



W.P.No.13137 of 2025

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**DATED: 21.04.2025**

**CORAM :**

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.13137 of 2025  
and W.M.P.Nos.14661 & 14663 of 2025

S.Goutham

.. **Petitioner**

**Vs.**

IDBI Bank Ltd,  
Fraud Examination Committee (FEC)-II  
Regd Office: IDBI Tower  
WTC Complex, Cuffle Parade  
Mumbai – 400 005.

.. **Respondent**

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 28.02.2025 passed by the respondent Bank leading to classifying the petitioner as 'fraud' under the RBI Master Directions dated 15.07.2024 and to quash the same as illegal, arbitrary, unconstitutional and violative of principles of natural justice and to consequently restrain the respondent Bank from initiating any further action pursuant thereto and pass such further or other orders.



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For the Petitioner : Mr.I.Abrar Mohamed Abdullah

For the Respondent : Mr.T.Ravichandran

### **ORDER**

The Writ Petition is filed challenging the impugned order passed by the respondent – Bank dated 28.02.2025. By the said impugned order, the account of the petitioner was classified as fraudulent account, as per the Reserve Bank of India Master directions dated 15.07.2024.

2. Heard, Mr.Abrar Mohamed Abdullah, the learned counsel appearing on behalf of the petitioner and Mr.T.Ravichandran, the learned counsel appearing on behalf of the respondent – Bank.

3. The brief factual premise on which the Writ Petition arises is that it is stated that at the time of availing loan from the respondent – Bank, the petitioner executed an agreement. As per the said agreement, the petitioner furnished the details of the property owned by him and the family members. There is also a clause in the agreement that apart from the properties that are given as security



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to the bank, the other properties also cannot be alienated by the petitioner, without getting prior approval and information from the bank. When certain properties were shown in the list of properties, pursuant to the said agreement, on an inspection, the respondent – Bank found that two items of the properties were sold by the petitioner, without informing the bank. On that pretext, a show cause notice was issued to the petitioner as to why the account should not be classified as a fraudulent account.

4. The petitioner submitted his explanation. It is his explanation that he did not remember such clause in the fineprint of the agreement and therefore, thinking that the properties were not given as security, he has alienated the properties. Not accepting the said reasons, the impugned order was passed on 28.02.2025. Aggrieved by which, the present Writ Petition is filed.

5. The primary grievance of the learned counsel for the petitioner is that the matters with reference to classifying the accounts as fraudulent accounts is *no longer res integra*, covered by the Judgment of the Hon'ble Supreme Court of



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India in *State Bank of India and Others Vs. Rajesh Agarwal and Others*<sup>1</sup>. It can be seen from paragraph No.81 and the conclusions reached in paragraph No.98 that adequate opportunity should be given to the petitioner. When the matter relates to classification of the account as fraudulent, especially in the context of the explanation that is submitted by the petitioner that he never remembered each and every clause of the agreement, and the properties that are sold are not the properties given as security to the Bank, an opportunity of personal hearing ought to have been given to the petitioner. The Hon'ble Supreme Court of India emphasizes the compliance with the principles of *audi alteram partem* and the provision of an opportunity for hearing to the borrower before classifying their account as fraudulent. The said opportunity should be a meaningful opportunity and it has been held by the Division Bench of the Delhi High Court, in *IDBI Bank Limited Vs. Gaurav Goel and Others*<sup>2</sup> (Paragraph Nos. 23 and 24) that the same would include personal hearing also. Therefore, the learned counsel would submit that the Writ Petition has to be allowed on this premises and the petitioner must be given an opportunity to represent his case effectively before the respondent.

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1 (2023) 6 SCC 1

2 (2025) SCC OnLine Del 935



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6. *Per contra*, the learned counsel appearing on behalf of the respondent would submit that, it is only the principles of *audi alteram partem*, which is read into the circular which means that an opportunity of hearing has to be granted. The petitioner was issued with the show cause notice and his explanation was considered. The action would come within fraudulent activity as enumerated under the Master Circular. Therefore, the Writ Petition is without any merits. The Hon'ble Supreme Court did not specifically direct the Banks to grant an opportunity of personal hearing. The learned counsel would rely upon paragraph No.17 of the counter affidavit wherein it has been stated about the directions of the Reserve Bank of India that is issued and timely reporting of instance of fraud to the law enforcement agencies etc., were considered and considering the purpose in which the order has been passed, this Court should not interfere.

7. I have considered the rival submissions that are made by the learned counsel on either side and perused the material records of the case.



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8. In the instant case, the allegation that is made is that after mentioning two properties in the list of properties owned by the petitioner, pursuant to the two agreements dated 03.07.2017 and 22.04.2013, subsequently, without informing the bank, the petitioner has alienated the same. A copy of the said guarantee agreements were produced before this Court and the relevant clauses read as follows:-

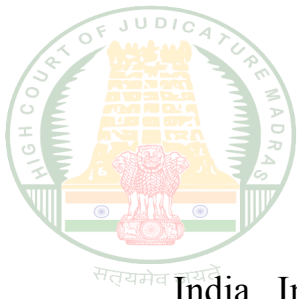
“20. The Guarantors shall be under an obligation at all times to intimate any change in their address mentioned hereinabove to the Bank.

