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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16651 of 2017

Mr.Srikanth Parthasarathy .. Petitioner

vs

1. Reserve Bank of India
16th Floor, Central Office Building
Shahid Bhagat Singh Marg
Mumbai 400 001
Also at:
Fort Glacis
16, Rajaji Salai
Chennai 600 001

2. Federal Bank Ltd.,
"Federal Towers"
Aluva 683 101
Kerala

3. Credit Information Bureau (India) Limited
Hoechst House, 6th Floor
No.193, Backbay Reclamation
Nariman Point
Mumbai 400 021 .. Respondents

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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 3rd respondent to delete the name of the petitioner in the list of wilful defaulters published by the 3rd respondent in its website.

For Petitioner	::	Mr.Kumarpal R Chopra
For Respondents	::	Mr.C.Mohan Ms.Rexy Josephine Mary for M/s King & Partridge for R1 Mr.S.Sathiyanarayanan for R2 Mr.S.Siva Sankar for R3

ORDER

This writ petition has been filed for issuance of a writ of mandamus directing the third respondent to delete the name of the petitioner from the list of wilful defaulters published by the third respondent in its website.

2. The case of the petitioner is that he was appointed on 30.06.2006 as a Director of the company named M/s Zylog Systems Limited. According to the petitioner, he was functioning as a Non-Executive Director and ultimately he resigned from the office of Directorship through letter dated 24.06.2013, which had been accepted by the Board of Directors through letter dated 23.08.2013.

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3. The grievance of the petitioner is that the above said M/s Zylog Sytems Limited had committed default and while including the name of the company in the defaulters list, the name of the petitioner was also added by the third respondent while publishing the wilful defaulters list in the website. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The second respondent Bank has filed a counter affidavit. They have taken a stand that M/s Zylog Systems Limited was sanctioned credit facilities and the said company defaulted and was classified as NPA on 01.03.2013. In view of the same, the borrower company and its Directors were reported as wilful defaulters on 31.03.2013, after complying with the directives of the RBI during the relevant period. The second respondent has taken a further stand that a show cause notice was issued to the petitioner, who was the then Executive Director of the company, and the petitioner failed to respond to the show cause notice and did not give his reply. Therefore, the second respondent went by the Master Circular dated 02.07.2012 and informed the third respondent regarding the defaulting

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company and its Directors, which was published in the website of the third respondent. It is further stated in the counter that the defaulting company had borrowed monies from nearly 9 lenders including the second respondent and that investigation was entrusted with CBI and based on the same, a First Information Report was registered and police report was also filed before the concerned Court against the company and its Directors. In view of the same, the second respondent has sought for the dismissal of this writ petition.

5. Heard the learned counsels appearing for the parties.

6. When this writ petition came up for hearing on 09.06.2025, this Court passed the following order:-

> "Heard learned counsel for the petitioner and the learned counsel appearing on behalf of the second respondent bank.
>
> 2. The main grievance raised by learned counsel for the petitioner is that the petitioner was functioning as a Non-Executive Director in the company and he submitted his resignation letter dated 24.06.2013, which was accepted by the Board of Directors of the

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company on 23.08.2013. Learned counsel for the petitioner by bringing to the notice of this Court the relevant circular submitted that opportunity must be given to the petitioner and that apart, a decision ought to have been taken by a Committee headed by the Executive Director consisting of two General Managers/Deputy General Managers as decided by the Board of the concerned bank. It was submitted that both in terms of not following this procedure and not putting the petitioner on notice, the petitioner ought not to have been declared as a wilful defaulter.

3. Per contra, learned counsel for the second respondent submitted that the show cause notice dated 11.06.2013 was issued by the second respondent bank to the petitioner much before the petitioner submitted his resignation letter on 24.06.2013. Learned counsel further submitted that even according to the admitted case of the petitioner, the resignation was accepted only on 23.08.2013. Hence, till then, the second respondent bank was under the impression that the petitioner was the Director of the company. It was further submitted that even though the petitioner claims to be a Non-Executive Director, he was in fact designated as a whole time Director. That apart, only after following the procedure as per the guidelines issued by the Reserve Bank of India, notice was issued to the petitioner on 11.06.2013.

4. Learned counsel for the second respondent bank shall furnish the relevant materials to substantiate that a Committee was formed and they declared the petitioner as a wilful defaulter.

One more connected writ petition filed by the same petitioner

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has been listed for hearing on 16.06.2025. Hence, post this writ petition under the caption 'Part-Heard Cases' on 16.06.2025."

7. The short issue that arises for consideration in the present writ petition is as to whether the inclusion of the name of the petitioner as a wilful defaulter, as has been reflected in the website maintained by the third respondent, is illegal and requires the interference of this Court.

8. The Reserve Bank of India issued the Master Circular dated 02.07.2012 on wilful defaulters. Guidelines were issued by RBI to the banks to put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure further bank finance is not made available to them.

