IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-08-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 19306 of 2017
and WMP No. 20810 of 2017

Mr.Srikanth Parthasarathy

Petitioner(s)

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.Union Bank of India
Union Bank Bhavan,
239, Vidhvan Bhavan Marg,
Nariman Point, Mumbai 400 021.
Also at: Union Bank Bhavan,
139, Prakasam Road,
Broadway, Chennai 108

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

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India 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(s): Mr.Nithyaesh Natraj

For Respondent(s): Mr.C.Mohan for
Ms.Rexy Josephine Mary for
M/s. King and Partridge for R1
Mr.Srinath Sridevan
Senior Counsel for
Mr.T.K.Baskar for R2
Mr.S.Siva Sankar for R3

ORDER

This writ petition has been filed for the issue of writ of mandamus directing the 3rd respondent to delete the name of the petitioner from the list of Wilful Defaulters published by the 3rd respondent in its website.

2.The case of the petitioner is that on 30.06.2006, he was appointed as a Director of M/s.Zylog System Limited. The petitioner resigned from the Directorship by way of resignation letter dated 24.06.2013 and according to the petitioner, the Board of Directors accepted the letter of resignation on

23.08.2013. The petitioner came to know that his name has also been included in the list of defaulters while dealing with the Company M/s.Zylog System Limited and such entry was made in the website of the 3rd respondent. It is under these circumstances, the present writ petition has been filed to direct the 3rd respondent to delete the name of the petitioner from the list of Wilful Defaulters.

3.The 2nd respondent Bank has filed a counter affidavit. The relevant portions are extracted hereunder:

> *24. After due deliberation and consideration of the evidence at hand, the Committee of Executives decided to classify and report the account of M/s Zylog Systems and the Writ Petitioner herein as "Wilful Defaulter" in a meeting held on 25.03.2014.*
>
> *25. Thereafter, a notice vide IFB: CHN: 2197 dated 03.04.2014 was issued to M/s Zylog Systems and its Directors calling for an explanation within 15 days as to why they should not be classified as willful defaulter for not meeting repayment obligations. Since, the Writ Petitioner herein was a Whole time*

Director during the period in question, notice was also issued to the Writ Petitioner.

26. Since no reply was forthcoming, the Writ Petitioner along with other Directors and M/s Zylog Systems were declared as a Willful Defaulter, and the same was communicated to the 3rd Respondent herein.

27. The Respondent submits that on 21.04.2014, M/s Zylog Systems replied to the notice refuting its contents. The Respondent Bank took due cognizance of this notice and referred the same to the Grievance Redressal Committee ("GRC") for a personal hearing.

28. The Respondent submits that the personal hearing was duly conducted on 22.07.2014 and Zylog was allowed to present its case before the GRC. However, the Writ Petitioner did not appear.

29. After careful deliberation and scrutiny of the facts, evidence and submissions of the parties, GRC held that M/s Zylog Systems and its Directors, including the Writ Petitioner herein did commit Wilful Default and that the Respondent Bank's previous communication to RBI that M/s Zylog Systems and its Directors *were Wilful Defaulters did not merit interference. This was duly conveyed to the Writ Petitioner on 08.08.2014 vide letter no.CP& MSME:WD: 1451:2013-14.*

30. It is submitted that it is in this background that the Respondent Bank has been reporting the Writ Petitioner herein as a Wilful Defaulter to the 3rd Respondent.

31. The Bank has followed the RBI Circular in declaring the Petitioner has Wilful Defaulter. The opportunity to address the issue to GRC was also given but not availed.

4.When this writ petition came up for hearing on 02.07.2025, this Court after hearing the learned counsel for the petitioner passed the following order:

On hearing the learned counsel for the petitioner, the learned Standing counsel for the 3 rd respondent and also the learned Senior Counsel appearing on behalf of the 2nd respondent, it will be more relevant to take note of the communication dated 30.09.2014 that was issued by the 2nd respondent bank to the 3 rd respondent. The 3 rd respondent only acts upon such report given by the Bank and reflect the name of persons/ entities in the website.

Therefore, if the communication given by the 2nd respondent to the 3 rd respondent also included the name of the petitioner, this Court must see as to whether the name of the petitioner was included by affording opportunity to the petitioner. In the absence of not reflecting the name of the petitioner in the communication, if the 3 rd respondent has included the name of the petitioner, the same has to be interfered by this Court. Hence, everything revolves around the communication dated 30.09.2014 sent by the 2nd respondent bank.

2. The learned Senior counsel appearing for the 2nd respondent bank seeks for some time to produce the copy of the communication dated 30.09.2014 which was sent by the 2nd respondent bank to the 3 rd respondent.

