

Court No. - 3

Case :- WRIT - C No. - 7725 of 2022

Petitioner :- Debt Recovery Tribunal Bar Association
Thru. Its Secy. Arvind Kumar Srivastava

Respondent :- Union Of India Ministry Of Finance, Deptt.
Of Financial Services Thru. Secy. And 3 Others

Counsel for Petitioner :- Anuj Kudesia

Counsel for Respondent :- A.S.G.I., Apoorva Tewari,
Gaurav Mehrotra

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Shree Prakash Singh, J.

(1) Heard Shri Asit Chaturvedi, learned Senior Advocate assisted by Shri Anuj Kudesia, and Shri Prashant Kumar Srivastava, for the petitioners in Writ-C No.7725 of 2022 and the learned Deputy Solicitor General of India, Shri S.B. Pandey, Senior Advocate assisted by Shri Anand Dwivedi, for the Opposite party nos.1 and 2, the Union of India and Shri Gaurav Mehrotra, and Ms. Ritika Singh, appearing for the Opposite party no.3 and Shri A. H. Khan, Presiding Officer, DRT, Lucknow, who appears in person.

(2) This writ petition has been filed by the petitioners for the following main prayer:-

"1) issue a writ, order or direction in the nature of Mandamus, directing Respondent no.1 and 2 to initiate appropriate action after conducting a detailed enquiry under Section 15 (2) of the Recovery of Debts and Bankruptcy Act, 1993, read with Rule 4 & 4 of DRT (Procedure for Investigation of Misbehaviour or Incapacity of Presiding Officer) Rules, 2010 into the working, behaviour, temperamental issues, act and conduct of Respondent no.4 in view of his consistent misbehaviour with the Advocates and in-competency to act as Presiding Officer of DRT Lucknow as also highlighted in the Complaint, Dated 12.10.2022 (Annexure 8 to this writ petition) submitted by the petitioner.

(ii) Alternatively, it is prayed that this Hon'ble Court may be pleased to direct Respondent no.1 to consider and transfer Respondent no.4 from DRT Lucknow to any other Tribunal on account of his vindictive approach which

has further aggravated after Representation dated 12.10.2022 (Annexure P-8) compelled to be submitted by the petitioner after growing resentment amongst the members of the Bar on account of his repeated act of insulting, threatening and misbehaviour with Advocates."

(3) It is the case of the petitioners as argued by their counsel that the private Respondent no.4, the Presiding Officer, arrayed in person Shri A.H. Khan, has been passing whimsical and arbitrary orders and a reference has been made to some such orders passed by him in some matters in Paragraph-55 of the writ petition.

(4) The allegations relate to nepotism and corruption and also of not following procedure as prescribed under the Rules. Such writ petition was filed by the Bar Association on 01.11.2022 and before such writ petition was filed two writ petitions were filed by two private parties namely Writ-C No.7240 of 2022 [***Shri Chandan Rastogi Vs. District Magistrate/ Collector, Sitapur, and others***] and Writ-C No.7362 of 2022 [***Mrs. Roli Singh Vs. Debt Recovery Tribunal and another***]. In these two writ petitions the prayer made by the petitioners was for quashing of the orders passed under the SARFAESI Act for ensuring recovery of loan dues and it was alleged that the petitioners have approached the D.R.T., Lucknow, by filing Securitization Application but the Bar Association has abstained from judicial work and copies of Resolutions dated 06.10.2022 and 10.10.2022 and 21.10.2022 were annexed to the writ petitions and it was alleged that the Bank while taking advantage of non-functioning of the Court due to the reasons of strike and non-performing the judicial work by the Advocates, will take physical possession of the Premises/ Secured Assets of the petitioners even during the pendency of the proceedings before the DRT because no orders had been passed granting interim relief and their applications remained pending. When the said writ petitions were filed, this Court took notice in its order dated 18.10.2022 in Writ-C No.7362 of 2022 and observed that the interim relief application alongwith Securitization Application of the petitioners could not be decided because of strike of Bar Association and that such strike was unlawful and that the interest of litigants cannot be allowed to suffer is reiterated time and again. The Court expected the DRT Bar Association, Lucknow to cooperate with the proceedings of the Tribunal and corrective measures be taken by the office bearers as well as by the members of the DRT Bar Association to resume the normal functioning

of judicial work. The Bar Association being an essential pillar is under a duty to cooperate with the administration of justice. In case there is any issue to be resolved, the same may be taken up with the Chairman of the DRAT. The Court observed that preventing lawyers from discharging their duties towards litigants cannot be permitted at any cost and necessary measures shall be adopted to eschew such a practice and also directed the Advocates representing the petitioners to appear before the DRT and Presiding Officer, DRT should decide the applications which were listed and pending before it within two weeks from the date of the order and he would also have to submit a report regarding resumption on work of the members of the DRT Bar Association.

