

(2026) 02 KL CK 1682

In the High Court Of Kerala

Case No : Writ Petition (C) No. 46033 Of 2025

K.T.Saidalavi

APPELLANT

Vs

Reserve Bank Of India Represented By Its Regional Director

RESPONDENT

Date of Decision : 09-02-2026

Acts Referred:

Constitution of India, 1950 — Article 226
Banking Regulation Act, 1949 — Section 21, 35A

Citation : (2026) 02 KL CK 1682

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : Zakeer Hussain, K.A.Sanjeetha, Aby George, Muneer P.M., C.Ajith Kumar, Varsha S.S., R.Remma

Final Decision : Allowed

Judgement

M.A.Abdul Hakhim, J

1. The Petitioner claims that he is the Chairman of Tip Top Furniture Group having six business units engaged in the business of manufacturing, importing, exporting, and trading of furniture. As per the averments in the Writ Petition, Tip Top Furniture Group availed loans from the Respondent No.2/Bank for a total amount of Rs.47.79 Crores against common securities. Tip Top Furniture Group has repaid more than Rs.11 Crores towards the loans. When the repayments were defaulted, the Respondent No.2 filed O.A. No.148/2022 before the Debts Recovery Tribunal (DRT), Ernakulam, for recovery of an amount of Rs.53,19,81,574/- and interest thereon. The Respondent No.2 initiated SARFAESI proceedings and Securitisation Applications are pending before the DRT, challenging the same. In SARFAESI proceedings and in liquidation proceedings initiated against one of the business units, viz., Tip Top Furniture Private Limited, the Respondent No.2 has recovered Rs.4,25,39,925/- and Rs.12,77,11,158/- respectively. The Petitioner claims that the Respondent No.2 has received a total amount of Rs.28,28,06,798/- towards the loans availed by the Tip Top Furniture

Group. Respondent No.2 issued Ext.P5 Show Cause Notice dated 30.05.2024 to Tip Top Furniture Industries, represented by the Petitioner and its other partners, asking them to show cause why they should not be classified as fraud to take action in terms of the Reserve Bank of India Master Directions on Frauds - Classification and Reporting by Commercial Banks and Select FI dated 01.07.2016. The Respondent No.3/Fraud Examination Committee of the Respondent No.2 passed Ext.P6 Order dated 04.01.2025, classifying Tip Top Furniture Industries and its partners, including the Petitioner, as fraud in terms of Ext.P7 Master Directions on Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions, 2024. Tip Top Furniture Industries and its partners, including the Petitioner, filed W.P.(C) No.3676/2025 challenging Ext.P6 Order and this Court disposed of the said Writ Petition as per Ext. P8 judgment dated 18.03.2025 setting aside Ext.P6 Order, directing the Respondent No.2 to furnish a copy of the Audit Report of the Competent Authority and finalise the proceedings as per the procedure laid down in Chapter II of Ext.P7 RBI Master Directions and in State Bank of India and Others v. Rajesh Agarwal and Others [(2023) 6 SCC 1]. Thereafter, the Respondent No.2 issued Ext.P9 Show Cause Notice dated 10.09.2025 and the Petitioner submitted Ext.P10 Reply dated 30.09.2025 for the Tip Top Furniture Group. Respondent No.2 issued Ext.P11 Notice dated 12.11.2025 requesting the Petitioner to confirm whether he wishes to avail the facility of a personal hearing and further stating that he has to appear for the hearing in person and he will not be permitted to be assisted by any third party, viz., Lawyers/ Chartered Accountants/ Consultants, Etc. The Petitioner submitted Ext.P12 dated 14.11.2025 to the Respondent Nos.2 and 3 requesting to permit him to attend the hearing along with his authorised representatives. Respondent No.2 issued Ext.P13 dated 15.11.2025 directing the Petitioner to appear for a personal hearing without any authorised expert representative. The Petitioner submitted Ext.P14 dated 26.11.2025 to the Respondent Nos.2 and 3 requesting to furnish the Board Approved Policy on Fraud Risk Management contemplated under Chapter II of Ext.P7 RBI Master Directions. The Respondent No.2 issued Ext.P15 dated 28.11.2025 to the Petitioner stating that the Board Approved Policy on Fraud Risk Management contemplated under Chapter II of Ext.P7 RBI Master Directions/Policy is an internal document of the Bank and is protected under banking confidentiality and risk norms and that it is framed in line with extant RBI's Master Directions and disclosure of such documents to the Petitioner is not required and it is in no way connected with the Show Cause Notice issued to the Petitioner. Thereafter, the Petitioner has filed this Writ Petition challenging Exts.P13 and P15, seeking direction to the Respondent Nos.2 and 3 to comply with Ext.P7 Mater Directions and to act in accordance with the same, to provide a copy of the Board Approved Policy on Fraud Risk Management of the Respondent No.2 and to permit the Petitioner to be represented by a Competent Representative along with the Petitioner at the time of hearing.

