

(2014) 07 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition 19247(W) of 2014

Kingfisher Airlines Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2015) 1 CompLJ 160

Hon'ble Judges : D. Datta, J

Bench : Single Bench

Advocate : Siddhartha Mitra, Moushumi Bhattacharya and Arunava Deb,
Advocates for the Appellant; HIRAK MITRA and PRANTAR BASU CHOWDHURY,
Advocates for the Respondent

Judgement

Dipankar Datta, J.—United Bank of India (hereafter the bank), respondent No. 2, issued a notice dated 28 May, 2014, to the petitioning company informing it that the account maintained by it with the Bangalore branch of the bank had been classified as non-performing asset in terms of the guidelines of the Reserve Bank of India (hereafter the RBI) and that the Committee on Identification of wilful defaulters had identified it as a wilful defaulter for the reasons mentioned therein. The petitioning company was granted 15 days time for submission of representation, if any, for consideration by the Grievance Redressal Committee of the bank (hereafter the Committee) on identification of wilful defaulters. Similar notice was issued to the directors of the petitioning company, who are the proforma respondents in this writ petition. The petitioning company responded to the aforesaid notice by a representation dated 10 June, 2014, wherein it was contended that the default made on its behalf was not capable of being categorized as wilful and a request was made to withdraw the notice. It was further observed therein that if the Committee were inclined to proceed further, the petitioning company may be given the opportunity of personal hearing as well as the liberty of being represented by an advocate of its choice. The bank by its notice dated 23 June, 2014, informed the Chairman and Managing Director of the petitioning company that 28 June, 2014, has been fixed as the date for

extending an opportunity of personal hearing and that it may attend the hearing fixed at the venue and time indicated therein. Alleging that the notice dated 23 June, 2014, contained fresh allegations, it was represented on behalf of the petitioning company on 24 June, 2014, that it be given the opportunity to respond thereto and the hearing may be rescheduled either on 26 July, 2014 or on 2 August, 2014, to enable the advocate for the petitioning company to address the Committee.

2. Pursuant to receipt of such representation, it was informed to the petitioning company by a notice dated 25 June, 2014, that 9 July, 2014, has been fixed as the date of hearing. It was additionally informed as follows:

"As regards engaging advocate for addressing the Grievance Redressal Committee, you are requested to be guided by the aforesaid Master Circular of RBI. In this regard, you will appreciate that the said Master Circular of RBI does not contain any provision for being represented by an advocate at the time of hearing before the Grievance Redressal Committee."

3. By a further representation dated 30 June, 2014, the petitioning company stressed that refusal of legal representation was in essence a violation of the principles of natural justice and the rights guaranteed under the Constitution of India. It was further brought to the notice of the bank that the petitioning company had been afforded opportunity to be represented by advocates of its choice by Corporation Bank, a member of the consortium which granted financial assistance to the petitioning company and, accordingly, it was reiterated that the hearing would be attended by the chairman cum managing director and the other directors alongwith their respective advocates.

4. The bank, by its letter dated 30 June, 2014, refused permission to the petitioning company to be represented by its advocate and called upon it to appear before the Committee on the date, time and the venue indicated in the earlier notice dated 25 June, 2014.

5. This writ petition dated 4 July, 2014, is directed against the notices dated 28 May, 2014, 23 June, 2014, 25 June, 2014, and 30 June, 2014, referred to above.

6. Appearing in support of the writ petition, Mr. Sarkar, learned Senior Advocate, contended that having regard to the complex factual and legal issues involved in the matter, it is only just and fair that the bank should be directed to allow the petitioning company and its directors to be represented by advocates of their choice. He conceded that the opportunity to be represented by an advocate may not be claimed as a matter of right but contended that the petitioning company, in view of the legal position that the guidelines of the RBI do not exclude legal representation, was at least entitled to know the reasons as to why legal representation could not be permitted. According to him/the order refusing legal representation is without reasons and it would be a violation of the principles of natural justice if the petitioning company on identification as a wilful defaulter is made to suffer penal consequences. Further, it was contended that if the

petitioning company is deprived of assistance of its advocate at the hearing, it would stand seriously prejudiced at the very beginning of the proceedings. He also contended that grant of legal assistance would not prejudice the bank and the bank may be directed to reconsider the prayer for grant of permission to be represented by an advocate of its choice. Reliance was placed on the decision of the Supreme Court reported in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, , in support of the contention that the petitioning company is entitled to a fair deal.

