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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 06.02.2025

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Judgment delivered on: 19.02.2025

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LPA 536/2024 & CM APPL. 36696/2024

IDBI BANK LTD

.....Appellant

Through: Mr. V. P. Singh, Adv. with Ms. Dacchita Shahi, Mr. Akshat Singh, Mr. Bhanu Gupta, Mr. Utkarsh Kandpal and Mr. Adeem Ahmed, Advs.

Versus

GAURAV GOEL & ORS.

.....Respondents

Through: Mr. Pulkit Prakash, Adv. with Ms. Nidhi Vardhan, Ms. Shakshi Goyal and Mr. Kanishk Arora, Advs. for R-1 to R-4.

Mr. Ramesh Babu, Adv. with Ms. Manisha Singh, Ms. Tanya Chowdhary, Ms. Jagriti Bharti and Mr. Rohan Srivastava, Advs. for RBI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. By instituting the proceedings of this intra-court appeal, the appellant/ IDBI Bank Limited (hereinafter referred to as 'IDBI Bank') seeks to challenge partially the judgment and order dated 22.05.2024 passed by the learned Single Judge in W.P.(C) No. 3733/2024 to the extent it directs that petitioners (respondents herein) will be at liberty to make request for personal hearing to the IDBI Bank, which shall be considered accordingly.



2. Impeaching the impugned direction given by the learned Single Judge *vide* judgment and order dated 22.05.2024, it has been argued by learned counsel appearing for the IDBI Bank that the said direction is based on misreading of the judgment of the Hon'ble Supreme Court in ***State Bank of India and others v. Rajesh Agarwal and Others***, (2023) 6 SCC 1 (hereinafter referred to as 'Rajesh Agarwal') inasmuch as, that in the said judgment what all has been provided by the Hon'ble Supreme Court is that an opportunity of hearing to the borrowers should be provided before passing an order declaring the account of the borrower as fraud, however, which should not be construed as opportunity of personal hearing.

3. It has further been argued that proceedings drawn consequent upon a show cause notice issued under the Reserve Bank of India (Master Directions on Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions 2016. (hereinafter referred to as the 'RBI Directions') are administrative proceedings and, therefore, the process of fair hearing need not be at the standard of a judicial proceeding and, consequently, opportunity of personal hearing in such proceedings is not available. In this view, the submission is that the impugned direction issued by the learned Single Judge that petitioners – respondents herein will be at liberty to make request for personal hearing is not lawful.

4. Drawing our attention to an order passed by Hon'ble Supreme Court on a Miscellaneous Application No. 810 of 2023 in Civil Appeal No. 7300 of 2022 in ***State Bank of India & Ors v. Rajesh Agarwal & Ors***, dated 12.05.2023 which was filed by the State Bank of India, expressing certain apprehensions to the effect that the judgment in Civil Appeal No. 7300 of 2022 may be interpreted to mean that ground of personal hearing is



mandatory, though it has not been so directed in the conclusions set out in the said judgment, it has been argued that the said order dated 12.05.2023 makes the legal position clear that in the proceedings drawn under the RBI Directions, there is no scope of providing the borrowers a personal hearing.

5. Submission, thus, is that the learned Single Judge has misread the judgment of the Hon'ble Supreme Court in the case of **Rajesh Agarwal**, (**supra**) and has also not taken into account the order dated 12.05.2023 passed by the Hon'ble Supreme Court while issuing the impugned direction.

6. Opposing the appeal, it has been contended by learned counsel representing the respondents that there is no illegality or irregularity in the impugned direction issued by the learned Single Judge by means of the judgment dated 22.05.2024 for the reason that the judgment of the Hon'ble Supreme Court in **Rajesh Agarwal**, (**supra**) has correctly been applied and relied upon to conclude that the proceedings drawn under the RBI Directions require that application of the principle of *audi alteram partem* cannot be impliedly excluded under the RBI Directions on frauds and that what has been held by Hon'ble Supreme Court in the said judgment is that under the RBI Directions on frauds as well as keeping in mind the nature of procedure adopted, it is reasonably practicable for the lender bank to provide an opportunity of hearing to the borrowers before classifying their account as fraud, which would include providing opportunity of personal hearing.

