

Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 15240 OF 2023**

S S Hemani ...Petitioner
Versus
The Reserve Bank of India & Ors ...Respondents

WITH

WRIT PETITION (L) NO. 5940 OF 2022

WITH

INTERIM APPLICATION (L) NO. 26987 OF 2022

Supama Trading Pvt Ltd & Ors ...Petitioners
Versus
Reserve Bank of India & Ors ...Respondents

WITH

WRIT PETITION (L) NO. 552 OF 2023

WITH

WRIT PETITION (L) NO. 8956 OF 2023

WITH

WRIT PETITION NO. 759 OF 2022

WITH

WRIT PETITION (L) NO. 5597 OF 2022

WITH

INTERIM APPLICATION (L) NO. 31047 OF 2022

WITH

WRIT PETITION (L) NO. 8124 OF 2022

WITH

INTERIM APPLICATION NO. 3939 OF 2022

IN
WRIT PETITION NO. 1043 OF 2023
WITH
WRIT PETITION NO. 1044 OF 2023
WITH
WRIT PETITION NO. 3171 OF 2022
WITH
INTERIM APPLICATION NO. 3115 OF 2022
IN
WRIT PETITION NO. 3171 OF 2022
WITH
WRIT PETITION NO. 243 OF 2023
WITH
WRIT PETITION (L) NO. 33274 OF 2022
WITH
WRIT PETITION (L) NO. 10522 OF 2023

Sikkim Ferro Alloys Ltd ...Petitioner
Versus
Reserve Bank of India ...Respondent

WITH
WRIT PETITION (L) NO. 15787 OF 2023

Abhay Narendra Lodha & Ors ...Petitioners
Versus
IDBI Bank & Ors ...Respondents

Mr Mayur Khandeparkar, *with Niret Mehta, Alya Khan i/b Vashi & Vashi, for the Petitioner in WPL/15240/2023.*

Mr Alok Mishra, *for the Respondent No.3 in WPL/15240/2023.*

Mr GS Godbole, Senior Advocate, *with Devashish Godbole, Prasad Nagargoje & Ryan Peter, for the Petitioners in WP(L)/5940/2022, WPL/10522/2023 & WP(L)/15787/2023.*

Mr Gaurav Joshi, Senior Advocate, *with Shreni Shetty & Antara*

Kalambi, i/b ANB Legal, for the Petitioners/Applicants in IA/3115/2022 in WP/3171/2022.

Dr Milind Sathe, Senior Advocate, with Abhishek Kale, Arya Bile & Parikshith K., i/b Naik Naik & Co, for the Petitioner in WP/1043/2023.

Mr Aabad Ponda, Senior Advocate, with Abhishek Kale, Arya Bile & Parikshith K., i/b Naik Naik & Co., for the Petitioner in WP/1044/2023.

Mr VN Ajitkumar, for Respondent No. 3-Indian Bank in WP(L)/9247/2023.

Mr Rajan Pillai, for Respondent No. 3 in WP/9239/2023.

Mr Prasad Shenoy, with Aditi Phatak & Vijay Salokhe, i/b BLAC, for the Respondent-RBI in WP(L)/5940/2022 & 9 others.

Mr Anant Bamne, i/b AR Bamne & Co, for Respondent No.1-Bank of Baroda in WP/759/2022.

Mr Ramchandra Apte, with Mayuresh Lagu, for Respondent No. 1/IOI in WP/243/2023.

Ms Akanksha Hambir, i/b Rathina Maravarman, for Respondent No. 2-SBI in WP(L)/13954/2022 & WP(L)/13592/2022..

Ms Yashvi Shah, i/b Nahush Shah Legal, for Respondents No. 3 to 15.

Mr Nishit Dhruva, with Prakash Shinde, Niyati Merchant, Yash Dhruva & Harsh Sheth, i/b MDP & Partners, for Respondent - Bank in WP(L)/8124/2022 & WP(L)/8956/2023.

Mr Kuldeep A Patil, for Respondent No. 3-CBI in WP(St)/8124/2022.

Ms Priya Nigwekar, i/b OA Das, for Respondent No. 3 in WP/243/2023.

Ms Purnima Awasthi, with Parag Vyas & Karuna Yadav, for Respondent No. 3 in WP/759/2022.

Mrs PH Kantharia, GP, for the Respondent-State in WP/5597/2022, WP(L)/8124/2022 & WPL/10522/2023.

Mr Dashrath Dube, with YR Mishra, for Respondent No. 1 in WP/3171/2022.

Mr Bharat Mirchandani, i/b Hiten Venegaonkar, for Respondent No. 3-CBI.

Mr Alizain Patel, i/b Jamshed Ansari, for Respondent No. 2 in WP(St)/5597/2022 & WP(St)/5940/2022.

Mr Sagar Chaturvedi, i/b SNM Legal, for Respondent No. 2-UBI in

WPL/10522/2023.