7. Per contra, Mr. Mitra, learned Senior Advocate for the bank contended that the allegation against the petitioning company is simple; there has been a default in meeting the obligations for repayment and that the funds were not utilised for the specific purpose for which it was availed of and that there has been a diversion of the same for other purposes. According to him, in none of the responses the petitioning company had chosen to indicate as to where the funds had gone and since the petitioning company has the specific knowledge in regard thereto, it is for it to appear before the Committee and to explain why it should not be declared as a wilful defaulter. Referring to the decision in J.K. Aggarwal, supra, it was submitted that the same arose out of a departmental enquiry that was initiated against a delinquent employee and the circumstances are not quite the same for applying the law laid down therein. He, accordingly, prayed for dismissal of the writ petition.

8. I have heard the learned senior advocates appearing for the respective parties and considered the materials on record.

9. No argument has been advanced in support of the claim for setting aside the notices dated 28 May, 2014 and 23 June, 2014. Regard being had to the arguments advanced the only point that emerges for a decision on this writ petition is whether the petitioning company is entitled to legal representation before the Committee.

10. It is true that the request of the petitioning company for legal representation has been refused on the ground that the guidelines of the RBI do not provide for the same, without any consideration worth the name as to whether any case for such representation had been set up or not. However, nothing turns on it. The infirmity from which the order of refusal suffers from is not such that the petitioning company would be entitled to any relief on this writ petition for the reasons that follow.

11. My understanding of the ratio of the decision in J.K. Aggarwal, supra, relied on by Mr. Sarkar, and the other decisions of the Supreme Court as well as this Court in regard to representation of a delinquent employee by an advocate in a departmental enquiry initiated against him is this. A delinquent employee cannot claim legal representation as of right; but where legal representation is not excluded expressly or by necessary implication, it is open to the delinquent employee to seek legal representation on cogent grounds and if a request in this

behalf is received, the employer in its discretion may allow the employee to avail himself of the same. The predominant consideration therefor would be the gravity of the charges vis-à-vis involvement of complex factual and legal issues, which a delinquent employee (who is likely to be unaware of the niceties of a departmental enquiry) might find too hot to handle and a virtual no contest would result, leading to disciplinary measures being taken against him. A delinquent employee may also legitimately seek and obtain legal representation should he be pitted against a legally trained mind. More often than not, a departmental enquiry turns out to be a duel between a lion and a lamb and the courts, if approached, zealously guard against a walk-over being secured by the employer within the limits of the rules governing such enquiry. Whether or not an employee is entitled to have legal representation would, however, depend on the facts of each particular case and the applicable rules, and cannot be put in a strait jacket.

12. Whatever might be relevant in relation to a departmental enquiry initiated against a delinquent employee would not ipso facto be of relevance in a case of the present nature, where a borrower like the petitioning company is sought to be proceeded against in accordance with the guidelines of the RBI to declare it as a wilful defaulter. Although the petitioning company would be liable to face consequences once it is declared a wilful defaulter, it is of no worth for it has not dealt with public funds in the manner agreed upon by and between the parties. That the petitioning company is a defaulter is not in question; what is of relevance is whether the default is wilful or not.

13. It has not been shown that the officers of the bank comprising the Committee are legally trained persons for which there could be a reasonable likelihood of a failure of justice, if the petitioning company were refused the permission to be represented by an advocate. Even if any or all the officers of the bank comprising the Committee are legally trained persons, the petitioning company does not stand at a disadvantage. It is inconceivable that the petitioning company does not have in its fleet an efficient and well versed company secretary and/or competent law officers. In the hearing to be conducted by the Committee, reasonably simple questions of fact as to by whom and how the finances of the petitioning company were handled and utilized, and where the funds have gone resulting in accumulation of dues, would fall for consideration, which a company secretary and/or law officers of fair intelligence and having knowledge of the conditions prevailing in the petitioning company would be able to disclose, for unearthing the truth. It is he/they who would be best suited to answer the queries of the Committee members or to raise effective defence and plead that the default has not been wilful and, therefore, question of declaring the petitioning company as a wilful defaulter does not and cannot arise.

14. On the facts pleaded in the responses to the impugned notices forming part of the writ petition, the petitioning company can claim no right to be represented by an advocate at the hearing before the Committee. The writ petition is without

merit and the same stands dismissed, without order for costs.

15. Since the Committee adjourned the hearing scheduled on 9 July, 2014, awaiting decision on this writ petition, and it has now been dismissed, it shall be at liberty to fix a further date of hearing upon service of 72 hours advance notice on the petitioning company and its directors.

16. Needless to observe, the Committee shall proceed to decide the issue before it in accordance with law and all other points are left open for being urged before it by the petitioning company. Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.