(5) The Court thereafter passed an order on 19.10.2022 in Writ Petition No.7240 of 2022 wherein it quoted the order passed by it on 18.10.2022 in the Writ-C No.7362 of 2022 [***Mrs. Roli Singh Vs. Debt Recovery Tribunal and another***] and directed the petitioner to implead the President and the Vice Chairman, Secretary of the DRT Bar Association as Opposite parties and also directed the Presiding Officer to remain present alongwith necessary report as called for in Writ-C No.7362 of 2022 and also directed the Chairman of the DRAT to look into the complaints made by the DRT Bar Association and forward the report to the Court before the next date of listing. The two writ petitions were connected and directed to be listed on 07.11.2022. On 07.11.2022, the matter could not be taken up and it was eventually taken up on 09.11.2022 where the Court recorded the presence of the Presiding Officer of the DRT and a fresh report was directed to be submitted regarding listing and disposal of the cases as well as working of lawyers. The matter was again taken up on 15.12.2022 when the Presiding Officer, DRT submitted a report that with the cooperation of the Bar several matters had been disposed of and on an average more than 13 cases per day in 22 days of working of the Tribunal had been taken up and disposed of.

(6) The Court appreciated the role of the members of the Bar and cooperation extended by them and in its order also expressed that it hoped and trusted that the members of the Bar would maintain due cooperation in the functioning of the Tribunal.

(7) When the case was taken up by this Court again on 16.01.2023, the Court noted the disposal of nearly 196 matters and on an average more than 19 matters per day

were decided by the Tribunal with the cooperation of the Advocates. The Court kept on record the fresh report submitted by the Presiding Officer of the Tribunal and also perused the report submitted by the Chairman DRAT sent in a sealed cover wherein certain observations were made regarding merits of the order passed by the Presiding Officer being appealable orders on the judicial side. Regarding personal conduct of the Presiding Officer of the DRT, Lucknow, the Court noted that the Chairman DRAT had given necessary advice to him to treat all lawyers uniformly and to conduct himself amicably in Court. The Chairman, DRAT having found no infirmity in the procedure being followed by the Presiding Officer, DRT, Lucknow, the Court found it inappropriate to issue any further directions in the matter and the Writ-C No.7240 of 2022 and Writ-C No.7362 of 2022 were dismissed as having become infructuous.

(8) It is evident from a perusal of the record of both these writ petitions that have been placed before us that they related to Borrowers / Guarantors coming before this Court asking this Court to interfere in SARFAESI proceedings initiated by the Banks for recovery of secured assets on the ground that there was a strike and abstention from judicial work by the Advocates of DRT Bar Association which Prevented DRT Lucknow from deciding their pending applications for interim relief. The Court *prima facie* was of the opinion that the strike is unlawful and therefore, directed the Advocates to start working and to cooperate in the disposal of matters. It asked for a report regarding pendency of cases and disposal of matters and referred to the same in its orders passed thereafter as mentioned hereinabove.

(9) Both the writ petitions were dismissed on 16.01.2023 as having become infructuous as working in DRT had resumed. However, on the same day in another connected matter i.e. the instant Writ Petition, bearing Writ-C No.7725 of 2022, the Court took notice of allegations made in Paragraph-55 of the writ petition regarding the conduct of the opposite party no. 4 arrayed in person and passed an order, which is quoted herein below:-

"Heard Sri Asit Chaturvedi, learned Senior Advocate assisted by Sri Anuj Kudesia, learned counsel for the petitioner.

Learned counsel for the petitioner says that the writ

petition has been filed by the Bar Association of Debt Recovery Tribunal, Lucknow, aggrieved by the misbehaviour including nepotism and favoritism of the Presiding Officer that he shows to certain persons.

Let a counter affidavit be filed by the Respondent No.1 and also by Respondents No.2 and 3 separately to the allegations made in the writ petition more specifically with regard to paragraph no.55 within a period of six weeks.

