

Calcutta High Court

HON'BLE JUDGE(S): MOUSHUMI BHATTACHARYA , J

SANDEEP KABRA V. RESERVE BANK OF INDIA

W.P.O. - 193 of 2023, decided on 24/04/2023

Reserve Bank of India Act (2 of 1934) , S.45JA— Constitution of India , Art.226— Willful defaulter - Issuance of show cause notice - Show cause notice was issued against petitioners being Directors of pvt. company and declaration of petitioners as willful defaulters was passed on 25.10.2018 - Photographs of petitioners were published in newspaper on 30.5.2019 - Look Out Circular was finally issued in December, 2022 - Petitioners challenged Look out Circular in writ petition as they needed to travel to South-East and interim relief was granted - Thus, petitioners woke up from their slumber after 5 years of issuance of show cause notice as a strategic move in aid of relief sought for and an interim relief granted to petitioners in case of Lock Out Circulars - Petition suffered from unexplained gross and inordinate delay - Show cause notice was not quashed.

(Para 6, 7, 8, 10)

Case Referred :

Chronological Paras

AIR 2019 SC 2854

Para No.(9)

AIR 2004 SC 1950 : 2004 AIR SCW 1739

Para No.(9)

AIR 1995 SC 1991 : 1995 AIR SCW 3116

Para No.(9)

Name of Advocates

Jishnu Saha, Sr. Adv. Swatarup Banerjee, Avishek Guha, Shaunak Ghosh, Ms. Akansha Chopra for Petitioner; Shiv Mangal Singh, Ms. Jahan Ara Kulsum, Ms. Moriam Sanfui for Respondent.

1. **ORDER** :-The petitioners before the Court are two brothers and the wife of one of the other brothers of the first and second petitioners. The petitioners seek quashing of a show-cause notice dated 24.7.2018 and an order dated 25.10.2018 of the respondent Bank by which the petitioners were declared as willful defaulters.

2. The petitioners, through learned counsel, claim that the impugned order dated 25.10.2018 declaring the petitioners as willful defaulters under the

Master Circular of the Reserve Bank of India on Willful Defaulters dated 1.7.2015 is contrary to the scheme of the Circular. Counsel submits that the impugned order was passed by the Willful Defaulter Identification Committee of the respondent Bank and was placed before the Willful Defaulter Review Committee of the Board and was approved by the latter by a Resolution dated 15.10.2018.

3. Learned counsel appearing for the respondent Indian Bank (erstwhile Allahabad Bank) submits that the writ petition was filed after an inordinate delay and should be dismissed on that ground alone. Counsel treats the point of delay as a preliminary objection to the maintainability of the writ petition.

4. The admitted facts are that the impugned show cause notice dated 24.7.2018 was issued by the respondent Bank on one M/s. Ceebuild Company Pvt. Ltd. and the petitioners as the Directors of the said Company. The petitioners replied to the show-cause notice by three individual letters dated 4.8.2018. The declaration of the petitioners as willful defaulters was passed by the Deputy General Manager (Recovery), on behalf of the Willful Defaulter Identification Committee on 25.10.2018. The only document on record after this date is a representation made by the Company to the respondent Bank on 14.12.2018. The other letter is of 23.4.2019 issued by Allahabad Bank on the petitioners threatening to publish the petitioners' photographs in newspapers in terms of the RBI guidelines.

5. There is no other document on record and the writ petition is resoundingly silent on what transpired from 23.4.2019 to 28.1.2023 when the present writ petition was filed. Significantly, the photographs of the petitioners were published in the Times of India, Kolkata edition on 30.5.2019. An extract of the relevant page of the newspaper has been placed before the Court. The petitioners have not given any explanation, let alone a credible one, to explain the delay of 5 years (less 1 month) in approaching this Court for quashing of the impugned show-cause notice and the order declaring the petitioners as willful defaulters.

6. As pointed out on behalf of the respondent Bank, the immediate cause for filing of the writ petition is a request made by the Bank to issue a Look Out Circular against the petitioners in August, 2022. The Look Out Circular was finally issued in December, 2022. The petitioners had filed a writ petition on 6.3.2023 challenging the said Look Out Circular and the said writ petition is pending before this Court. This court considered the matter and gave interim relief to the petitioners on 12.4.2023. It is therefore evident that the petitioners woke up from their slumber after 5 years only by reason of the issuance of the Look Out Circular against them. Significantly, the challenge to the Look Out Circular was made in the Appellate Side Jurisdiction of this Court and the ground taken for such was that the petitioners needed to travel to South-East Asia on account of a wedding in the family. Therefore, it appears that the petitioners decided to file the present writ petition as a strategic move in aid of the relief sought for and an interim relief granted to the petitioners in WPA 5778 of 2023.

7. It is also evident from the records that the impugned order of the respondent Bank was passed on 25.10.2018 and the Bank also proceeded to publish the photographs of the petitioners on 30.5.2019. The absence of any explanation for the intervening delay persuades this Court to come to the finding that the present writ petition is a belated afterthought in view of the Look Out Circular. Further, since the respondent Bank already took steps to publish the photographs as of May, 2019, the petitioners cannot claim any immediate prejudice from the impugned show cause notice of 24.7.2018 or the order dated 25.10.2018.

8. The writ petition suffers from gross and inordinate delay which is made even more stark by the lack of reasons for explaining the delay.

9. The effect of delay in a discretionary jurisdiction exercised by this Court under Article 226 of the **Constitution of India** was dealt with by the Supreme Court in *State of Maharashtra v. Digambar*; (1995) 4 SCC 683 : (**AIR 1995 SC 1991**) and *Express Publications (Madurai) Limited v. Union of India*; (2004) 11 SCC 526 : (**AIR 2004 SC 1950**). The Supreme Court dwelt on

the absence of explanation as to "blameworthy conduct" of undue delay or laches on the part of the respondent before the Court. In Express Publications, the Supreme Court held that the Court may decline discretionary relief if the person aggrieved has slept over his rights for a long number of years. State Bank of India v. Jah Developers Private Limited; (2019) 6 SCC 787 : (AIR 2019 SC 2854) which dealt with the impact of a declaration of willful defaulter on the fundamental rights of a borrower under Article 19(1)(g) of the Constitution does not assist the petitioners since there was no finding of inordinate delay on the part of the respondents before the Supreme Court. Moreover, the question before the Supreme Court was whether the borrower can be permitted to be represented by a lawyer before the First Committee or the Review Committee under the revised Master Circular dated 1.7.2015.

10. The admitted and unmitigated facts lead to the conclusion of gross delay, laches and acquiescence on the part of the petitioners. Any alleged infraction of the RBI guidelines pales in comparison to the stale demand brought by the petitioners after 5 long years. The petitioners have lived with the impugned show cause notice and the order for 5 years and that fact itself defeats any equity in favour of the petitioners and certainly persuades the Writ Court to deny discretionary relief to the petitioners.

11. WPO 193 of 2023 is dismissed on the preliminary ground taken by the respondent Bank. There will be no order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

Petition Dismissed