2. The Respondent Nos. 2 and 3 have filed Counter Affidavit dated 06.01.2026

contending, inter alia, that the Writ Petition under Article 226 of the Constitution of India is not maintainable against the Respondent No.2 as the Respondent No.2 is not a 'State' within the meaning of Article 12 of the Constitution of India; that the question whether a person who is to be declared as wilful defaulter under RBI Directions, is entitled to be represented by a lawyer is covered by the decision of the Hon'ble Supreme Court in State Bank of India v. Jah Developers Private Limited and Others [(2019) 6 SCC 787]; that the said principle is squarely applicable to the case of the Petitioner; that the principles of natural justice is satisfied when the Petitioner was issued with Ext.P9 Show Cause Notice and the Petitioner was afforded an opportunity to submit Ext.P10 Reply and there is no necessity for further hearing; that the Board Approved Policy is an internal document of the Respondent No.2 and is protected under banking confidentiality and risk norms and it is not in any way connected with the issuance of Ext.9 Show Cause Notice and hence there is no illegality in issuing Ext.P15 denying the same; that Ext.P5 Show Cause Notice was issued by the Respondent No.2 on the basis of the finding in a Forensic Audit Report with respect to the accounts of the Tip Top Group by a Chartered Accountant; that the explanations tendered by the Petitioner in Ext.P10 itself is sufficient for the Respondent Nos.2 and 3 to proceed with the matter; that the Respondent Nos.2 and 3 would be in a position to adjudicate and enter into findings on the explanation offered without there being any necessity of oral hearing; that even then the Respondent No.2 issued Ext.P11 to the Petitioner giving an opportunity of personal hearing specifically stating that the Petitioner to attend the hearing-in-person and not to be assisted by the third party, namely, Lawyers/ Chartered Accountants/ Consultants, etc; that the Petitioner was directed to confirm his attendance for personal hearing on or before 15.11.2025 but he did not provide any intimation; that only on 26.11.2025 the Petitioner issued Ext.P14 with the request for providing the Board Approved Policy on Fraud Risk Management as contemplated under Chapter II of Ext.P7 RBI Master Directions; that it shows the deliberate attempt on the part of the Petitioner to avoid personal hearing; that the decision of the Hon'ble Supreme Court in Rajesh Agarwal (supra) and Ext.P7 does not envisage a right of personal hearing to the Petitioner and hence the Writ Petition is liable to be dismissed.

3. I heard Smt. K.A. Sanjeetha, the learned Counsel for the Petitioner, and Sri. C. Ajith Kumar, learned Counsel for Respondent Nos.2 and 3.

