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(S.R.)

WPA 1582 of 2025

Hemant Kanoria & Anr.
v.
UCO Bank

Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Deepan Kumar Sarkar
Mr. Soumalya Ganguli
Mr. Samriddha Sen
Mr. Naman Choudhury
Mr. Shubrojyoti Mookherjee
Mr. S. Sen ... for the petitioners.

Mr. Dhruv Dewan
Mr. Deepanjan Dutta Roy
Ms. A. Chandra
Ms. U. Nanda
Ms. Sanjana Jha
Ms. Aditi Rathore ... for the respondent.

1. This writ petition mounts challenge to the action of the respondent Bank in declaring the accounts of SREI Infrastructure Finance Limited and SREI Equipment Finance Limited (hereafter collectively referred to as "SREI Entities") maintained with the said Bank, as "fraud" on April 7, 2022 as also to the notices dated December 26, 2024 issued to the petitioners thereby calling upon the petitioners to show cause as to why the aforesaid accounts standing in the name of the SREI Entities would not be declared as fraud.
2. It is the petitioners' case that the impugned show cause notices themselves would reveal, that the aforesaid accounts had been declared as "fraud" on

April 7, 2022 meaning thereby that the said show-cause notices were issued *ex post facto* i.e. subsequent to the declaration of the aforesaid accounts as fraud and that being so the declaration that preceded the show cause notices is bad in law.

3. Mr. Chowdhury, learned senior advocate appearing for the petitioners submits that declaration of an amount as fraud leads to evil and civil consequences and such action cannot be undertaken by the bank without first affording an opportunity of hearing to the persons affected (in this case the petitioners).

4. It is further submitted that the very fact that notices to show cause have been issued subsequent to the declaration of the aforesaid accounts of SREI Entities as fraud would establish that the declaration was done without hearing the petitioners and the bank is now trying to correct the incorrigible by issuing notices to show cause subsequently.

5. In support of his contention that any action of declaring an account as fraud must be preceded by an opportunity of hearing to the persons concerned, Mr. Chowdhury has relied on the following judgments: -

    1. ***State Bank of India & Ors. v. Rajesh Agarwal & Ors.*** reported at **(2023) 6 SCC 1**.

2. ***Indian Commodity Exchange Ltd. v. Neptune overseas Ltd. & Ors.*** reported at ***(2020) 20 SCC 106.***
3. ***T. Takano v. Securities & Exchange Board of India & Anr.*** reported at ***(2022) 8 SCC 162.***
4. ***Milind Patel v. Union Bank of India & Ors.*** reported at ***(2024) 251 Comp Cas 1.***

6. He has also relied on a Coordinate Bench judgment of this Court in the petitioner no.1's own case being ***WPA 28329 of 2023 (Hemant Kanoria v. Bank of India)*** decided on February 2, 2024 along with other three writ petitions filed by the petitioner no.1.

7. In the said case, a Coordinate Bench of this Court after taking into consideration several authorities, delineated the steps, which are required to be taken by a Bank in matters like the one at hand. The observations made by the Coordinate Bench, which are relevant for the present matter are follows: -

> *"64. First, a show-cause notice is to be issued, enumerating the exact offences alleged against the borrower/Director. If any FAR or other document forms the basis of the show-cause, the same is to be served along with the show-cause notice. (Both the said criteria have, in fact, have been satisfied in the present case in respect of BOI, BOB and UBI.)*
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> *65. A fortnight thereafter would be ample time to give reply to the show-cause notice. In its reply, the noticee shall, apart from addressing the allegations and controverting those specifically, specify the documents which are required to be provided to the noticee by the*

Banks/financial institutions. If necessary, in the reply, the borrower/Director or promoter can reserve its rights to give a further additional reply upon receiving such documents.

66. Within a week from receiving such replies, the Banks can give an inspection of the documents, if extremely voluminous, and/or furnish copies of the particular documents which are sought by the borrower.

67. Within a further fortnight, if necessary, the noticee/borrower can be given an opportunity to file additional reply, in the light of the documents which have by now been inspected / served on them. Thereafter, a hearing shall be fixed by the bank on the basis of the reply.

68. Upon such hearing being concluded, a decision shall be taken whether or not to declare the borrower-company or its Director/promoter as "fraud" or "perpetrator of fraud". The aforesaid procedure would take, at the most, 8 weeks in total to be concluded, which would be sufficient compliance of the Master Directions of the RBI. Thereafter, if declared as fraud/perpetrator of fraud, the same can be intimated by the Bank to the RBI".

8. Attention of this Court has also been invited to a subsequent order dated August 09, 2024 passed by the same Coordinate Bench in ***WPA 892 of 2024 (Hemant Kanoria & Ors. v. Central Bank of India)*** (and two other writ petitions of the same petitioner), where the directions ultimately passed in WPA 28329 of 2023 were reiterated upon agreement of the parties.

9. Another judgment of a Coordinate Bench of this Court in the petitioners' own case being ***WPA 13100 of 2024 (Hemant Kanoria & Anr. v. Punjab National Bank)*** has also been relied on for

the same purpose.