7. It has also been argued on behalf of the respondents that since the Hon'ble Supreme Court in **Rajesh Agarwal**, (**supra**) upheld the judgment of Hon'ble High Court of Telangana in **Rajesh Agarwal v. RBI**, 2020 SCC OnLine TS 2021, wherein it was clearly directed that an opportunity of personal hearing shall be given to the borrower, the very basic premise of



this appeal is based on a complete misreading of the judgment of the Hon'ble Supreme Court in ***Rajesh Agarwal***, (***supra***).

8. In substance, the submission on behalf of the respondents is that once the Hon'ble Supreme Court in ***Rajesh Agarwal***, (***supra***) upheld the judgment of the Hon'ble High Court of Telangana which provided for opportunity of personal hearing, the instant appeal is highly misconceived which is liable to be dismissed.

9. We have considered the competing submissions made on behalf of the respective parties and have also perused the records available before us on this Letters Patent Appeal.

10. The only issue which arises for our consideration for appropriate adjudication of this appeal is as to whether the principle of *audi alteram partem* which has been read to have not been excluded by the Hon'ble Supreme Court in ***Rajesh Agarwal*** (***supra***) in respect of the proceedings drawn under the RBI Directions would mean providing right of personal hearing as well or it would only mean permitting the borrower to file reply to the show cause notice and making representation in writing without any personal hearing thereupon.

11. The nature of procedure to be adopted under the RBI Directions and the consequences of passing final order under the said Directions classifying account of a borrower as fraud, as also the extent of application of principle of *audi alteram partem* in such proceedings have been discussed at length by the Hon'ble Supreme Court in ***Rajesh Agarwal***, (***supra***).

12. In ***Rajesh Agarwal***, (***supra***), the Hon'ble Supreme Court has considered, *inter alia*, the consequences of classification of an account as fraud and has discussed the application of the rule of *audi alteram partem*



even in administrative actions. The Hon'ble Supreme Court has reiterated the settled principle of law that rule of *audi alteram partem* applies to administrative actions as well, apart from judicial and quasi-judicial functions. Another important principle reiterated in the said judgment by the Hon'ble Supreme Court is that it is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity. The Hon'ble Supreme Court has further observed that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard and that administrative action involving civil consequences must be made consistent with the rules of natural justice.

13. Paragraph 40 and 41 of the said judgment in ***Rajesh Agarwal***, (*supra*) are relevant to be extracted here, which run as under:

“40. The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions. It is now a settled principle of law that the rule of audi alteram partem applies to administrative actions, apart from judicial and quasi-judicial functions. [A.K. Kraipak v. Union of India, (1969) 2 SCC 262; St. Anthony's College v. Rev. Fr. Paul Petta, 1988 Supp SCC 676 : 1989 SCC (L&S) 44; Uma Nath Pandey v. State of U.P., (2009) 12 SCC 40 : (2010) 1 SCC (Cri) 501.] It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity.

41. In State of Orissa v. Binapani Dei [State of Orissa v. Binapani Dei, AIR 1967 SC 1269] , a two-Judge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice : (AIR p. 1271, para 9)

“9. ... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate



upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.””

14. On an elaborate discussion on the issue which had arisen in **Rajesh Agarwal, (supra)**, which centered around the issue relating to application of principle of *audi alteram partem* in respect of the proceedings drawn under the RBI Directions, the Hon’ble Supreme Court in paragraph 98 has concluded as under:

“98. The conclusions are summarised below:

98.1. No opportunity of being heard is required before an 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.”

15. Underlying the fact that classification of account of a borrower as fraud results in civil consequences against the borrower, it has thus, been concluded in **Rajesh Agarwal, (supra)** that application of principle of *audi alteram partem* cannot be excluded under the RBI Directions on fraud and that it is reasonably practicable for lender banks to provide for an opportunity of hearing to the borrowers before classifying their accounts as fraud.

16. In paragraph 99, the Hon’ble Supreme Court in **Rajesh Agarwal, (supra)** has clearly upheld the judgment of the Division Bench of the Hon’ble High Court of Telangana dated 10.12.2020 (2020 SCC OnLine TS 2021) and other such judgments. Paragraph 99 of **Rajesh Agarwal (supra)** is quoted below:-

“99. In the result, the judgment of the Division Bench of the High Court of Telangana dated 10-12-2020 [Rajesh Agarwal v. RBI, 2020 SCC OnLine TS 2021] is upheld. The judgments of the High Court of Telangana dated 22-12-2021 [Shree Saraiwwalaa Agrar Refineries Ltd. v. Union of India, 2021 SCC OnLine TS 1816] and 31-12-2021 [Yashdeep Sharma v. RBI, 2021 SCC OnLine TS 1852] , and of the High Court of Gujarat dated 23-12-2021 [Mona Jignesh



Acharya v. Bank of India, 2021 SCC OnLine Guj 2811] are accordingly set aside. The civil appeals are disposed of. Writ Petition (C) No. 138 of 2022 is also disposed of in the above terms. There shall be no order as to costs.”