4. The learned Counsel for the Petitioner contended that the Writ Petition is clearly maintainable against Respondent Nos.2 and 3 since the Respondent No.3 is charged with the duty of deciding a matter. In such case, if there is a violation of principles of natural justice, this Court can interfere, exercising the jurisdiction under Article 226 of the Constitution of India even though the Respondent Nos.2 and 3 do not strictly come within the definition of 'State' under Article 12. This Court set aside Ext.P6 Order passed by the Respondent No.3 classifying Tip Top Furniture Industries and its partners, including the Petitioner, as fraud in Ext.P8 judgment directing the Respondent No.2 to furnish a copy of the Audit Report

and finalise the proceedings as per the procedure laid down in Chapter II of Ext.P7 RBI Master Directions and in Rajesh Agarwal's case (supra). The RBI Master Directions, which were considered in Rajesh Agarwal's case (supra), was of the year 2016 which did not provide compliance with principles of natural justice. Ext.P7 RBI Master Directions is framed and issued by the Respondent No.1 on 15.07.2024, superseding the earlier RBI Master Directions of the year 2016. Clause 2.1 of Chapter II of the Ext.P7 RBI Master Directions specifically provides for compliance with the principles of natural justice. The Petitioner submitted Ext.P10 Reply to the Respondent Nos.2 and 3 explaining each and every allegation in the Show Cause Notice issued on the basis of the Forensic Audit Report. The Petitioner submitted Ext.P10 with the assistance of legal and accounting experts. Ext.P10 can be explained before Respondent No.3 only by those experts. That apart, the Petitioner does not know any other language other than Malayalam and hence the Petitioner will not be able to present his case against Ext.P9 effectively without the assistance of those experts. If the assistance of legal and accounting experts is not permitted to present the case of the Petitioner before the Respondent No.3, it would not be in full compliance with the principles of natural justice. The decision in Rajesh Agarwal (supra) clearly mandates providing an opportunity of personal hearing to the borrower in the proceedings under the RBI Master Directions on Fraud. The said decision is followed by the High Court of Delhi in IDBI Bank Ltd. v. Gaurav Goel and Others [2025 SCC OnLine Del 935], in which it is specifically held that the opportunity of hearing directed to be provided as per Paragraph No.81 of Rajesh Agarwal (supra) includes the opportunity of personal hearing as well. The Respondent No.2 Bank framed a Board Approved Policy on Fraud Risk Management in view of Clause 2.1 of Chapter II of Ext.P7 RBI Master Directions. Clause 2.1 specifically provides that the Policy shall also incorporate measures for ensuring compliance with the principles of natural justice in a time-bound manner and include the provisions for the matters included therein. In such cases, such Board Approved Policy could not be a confidential document, and without furnishing a copy of the said Board Approved Policy to the Petitioner, the Petitioner will not be in a position to ascertain whether the Respondent Nos.2 and 3 have completed the proceedings in compliance with the said Board Approved Policy.

5. Per contra, the learned Counsel for the Respondent Nos.2 and 3 cited the decision of the Hon'ble Supreme Court in Federal Bank Ltd. v. Sagar Thomas and Others [(2003) 10 SCC 733] to substantiate the point that the Writ Petition is not maintainable against a private Bank. The learned Counsel contended that the Respondent Nos.2 and 3 are not imparting any public duty while exercising their powers under Ext.P7 RBI Master Directions to classify a borrower as fraud. In the Ext.P8 judgment, the direction of this Court is to provide the Forensic Audit Report on the basis of which the Show Cause Notice was issued and to finalise the proceedings as per the procedure laid down in Chapter II of Ext.P7 RBI Master Directions and the decision in Rajesh Agarwal (supra). The Respondent No.2 has furnished a copy of the Forensic Audit Report to the Petitioner with