**Mr Shreeram Shirsat, with Ama Ommen, for Respondent No. 3-CBI
in WPL/10522/2023.**

**CORAM G. S. Patel &
Neela Gokhale, JJ.
DATED: 19th June 2023**

PC:-

1. All the Petitions assail actions taken by various banks under directions issued by the Reserve Bank of India called the Frauds (Classification and Reporting by Commercial Banks and Select FI) Directions, 2016. These directions came up for consideration before the Supreme Court in *State Bank of India & Ors v. Rajesh Agarwal & Ors.*¹ The Supreme Court's conclusions are set out in Section 'E' and paragraphs 81 and 82 of the judgment. Before the Supreme Court was a challenge to a decision of the High Court of Telangana which *inter alia* held that principles of natural justice must be read into the provisions of the master directions on fraud. This is summarized in paragraph 5 of the Supreme Court judgment. Paragraphs 81 and 82 of the Supreme Court decision read thus:

“81. The conclusions are summarized below:

- (i) No opportunity of being heard is required before an FIR is lodged and registered.
- (ii) Classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers.
- (iii) 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

1 2023 SCC OnLine SC 342.

borrower.

(iv) 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 opportunity of hearing ought to be provided before a person is blacklisted.

(v) 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 lenders banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.

(vi) 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, and

(vii) 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.

82. In the result, the judgment of the Division Bench of the High Court of Telangana dated 10th December 2020 is upheld. The judgments of the High Court of Telangana dated 22nd December 2021 and 31st December 2021, and of the High Court of Gujarat dated 23rd December 2021 are accordingly set aside. The Civil Appeals are disposed of. Writ Petition (C) No.138 of 2022

is also disposed of in above terms. There shall be no order as to costs.”

(Emphasis added)

2. Then, the State Bank of India filed a Miscellaneous Application No.810 of 2023 before the Supreme Court on which the following order came to be passed on 12th May 2023:

“1. The apprehension which has been expressed by the Solicitor General of India is that since the judgment of the Division Bench of the High Court of Telangana dated 10 December 2022 was upheld in the judgment of this Court dated 27 March 2023, the judgment of this Court may be interpreted in the future to mean that the grant of a personal hearing is mandatory though it has not been so directed in the conclusions set out in paragraph 81 of the judgment.

2. While upholding the judgment of the High Court of Telangana dated 10 December 2020, the operative directions of this Court are those which are summarized in paragraph 81 in section 'E' of the judgment.

3. The Solicitor General states that in respect of his submission that the judgment of the Court should be granted only prospective effect, the State Bank of India may be advised to file a review separately.

4. The Miscellaneous Application is disposed of.

5. Pending applications, if any, stand disposed of.”

(Emphasis added)

3. As the emphasized portion above shows, the principal decision in *Rajesh Agarmal* has not been disturbed by the 12th May 2023 order.
4. We are told that the State Bank of India has indeed filed a Review Petition, but it is presently in office objection. So noted.
5. Consequently, we will have to consider each of these Petitions in turn but it seems clear to us that since every Petition complains of a violation of the principles of natural justice including not being afforded an opportunity of a hearing and not being given copies of the material relied upon against the Petitioner, we will have to issue Rule and grant stay against further actions based on the decision taken by the banks under the Master Circular in question.
6. We see little purpose in keeping the Petitions pending indefinitely. We would ordinarily have proceeded to a final disposal immediately, but this requires some scheduling and directions for Affidavit in Reply and possibly a Rejoinder to complete the pleadings. We also do not want repeated arguments on the same point and we will have to impose time constraints, unavoidably necessary.
7. We will take up the entire group for hearing and final disposal on 7th and 8th September 2023. The final hearing will begin immediately after the completion of the short supplementary board on both those dates.

8. Counsel for opposing sides must arrange between them to coordinate their submissions to avoid repetition. On both sides, we permit advanced concise notes of written submission and compilations of Authorities duly indexed and paginated provided these are filed by no later than 2nd September 2023. The hearings must conclude by 8th September 2023 as we will not be able to accommodate counsel for a longer hearing.

9. Counsel are at liberty to appear either physically or online at their choice. No prior permission is required for this purpose.

10. All Affidavits in Reply including by the RBI are to be filed and served by 17th July 2023. We make it clear that this is at the option of the answering banks since some of them have filed Affidavits to oppose admission. More complete Affidavits are permitted by that date. Where no Affidavits are filed, these are to be filed by 17th July 2023. Rejoinders are permitted by 21st August 2023. There will be no further Affidavits beyond the Rejoinders. By 31st August 2023, the record in each matter is to be completely digitised and properly bookmarked by the Registry. All appearing advocates will be at liberty to seek a soft copy of the digitised record for their reference purposes.

11. The stay will continue only till 11th September 2023. It is restricted only to actions by the banks or their in-house committees under the Master Circular in question.

12. We clarify that where the Central Bureau of Investigation (“CBI”) is involved and there are criminal proceedings that are ongoing, our order is not to be construed as interfering with those proceedings. Those will continue on merits. This is, of course, on the basis that the CBI proceedings are based on FIRs which are *dehors* the Master Circular. The Supreme Court decision clearly states that no hearing is necessary before filing of FIRs, even if the charge is of fraud accounts. In other words, the investigating agencies are at liberty to file and proceed with FIRs without reference to any findings by the bank under the Master Circular in question. Equally, all remedies available in law to private parties remain unaffected by this order and may be pursued.

13. Further, all banks are also at liberty to rescind, withdraw or cancel any orders already passed under the Master Circular and which may be inconsistent with the Supreme Court judgment in *Rajesh Agarwal*; and to re-initiate the process consistent with the Supreme Court decision. We have not stayed the operation of the Master Circular (which has not been struck down by the Supreme Court decision). The Supreme Court has only read certain requirements into the Master Circular. It follows, therefore, that actions under the Master Circular consistent with the Supreme Court judgment and decision may undoubtedly proceed.

(Neela Gokhale, J)

(G. S. Patel, J)