3. Post this case for hearing on 07.07.2025.

5.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

6.The main ground that was raised by the learned counsel for the petitioner is that the petitioner had resigned from the Company as early as on

24.06.2013 and the resignation was also accepted by the Board of Directors on 23.08.2013. Only thereafter, the 2nd respondent Bank took a decision on 25.03.2014 to proceed against M/s.Zylog System Limited and other Companies to initiate proceedings to declare them as Wilful Defaulters. The learned counsel submitted that when such a decision was taken, the petitioner was not even a Director of the Company. The further contention raised is that the Identification Committee took a decision for reporting cases of Wilful Defaulters on 28.03.2014. However, when the subsequent notice dated 03.04.2014 was issued to the Company, there is not even an indication that the report of the Identification Committee was annexed along with the notice. It was submitted that if this procedure has not been followed, it directly violates the Master Circular issued by the Reserve Bank of India and also the judgement of the Apex Court in ***State Bank of India vs. Jah Developers Private Limited and Others*** reported in ***2019 6 SCC 787*** and specific reliance was placed on Paragraph No.24 of the judgement. The learned counsel also placed reliance upon the Division Bench judgement of this Court in W.P.No.12103 of 2020 dated 12.08.2021, following the judgement of the Apex Court and also the judgement of the learned single Judge passed in W.P.(MD)Nos.16977 etc., of 2019 dated 11.04.2022.

7.Per contra, the learned counsel appearing on behalf of the 2nd respondent Bank submitted that the name of the petitioner has already been included as a wilful defaulter based on the report submitted by the Federal Bank and the same was put to challenge before this Court in W.P.No.16651 of 2017 and this Court did not find any merits in the claim made by the petitioner and the writ petition was dismissed on 02.07.2025. Therefore, it was contended that since the name of the petitioner has already been included as a wilful defaulter by one of the Bank, it is not necessary to once again deal with the grievance expressed by the petitioner, since even if this writ petition is allowed, the name of the petitioner is going to be reflected by the 3rd respondent as a wilful defaulter based on the report given by Federal Bank.

8.The learned counsel for the petitioner in reply to the above submission contended that the proceedings initiated by each Bank has to be dealt with separately and for instance, insofar as the Dena Bank is concerned, they took a decision that the name of the petitioner can be deleted from the list of Wilful Defaulters and to substantiate the same, the communication made by Dena Bank to the petitioner dated 05.01.2017, was placed before this Court. It was therefore submitted that just because the action taken by one of the Bank against the petitioner was upheld, that cannot be a reason not to deal with the facts of the present case which involves a different Bank which took steps to name the petitioner also as a wilful defaulter.

9.The learned counsel appearing on behalf of Reserve Bank of India submitted that as per the Master Circular issued by the Reserve Bank of India, whenever penal and other measures are taken against wilful defaulter, if the wilful defaulter is a natural person, all entities in which he is associated as promoter or director or as one in-charge and responsible for the management of the affairs of the entity shall be deemed to be associated. The learned counsel submitted now that the M/s.Zylog System Limited has been included as a wilful defaulter by the CIBIL and the action taken by one of the Bank viz., Federal

Bank has been upheld by this Court and the petitioner cannot be permitted to once again agitate the present case independently. Therefore, the learned counsel sought for the dismissal of this writ petition.

10.The learned counsel appearing on behalf of the 3rd respondent submitted that the 3rd respondent merely acts upon the communication received from the concerned Bank and they do not take any independent decision. It was therefore submitted that whatever decision is rendered by this Court, will be complied with by the 3rd respondent.

11.This Court has carefully considered the submissions made on either side and the materials available on record.

12.In the considered view of this Court, just because the name of the petitioner has been entered as a Wilful Defaulter pursuant to the action initiated by the Federal Bank of India and the same has been upheld by this Court in W.P.No.16651 of 2017 by order dated 02.07.2025, that does not result in automatic confirmation of action taken by all the other Banks against the petitioner to declare him as a wilful defaulter. Each case has to be dealt with independently. This is more so due to the fact that one other Bank which proceeded against the petitioner viz., Dena Bank, informed the petitioner through communication dated 05.01.2017 that the name of the petitioner has been deleted from the list of Wilful Defaulters. Therefore, it is quite evident that each Bank takes independent decision and it must only be seen as to whether when the petitioner was declared as a wilful defaulter, the concerned Bank had followed the procedure.

