also given to the petitioners to defend themselves which they failed to do. Prayer has been made to dismiss the writ petition.

10. I have heard the detailed submissions made on behalf of both the parties.

11. From the documents annexed to the writ petition, it is evident that prior to issuance of the show-cause notice there had been several communications by and between the parties. Admittedly, repeated opportunities were given to the petitioners to provide information based on the auditor's report, but the show-cause notice issued to the petitioners did not disclose the documents and the details relied upon by the bank to declare the petitioners' account as fraud. The parties may have exchanged several communications but the exact communication and the proper fact and figure which the bank relied upon for concluding that the petitioners'

account is fraud, has not been disclosed in the show-cause notice.

12. The contention of the bank that as all details were known to the petitioners, accordingly, there was no requirement for disclosing each and every fact all over again in the show-cause notice cannot be accepted by the Court.

13. A co-ordinate Bench of this Court in the matter of **Sweta Agarwal** (supra) held that before declaring an account as fraud, the documents relied upon by the committee should be mentioned in the show-cause notice and also to be supplied to the borrower.

14. As regards the opportunity of hearing, the Hon'ble Supreme Court held that the borrower should be given an opportunity to explain the conclusion of the forensic audit report and be allowed to represent the banks/JLF before their account is classified as fraud. The stand of the bank that as there was no request for personal hearing, the same was not allowed, does not save the order passed by the bank declaring the bank account of the petitioners as fraud from the vice of arbitrariness. There was no question or requirement of the borrower to seek for a hearing.

15. The Hon'ble Supreme Court in **Rajesh Agarwal** (supra) has laid down that the principle of *audi alterem partem* has to be read in the Master Directions on fraud. It was obligatory for the bank to provide the opportunity of hearing to the petitioners prior to declaring their bank account as fraud.

16. In the instant case it appears that the bank, relying upon the various communications made by and between the parties, issued the show-

cause notice and proceeded to declare the petitioners' account as fraud without forwarding the supporting documents and without granting opportunity of hearing. The same is contrary to the law laid down by the Supreme Court in the case of **RAJESH AGARWAL** (supra).

17. In view of the above, the show-cause notice and the steps taken pursuant thereto, including the final order declaring the account of the petitioners as fraud, are liable to be set aside and the same are, accordingly, set aside.

18. It will, however, be open to the bank to take steps in the matter strictly in accordance with the law laid down by the Hon'ble Supreme Court in the case of **RAJESH AGARWAL** (supra).

19. The writ petition stands disposed of.

20. Affidavit of service is taken on record.

21. All parties are to act on the server copy of this order duly downloaded from the official website of this Court.

22. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]