# IN THE HIGH COURT OF MADHYA PRADESH

## AT INDORE

**BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI**

**&**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 25th OF JULY, 2023**

**WRIT PETITION No. 23800 of 2021**

**BETWEEN:-**

1. **SURENDRA PATWA S/O SHRI SAMAR ATHMAL PATWA, AGED ABOUT 57 YEARS, OCCUPATION: BUSINESS, R/O. 34, GULMARG COLONY, INDORE (M.P.)**
2. **MONICA PATWA W/O SHRI SURENDRA PATWA, AGED ABOUT 57 YEARS, OCCUPATION: HOUSEWIFE R/O. 34, GULMARG COLONY, INDORE (M.P.)**

**.....PETITIONERS**

***(SHRI MRIGENDRA SINGH SENIOR ADVOCATE WITH SHRI ABHINAV MALHOTRA, LEARNED COUNSEL FOR THE PETITIONERS)***

**AND**

1. **RESERVE BANK OF INDIA MAIN BUILDING P.O. BOX 901, SHAHID BHAGAT SINGH ROAD, MUMBAI (MAHARASHTRA)**
2. **BANK OF BARODA REGISTERED OFFICE: BARODA CORPORATE CENTRE, PLOT NO. C-26, BLOCK G, BANDRA KURLA COMPLEX, BANDRA EAST MUMBAI REGIONAL OFFICE: PLOT NO. 12, R.C., FIRST FLOOR, SCHEME 134, NIPANIYA, INDORE BRANCH OFFICE: INDUSTRIAL ESTATE BRANCH , 61/1 SNEHLATA GANJ, INDORE (M.P.)**
3. **CENTRAL BUREAU OF INVESTIGATION THR ITS DIRECTOR INDORE REGION ADD AT ANVESHAN PARISAR, CHAR IMLI, BHOPAL 462016 (M.P.)**

**.....RESPONDENTS**

***(BY SHRI BHARAT ASHOK CHITALE, LEARNED COUNSEL FOR THE***

*RESPONDENT NO.1.)*
*(BY SHRI LOKESH MEHTA, LEARNED COUNSEL FOR THE RESPONDENT NO.2)*

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## WRIT PETITION No. 28645 of 2019

**BETWEEN:-**

**1. SURINDER SINGH BHATIA S/O SHRI KRIPAL SINGH BHATIA, R/O. PLOT NO. 13 AND 14, ADITYA NAGAR INDORE 452001 (M.P.)**
**2. GURVINDER SINGH BHATIA S/O SHRI KRIPAL SINGH BHATIA, R/O. PLOT NO. 1, 2, 3 AND 4, VISHNUPURI COLONY INDORE 452001 (M.P.)**

**.....PETITIONERS**
*(BY SHRI ABHINAV MALHOTRA, LEARNED COUNSEL FOR THE PETITIONERS)*

**AND**

**1. RESERVE BANK OF INDIA MAIN BUILDING, PO BOX 901, SHAHID BHAGAT SINGH ROAD MUMBAI 400 001 (MAHARASHTRA)**
**2. STATE BANK OF INDIA STRESSED ASSETS MANAGEMENT BRANCH, HOSHANGABAD ROAD, BHOPAL 462 001(M.P.)**
**3. ORIENTAL BANK OF COMMERCE 95A, SNEH NAGAR INDORE 452 001 ALSO AT 1ST FLOOR, PLOT NO. 5, SECTOR 32, INSTITUTIONAL AREA, GURGAON - 122001**

**.....RESPONDENTS**
*(BY SHRI BHARAT ASHOK CHITALE, LEARNED COUNSEL FOR THE RESPONDENT NO.1)*
*(BY SHRI RAMESH CHANDRA SINHAL, LEARNED COUNSEL FOR THE RESPONDENT NO.2.)*
*(BY SHRI SUNIL KUMAR SHARMA, LEARNED COUNSEL FOR RESPONDENT NO.3.*

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## WRIT PETITION No. 17190 of 2020