13.In the light of the above findings, the next issue to be considered is with respect to the procedure that has to be followed before declaring an entity or a person as a wilful defaulter. The law on this issue is no longer *res integra*. Useful reference can be made to the judgement of the learned single Judge of this Court in W.P.(MD)Nos.16977 etc., of 2019 11.04.2022. The learned single Judge has taken into account, the judgement of the Apex Court in Jah Developers and enunciated the procedure to be followed at Paragraph No.12 of the judgement which is extracted hereunder:

12. The impugned judgment has held that the expression "legally authorised to take evidence" goes with the word "person" and not with the word "tribunal". While this may be correct, it is clear that before a body can be said to be a "tribunal", it must be invested with the judicial power of the State to decide a lis which arises before it. This would necessarily mean that all "tribunals" must be legally authorised to take evidence by statute or subordinate legislation or otherwise, the judicial power of the State vesting in such tribunal. This Court, in Jaswant Sugar Mills Ltd. v. Lakshmi Chand, held that a Conciliation Officer under Clause 29 of an order promulgated under the U.P. Industrial Disputes Act, 1947, has to act judicially. However, he cannot be regarded as a "tribunal" within the meaning of Article 136 of the Constitution of India as such tribunal must be a body invested with the judicial power of the State, which a Conciliation Officer was not so invested with. Similarly, in Engg. Mazdoor Sabha v. Hind Cycles Ltd., this Court held that an arbitrator appointed under Section 10-A of the Industrial Disputes Act, 1947 could not be said to be a tribunal because the State has not invested him with judicial power. His position may be stated to be higher than that of a private arbitrator, but lower than that of a tribunal.

14.The learned Single Judge after explaining the procedure to be followed, in that case, found that the order passed by the Identification Committee was not served on the petitioner and therefore, proceeded to interfere with the decision taken by declaring the petitioners therein as wilful defaulters.

15.In the case in hand, there is no dispute regarding the fact that the 2nd respondent Bank after due deliberation and consideration in the meeting of the Committee of Executives decided to classify and report the accounts of M/s.Zylog System Limited as a Wilful Defaulter on 25.03.2014. In this meeting, they had considered not only the case of M/s.Zylog System Limited, but also many other entities against whom they wanted to proceed further to declare as wilful defaulters.

16.Pursuant to the above decision, the Identification Committee dealt with M/s.Zylog System Limited and through communication dated 28.03.2014, it was informed to the Regional Head to intimate to the defaulting borrower the proposal to classify them as a wilful defaulter. This communication can be safely taken as a communication made after the Identification Committee decided and passed an order. If that is so, communication dated 03.04.2024 must be sent along with the Identification Committee report. There is no indication regarding the same either in letter dated 03.04.2024 nor in the counter affidavit that has been filed by the 2nd respondent.

17.The petitioner is disputing the very receipt of the notice that was issued to M/s.Zylog System Limited. However, it is not necessary for this Court to go into this issue. For the sake of arguments, even if it is taken that the petitioner was served with the notice after the Identification Committee took a decision, it must be seen as to whether the petitioner was served with the report of the Identification Committee which was held to be mandatory by the Apex Court. In the absence of the same, mere service of notice on the petitioner does not satisfy the mandatory requirement. The Apex Court in Jah Developers case made it very clear that once the Identification Committee takes a preliminary decision to declare an entity or a person as a wilful defaulter, as per the Master

Circular, the borrower must be permitted to make a representation on the preliminary decision taken by the Identification Committee and the report of the Identification Committee must be given to the borrower based on which a reply will be given by the borrower. If this procedure has not been followed, the final decision taken to report to the CIBIL will be vitiated.

18.In the light of the above discussion, this Court finds that there is absolutely no indication that the report of the Identification Committee was sent to the petitioner along with the notice issued before the Review Committee passed the final order. Therefore, the procedure adopted by the 2nd respondent Bank stands vitiated due to non-compliance of the Master Circular as well as mandatory directions issued by the Apex Court.

19.The conspectus of the above discussion leads to the only conclusion that the inclusion of the name of the petitioner as a wilful defaulter stands vitiated and it requires the interference of this Court.

20.If the 2nd respondent Bank wants to proceed further to name the petitioner as a wilful defaulter, they have to necessarily issue a fresh notice to the petitioner and strictly follow the directions issued by the Apex Court in Jah Developers case and also the Master Circular issued by the Reserve Bank of India. It is left open to the petitioner to raise all the grounds on receipt of the notice from the 2nd respondent Bank. In the meantime, there shall be a direction to the 3rd respondent not to show the name of the petitioner as a wilful defaulter based on the communication received from the 2nd respondent Bank.

21.In the result, this writ petition is allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

05-08-2025

Index:Yes
Speaking
Internet:Yes
Neutral Citation:Yes
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To

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