

(2023) 02 CAL CK 0082
In the Calcutta High Court
Case No : W.P.A. No. 26580 Of 2008

Uday Narayan Ghosh

APPELLANT

Vs

State Bank Of India And Others

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : (2023) 02 CAL CK 0082

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Saibal Acharjee, Ambu Bindu Chakraborty, Mrinmoyee Roy
Chowdhury, Sudip Pal Choudhuri, Diya Nandi

Final Decision : Partly Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. This writ petition has been filed by a legal professional who was, inter alia, on the panel of the State Bank of Bikaner and Jaipur, which merged with the State Bank of India (SBI) on April 1, 2017. Before the said merger, the petitioner had all along acted as an empanelled lawyer without any complaint having arisen against the petitioner from any quarter.

2. For the first time in the year 2018, the petitioner learnt of a letter dated January 2, 2014 issued by the then State Bank of Bikaner and Jaipur to the Indian Bankers' Association (IBA) with an advice to place the petitioner's name in the IBA Caution List of Third Party Entities involved in frauds. Upon the petitioner making query, the Deputy Chief Executive, IBA informed on November 15, 2018 that such listing was done on the report of the State Bank of Bikaner and Jaipur and had been circulated to all members of the IBA vide communication dated January 16, 2014. The petitioner was informed by the IBA that the SBI (respondent no.1) was to be approached for removal of his name from the list. Although the petitioner made several correspondences, the petitioner was not

informed about the reason of the caution listing. The Assistant General Manager of the SBI asked the petitioner by a Letter dated February 26, 2020 to disclose the reason for his name being included in the list and other relevant details.

3. Ultimately, the petitioner was informed that in view of three Title Investigation Reports (TIRs) issued by the petitioner, the bank was examining the petitioner's contention and would revert back in due course, which the bank did not do.

4. The petitioner served a Demand Notice dated November 17, 2020 requesting removal of his name from the caution list.

5. Challenging such inclusion, the petitioner moved a writ petition bearing WPA 11563 of 2020 which was allowed on February 19, 2021, setting aside the Caution List dated January 2, 2014 and the circulation of the same dated January 16, 2014 insofar as those related to the petitioner.

6. The IBA was directed to duly circulate the said order and the removal of the petitioner's name from the said list among its members within 30 days. Costs were also awarded in favour of the petitioner.

7. Prior to the filing of WPA 11563 of 2020, however, the petitioner had moved the present writ petition bearing WPA 26580 of 2008, challenging an enquiry report submitted by the respondent no.3, that is, the Assistant General Manager, Law of the SBI and the order dated July 21, 2005 passed by the Chief General Manager, SBI.

8. The context of the challenge was an order dated July 14, 2005 passed by the Kolkata Debts Recovery Tribunal to in OA/128/2008 (SBI Vs. Bijoy Kumar Agarwala and others) wherein it was recorded that the Branch Manager of the SBI, Local Head Office, was appointed as Special Officer to inspect securities as detailed in the case by order dated January 20, 2005 that the Special Officer had not given any report so far and it appeared that the bank was not interested for suitable orders on the interim reliefs. It was further observed by the Presiding Officer of the DRT that it was sheer negligence and not proper prosecution of the case and it appeared that the Branch Manager was helping the defendants to create grounds that the securities be removed.

9. It was further directed that a copy of the order be sent to the CGM of the Bank that he should report why the Tribunal's order was not implemented and also the then present position of the securities not brought to the notice of the Tribunal, for effective orders.

10. On the right hand margin of a copy of the said order, headed "Office Action with date and dated signature of the parties when necessary", it was endorsed that the AGM (Law) was to immediately refer with details. The said endorsement was dated July 14, 2005.

11. The next endorsement of the AGM (Law) recorded "change the Advocate". "Blacklist him how many other cases are with him". The same carried a seal of

the SBI and was dated July 18, 2005 and was received on July 21, 2005.

12. A note by the respondent no.3, the AGM (Law) at the bottom of the copy of the order recorded that the matter relates to the Alam Bazar Branch of the Bank and that the Branch Manager had informed that the Advocate (the present petitioner) did not inform about the order of DRT whereby he was appointed as Special Officer. The Branch Manager, it further went, was informed about the order on June 15, 2005 and he inspected the spot and produced the inspection report on June 15, 2005 and that the report had been handed over to the Advocate for filing on July 22, 2005.