10. Mr. Chowdhury, learned senior advocate appearing for the petitioners submits that in the light of the plethora of authorities of the Hon'ble Supreme Court as well as this Court the declaration of the aforesaid accounts as "fraud" by the respondent Bank should be set aside. It is submitted that since the petitioners have been issued notices to show cause without the documents on which the said notice are based, a direction may be issued to the bank to furnish the documents in support of the notices to show cause to enable the petitioners to answer the charges levelled against them.

11. Mr. Dewan, learned advocate appearing for the bank has little resistance to offer to the petitioners' contention that the accounts in the name of SREI Entities were declared as fraud without hearing the petitioners.

12. Mr. Dewan however submits that at this stage, this Court should not enter into the dispute as to which documents are relevant for the purpose of the petitioners answering the notice to show cause and it should be left to the decision of the bank to supply to the petitioners such documents, which the bank considers relevant.

13. He, further submits that the impugned

notices to show cause are principally based on the Forensic Audit Report and a copy thereof is well in possession of the petitioners inasmuch as almost all the notices to show cause, which have been issued by the different banks are based on the same Forensic Audit Report. It is further submitted that it is always open to the petitioners to ask for such further or additional documents, in accordance with law, which the petitioners may require to effectively deal with the notices to show cause.

14. It is next submitted that if a request is made, the bank will deal with such request, in accordance with law and documents which the bank considers necessary and relevant will definitely be supplied.

15. Heard learned advocates appearing for the respective parties and considered the material on record.

16. It is not in dispute that the declaration of the accounts of the SREI Entities as fraud was done without adherence to the principles of natural justice i.e. without affording any opportunity of hearing to the petitioners and without issuing any prior notice to show cause.

17. In view of the catena of the decisions of the Hon'ble Supreme Court as well as Coordinate Benches of this Court on the same issue and in cases pertaining to the petitioner no.1 himself, the

Bank's decision of declaring the aforesaid accounts of SREI Entities as fraud cannot be sustained. Such declaration is therefore set aside. However, this Court is not minded to set aside the notices to show cause that have been issued to the petitioners. The said notice to show cause can be enlivened and given a fresh lease of life by giving the petitioners an opportunity to respond to the same in the manner ordered by this Court in WPA 28329 of 2023.

18. It has been noticed that the directions passed by the Coordinate Bench of this Court in WPA 28329 of 2023 have been reiterated and followed throughout by the parties in the subsequent writ petitions. Accordingly, this Court should also follow suit. The relevant directions passed in WPA 28329 of 2023 are reiterated hereinbelow: -

*"**74. WPA No. 28329 of 2023, WPA No. 28980 of 2023 and WPA No. 236 of 2024** are disposed of by directing the petitioner in each of those writ petitions to furnish his reply to the show-cause notices within a fortnight from date, indicating the documents which are required to be inspected by / furnished to the petitioner to effectively rebut the allegations made therein.*

75. Upon such reply being given, the respondent-Bank in each of the writ petitions shall fix a date for giving inspection of the documents, if extremely voluminous; alternatively, the Banks shall furnish copies of the relevant documents to the petitioner within a further fortnight thereafter.

76. Upon being so served/given inspection, the petitioner shall, if necessary, give an additional reply in the light of such documents. Such additional reply shall *be given within an outer limit of a fortnight from such inspection/furnishing of copies of documents.*

77. The respondent-Bank in each of the cases shall thereafter fix an early date for hearing the petitioner. Upon such hearing being concluded, the respondent-Bank in each of the cases shall take a reasoned decision as to whether or not to declare the petitioner as "fraud" or "perpetrator of fraud". In the event the petitioner is declared to be fraud/perpetrator of fraud, the same shall be intimated in due course of law to the RBI and appropriate consequential steps under the Master Directions of the RBI shall be taken by the respondent-Bank in each of the cases".

19. The bank as well as the petitioners shall abide by the aforesaid directions in letter and spirit excepting that the petitioners shall now have a period of 21 days (instead of a *fortnight*) from date to reply to the notices to show cause *indicating the documents, which are required to be inspected/furnished to the petitioners to effectively rebut the allegations made therein*. Such timeframe is being provided since it has been brought to the notice of this Court that provisions of the revised Master Directions namely Reserve Bank of India (Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions) Directions, 2024 dated July 15, 2024 provide to the person(s) concerned a window of 21 days to respond to a notice to show cause.

20. Apart from the aforesaid change as regards

time to furnish reply to the notices to show cause, the other directions contained in the order dated February 2, 2024 passed in WPA 28329 of 2023 as extracted hereinabove shall apply to the present case in full.

21. Needless to reiterate that the bank and the petitioners shall be obliged to act in accordance with the directions contained in the order dated February 2, 2024 passed by this Court in WPA 28329 of 2023.

22. It is clarified that this Court has not gone into any other aspect excepting the validity of declaration of the accounts of SREI Entities as fraud on the ground of violation of principles of natural justice.

23. With the aforesaid directions, WPA 1582 of 2025 stands disposed of. No costs.

24. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)