17. It is noticeable, at this juncture, that **Rajesh Agarwal, (supra)** had emanated from the judgment of the Hon’ble High Court of Telangana (2020 SCC OnLine TS 2021). While allowing the writ petition filed by the petitioner, the Hon’ble High Court of Telangana in paragraph 76 had issued certain directions. Paragraph 76 of the judgment of the Hon’ble High Court of Telangana is extracted herein below:

“76. For the reasons stated above, this Writ Petition is, hereby, allowed with the following directions and in the following terms:—

76.1. Firstly, the principle of audi alteram partem, part of the principles of natural justice, is to be read in Clause 8.9.4 and 8.9.5 of the Master Circular.

76.2. Secondly, the decision, dated 15.02.2019, passed by the JLF, and the resolution dated 31.07.2019, passed by the FIC are, hereby, set aside.

76.3. Thirdly, the JLF is directed to give an opportunity of hearing by furnishing copies of both the Reports, namely the Forensic Auditor Report, dated 06.04.2018 and the subsequent Report submitted by Dr. K.V. Srinivas, IRP, to the petitioner, and to the OL.

76.4. Fourthly, the JLF is directed to give an opportunity of personal hearing both to the petitioner and to the OL before taking any decision on the issue whether the account should be classified as ‘fraud’ or not?

76.5. Fifthly, after the JLF has taken its decision, the FIC is directed to pass its resolution whether the decision of the JLF should be confirmed or not?

76.6. Lastly, the said exercise shall be carried out by the JLF within a period of three months from the date of receipt of the certified copy of this judgment. Furthermore, the subsequent exercise by FIC shall be carried out within two months from the date of the decision of the JLF.”



18. From a perusal of the afore-quoted extracts of the judgment rendered by the Hon'ble High Court of Telangana what we find is that one of the directions issued, as embodied in paragraph 76.4 of the judgment, was to give opportunity of 'personal hearing' both to the petitioner in the said writ petition and also to the Official Liquidator before taking any decision on the issue whether the account should be classified as fraud or not.

19. Since, in paragraph 99, the Hon'ble Supreme Court has upheld the said decision of the Hon'ble High Court of Telangana (2020 SCC OnLine TS 2021), in our considered opinion, reading the conclusion in ***Rajesh Agarwal, (supra)***, as can be found in paragraph 98.4, to mean that in proceedings under the RBI Directions, opportunity of hearing would not include opportunity of personal hearing, is untenable. Once, the Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court of Telangana which clearly had directed for providing an opportunity of personal hearing as well, to conclude that opportunity of hearing would not include opportunity of personal hearing, in our opinion, will be erroneous.

20. The submission made by learned counsel representing the appellant that the proceedings consequent upon the show cause notice under the RBI Directions are administrative proceedings as such the process of fair hearing will not be at the standard of a judicial proceeding, in our considered opinion, does not have any bearing to the instant case for the reason that the Hon'ble Supreme Court in ***Rajesh Agarwal, (supra)*** has clearly reiterated the well-known principle of law that even in administrative action, the principles of *audi alteram partem* are to be observed. The extent of application of the principle of *audi alteram partem* in the proceedings drawn



under the RBI Directions has already been explained by the Hon'ble Supreme Court in ***Rajesh Agarwal***, (**supra**) which has upheld the directions issued by the Hon'ble High Court of Telangana where one of the directions issued was for providing opportunity of personal hearing as well.

21. It is trite in law that there is no straight jacketed formula to ensure observance of principles of justice for the reason that the extent and width of application of this principle depends on the nature of proceedings and the provisions under which such proceedings are drawn as also on the consequences which such proceedings entail.

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 appellant is of no avail to the appellant.

25. In view of the discussions made and reasons given above, we find that the impugned direction by the learned Single Judge, which is under challenge herein, does not warrant any interference by us in this Letters Patent Appeal.

26. Consequently, the Letters Patent Appeal is hereby dismissed.

27. However, there shall be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

FEBRUARY 19, 2025/N.Khanna