21. The Guarantors hereby declares that the immovable properties and movable properties described in the Annexure, save and except specified therein are free from encumbrances, charges, claims and demands and owned and possessed by him.

22. The Guarantors undertakes to notify the Lender in writing particulars of immovable properties acquired or inherited by him within a reasonable time so long as the guarantees remain in force.

23. The Guarantors hereby further undertakes not to sell, transfer, encumber, charge, pledge, hypothecate, mortgage or create any lien on all or any of his/its aforesaid properties and /or other properties and/or other properties acquired or inherited thereafter without the written permission of the Bank.”

9. Therefore, the properties in question are neither mortgaged nor given as security for the loan. The contention of the bank is that the clauses of the guarantee agreement is violated by the petitioner and that would render the account fraudulent within the Master Circular, issued by the Reserve Bank of



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India. In this regard, it can be observed that the explanation offered by the petitioner is that, since the properties were not provided as security to the bank and the petitioner did not remember every clause of the guarantee agreements, he sold the said properties without informing the bank. In this context, the principles of natural justice that must be complied with need to be considered. It is relevant to extract paragraph No.81 and 98 of the Judgment of the Hon'ble Supreme Court of India in *Rajesh Agarwal's case* (cited supra) which read as follows:-

“81.Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.

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98. The conclusions are summarised below:

98.1. No opportunity of being heard is required before an



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FIR is lodged and registered.

98.2. Classification of an account as fraud not only results in reporting the crime to the investigating agencies, but also has other penal and civil consequences against the borrowers.

98.3. Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds results in serious civil consequences for the borrower.

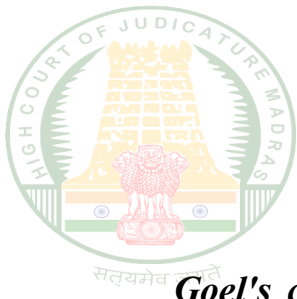
98.4. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.

98.5. The application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time-frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.

98.6. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.

98.7. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness.”

10. Even though the word 'personal hearing' was not specifically mentioned in the case of **Rajesh Agarwal** (cited supra), the question came to be considered by the Hon'ble Division Bench of the Delhi High Court in **Gaurav**



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*Goel's case* (cited supra) and it is essential to quote paragraph Nos.22 to 24

which reads as follows:-

“22. However, once the Hon'ble Supreme Court in Rajesh Agarwal, (supra) has clearly upheld the directions issued by the Hon'ble High Court of Telangana (2020 SCC OnLine TS 2021) regarding providing opportunity of personal hearing in the proceedings drawn under the RBI Directions, it is not open to this Court to read the application of principle of audi alteram partem in any other manner.

23. The submission of learned counsel for the appellant that in the conclusion drawn by the Hon'ble Supreme Court in Rajesh Agarwal, (supra), the word 'hearing' did not qualify the word 'personal', while reading the principle of audi alteram partem in the procedure to be adopted under the RBI Directions, such opportunity of personal hearing is not mandatory is not tenable in the instant matter for the reasons given above, specially for the reason that the Hon'ble Supreme Court has upheld the directions issued by Hon'ble High Court of Telangana which clearly provided for opportunity of personal hearing to the borrower.

24. As regards the reliance placed by learned counsel for the appellant on the order dated 12.05.2023 passed by the Hon'ble Supreme Court in Miscellaneous Application No. 810 of 2023, we are of the opinion that the said order also does not come in the way of reading the principle of audi alteram partem in its application to the proceedings drawn under the RBI Directions to include the opportunity of personal hearing as well for the reason that while addressing the apprehension expressed by the learned Solicitor General of India who appeared for the State Bank of India, the Hon'ble Supreme Court has reiterated the conclusions summarized in paragraph 98 of the report, simultaneous with upholding the judgment of the Hon'ble High Court of Telangana, dated 10.12.2020 (2020 SCC OnLine TS 2021). Upholding the judgment of the Hon'ble High Court of Telangana thus, approves the directions issued by the High Court of Telangana which included providing for opportunity of personal hearing as well. Accordingly, reliance placed on the order dated 12.05.2023 by the learned counsel for the



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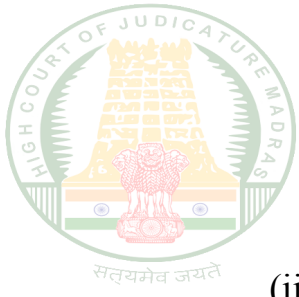
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appellant is of no avail to the appellant.”

11. The principles of natural justice is not a straight jacket formula and the Court will consider with particular reference to the facts and circumstances of the case. It may not be a case under all circumstances, personal hearing need be granted. However, in this case, considering the nature of allegations that is made and the nature of defence that is taken, I am of the view that an opportunity of personal hearing would complete, if only a personal hearing is granted as enumerated by the Division Bench of the Delhi High Court.

12. In view thereof, I am inclined to accept the contention that is made by the learned counsel for the petitioner. This Writ Petition is allowed on the following terms,

- (i) The impugned order dated 28.02.2025 shall stand quashed;
- (ii) The petitioner shall be afforded a personal hearing by the concerned committee of the respondent – Bank and it would be open for the respondent-Bank to pass fresh orders thereon, after considering the submissions that are made by the petitioner;



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closed.

Neutral Citation : Yes / No  
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