**BETWEEN:-**

**VIJAY SONI S/O JANAKRAJ SONI, AGED ABOUT 62 YEARS, OCCUPATION: NA R/O. 19/2, MANORAMA GANJ, INDORE (M.P.)**

**.....PETITIONER**
*(BY SHRI VEER KUMAR JAIN WITH SHRI VAIBHAV JAIN, LEARNED COUNSEL*

*FOR THE PETITIONER)*

**AND**

**1. PUNJAB NATIONAL BANK THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR AND THROUGH ITS BRANCH HEAD, 20, SNEH NAGAR, SAPNA SANGEETA ROAD, INDORE 452001 (M.P.)**

**2. RESERVE BANK OF INDIA THR. ITS GOVERNOR RESERVE BANK OF INDIA CENTRAL OFFICE BUILDING 18TH. FLOOR SHAHID BHAGAT SINGH ROAD. MUMBAI 400 001 (MAHARASHTRA)**

**.....RESPONDENTS**

*(SHREY RAJ SAXENA, LEARNED COUNSEL FOR THE RESPONDENT NO.1.*

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**WRIT PETITION No. 17195 of 2020**

**BETWEEN:-**

**VIJAY SONI S/O SHRI JANAKRAJ SONI, AGED ABOUT 62 YEARS, OCCUPATION: NA, R/O. 19/2, MANORAMA GANJ, INDORE (M.P.)**

**.....PETITIONER**

*(BY SHRI VEER KUMAR JAIN WITH SHRI VAIBHAV JAIN, LEARNED COUNSEL FOR THE PETITIONER)*

**AND**

**1. BANK OF BARODA THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR AND THR ITS BRANCH HEAD BANK OF BARODA SIYAGANJ BRANCH, 15/16, JAWAHAR MARG (M.P.)**

**2. RESERVE BANK INDIA THR. ITS GOVERNOR RESERVE BANK OF INDIA CENTRAL OFFICE BUILDING 18TH FLOOR SHAHID BHAGAT SINGH ROAD. MUMBAI 400001 (MAHARASHTRA)**

**3. PUNJAB NATIONAL BANK THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR AND THROUGH ITS BRANCH HEAD, 20 SNEH NAGAR, SAPNA-SANGEETA ROAD, INDORE 452001 INDORE (M.P.)**

**4. BANK OF INDIA 1, THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR AND THROUGH ITS BRANCH HEAD BANK OF INDIA 1, MAHATMA GANDHI ROAD, NEAR EUREKA HOSPITAL, NEW PALASIA, INDORE (M.P.)**

**.....RESPONDENTS**

*(BY SHRI ABHINAV DHANODKAR, LEARNED COUNSEL FOR RESPONDENT NO.1.)*

*(BY SHRI BHARAT ASHOK CHITALE, LEARNED COUNSEL FOR THE RESPONDENT NO.2.*
*(BY SHRI SHREY RAJ SAXENA, LEARNED COUNSEL FOR THE RESPONDENT NO.3.*
*(BY SHRI SHISHIR KUMAR PUROHIT, LEARNED COUNSEL FOR THE RESPONDENT NO.4.*

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## WRIT PETITION No. 24984 of 2021

**BETWEEN:-**

**RAJIV SONI S/O LATE SHRI JANAKRAJ SONI, AGED ABOUT 65 YEARS, OCCUPATION: N/A 19/2 MANORAMA GANJ, INDORE (M.P.)**

**.....PETITIONER**

*(BY SHRI RAVINDRA SINGH CHHABRA, LEARNED SENIOR COUNSEL WITH SHRI MUDIT MAHESHWARI, LEARNED COUNSEL FOR THE PETITIONER)*

**AND**

1. **PUNJAB NATIONAL BANK THRU. ITS CHAIRMAN AND MANAGING DIRECTOR AND THRU. ITS BRANCH HEAD 20, SNEH, NAGAR, SAPNA SANGEETA ROAD, INDORE (M.P.)**
2. **RESERVE BANK OF INDIA THROUGH ITS GOVERNOR RESERVE BANK OF INDIA CENTRL OFFICE BUILDING, 18TH FLOOR, SHAHID BHAGAT SINGH ROAD MUMBAI (MAHARASHTRA)**