13. It was also evident from such endorsements that the petitioner had been blacklisted by the Bank.

14. The petitioner places reliance on printouts of the call records of the concerned mobile phone service provider and the copy of a letter dated January 28, 2005, both annexed to the writ petition, to indicate that the order-in-question had been duly communicated by the petitioner to the Branch Manager, Alam Bazar Branch on January 22, 2005 (over the phone) and January 28, 2005 (by a written letter) respectively.

15. The Branch Manager informed the Presiding Officer of the DRT that he could not visit earlier due to his pre-occupation. A copy of the said undated letter has also been annexed to the writ petition.

16. Hence, the impugned order of blacklisting the petitioner only on the ground of non-communication of the order of the Tribunal dated June 15, 2005 was incorrect and done behind the back of the petitioner, thereby contravening the basic tenet of natural justice, Audi Alterem Partem. It is submitted that the blacklisting operates as humiliation of the petitioner and derogatory for his fame and prestige in the professional career and was done with the intention to deprive the petitioner of a huge amount of arrear bills in view of his professional fees and other expenses for service rendered to the Bank. It is contended that the AGM (Law) victimized the petitioner to save his own skin.

17. It is further submitted that the petitioner was, even subsequent to the impugned blacklisting, engaged by the Shyambazar Branch of the SBI to render professional service in regard to verification of numbers of title deeds, a document regarding which has also been annexed to the writ petition.

18. It is submitted that the allegation regarding alleged misappropriation of funds by the petitioner and non-deposit of court-fees are being contended by the Bank for the first time in the writ petition and were never grounds for the impugned blacklisting.

19. It is further submitted that the Bank lodged a complaint with the Bar Council of West Bengal bearing Case No.26 of 2006. Vide Order No.6 dated January 19, 2009, the petitioner was discharged by the Disciplinary Committee of the Bar Council. The Committee also recorded that the petitioner had returned a sum of

Rs.1,50,000/- out of Rs.3,00,000/- on being demanded by the Bank which was admitted by the learned advocate for the Bank before the Disciplinary Committee and the balance amount was spent for purchasing court stamp papers.

20. The petitioner also lodged a complaint against the Bank before the District Consumer Redressal Forum, Kolkata Unit-II, bearing CC No.19 of 2011, which was allowed on contest by order dated October 30, 2013. The Bank was directed to pay costs of Rs.2,000/- and compensation of Rs.5,000/- to the petitioner. A further sum of Rs.5,000/- was imposed against the Bank for adopting unfair trade practice.

21. The petitioner also relies on the Judgment and order dated February 19, 2021 passed in WPA 11563 of 2020 to vindicate his stand.

22. Learned counsel for the Bank denies the allegations made by the petitioner. In the written notes of arguments, the Bank has disclosed that the petitioner had filed a Money Suit bearing Money Suit No.88 of 2009 before the Civil Judge (Senior Division), First Court at Barasat claiming damages and other reliefs, which had been dismissed.

23. The bank also enumerates certain alleged instances of non-deposit of court-fees by the petitioner even after receiving the same in Clause f of Paragraph 4 of its written notes of arguments, by placing reliance on certain paragraphs of the affidavits-in-opposition and reply filed in connection with the present writ petition.

24. Some suits, it is alleged, were dismissed for default due to non-payment of court-fees, for which the petitioner allegedly admitted responsibility by undertaking to proceed with the restoration of such cases without raising any bill till they were restored, vide letter dated February 6, 2006.

25. As regards the letters dated December 24, 2005 and January 9, 2006, annexed to the writ petition, the Bank denies the service of those.

26. Apart from denying all the allegations made by the petitioner, learned counsel for the Bank submits that the cause of action for recovery of money sought by the petitioner is time-barred.

27. Learned counsel for the Bank submits that empanelment with the Bank does not create any vested right in favour of the petitioner. The subject-matter of the writ petition is in no way connected with discharge of public function and is beyond the scope of regular banking business. Empanelment is a mere private arrangement and the question of violation of natural justice does not arise.

28. The Bank, as a client, it is argued, is entitled to change its lawyer and, as such, the petitioner cannot claim any vested right of empanelment.

29. It is argued that there was no communication on the part of the Bank, so no stigma attaches to the petitioner by the blacklisting. An inter-office, administrative, discretionary decision cannot be the subject matter of the constitutional writ jurisdiction.