Ext.P9 Show Cause Notice detailing the specific allegations against the borrower establishment and its partners, including the Petitioner. As per Clause 6.1 of Ext.P7 RBI Master Directions, misappropriation of funds and criminal breach of trust is an incident of fraud to invoke the power under Ext.P7 RBI Master Directions to classify a borrower as fraud. The Petitioner has fully understood the allegations against him and has submitted Ext.P10 Reply running to 33 Pages with the assistance of the experts. When the Petitioner has elaborately stated his objections in Ext.P10, the Respondent No.3 can very well understand the objections of the Petitioner from Ext.P10 and there is no need to give any personal hearing to explain Ext.P10. Even then, a personal hearing was offered as per Ext.P11, which was not availed by the Petitioner by confirming the same within time. If the Petitioner is not familiar with the English language, the Respondents are prepared to provide every assistance for translating his contentions during the personal hearing. The Hon'ble Supreme Court in *Rajesh Agarwal (supra)* has not laid down a law that a personal hearing is to be given to the borrower before classifying him as fraud. It only provides that an opportunity of hearing is to be granted to the borrower. Opportunity of hearing does not include personal hearing as explained by the Bombay High Court in *Anil D. Ambani v. State Bank of India and Another* [2025 SCC OnLine Bom 3755] after considering the decision in *Rajesh Agarwal (supra)*. That apart, the Hon'ble Supreme Court clarified the judgment in *Rajesh Agarwal (supra)* in the Order dated 12.05.2023 in Miscellaneous Application No.810/2023 in Civil Appeal No.7300/2022 clarifying that while upholding the judgment of the High Court of Telangana dated 10.12.2022, the operative directions of the Hon'ble Supreme Court are those which are summarised in paragraph No.81 in Section 'E' of the said judgment. In such case, the judgment does not lay down any law to hold that a personal hearing is mandatory for the borrower before classifying him as fraud as per the Ext.P7 RBI Master Directions. The Hon'ble Supreme Court in *Gorkha Security Services v. Government of NCT of Delhi and Others* [2014 Supreme (SC) 558] is cited to substantiate the point that even in the case of blacklisting, an oral hearing is not necessary. The learned Counsel cited the decision of the Hon'ble Supreme Court in *Jah Developers Private Limited (supra)* to substantiate the point that in the proceedings before the in-house committees, the borrower is not entitled to be represented by a lawyer. The learned Counsel further contended that the Board Approved Policy on Fraud Risk Management formulated by the Respondent No.2 is a confidential document which could not be provided to the Petitioner. The said Policy has no relevance to the proceedings as Ext.P9 Show Cause Notice is issued not with reference to the said Policy. The learned Counsel concluded his arguments, praying to dismiss the Writ Petition as it is not a fit case to invoke the jurisdiction of this Court under Article 226 of the Constitution of India at the instance of the Petitioner who is in default of repayment of huge amounts of loans to the Respondent No.2 and who has been taking all dilatory tactics to delay the recovery.

6. In the light of the contentions advanced before me, the questions that arise

for consideration in this Writ Petition are:

1. Whether this Writ Petition is maintainable under Article 226 of the Constitution of India as the Respondent No.2 is a private Bank?
2. Whether the borrower is entitled to a personal hearing in the proceedings initiated under Ext.P7 RBI Master Directions to classify his account as fraud?
3. If the borrower is entitled to such personal hearing, whether he is entitled to be represented by another person who is having legal and accounting expertise?
4. Whether the Petitioner is entitled to get a copy of the Board Approved Policy on Fraud Risk Management formulated by the Respondent No.2?

Question No.1:

7. It is well settled by the decision of the Hon'ble Supreme Court in Federal Bank Ltd. (supra) that a Writ Petition is not maintainable against a private company carrying on banking business as a scheduled bank and that a private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. Learned Counsel for the Petitioner tried to distinguish the said decision on the ground that the said decision arose from disciplinary proceedings and that in the case on hand, Respondent No.3 is vested with the power of adjudication. In such case, if the said authority proceeds with the matter in violation of the principles of natural justice, this Court can perfectly interfere under Article 226 of the Constitution of India. In *Union of India and Others v. Tulsiram Patel and Others* [(1985) 3 SCC 398] followed in *Rajesh Agarwal* (supra), the Constitutional Bench of the Hon'ble Supreme Court held that violation of a rule of natural justice results in arbitrariness, which is the same as discrimination under Article 14 of the Constitution of India; that where the discrimination is the result of State action, it is a violation of Article 14; that the principles of natural justice applies not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State under Article 12, is charged with the duty of deciding a matter and that in such a case, the principles of natural justice require that it must decide such matter fairly and impartially. In *Rajesh Agarwal* (supra), the Hon'ble Supreme Court held that the process of forming an informed opinion under the Master Directions on Frauds is administrative in nature and that it is 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. When a body is legally entrusted with the power of adjudication involving serious civil consequences on the affected parties, it could be said that such adjudication involves an element of public nature at the least for the limited extent of satisfying that the principles of natural justice are complied with by such authority. When such a body decides the dispute in violation of the principles of natural justice, this Court can definitely interfere with such a decision under