**.....RESPONDENTS**

*(BY SHRI SHREY RAJ SAXENA, LEARNED COUNSEL FOR THE RESPONDENT NO.1.*
*(BY SHRI BHARAT ASHOK CHITALE, LEARNED COUNSEL FOR THE RESPONDENT NO.2)*

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## WRIT PETITION No. 25083 of 2021

**BETWEEN:-**

**RAJIV SONI S/O LATE SHRI JANAKRAJ SONI, AGED ABOUT 65 YEARS, OCCUPATION: N/A, R/O.19/2,MANORAMA GANJ INDORE 452001 (M.P.)**

**.....PETITIONER**

*(BY SHRI RAVINDRA SINGH CHHABRA, LEARNED SENIOR COUNSEL WITH SHRI MUDIT MAHESHWARI, LEARNED COUNSEL FOR THE PETITIONER).*

**AND**

1. **BANK OF BARODA THR. ITS CHAIRMAN AND MANAGING DIRECTOR AND THR. ITS BRANCH HEAD BANKOF BARODA SIYAGANJ BRANCH 15/16 JAWAHAR MARG, INDORE 452007 (M.P.)**
2. **PUNJAB NATIONAL BANK THROGH ITS CHAIRMAN AND MANAGING DIRECTOR AND THROUGH ITS BRANCH HEAD, 20, SNEH NAGAR, SAPNA SANGEETA ROAD INDORE 452001 (M.P.)**
3. **BANK OF INDIA THROUGH CHAIRMAN AND MANAGING DIRECTOR AND THROUGH ITS BRANCH HEAD 1 MAHATMA GANDHI ROAD, NEAR EUREKA HOSPITAL, INDORE (M.P.)**
4. **RESERVE BANK OF INDIA THROUGH ITS GOVERNOR RESERVE BANK OF INDIA, CENTRAL OFFICE BUILDING, 18TH FLOOR, SHAHID BHAGAT SINGH ROAD MUMBAI 400 001 (MAHARASHTRA)**

**.....RESPONDENTS**

***(BY SHRI SHREY RAJ SAXENA, LEARNED COUNSEL FOR THE RESPONDENT NO.2.)***
***(BY SHRI SHISHIR KUMAR PUROHIT, LEARNED COUNSEL FOR THE RESPONDENT NO.3.)***
***(BY SHRI BHARAT ASHOK CHITALE, LEARNED COUNSEL FOR THE RESPONDENT NO.4.***

*This petitions coming on for admission this day,* ***JUSTICE SUSHRUT ARVIND DHARMADHIKARI*** *passed the following:*

**ORDER**

**1.** Since similar questions of law and facts are involved in these petitions they have been heard analogously and are being decided by a common order.

**2.** The present writ petitions have been filed by the petitioners herein challenging the constitutional validity / vires of the master directions dated 1.7.2016 on 'Fraud – Classification and Reporting' (**"Impugned Directions"**) issued by respondent No.1 for being manifestly arbitrary, unjust, discriminatory as they do not adhere to the principles of natural justice, including show cause notice, any opportunity of personal hearing and representation to the borrowers before the banks declare any account as

'fraudulent'. By way of the impugned action, the respondent (Banking Institutions) in the present case has unilaterally classified the account as 'fraudulent' and have declined to follow even the fundamental principles of natural justice.

**3.** Learned counsel for the petitioners submitted that in the present case no show cause notice or an opportunity of hearing has been provided to the petitioners herein, even though classification of account as fraud – entails consequences such as registration of cases under criminal law and denial of access to banking facilities for the petitioners. As such unilateral classification of account as 'fraudulent' without even affording an opportunity of hearing to the petitioners is antithesis to the rule of law and violates the fundamental rights as enshrined under Article 14, 19(1)(g) and 21 of the Constitution of India.

