

# Hem Singh Bharana vs Reserve Bank Of India & Ors on 6 October, 2020

**Author: Jayant Nath**

**Bench: Jayant Nath**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 7454/2020, CM APPL.Nos. 24894-24895/2020  
HEM SINGH BHARANA ..... Petitioner  
Through Mr.Sudhir Nandrajog, Sr.Adv. with  
Mr.Apoorv Agarwal, Ms.Akanksha  
Sharma, Advs.  
versus  
RESERVE BANK OF INDIA & ORS. .... Respondents  
Through Mr.O.P.Gaggar, Adv. for R-3/Union  
Bank of India  
CORAM:  
HON'BLE MR. JUSTICE JAYANT NATH  
ORDER

% 06.10.2020 This hearing is conducted through video conferencing.

1. This writ petition is filed by the petitioner seeking the following reliefs:

"a. Quash and set aside the impugned circular dated 01.07.2016 bearing number DBS.CO.CFMC.BC.No.1/ 23.04.001 / 2016-17 issued by the Respondent No. 1 to the extent it violates Articles 14, 19 & 21 of the Constitution of India along or its scope be expounded or clarified accordingly, with consequential relief;

b. Call for the relevant records and set aside the categorization of the account of the Company and in consequence the account of the Petitioner as "fraud" as declared by the Respondent No.3 who did not follow the principles of natural justice;

c. In case the Respondent No.3 has already categorized the account of the Company and in consequence the account of the Petitioner as "fraud" in any ex-parte order, the said categorization be set aside and quashed after calling the relevant record from the Respondent No.3; and d. Direct the Respondent No. 1, Reserve Bank of India to take appropriate action against the Respondent No.3 Bank in view of the mala fide, unlawful and vexatious conduct of the Respondent No.3 Bank in declaring the account of the Company and the Petitioner as a "fraud" in violation of Constitution of India."

2. The case of the petitioner is that the petitioner is a civil engineer and has promoted Era & Infra Engineering Limited and currently is a suspended director of the said company. In 2013, SBI Capital Markets Limited was appointed for preparation of restructuring scheme of the company. Further a Special Investigation Audit was carried out. The Special Investigation Auditor concluded that a large portion of the total receivables from government clients were not received in a timely manner. It is also stated that G.D. Apte & Co. who was appointed to conduct a Special Investigation Audit has given its report and submitted that there is nothing against the petitioner. Reference is made to various events that had taken place subsequently. Reliance is also placed on a forensic audit report of Rajan Beri & Associates who were appointed to carry out Forensic Audit, to submit that the company had suffered losses in its business and is not being able to recover receivables due from government departments which had lead to the financial stress in the company.

3. It is the case of the petitioner that every efforts has been made to revive the company.

4. Learned senior counsel appearing for the petitioner has also pleaded that large dues are pending from government departments for which litigations have been commenced. However, it is stated that recently the petitioner's company learnt that respondent No.3 bank has declared the account of the petitioner company as fraud in terms of RBI circular dated 01.07.2016. It is stated that no show cause notice or opportunity of hearing was given to the petitioner. It has been stressed that earlier audits done by the auditors appointed by respondent No.2 and other bankers have fairly shown that there is no fraud done by the petitioner.

5. Learned senior counsel further pleads that this act of respondent No.3 bank causes grave civil consequences without following principles of natural justice.

6. Reliance is placed on an order of a Co-ordinate Bench of this court in the case of Apple Sponge And Power Ltd. And Ors. v. Reserve Bank Of India And Anr., W.P.(C) 306/2019, dated 15.02.2019, where this court had stayed the operation of an order declaring the account in question as a fraud as being contrary to the principles of natural justice.

7. In this context, this court had passed several such orders where RBI circular dated 01.07.2016 has been impugned. Those matters are coming up before this court on 20.10.2020.

8. Reference in this context may be had to the relevant portion of the order in Apple Sponge And Power Ltd. And Ors. v. Reserve Bank Of India And Anr.(supra), where this court held as follows:

"9. The contentions and counter-contentions notwithstanding, in my prima facie view there clearly appears to be something amiss inasmuch as RBI's Master Directions dated 01.07.2016 relating to classification and reporting of 'fraud' does not contain any provision for issuance of show-cause notice or affording a hearing to the affected party, even though a decision by a bank, whether taken individually or collectively with other banks, to classify an account as 'fraud' is a significant administrative decision taken in the commercial realm, having serious consequences for the account holder. That is to say, while a bank may most certainly report fraudulent transactions in an account to law enforcement agencies under the criminal law regime without issuing a show cause notice or

hearing an affected party, but if an account is to be declared 'fraud' by an administrative decision in the framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.

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11. It is noteworthy that while the RBI circular dealing with 'willful defaulters' provides a mechanism whereby a hearing is given to the affected party, no opportunity of hearing appears to be available in the circular that deals with declaring an account as 'fraud', which latter is a much more serious matter.

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17. To me it prima facie appears that declaring an account as 'fraud' would arise in a case of egregious default on the part of an account holder, something more than the account holder being a 'willful defaulter'. For an account to be declared as 'fraud' must entail an element of criminality on the part of the account holder, which ought to be inferred only on the basis of some substantial material which must be put to the errant account holder; and after considering any explanation such account holder has to offer; and not unilaterally by a stroke of the pen.

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19. In the circumstances, without prejudice to the rights and contentions of the parties, all of which are kept open, it is directed that respondent No. 2/bank shall not take any further steps or actions prejudicial to the petitioners based upon the petitioners' account being declared 'fraud' until the next date of hearing."

9. In the present case, it is manifest that respondent No.3 bank has not followed the principles of natural justice and has not issued show cause notice or given an opportunity of hearing to the petitioner.

10. Keeping in view the above facts, it is manifest that the petitioner has made out a prime facie case. There has been prima facie non-compliance with the principles of natural justice. Accordingly, in view of the afore-noted order of this court, the decision of respondent No.3 bank declaring the account of the petitioner as fraud account is stayed till next date of hearing.

11. It is clarified that respondent No.3 bank is free to take any steps as per law which do not emanate from the declaration of the account of the petitioner as fraud.

12. It is also clarified that respondent No.3 bank is free to issue a show cause notice to the petitioner and after hearing may pass appropriate reasoned orders pertaining to the account of the petitioner.

13. Issue notice.

14. Learned counsel for respondent No.3 bank accepts notice. He states that respondent No.3 has in 2019 itself forwarded its report to RBI under RBI circular dated 01.07.2016. He further states that a complaint has also been filed with CBI in 2019 by respondent No.3 bank.

15. List on this matter on 20.10.2020.

JAYANT NATH, J.

OCTOBER 6, 2020/v