Article 226 of the Constitution of India for the limited purpose of ensuring that the principles of natural justice are complied with. The Respondent No.3 is entrusted with the power to take a decision declaring/classifying the account as fraud as per Clause 2.1 of Chapter II of Ext.P7 RBI Master Directions. Ext.P7 RBI Master Directions is having statutory force as it is issued by the Reserve Bank of India in exercise of the power conferred under Chapter IIIA and Chapter IIIB of the Reserve Bank of India Act, 1934, and Sections 21 & 35A of the Banking Regulation Act, 1949. The allegation in the Writ Petition is that the Respondent No.3 has been conducting the proceedings in violation of the principle of natural justice. In such case, the Writ Petition is perfectly maintainable if the Petitioner is able to substantiate such an allegation. That apart, this Court had entertained the Writ Petition filed by the Petitioner challenging the earlier Order of the Respondent No.3 and passed Ext.P8 judgment setting aside the said Order. The Respondent Nos.2 and 3 did not raise any question of maintainability in the said Writ Petition. Hence, I hold that this Writ Petition is maintainable in view of the averments in the Writ Petition with respect to the violation of principles of natural justice.

Question No.2:

8. The Respondent Nos.2 and 3 have offered a personal hearing to the Petitioner. The Respondent Nos.2 and 3 have no case that they will not give any personal hearing to the Petitioner. Hence, this question does not arise for consideration in a normal case. But the stand of the Respondent Nos. 2 and 3 is that they are offering a personal hearing to the Petitioner by way of their concession. There will be a lot of difference in the treatment of a person when he appears for a personal hearing by way of his established right, compared to his appearance for a personal hearing by way of concession. In the Counter affidavit, the Respondent Nos.2 and 3 have stated that the explanations tendered in Ext.P10 itself is sufficient for them to proceed in the matter. The said averment would show that Respondent Nos.2 and 3 have misunderstood the purpose of giving personal hearing to the Petitioner. The purpose of personal hearing is to enable the Petitioner to present his case against the allegations in Ext.P9 and the findings in Forensic Audit Report and not to enable the Respondent Nos.2 and 3 to obtain additional materials to support the proceeding in the matter. Of course, the Respondent Nos.2 and 3 can rely on any material favourable to them found in the enquiry, but the object could not be for that. Hence, I am compelled to examine whether the Petitioner is having a right to personal hearing before the Respondent No.3.

9. Ext.P7 RBI Master Directions as such do not provide for ensuring the principles of natural justice in the proceedings under Clause 2.1 therein to declare/classify an account as fraud. It mandates the Bank to frame a Policy approved by its Board on fraud risk management and that such Policy shall incorporate measures for ensuring compliance with the principles of natural justice. The Respondent No.2/Bank has not produced the said Policy before this Court, taking an adamant