**4.** Learned counsel for the petitioners contended that a similar issue cropped up before the High Court of Telangana. The High Court of Telangana vide judgment dated 10th December, 2020, allowed the writ petition with the following directions and in the following terms :-

> "70.1. Firstly, the principle of audi alteram partem, part of the principles of natural justice, is to be read in Clause 8.9.4 and 8.9.5 of the Master Circular.
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> 70.2. Secondly, the decision, dated 15.02.2019, passed by the JLF, and the resolution dated 31.07.2019, passed by the FIC are, hereby, set aside.
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> 70.3. Thirdly, the JLF is directed to give an opportunity of hearing by furnishing copies of both the Reports, namely the Forensic Auditor Report, dated 06.04.2018 and the subsequent Report submitted by Dr. K.V. Srinivas, IRP, to the petitioner, and to the OL.
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> 70.4. Fourthly, the JLF is directed to give an opportunity of personal hearing both to the petitioner and to the OL before taking any decision on the issue whether the account should be classified as 'fraud' or not?
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> 70.5. Fifthly, after the JLF has taken its decision, the FIC is directed to pass its resolution whether the decision of the JLF should be confirmed or not?

> 70.6. Lastly, the said exercise shall be carried out by the JLF within a period of three months from the date of receipt of the certified copy of this judgment. Furthermore, the subsequent exercise by FIC shall be carried out within two months from the date of the decision of the JLF."

**5.** Being aggrieved by order dated 10th September, 2020, the Regional Banks as well as the Reserve Bank of India preferred civil appeal before the Apex Court. The Apex Court vide judgment dated March 27, 2023, decided the issue in favour of the petitioners. The said judgment is ***State Bank of India & Ors.. vs. Rajesh Agrawal & Ors.***, reported as *(2023) 6 SCC 1*.

**6.** Learned counsel for the petitioners contended that the issue involved in these batch of petitions is exactly identical to that of ***State Bank of India*** (supra). The Apex Court had summarised the conclusions as under :-

> **98.** The conclusions are summarized below:
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> **98.1**. No opportunity of being heard is required before an FIR is lodged and registered;
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> **98.2.** 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;
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> **98.3.** 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;
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> **98.4** 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;
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> **98.5** 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;

> **98.6.** 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;
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> **98.7** 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.
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> **99**. In the result, the judgment of the Division Bench of the High Court of Telangana dated 10 December 2020 is upheld. The judgments of the High Court of Telangana dated 22 December 2021 and 31 December 2021, and of the High Court of Gujarat dated 23 December 2021 are accordingly set aside. The Civil Appeals are disposed of. Writ Petition (C) No. 138 of 2022 is also disposed of in above terms. There shall be no order as to costs.

**7.** In view of the aforesaid, learned counsel for the petitioners contended that the issue is no more *res integra* therefore, these petitions deserve to be disposed off in terms of the case of ***State Bank of India*** (supra).

**8.** On the other hand, learned counsel for the respondents have also not disputed the legal position.

**9.** In view of the aforesaid, these petitions are disposed off in terms of ***State Bank of India & Ors.. vs. Rajesh Agrawal & Ors.***, reported as *(2023) 6 SCC 1*. The directions / conclusions as contained in ***State Bank of India*** (supra) shall apply to the facts and circumstances of the present case *mutatis mutandis.*

**10.** As a consequence any action taken against the petitioners example registration of FIR etc and declaration of fraud is hereby quashed. It is however made clear that the impugned circular shall remain in existence as it is.

**11.** However, the respondents would be at liberty to proceed in accordance with law and as per the directions / conclusions contained in ***State Bank of***

***India*** (supra).

**12.** Accordingly, these bunch of petitions are disposed off finally.

**13.** A copy of this order be kept in each connected case.

**(S. A. DHARMADHIKARI)**
**JUDGE**

**(PRANAY VERMA)**
**JUDGE**

SS/-

Digitally signed by SHAILESH MAHADEV SUKHDEVE
Date: 2023.07.26 16:56:09 +05'30'