9. The second Master Circular on wilful defaulters was issued by RBI on 01.07.2013. The third Master Circular on wilful defaulters was issued by RBI on 01.07.2015. The second and third Master Circulars provided detailed guidelines and procedures to be followed before adding the name of

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any person as a wilful defaulter. However, in the first Master Circular dated 02.07.2012, once the name of wilful defaulter i.e., the defaulting company is added, names of all the Directors were also added. Since it had civil consequences, it was modified and detailed procedure was laid down in the subsequent circulars. In short, observance of the principles of natural justice by giving opportunity to the concerned person, was the basis of the subsequent circulars issued by the RBI.

10. It will be relevant to take note of the judgment of the Apex Court in *State Bank of India v. Jah Developers Private Limited and others, (2019) 6 SCC 787*, which went into the scope of both the RBI Master Circular dated 01.07.2013 and the Revised Circular dated 01.07.2015 and the relevant portion is extracted hereunder:-

> "24. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 2.1.3 would only relate to the individual facts

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of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and

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Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01.07.2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms

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of our judgment. We thank the learned Amicus Curiae, Shri Parag Tripathi, for his valuable assistance to this Court."

11. It is also relevant to take note of the latest judgment of the Apex Court in *Central Bureau of Investigation v. Surendra Patwa and others, 2025 SCC OnLine SC 934*.

12. In the case on hand, the process was initiated by the second respondent bank after the company was classified as NPA on 01.03.2013. The borrower company and its Directors were reported as wilful defaulters on 31.03.2013. As on that date, the relevant Circular that was in force was the Master Circular dated 02.07.2012.

13. A Division Bench of the Gujarat High Court in *Ionic Metalliks & others v. Union of India and others, 2014 SCC OnLine Guj 10066,* dealt with the scope of the Master Circular dated 02.07.2012 and in the concluding portion of the judgment, held that the Master Circular insofar as

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it is sought to be made applicable to all the Directors of the company, was found to be arbitrary and unreasonable and that part of the Master Circular was held to be ultra vires and violative of Article 19(1)(g) of the Constitution of India. However, it was made clear that this will not apply to promoters/entrepreneurs.

14. The above deficiency in the Master Circular dated 02.07.2012 was rectified in the subsequent Master Circular dated 01.07.2013 issued by RBI and which was considered by the Apex Court in *Jah Developers case* cited supra. The Apex Court held that the procedure that is prescribed in the said Circular has to be followed and sufficient opportunity must be given to the borrower and thereafter the Review Committee must pass a reasoned order.

15. The petitioner claims to be a Non-Executive Director. However, the petitioner has been described as the Executive Director in the notice that was issued by the company dated 23.08.2013 to the petitioner while accepting the resignation letter given by the petitioner and relieving him as

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the Executive Director of the company. On a careful reading of the resignation letter, it is seen that the petitioner was a member of the Audit Committee and also the Investors Grievance Committee of the Board of M/s Zylog Systems Limited. It is, therefore, apparent that the petitioner is not a Non-Executive Director, as has been claimed by the petitioner.

16. It is also quite evident from the materials placed before this Court that the second respondent bank had issued a show cause notice dated 11.06.2013 to the petitioner calling upon the petitioner to give his explanation as to why he should not be treated as a wilful defaulter. The petitioner was also informed that his name would be reported to the RBI/Credit Information Bureau as a wilful defaulter, if the petitioner failed to show cause within a period of 15 days on receipt of the communication. For the reasons best known to the petitioner, neither did he give his reply nor has he informed the second respondent bank that he functioned as a Non-Executive Director. It is also seen from the records that wherever the second respondent bank had received response from the concerned persons to exclude them from the list on the ground that they were Non-Executive

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Directors, the same was acted upon and their names were deleted in appropriate cases. A note was also placed before the Committee for identification of wilful defaulters and the Committee considered the same based on the materials placed before it and a report of wilful defaulters of loans and advances as on 31.03.2013 was prepared, in which the name of the petitioner was also shown as the wholetime Director of the defaulting company.

17. The sum and substance of the Circulars issued by RBI would exhibit that no one should be declared as a wilful defaulter without affording sufficient opportunity to the person concerned. That apart, whenever any defence is taken to the extent that the person concerned was a Non-Executive Director or was not functioning as Director during the relevant point of time, the Committee is expected to apply its mind and take a decision and thereafter based on the report of the Committee, the bank can submit the list of wilful defaulters to CIBIL. If the petitioner has not chosen to defend himself and has not chosen to give his explanation to the second respondent bank, the petitioner has to blame himself for that. The materials

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placed before this Court would show that the petitioner was in fact the Executive Director and he was a Member of the Audit Committee and Investors Grievance Committee of the Board. If the petitioner was not an Executive Director, there is no need for the petitioner to hold such important positions in the company.

18. In the light of the above discussions, this Court does not find any merit in the claim made by the petitioner and the reason assigned by the second respondent bank by placing all the relevant materials before this Court to name the petitioner as a wilful defaulter, is justified and it does not require the interference of this Court.

19. In the result, this writ petition stands dismissed. Consequently, W.M.P.No.18029 of 2017 is also dismissed. No costs.

Index : yes/no 02.07.2025
Neutral citation : yes/no

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To

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   Reserve Bank of India
   16th Floor, Central Office Building
   Shahid Bhagat Singh Marg
   Mumbai 400 001
   Also at:
   Fort Glacis
   16, Rajaji Salai
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