Two weeks time, thereafter is given to the petitioner to file rejoinder affidavit.

List this case on 14.03.2023"

(10) In Writ No. 7725 of 2022, a short counter affidavit has been filed by the opposite party no. 1 and detailed counter affidavits have been filed by the Opposite parties nos. 2 & 3. Thereafter, rejoinder affidavits have been filed by the petitioners to all such affidavits and a supplementary counter affidavit has also been filed by the opposite party no.3 indicating action taken with respect to certain grievances raised by the petitioners. In the short counter affidavit that has been filed by the opposite party no.1, a reference has been made of certain representations having been received from DRT, Bar Association by the Central Government dated 12.10.2022 and 18.10.2022 and their Resolution dated 21.10.2022. The Central Government through its Under Secretary had sent information to the Registrar, DRAT, Allahabad on 15.12.2022 that a decision has been taken by the Government and the Chairperson, DRAT should examine such grievances of the DRT, Bar Association as per the Provisions of Rule 9 (1) of the Tribunal (Conditions of Service) Rules, 2021 and Specific comments be furnished to the Department at the earliest regarding contents of Para 55 of the Writ Petition no.7725 of 2022.

(11) It has been submitted in the short counter affidavit that taking notice of order passed by this Court in Writ-C No. 7725 of 2022, the Ministry had asked for a copy of Writ-C No. 7725 of 2022 and specific comments regarding allegations made in Paragraph-55 of the said writ petition. While forwarding a copy of the Writ-C No.7725 of 2022 to the Government i.e. the Under Secretary, DRT, Department of Financial Services, Ministry of Finance, a letter was sent by the Registrar, DRAT on 08.02.2023 saying that similar allegations had been made by the DRT Bar Association in its representation dated 12.10.2022

against the Presiding Officer, Shri A. H. Khan, DRT, Lucknow which were examined by the Chairman, DRAT and a report was submitted to the Court in Writ-C No.7240 of 2022 and a Court had taken notice of such report disposed of Writ-C No. 7240 of 2022. However, it was pointed out that Writ-C No.7725 of 2022, a counter affidavit has to be filed separately by the DRAT, Allahabad, in pursuance of an order passed on 16.01.2023.

(12) It has been argued on the basis of such short counter affidavit that the Central Government is treating the matter closed insofar as alleged misbehaviour of the opposite party no. 4 is concerned.

(13) We deem it appropriate to clarify that although the Court had summoned reports from the Presiding Officer, DRT, Lucknow and the Chairperson, DRAT, Allahabad in Writ-C No.7240 of 2022 and Writ-C No.7362 of 2022 as aforesaid; such reports were called for only with regard to functioning of the DRT and with regard to certain grievances raised by the DRT Bar Association, before the Chairperson DRAT regarding working of the Presiding Officer which had led to abstention from judicial work by them.

(14) The order passed by the Central Government communicated to the Registrar of the DRAT, Allahabad by a letter sent by the Government of India dated 15.12.2022 has not yet been complied with. The Chairperson, DRAT, Allahabad, has not examined the specific grievances of the DRT, Bar Association as raised by them in their several Resolutions and Representations under the Provisions of Rule 9(1) of the Tribunal (Condition of Services) Rules, 2021.

(15) We are of the considered opinion that this writ petition can be disposed of with a direction to the Central Government to insist upon a Preliminary Scrutiny to be conducted with regard to various allegations made against the Presiding Officer, DRT, Lucknow, and for a detailed report to be submitted to it. The grievance of the petitioners would be sufficiently redressed as argued by their counsel, if the Central Government takes cognizance of any such preliminary scrutiny report to be submitted to it and to pass appropriate orders thereon in terms of the Rules of 2010 as amended from time to time and the Conditions of Service Rules, 2021.

(16) We therefore *dispose of* this petition with a direction to Chairperson DRAT to submit his preliminary report under Section 9 (1) of the Condition of Service Rule 2021 within four weeks from today. We also direct the Opposite party no.1 to take an appropriate reasoned decision on the report within a period of four weeks thereafter.

(17) We clarify that we have not expressed any opinion on the alleged Mis-behaviour/ Incapacity of the Opposite party no.4 in the judicial work he is performing.

Order Date :- 8.7.2024

N.PAL