30. Learned counsel for the Bank places reliance on an unreported Judgment of a learned Single Judge of the Karnataka High Court dated December 7, 2021 passed in WP No.22279 of 2021 (GM-RES) for the proposition that the discontinuance of an advocate from the panel cannot be construed as attaching stigma as a professional and the bank can exercise its prerogative in empanelling the lawyers of its choice.

31. By placing reliance on a co-ordinate judgment of this Court dated May 6, 2013 passed in WP No.4491(W) of 2013, it is argued that empanelment does not create any vested right to be appointed.

32. Upon hearing learned counsel for the parties, it transpires that, in similar circumstances, WPA No.11563 of 2020 was disposed of on February 19, 2021 in favour of the petitioner, directing removal of his name from the Caution List. The bank does not argue that any successful challenge was preferred against such order.

33. On virtually the same set of facts, it was observed, inter alia, that the report leading to the inclusion of the petitioner on the Caution List might have been a backlash against the petitioner which found support from the materials on record. Even the Consumer Forum passed an award of compensation in favour of the petitioner on the ground of unfair trade practice of the respondent no.1-Bank. The Bar Council had also dropped the complaint lodged by the Bank upon due enquiry. On a preponderance of probabilities, it was observed that the bank officials, having failed in several forums, might have resorted to oblique means to harass the petitioner and to justify their failure.

34. In the present case, we find that vide letter dated January 28, 2005, which was duly received by the Branch Manager of the State Bank of India (with a seal of the Branch Manager, Alam Bazar Branch, SBI affixed to indicate receipt), the petitioner had informed the said Manager about the Tribunal's order dated January 20, 2005 appointing the Branch Manager as a Special Officer to inspect the factory and to report about the condition of hypothecated/charged machinery etc. along with a copy of the said order enclosed therewith.

35. Although Annexure P-3 of the writ petition is undated, the same carries the stamp and seal of the SBI, Branch Manager, Alam Bazar Branch and his signature and was addressed to the Presiding Officer, Kolkata DRT-II where the Manager, inter alia, expressed that he had been appointed as Special Officer but could not visit earlier due to pre-occupation and visited the factory of the defendant in OA 128 of 2004 only on June 18, 2005 along with the petitioner, who was the bank's lawyer.

36. The order dated July 14, 2005 was passed by the Presiding Officer of the DRT on the premise that the Special Officer had not given report so far and it appeared that the bank was not interested for suitable order on interim reliefs. The sheer negligence and improper prosecution of the case on the part of the Bank and the apprehension that the Branch Manager was helping the defendants

also found place in the order, the justification and backdrop of which can very well be deciphered from the documents as discussed above.

37. Surprisingly, without any hearing having been given or notice having been given to the petitioner, the bank blacklisted the petitioner and the same was endorsed on a copy of the order which also led to the petitioner's name ultimately finding place in a Caution List circulated by the IBA, being the subject-matter of challenge in WPA 11563 of 2020, which was ultimately allowed, thereby quashing the said enlistment and circulation thereof. As such, it cannot be said that the fallout of the black listing was merely confined to the offices of the SBI itself. The same traversed across the boundaries of the Bank and found place in the circulation of the IBA, of which the SBI is the lead bank. The circulation following the same debarred the petitioner, for all practical purposes, from being empanelled afresh before any other bank which was the part of the IBA, let alone the SBI.

38. Hence, the flimsy argument of the Bank that due to non-communication of the blacklisting to the petitioner, there was no occasion of stigma, falls flat.

39. The endorsement at the bottom of the order copy of the DRT made by respondent no.3, the AGM (Law) of the Bank dated July 21, 2005 blatantly stated that the petitioner did not inform about the order the DRT, which was communicated by none other than the Branch Manager who had been castigated in the order of the DRT.

40. Such communication by the Manager was the only disclosed basis of blacklisting the said Advocate. However, in view of the production of a copy of the letter dated January 28, 2005 issued by the petitioner and received by the Branch Manager, Alam Bazar Branch of the SBI (Annexure P-1 at page 46 of the writ petition) clearly belies such allegation against the petitioner and takes away the only premise of the impugned blacklisting.

41. It is well-settled in Mohinder Singh Gill's Case (AIR 1978 SC 851) onwards that subsequent allegations made in affidavits as afterthought cannot justify a previous illegal order passed by the authorities. In the present instance, the Bank did not disclose any allegation of alleged misappropriation of funds against the petitioner at any point of time as a ground of the blacklisting.

42. Since blacklisting, in view of its inevitable consequences, definitely operates as a stigma against the concerned person, particularly when good-will is the most important asset of a legal professional, the non-service of prior notice and absence of opportunity of hearing to the petitioner before blacklisting was patently violative of Audi Alterem Partem, an integral tenet of natural justice.

43. The subsequent allegations of misappropriation of funds have been satisfactorily sought to be answered by the petitioner in his pleadings in connection with the present writ petition. In any event, such allegations having never been made against the petitioner previously as a ground of blacklisting and

no opportunity of being represented/heard being given to the petitioner, the same cannot be brought in at the subsequent stage of the writ petition by the Bank as a clear afterthought.

44. There are several surrounding circumstances, as held by the order dated February 19, 2021 in WPA 11563 of 2020, which point to the conclusion that preponderance of probability unerringly indicates towards a backlash and witch-hunting exercise on the part of the Bank to cover up laches of its officials, of which the petitioner became a victim. Not only was the then Branch Manager of the Alam Bazar Branch of SBI facing serious charges in the order of the DRT itself, the Bank's reputation was at stake, which might very well have prompted the AGM (Law), a subordinate in the hierarchy, to have given a favourable report to protect the skin of the bank and the Branch Manager.

45. We cannot ignore the fact that the petitioner was awarded damages by the Consumer Redressal Forum and was absolved by the Bar Council of West Bengal on the complaint lodged against the petitioner by the Bank, both of which have attained finality.

46. In such view of the matter, the impugned blacklisting of the petitioner and the consequential action taken by the respondent no.1-Bank was patently mala fide, arbitrary and violative of principles of natural justice, in particular the doctrine of Audi Alterem Partem.

47. However, insofar as the petitioner's claim of arrear professional fees is concerned, it is beyond the scope of the writ court to adjudicate such money claim on merit and/or to invite and assess detailed evidence on disputed questions of fact for directing any arrear amount to be paid on such score in favour of the petitioner.

48. However, this much is obvious from the above observations that there was no basis for the Bank to withhold the professional expenses incurred and fees earned by the petitioner for his work done for the Bank.

49. Since the Shyambazar Branch of the SBI has subsequently allocated work to the petitioner, it cannot be said that the blacklisting was a deterrent for withholding the professional dues of the petitioner.

50. Moreover, it is well-settled that the Bank does not have any lien on the professional fees of its lawyer, who is not even a customer of the Bank.

51. It is well-settled that a public body, which discharges public function, is required to be more transparent and maintain a much higher standard of ethics than an ordinary litigant, since it represents the State.

52. The present claims are not confined merely to a private cause of action of the petitioner but relate to the patent arbitrariness exhibited by the Bank in blacklisting the petitioner. Since the petitioner had acted as the lawyer of the SBI, a Nationalized Bank, which deals with public money, thereby protecting

public interest before courts and forums, the element of public law is definitely involved in the present case.

53. Thus, the arguments of the Bank as regards non-maintainability on such score cannot but be brushed aside.

54. In the light of the above observations and findings, W.P.A. No.26580 of 2008 is allowed in part, thereby setting aside the blacklisting order dated July 21, 2005 of the petitioner and the enquiry report and other observations leading thereto as well as all other consequential action. It is hereby held that the Bank has no entitlement to withhold the professional fees and expenses borne by the petitioner for conducting the litigation on behalf of the respondent no.1-Bank.

55. Since the petitioner was all along proceeding with the writ petition, which was entertained and pending for so long and included the claim of such arrear amount of fees, it is hereby observed that the petitioner is entitled to the protection under Section 14 of the Limitation Act, 1963, since the petitioner was acting on the bona fide misapprehension that non-payment of his due arrear bills, being directly in consequence of the impugned blacklisting, was also part of the cause action of the present writ petition.

56. Although the entitlement of the petitioner to get his arrear professional fees and expenses is hereby upheld, in view of the observations above that the writ court does not have the mechanism to grant such relief, liberty is granted to the petitioner to approach the competent forum/Civil Court, claiming the said professional fees and expenses on the basis of his bills, raised by the petitioner.

57. Upon such approach being made, the competent court/forum shall adjudicate on such issue expeditiously, and direct the respondent no.1-Bank to disburse the arrear amounts at the earliest.

58. There will be no order as to costs.

59. Urgent certified copies, if applied for, be issued to the applicants subject to compliance of due formalities.