stand that it is a confidential document. The Counsel for the Respondent Nos.2 and 3 could not substantiate the nature of confidentiality of the Policy and risk exposure of the Bank in producing the said Policy before this Court. The details of such Board Approved Policy are also not disclosed in the Counter Affidavit filed by the Respondent Nos.2 and 3. At the least, the relevant provision in such Policy regarding the principles of natural justice incorporated therein could have been extracted in the Counter Affidavit. This Court seriously doubts whether the Respondent No.2 has formulated such Board Approved Policy mandated under Ext.P7 RBI Master Directions. This Court is not in a position to verify whether the said Policy has incorporated measures for ensuring compliance with the principles of natural justice, what are the measures incorporated for ensuring compliance with the principles of natural justice and whether the proceedings initiated by the Respondent Nos.2 and 3 are in compliance with the provisions in the said Policy. Clause 2.1.1.1 of Ext.P7 provides for the issuance of a Show Cause Notice with complete details of the transactions. Clause 2.1.1.2 of Ext.P7 provides to give a reasonable time of not less than 21 days to the borrower. Clause 2.1.1.4 of Ext.P7 mandates the passing of a reasoned Order. Clause 2.1.1.3 of Ext.P7 mandates that the Bank shall have a well laid out system for issuance of Show Cause Notice and examination of responses prior to the declaration of a person/entity as fraudulent. Clauses 2.1.1.1, 2.1.1.2 and 2.1.1.4 do not contemplate any personal hearing before passing the Order. But Clause 2.1.1.3 indicates that the provisions in Clauses 2.1.1.1, 2.1.1.2 and 2.1.1.4 are not exhaustive. The adjudication for declaring a person/entity as fraudulent is governed by Clause 2.1 of Ext.P7 and the Board Approved Policy of the Bank mandated therein. Since the Board Approved Policy is not produced by the Respondent No.2, it is not clear whether the Respondent No.2 has a well laid out system for the issuance of Show Cause Notice and examination of responses prior to the declaration of a person/entity as fraudulent. When a party to the litigation deliberately refuses to produce a material document which is relevant for adjudication, without any reasonable excuse, an adverse inference has to be drawn against such party. In this case, an adverse inference has to be drawn against the Respondent Nos.2 and 3 to the extent required in the facts and circumstances of the case.

10. In Ext.P8, this Court has specifically directed to finalise the proceedings as per the procedure laid down in Chapter II of Ext.P7 and in Rajesh Agarwal (supra). The contention of the learned Counsel for the Respondent Nos.2 and 3 is that the directions in the said decision are not applicable since the said decision is rendered ineffective by the clarificatory Order of the Hon'ble Supreme Court dated 12.05.2023 in Miscellaneous Application No.810/2023 (supra). It appears from the said Order that the said Order was passed on an Application filed by the Solicitor General of India expressing an apprehension that the judgment of the Hon'ble Supreme 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 No.81 of the judgment. The Hon'ble Supreme Court clarified that the operative directions are those which are summarised in

paragraph No.81 in Section E of the judgment. Paragraph No.81 in Section E of the judgment is extracted hereunder:

"E. Conclusion

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 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 an 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 lender 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.

11. In the directions of the Hon'ble Supreme Court in Paragraph No.81, the Hon'ble Supreme Court has stated that the opportunity of hearing has to be granted to the borrowers before classifying their accounts as fraud. It is true that the Hon'ble Supreme Court has not specifically held that the opportunity of personal hearing is to be granted to the borrower before classifying their account as fraud. The question to be considered is whether such an opportunity of hearing includes an opportunity of personal hearing. Going by the aforesaid directions, it is not clear whether the Hon'ble Supreme Court intended to grant an opportunity of personal hearing to the borrowers before classifying their

accounts as fraud. There are divergent views expressed by the Bombay High Court and the Delhi High Court with respect to the said directions. The Bombay High Court in *Anil D. Ambani (supra)* held that in *Rajesh Agarwal (supra)* the Hon'ble Supreme Court has not held that an opportunity of being heard necessarily includes and means an opportunity of personal hearing; that grant of personal hearing is not a matter of right in every case unless specifically mandated by the statute or rules; and that so long as the Petitioner was afforded an adequate opportunity to submit his objections in writing, the requirement of fairness and compliance with the principle of natural justice, stood satisfied. The Delhi High Court in *Gaurav Goel (supra)* held that 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 High Court of Telangana where one of the directions issued was for providing opportunity of personal hearing as well. It is further held that once the Hon'ble Supreme Court in *Rajesh Agarwal (supra)* has clearly upheld the directions issued by the High Court of Telangana providing an opportunity of personal hearing in the proceedings drawn under the RBI Directions, it is not open to read the application of the principle of *audi alteram partem* in any other manner. I am in respectful agreement with the view expressed by the Delhi High Court. The Hon'ble Supreme Court in *Rajesh Agarwal (supra)* had been considering the legality of the directions of the High Court of Telangana which includes granting of personal hearing to the borrower. The Interim Order of the Hon'ble Supreme Court specifically stated that the High Court insofar as it observed that a personal hearing be given is stayed. In final judgment, the Supreme Court upheld the judgment of the High Court of Telangana and held that an opportunity of hearing is to be given to the borrowers before classifying their accounts as fraud. In such case, the opportunity of hearing expressed by the Hon'ble Supreme Court in Paragraph No.81 would mean an opportunity of personal hearing and not a mere right to represent against the Show Cause Notice alone.

12. The decision in *Rajesh Agarwal (supra)* was rendered by the Hon'ble Supreme Court after considering its earlier decisions in *Gorkha Security Services (supra)* and *Jah Developers Private Limited (supra)* cited by the learned Counsel for the Respondent Nos.2 and 3, and hence there is no need to consider these decisions while answering this Question.

13. In *Rajesh Agarwal (supra)*, the Hon'ble Supreme Court, after following its own various decisions, reiterated that classification of the borrower's account does not simpliciter lead to reporting of criminal complaint with the enforcement authorities; it also entails penal consequences for the borrowers; that there is a consistent pattern of judicial thought that civil consequences entail infractions not merely of property or personal rights, but also of civil liberties, material deprivations, and non - pecuniary damages; and that every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice. It is further held that

consequences under Master Directions on Frauds show that the classification of a borrower's account as fraud has difficult civil consequences for the borrower and that the classification of an account as fraud not only results in reporting the fact to investigating agencies, but has other penal and civil consequences. Under Clause 4.4 of Ext.P7 RBI Master Directions on the classification of persons as fraud, he shall be debarred from raising funds and/or seeking additional credit facilities from financial entities regulated by RBI for a period of five years from the date of full payment of the defrauded amount/settlement amount agreed upon in case of a compromise settlement. It is held in *Rajesh Agarwal (supra)* that the bar from raising finances could be fatal for the borrower leading to its 'civil death' in addition to the infringement of their rights under Article 19(1)(g) of the Constitution. The Order to be passed by the Respondent may end in serious civil consequences to the Petitioner, if it is against the Petitioner. Considering the facts and circumstances of the case, the compliance of the principles of natural justice would be met only if the Petitioner is given a personal hearing. Hence, I hold that the Petitioner is entitled to a personal hearing as of right under Ext.P7 RBI Master Directions.

Question No.3:

14. I have already held that the Petitioner is entitled to get a personal hearing. Then the further question is whether the Petitioner is entitled to get assistance of a Lawyer and Chartered Accountant before the Respondent No.3. The concept of natural justice is elastic and flexible and not static. It is based on the principle of *audi alteram partem*. It is designed to avoid arbitrariness in the adjudication process and miscarriage of justice. Its application depends on the facts and circumstances and the nature of the rights affected in each case. The affected person should be given an adequate opportunity to present his case before deciding the matter. The extent of opportunity depends on the facts and circumstances of the case. When the statute or rules provide for a procedure for compliance of natural justice, it must be mandatorily followed. In the absence of any rule with respect to the same, it is for the adjudicating body to ensure that there is due compliance with principles of natural justice. Ext.P7 RBI Master Directions mandates Respondent No.2/Bank to frame a Board Approved Policy on Fraud Risk Management incorporating the measures for ensuring compliance with principles of natural justice. Even though the Respondent No.2 claims that it has formulated such a policy, nothing is produced before this Court taking a stand that it is a confidential document. In such case, this Court has to decide the matter, considering that the said Policy does not lay down any specific procedure for compliance with the principles of natural justice. In compliance with Ext.P8 judgment of this Court, the Respondent No.2 has issued Ext.P9 Show Cause Notice detailing the grounds for initiating the action for classifying the account of the Petitioner as fraud. Ext.P9 has specifically alleged misappropriation and criminal breach of trust as a ground for initiating the action, which is recognised in Clause 6.1 of Ext.P7 RBI Master Directions. The Petitioner was furnished with a copy of the Forensic Audit Report also, along with Ext.P9. The Petitioner

submitted Ext.P10 Reply to Ext.P9 explaining the allegations in detail. A perusal of Ext.P10 would reveal that the Petitioner has prepared Ext.P10 after taking assistance from the experts. In such case, it is for the Respondent No.3 to consider the contentions raised in Ext.P10 and to pass a reasoned order in the matter. There is no need of a Lawyer or Chartered Accountant to the Petitioner while exercising his right of personal hearing. It does not require any detailed adjudication taking elaborate evidence in the matter. The Hon'ble Supreme Court in Jah Developers Private Limited (supra) considered the question whether the borrower is entitled to be represented by a lawyer before an In-House Committee deciding whether the borrower is a wilful defaulter or not. The Hon'ble Supreme Court specifically held that In-House Committees are not vested with any judicial power at all, their powers being administrative powers given to In-House Committees to gather facts and then arrive at a result, and hence there is no right to be represented by a lawyer in the In-House proceedings. The same principle is applicable to the case of classifying the account of the borrower as fraud. That apart, the members of the Respondent No.3 Committee are not having any legal expertise. Hence, I hold that the Petitioner is not having any right to be represented by a Lawyer or other expert in the personal hearing. The Petitioner has a contention that he does not know any other language other than Malayalam. If the members of the Respondent No.3 Committee are not well versed in Malayalam, of course, the Petitioner is to be permitted to take the assistance of a translator, but such translator should not be a Lawyer or Chartered Accountant.

Question No.4:

15. I have already held that the Board Approved Policy formulated by the Respondent No.2 under Ext.P7 RBI Master Directions is a material document in the adjudication whether the account of the Petitioner is to be classified as a fraud or not. The Respondent No.2 could not attribute any kind of confidentiality with respect to the said document. Going by the nature of the document, it could not be said that the said document is confidential in nature. When Ext.P7 RBI Master Directions mandates incorporation of measures to comply with the principles of natural justice, it is to be ensured that said Policy contains provisions incorporating the principles of natural justice and the same have been followed by Respondent No.3. The Petitioner as a borrower has a right to ensure that the procedure adopted by the Respondent No.3 is in full compliance with such Policy. In order to ensure the same, the Respondent No.2 is bound to provide a copy of such Policy to the Petitioner. When an action would result in serious civil consequences for the affected person, strict compliance with the procedure is mandatory and the theory of substantial compliance is not sufficient. When wide and drastic powers are given to a body for taking decisions on questions involving serious civil consequences, it has to be ensured that the procedure prescribed for the same is scrupulously followed. Hence, I hold that the Respondent No.3 has no right to deny a copy of the Board Approved Policy formulated by the Respondent No.2 under Clause 2.1 of the Ext.P7 RBI Master

Directions to the Petitioner.

16. In view of the answers to the aforesaid questions, I allow this Writ Petition in part by issuing a Writ of Mandamus compelling the Respondent No.3 to complete the proceedings initiated as per Ext.P9 Show Cause Notice after providing a copy of the Board Approved Policy formulated under the Ext.P7 RBI Master Directions and further providing an opportunity of personal hearing and permitting the Petitioner to take the assistance of a Translator, if necessary.