

ITEM NO.105

COURT NO.2

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 573/2003

CENTRE FOR PUBLIC INTEREST LITIGATION

Petitioner(s)

VERSUS

HOUSING AND URBAN DEVELOPMENT CORPORATION LTD.
& ORS.

Respondent(s)

([TO GO BEFORE THREE HON'BLE JUDGES]
IA No. 107183/2022 - EARLY HEARING APPLICATION)

Date : 07-12-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE VIKRAM NATH

For Petitioner(s) Mr. Prashant Bhushan, AOR
Mr. Pranav Sachdeva, Adv.
Ms. Neha Rathi, Adv.

For Respondent(s)
Mr. Balbir Singh, ASG
Ms. Sunita Sharma, Adv.
Mr. Shashank Bajpai, Adv.
Mr. Prashant Singh, Adv.
Mr. Prahlad Singh, Adv.
Mr. Raj Bahadur Yadav, AOR

Ms. Ruby Singh Ahuja, AOR

Mr. Pranab Kumar Mullick, AOR
Mrs. Sona Mullick, Adv.
Mr. Sebat Kumar Deuria, Adv.
Mr. Anil Rana, Adv.

Mr. B. Krishna Prasad, AOR

Applicant-in-person

Mr. P. Parmeswaran, AOR

Mr. Vikas Mehta, AOR
Ms. Rashi Rampal, Adv.

Mrs. Anil Katiyar, AOR

Ms. Nina Gupta, Adv.
Dr. Lalit Bhasin, Adv.
Ms. Radhika Gupta, Adv.
Ms. Ruchika Joshi, Adv.
Ms. Ananya Marwah, Adv.
Mr. Mudit Sharma, AOR

Mr. Jaideep Gupta, Sr. Adv.
Mr. H. S. Parihar, AOR
Mr. Kuldeep S. Parihar, Adv.
Ms. Ikshita Parihar, Adv.

Mr. Rajeev Sharma, Sr. Adv.
Mr. Uddyam Mukherjee, AOR
Mr. Saket Chandra Roy, Adv.
Mr. Swapnil Pattanayak, Adv.
Mr. Pranav Giri, Adv.

Mr. R. Chandrachud, AOR
Mr. D. Venkata Krishna, Adv.

Mr. Shashank Bajpai, Adv.
Mr. R. R. Rajesh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

A short note has been filed on behalf of the petitioner on 28.11.2022 and thus it is stated that there has not been sufficient time to respond in terms of the Order dated 08.9.2022.

We have, however, examined the short note which itself runs into about 22 pages. In paragraph 16 of the short note the prayers stated to be surviving as per the petitioner are as under:-

"a. This Hon'ble Court may direct the RBI and the Union of India to implement all the recommendations of the Committee's Report, dated 23.1.2017 in letter and spirit in a time-bound manner;

b. All the banks may be directed to strictly comply with the RBI's Circular, dated 01.7.2016 and CVC's Circular No.04/05/18, dated 09.5.2018, regarding reporting of fraud cases to Local/State Polic and CBI.

c. RBI may be directed to periodically publish consolidated lists of defaulters whose default is more than Rs.500/- crores."

We are of the view that the affidavits are required to be filed both by the RBI and the UOI qua both prayers a and b.

The stand of the Indian Bank Association is that they are, looking to the nature of pleas, not in possession of the relevant information and it is their say that the information would be in the nature of confidential information with the banks.

It would be appropriate to first see what is the stand of UOI and RBI qua the prayers made.

The affidavits be filed within four weeks as prayed for.

Insofar as the prayer (C) is concerned, learned counsel for the RBI has brought to our notice orders passed in WP (C) No. 1159/2019 "HDFC Bank Ltd. & Ors. Vs. UOI & Ors." on 30.9.2022. It would be useful to reproduce the following paragraphs:

"39. In view of the judgment of this Court in the case of Jayantilal N. Mistry (supra), the RBI is entitled to issue directions to the petitioners/Banks to disclose information even with regard to the individual customers of the Bank. In effect, it may adversely affect the individuals' fundamental right to privacy.

40. A Nine-Judge Constitution Bench of this Court in the case of K.S. Puttaswamy and another (supra) has held that the right to privacy is a fundamental right. No doubt that the right to information is also a fundamental right. In case of such a conflict, the Court is required to achieve a sense of balance.

41. A perusal of the judgments of this Court cited supra would reveal that it has been held that though the

concept of finality of judgment has to be preserved, at the same time, the principle of ex debito justitiae cannot be given a go-bye. If the Court finds that the earlier judgment does not lay down a correct position of law, it is always permissible for this Court to reconsider the same and if necessary, to refer it to a larger Bench.

42. Without expressing any final opinion, prima facie, we find that the judgment of this Court in the case of Jayantilal N. Mistry (supra) did not take into consideration the aspect of balancing the right to information and the right to privacy. The petitioners have challenged the action of the respondent-RBI, vide which the RBI issued directions to the petitioners/Banks to disclose certain information, which according to the petitioners is not only contrary to the provisions as contained in the RTI Act, the RBI Act and the Banking Regulation Act, 1949, but also adversely affects the right to privacy of such Banks and their consumers. The RBI has issued such directions in view of the decision of this Court in the case of Jayantilal N. Mistry (supra) and Girish Mittal (supra). As such, the petitioners would have no other remedy than to approach this Court. As observed by Ranganath Misra, J. in the case of A.R. Antulay (supra) that, this being the Apex Court, no litigant has any opportunity of approaching any higher forum to question its decision. The only remedy available to the petitioners would be to approach this Court by way of writ petition under Article 32 of the Constitution of India for protection of the fundamental rights of their customers who are citizens of India."

It is the submission of learned counsel for the RBI that in view of what has been stated aforesaid, the judgment in Jayantilal N. Mistry (Supra) would be required to be considered by a larger bench of three judges which would have a direct impact on the prayer c made.

Learned counsel for the petitioner however submits that the observations are in the context of the inspection report for the banks. He also seeks to rely on the order earlier passed for filing affidavits.

Be that as it may, we consider it appropriate that the aforesaid issue be placed before Hon'ble the Chief Justice of India to consider whether this matter can be placed before a Three Judges Bench to put a quietus to the issue.

List for directions in the category of miscellaneous matters on 25th January, 2023.

I.A.Nos.9-10/2016

The applicant states that he has worked with the banking industry as a law officer and is of the view that the merger and amalgamation of different banks has increased the NPS.

We are not examining here any merger or amalgamation, what is its effect, largely policy matters.

We are not inclined to entertain the application but if the applicant has any thoughts he can always communicate it to Mr. Bhushan to address this Court.

The application stands dismissed.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER