IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-06-2026

CORAM

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No.13277 and 13286 of 2024
and
WMP Nos.14424, 14426, 14434 and 14436 of 2024

1.S.Kishore ..Petitioner in W.P.No.13277 of 2024

2.Ramakrishnan Natarajan ..Petitioner in W.P.No.13286 of 2024

Vs

Indian Overseas Bank,
Stressed Assets Management Department,
Represented by its General Manager,
P.B.No.3765, 763,
Anna Salai, Chennai 600 002,
Tamil Nadu.

..Respondent in both WPs

PRAYER in WP No.13277 and 13286 of 2024 : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records of the respondent in issuing the Show Cause Notice dated 21/01/2021 and consequential communication of order dated 29/09/2021 classifying the petitioners as wilful defaulters and thereby quash the same and consequently direct the respondent to remove petitioners' name from the list of wilful defaulters.

For Petitioners : Mr.R.Sankaranarayanan
Senior Advocate
for Ms. Tanya Kapoor in WP No.13277 of 2024
for Mr.Ramasamy Meyyappan
in WP No.13286 of 2024

For Respondent : Ms. V.Rajeswari in both WPs

COMMON ORDER

The writ petitions have been filed challenging the Show Cause Notice dated 21.01.2021 issued by respondent and consequential communication dated 29.09.2021 classifying petitioners as wilful defaulters and to direct respondent to remove petitioners' name from the list of wilful defaulters.

2. Brief facts:

2.1. Petitioners are directors in M/s.Sai Regency Power Corporation Private Limited (hereinafter referred to as "Company"). The said Company was operating a 58 MW Gas Based Power Generation Plant at Kalugoorani Village in Ramanathapuram. The Company took a Working Capital Facility vide initial credit sanction letter dated 27.06.2014 and extended the line of credit subsequently vide credit sanction letters dated 17.06.2016 and 15.12.2017. A Term Loan vide Agreement dated 27.06.2014 with the respondent was entered into. Petitioners would submit that Company was servicing the loans promptly till late 2017. Towards the end of 2017 Company faced severe financial crisis in view of non-availability of natural gas from GAIL, stated to be primary source of fuel for Company's gas-based power generation plant. There were defaults by petitioners in servicing the loan account which came to be declared as NPA on 31.03.2018. This was followed by an application made under Section 7 of Insolvency and Bankruptcy Code, 2016, (IBC) by India Opportunities III Private Limited. During pendency of CIRP proceedings, respondent issued the impugned show cause notice dated 05.08.2019, whereby petitioners were classified as "Wilful Defaulters", without availing remedies available under IBC code. Resolution Professional responded to show cause notice vide letter dated 23.08.2019, *inter alia* stating that Company had been tendering payments till initiation of CIRP and that respondent was part of CoC and was thus aware of the financial position of the Company.

2.2. A Forensic Audit Report was placed before CoC, which revealed that none of the other consortium members evidenced any instance of wilful default by petitioners. This was followed by a Transactional Audit Report dated 10.12.2019, which was placed before CoC in its 10th meeting, dated 12.12.2019, in which respondent also participated. Importantly, CoC is stated to have taken cognizance of the fact that no fraudulent transactions, transaction to defraud lenders or undervalued transactions had taken place in the last two years prior to CIRP. However, as referred supra respondent issued the impugned show cause notice dated 21.01.2021, disregarding CoC, RP and CIRP process, wherein the Company and directors of the said Company i.e. petitioners were named. Petitioners would submit that the show cause notice was neither addressed to them nor petitioners were even aware inasmuch as Company was under the control of RP in view of CIRP proceedings. He would also submit that show cause notice bears no mention of the Forensic Audit Report as well. A personal hearing to the Directors of the Company was fixed on 20.04.2021, vide letter dated 03.04.2021. Petitioners replied to the respondent on 19.04.2021, stating that in view of the Covid pandemic and nationwide shutdown and also in view of his age-related ailment and comorbid conditions, requested to grant a virtual personal hearing, which was reiterated vide his letter dated 20.04.2021.

2.3. Identification Committee responded to the request and afforded petitioners an opportunity to appear before Identification Committee, either physically or through Video Conferencing on 15.07.2021. Petitioners submitted another representation on 14.07.2021 stating that petitioner in WP No.13277 of 2024 have been advised by the doctors, not to travel, due to his failing health and petitioner in WP No.13286 of 2024 have certain personal exigencies. He would submit that on 15.07.2021, i.e., the date fixed for the personal hearing, no Video Conferencing link or meeting link was shared. Thus, petitioners would submit they had no opportunity to represent/put forth their explanation. However, the impugned order has been passed, classifying Company as well as the petitioners i.e. Directors as wilful defaulters on 29.09.2021. It is against this background that the present writ petitions have been filed by petitioners.

3. Though the impugned proceeding is challenged on various grounds, learned Senior Advocate for petitioners would submit that Forensic Audit Report was not furnished, that by itself would vitiate the impugned proceedings on the ground of violation of principles of natural justice. In view thereof this Court proposes to deal with the question whether failure to furnish Forensic Audit Report would vitiate the proceedings before the Identification Committee, as a preliminary issue.

4.Case of Petitioners:

4.1. Learned Senior Advocate appearing for petitioners placing reliance on judgment of Supreme Court in the case of *State Bank of India vs Amit Iron Private Limited & Ors* reported in *2026 SCC OnLine SC 538,* would submit that Forensic Audit Report ought to be made available and failure to furnish the same, would handicap petitioners from responding to the notice, which places reliance upon Forensic Audit Report. He would submit that it is trite that any order which results in civil consequences, would have to be compliant with principles of natural justice. It is equally trite that any material which is sought to be relied upon, ought to be made available to the party against whom the same is sought to be relied inasmuch as such party would otherwise be handicapped in dealing with the reasons/material which weighed with the authority to arrive at a conclusion.

5.Case of Respondent:

5.1. Learned counsel for respondent would submit that Forensic Audit Report was in fact furnished and would place reliance upon Paragraph No.5 (e) of the counter affidavit. The said paragraph is extracted hereunder:

> *"5...*
>
> *(e) It is prudent to note that as the Company was undergoing CIRP and the Resolution Professional, G.Ramachandran ("RP") was in-charge of the Company. The RP replied to the show cause notice vide a letter dated 23.08.2019 stating that the Company had been tendering payments till the initiation of CIRP and that the Respondent was part of the CoC, therefore was well aware of the on-going affairs of the Company. Further, the RP addressed the Forensic Audit Report which was produced before the CoC and stated that there were no instances of "Wilful Default" since the Company has been regularly making payments until commencement of moratorium and therein lay no actionable cause of action for the serious natured penal measures that come along with being labelled a "Wilful Defaulter".*

5.2. Reliance was then placed by the respondent on the judgment of the Supreme Court in the case of *State Bank of India vs Jah Developers Pvt. Ltd., and Ors* reported in *(2019) 6 SCC 787,* to submit all that they have to comply is only with Master Circular dated 01.07.2015 which does not expressly provide nor obligate the bank to furnish copies of the Forensic Audit Report. Reliance was also placed on the judgments of the Madhya Pradesh High Court in the case of *Gulab Agrawal and others vs IDBI Bank Limited and Ors* reported in *2025:MPHC-JBP:24093* and Gujarat High Court in the case of *Kirtilal Ravchandbhai Sanghavi vs Reserve Bank of India* reported in *(2023) ibclaw.in 16 HC*, to submit that mere failure to furnish Forensic Audit Report, or relied upon any material would not prove fatal to the validity of the order. She would submit that non-furnishing of Forensic Audit Report does not cause any prejudice to petitioners, while submitting that test of prejudice would have to be applied to determine whether failure to comply with principles of natural justice would prove fatal.

6. Heard both sides. Perused materials on record.

7. To resolve the present controversy as to whether failure to furnish Forensic Audit Report relied upon in the proceedings properly to classify petitioners as wilful defaulters, it may be necessary to keep the following principles in mind. The general principle is that no evidence should be accepted at the back of the other party and in case it is so accepted or recorded, the same ought to be made available to the other party. It is necessary, therefore, that the judicial or the quasi-judicial authority must act on the evidence properly brought before it in the presence of both the parties. If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the person

against whom proceedings are initiated to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then must be given a fair opportunity to correct or contradict them.

7.1. Rules of natural justice, according to the Supreme Court of India, require that a party charged should have the opportunity of adducing all relevant evidence on which he relies, further no materials should be relied without being given an opportunity of explaining them. If relevant evidential material is not disclosed at all to a party who is prejudiced by it, it would normally constitute a breach of natural justice.

7.2. In the case of *Mohinder Singh Gill and Anr. v. Chief Election Commissioner, New Delhi and Ors.,* reported in *(1978) 1 SCC 405*, in the context of election law, the Apex Court held:

> *"63. In Wiseman v. Borneman [(1967) 3 All ER 1945] there was a hint of the competitive claims of hurry and hearing. Lord Reid said: "Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him ..."*

(emphasis supplied)

8. With the above legal principles in mind, I shall proceed to set-out reasons as to why I would think Forensic Audit Report ought to be furnished before being classified as "wilful defaulter".

9. Consequences – That Ensue- On Classification as Wilful Defaulters:

9.1. Keeping in view discussion on law relating to disclosure of relied upon material as part of natural justice, this Court shall now examine consequences that ensue on classification as "wilful defaulter".

9.2. In the case of S*tate Bank of India v. Jah Developers Pvt. Ltd. and Others,* reported in *(2019) 6 SCC 787***,** Supreme Court, while considering the RBI Master Circular on Wilful Defaulters dated 01.07.2015, examined the consequences that ensue upon classification of a person as a wilful defaulter. The Court observed that such a declaration has serious civil consequences and directly impinges upon the fundamental right to carry on business guaranteed under Article 19(1)(g) of the Constitution. Having regard to the grave consequences that ensue upon such classification. The relevant portion of the said decision reads as under:

> *"9. At this stage, it is necessary to mention that serious consequences follow after a person has been classified as a wilful defaulter. These consequences are as follows:*

a) No additional facilities to be granted by any bank/financial institution [paragraph 2.5(a)].

b) Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years [paragraph 2.5(a)].

c) Any legal proceedings can be initiated, including criminal complaints [paragraph 2.5(b)].

d) Banks and financial institutions to adopt proactive approach in changing the management of the wilful defaulter [paragraph 2.5(c)].

e) Promoter/Director of wilful defaulter shall not be inducted by another borrowing company [paragraph 2.5(d)].

f) As per section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant.

.....

24. ...<u>we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate.</u> This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably.

9.3. It is thus clear that classification as "wilful defaulter" would have drastic consequences and may well infringe right guaranteed under the

Constitution. Thus an order classifying as "wilful defaulter" ought to be compliant with principles of natural justice.

10. Furnishing of Forensic Audit Report documents/material – Part of Compliance with principles of natural justice:

10.1. Given the drastic civil and penal consequences that ensue upon declaration of a person as wilful defaulter, disclosure of Forensic Audit Report, which forms the basis of the proposed action, assumes paramount importance. I shall now proceed to examine if furnishing of Forensic Audit Report is necessary for compliance with principles of natural justice. To answer the above question, it may be relevant to refer to the decision in the case of *Kanumuru Rama Devi v. SBI,* reported in *2021 SCC OnLine Mad 14424***,** wherein this Court directed disclosure of the Forensic Audit Report and other relevant documents relied upon by the Bank, recognising serious consequences that flow from a declaration of wilful default. In arriving at the said conclusion, the Court relied upon the observation of the Hon'ble Supreme Court in *State Bank of India v. Jah Developers (P) Ltd., supra* wherein it was held as under:

> *"11. ..... "Article 19(1)(g) is attracted, as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate."*

10.2. In the case of *Milind Patel v. Union Bank of India,* reported in *(2024) 251 Comp Cas 1***,** the Division Bench of the Bombay High Court undertook a detailed examination of the obligation to disclose materials forming the basis of the allegations in proceedings for classification as a wilful defaulter. The relevant paragraphs reads as under:

> *"24. It is now well settled that due compliance with principles of natural justice must essentially entail compliance with the obligation to provide access to the material on which the allegations are based. In the case of* ***T.Takano Vs Securities and Exchange Board of India & Anr. [(2022) 8 SCC 162]*** *(Takano), after considering the law declared on access to the material underlying the allegations, across various types of enforcement proceedings under various legislations, the Hon'ble Supreme Court pithily summarized the relevance of disclosure of information and record in the following words:*
>
> *"C.2. Duty to disclose investigation material*
>
> *While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest. An identification of the purpose of disclosure would lead us closer to identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:*

(i) Reliability: The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information.

(ii) Fair trial: Since a verdict of the Court has far-reaching repercussions on the life and liberty of an individual, it is only fair that there is a legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings.

(iii) Transparency and accountability: The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity--principles that are antithetical to transparency. It is of utmost importance that in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability. The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgment or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order. Keeping a party bereft of the information that influenced the

decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the party concerned and the public at large the ability to effectively scrutinise the decisions of the authority since it create an information asymmetry.

The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.

25. A plain reading of Takano would throw light on how the Master Circular must be construed. <u>The Master Circular consciously enables inflicting "penal" consequences, and underlines the "imperative" need to adhere to a "transparent mechanism". The avoidance of information asymmetry and the means of ensuring transparency as outlined by the Hon'ble Supreme Court in Takano would necessarily mean that principles of natural justice, including the need to provide the underlying material, are inherent and implicit in the process stipulated under the Master Circular.</u> The material and information in question for disclosure to the noticee would be all "relevant" material and not just information that is "relied upon" or "referred to" in the show-cause notice.

26. Not only must information that is referred to and relied on in the show-cause notice be supplied but also information that may undermine the allegations contained in the show-cause notice (which may therefore not be referred to or relied on) must be supplied - only to *ensure that everything relevant to arrive at the truth is available to both parties. The objective of the proceedings initiated by issuance of a show-cause notice is not to somehow find the noticee guilty of wilful default on the same terms as alleged. Instead, the objective is to arrive at the truth as to whether or not an individual in question is to be subjected to "penal" (in the RBI's words) consequences.*

Therefore, if the bank has conducted a forensic investigation into alleged diversion and siphoning of funds, and specific roles played by specific individuals is brought out in the investigation, and such a probe would point to plausible interpretation that certain individuals did not play any role in the diversion and siphoning, the material underlying such plausible inference would undermine the allegations. Therefore, fair and transparent symmetrical access to information, as stipulated by the Hon'ble Supreme Court in Takano would mean providing access to not only incriminating material but also exculpatory material, since all such information would be relevant for arriving at the truth. Therefore, access to the record is a vital element of complying with principles of natural justice. In the instant case, not only has no material been supplied, but also Union Bank has actually asserted on oath that it was not required to provide any material whatsoever, and that it is for the noticee to prove his innocence."

(emphasis supplied)

10.3. In *Ritesh Kumar Agarwal v. SBI,* reported in *2024 SCC OnLine TS 755*, the Telangana High Court relying upon the decision of the Hon'ble Supreme Court in *State Bank of India v. Rajesh Agarwal*, reported in *(2023) 6 SCC 1*, held that the principles of natural justice require furnishing of the

Forensic Audit Report to the borrower before declaring him a wilful defaulter. The relevant extract reads as under:

> *"8. The Apex Court in the judgment in* ***State Bank of India v. Rajesh Agarwal,*** **(2023) 6 SCC 1** *at para 81 dealing with a case of declaration of account as fraud observed that principles of natural justice demand that the borrowers must be served a notice given an opportunity to explain the findings in the forensic audit report before the account is declared as fraud. This itself indicates that Forensic Audit Report must be necessarily supplied to the borrower prior to declaring an account as fraud. This Court in principle opines that the same principles of natural justice need to be necessarily followed prior to declaring the petitioners as defaulters or willful defaulters and the petitioners should be furnished with the copy of the Forensic Audit Report prior to such declaration by the Respondent Bank and consistent with the principles of natural justice, the respondent bank should provide an opportunity to petitioners by furnishing a copy of the Forensic Audit Report and allow the petitioners a reasonable opportunity to submit a representation before declaring the petitioners as willful defaulters which admittedly as borne on record had not been followed in the present case."*

10.4. Reserve Bank of India (Treatment of Wilful Defaulters and Large Defaulters) Directions, 2024

The above position stands reinforced by Clause 4(1) of the *Reserve Bank of India (Treatment of Wilful Defaulters and Large Defaulters) Directions, 2024* (effective from 30.07.2024), which, while prescribing the mechanism for identification and classification of wilful defaulters, expressly mandates the

Identification Committee to disclose all materials and information on which the show cause notice is based.

10.5. It is thus clear that classification as "wilful defaulter" has serious/drastic consequences thus ought to be compliant with principles of natural justice. Importantly, if Forensic Audit Report is relied failure to furnish copies of the same would result in violation of principles of natural justice.

11. Secondly, this Court finds that submission on "Test of prejudice" by respondent, is misconceived inasmuch as test of prejudice has been rejected by the Constitution Bench of the Supreme Case in the case of *Union Carbide Corporation vs. Union of India,* reported in (*1991) 4 SCC 584*, wherein it has been held that the very fact that natural justice has been violated itself is a matter of prejudice and no further prejudice needs to be shown. Therefore, this Court is not inclined to agree with the above submission of the learned counsel for respondent that prejudice is to be established while considering a challenge to an order on the ground of violation of principles of natural justice. The relevant portion read as under:

> *"160. These are all accepted principles. Their wisdom, verity and universality in the discipline of law are well established. Omission to comply with the requirements of the rule of audi alteram partem, as a general rule, vitiates a decision. Where there is violation of natural justice no resultant or independent prejudice need be shown, as the*

denial of natural justice is, in itself, sufficient prejudice and it is no answer to say that even with observance of natural justice the same conclusion would have been reached. The citizen "is entitled to be under the Rule of Law and not the Rule of Discretion" and "to remit the maintenance of constitutional right to judicial discretion is to shift the foundations of freedom from the rock to the sand".

12. Apex Court in *State Bank of India vs Amit Iron Private Limited & Ors* reported in *2026 SCC OnLine SC 538,* while dealing with supply of Forensic Audit Report had placed it beyond doubt that it is incumbent on the Bank to furnish the Forensic Audit Report.

13. In the light of the above discussion this Court has no doubt that failure to furnish the Forensic Audit Report would vitiate the proceedings for violation of principles of natural justice.

14. In that view of the matter, this Court is inclined to set aside the impugned proceedings dated 29.09.2021. Accordingly, the impugned order dated 29.09.2021 is set aside. It is open to petitioners to submit its response treating the impugned order as show cause notice within a period of four weeks from the date of uploading of web copy without waiting for the receipt of certified copy. On considering the response/reply and documents submitted by petitioners, respondent shall pass orders in accordance with law after affording an opportunity of hearing.

15. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

05-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
MRN

To:
The General Manager,
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P.B.No.3765, 763, Anna Salai, Chennai 600 002,
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