

**(2006) 02 CAL CK 0031**

**Calcutta High Court**

**Case No:** F.M.A. No. 519 of 2005

Punjab National Bank and  
Others

APPELLANT

Vs

Uniworth International Limited  
and Another

RESPONDENT

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**Date of Decision:** Feb. 14, 2006

**Acts Referred:**

- Constitution of India, 1950 - Article 12

**Citation:** (2007) 2 CHN 29

**Hon'ble Judges:** Debasish Kar Gupta, J; Bhaskar Bhattacharya, J

**Bench:** Division Bench

**Advocate:** H.K. Mitra, Soumen Sen, Nilendu Bhattacharya and Sandip Kr. Datta, for the Appellant; Anindya Kr. Mitra, Bhaskar Sen and Nirmalya Mohan Bhattacharya, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Bhaskar Bhattacharya, J.

This appeal is at the instance of the respondents in a writ application and is directed against the order dated 12th August, 2004 passed by a learned Single Judge of this Court thereby disposing of a writ application by setting aside the order impugned with a direction to the present appellant to give an opportunity of hearing to the writ petitioner within two weeks from that date after giving liberty to place all the facts before them and to pass a reasoned order and to communicate the same to the writ petitioner. His Lordship further made it clear that His Lordship did not enter into the merit of the case.

2. Being dissatisfied, the respondents have come up with the present mandamus appeal.

3. Before entering into the merit of the appeal, we are of the view that this mandamus appeal should be disposed of on the simple ground that the writ application, as it stood, was not maintainable in the absence of the Reserve Bank of India as party-respondent and as such, the learned Trial Judge instead of setting aside the order impugned and giving direction ought to have either dismissed the writ application as not maintainable in the absence of the Reserve Bank of India or directed the writ petitioner to make the Reserve Bank of India as party-respondent and then considered the merit of the same.

4. It appears from the averments of the writ application that the grievance of the writ petitioner is that on 12th June, 2003 the writ petitioner was surprised to learn at the behest of Punjab National Bank, the appellant before us, the name of the petitioner No. 1 company had been enlisted in the list of "wilful defaulters" issued by the Reserve Bank of India as on 31st March, 2002 and the said information had been circulated through the Internet all over the world. In paragraph 11 of the writ application, the writ petitioner has further asserted that on 13th June, 2003 it issued a letter to the Reserve bank of India giving details of the situation which had given rise to the financial crisis of the writ petitioner No. 1 company and further informed that the appellant without serving any notice to the writ petitioners gave the wrong information to the Reserve Bank of India in including the name of the writ petitioner No. 1 as "wilful defaulter". It was stated in the said letter that no other bank or financial institution had taken any step by way of inclusion of any other group of company and thus, requested the Reserve Bank of India for removal of its name from the list of "wilful defaulters" immediately. To long and short of the allegation of the writ petitioners was that it had an account with the Punjab National Bank and the Bank on the basis of circulars given by the Reserve Bank of India issued the list of "wilful defaulters" to the Reserve Bank of India but before arriving at the conclusion that the writ petitioner No. 1 was a wilful defaulter, the Punjab National Bank authority did not give adequate opportunity of hearing and, thus, the Reserve Bank of India authority should not have published the petitioners' name as "wilful defaulter" in the Internet without verifying the information given by the appellant.

5. As pointed out earlier, the learned Trial Judge disposed of the writ petition by directing the Punjab National Bank, the respondent herein to give an opportunity of hearing to the writ petitioners before making any recommendation to the Reserve Bank of India after setting aside the order of publication of "wilful defaulters".

6. We find from the prayer "of the writ application that the writ petitioner prayed for direction upon the respondents to recall or withdraw the purported enlistment of the petitioner No. 1 company in the list of "wilful defaulters" though the Reserve Bank of India was never made party. In the writ application, as pointed out earlier, it has been specifically stated that the Reserve Bank of India on the basis of information given by the Punjab National Bank had published the said list in the Internet resulting in injury to the writ petitioner.

7. Once it is alleged that the Reserve Bank of India is the real wrongdoer who issued the name of the writ petitioner in the Internet by blindly accepting the recommendation of the Punjab National Bank, in our view, no effective order can be passed in the absence of the Reserve Bank of India.

8. There is no dispute that the Reserve Bank of India is a State within the meaning of Article 12 of the Constitution of India and it has control over the function of all the Nationalised Banks and including the Punjab National Bank and those Banks are bound to follow the instructions of the Reserve Bank of India from time to time. In the case before us, the Reserve Bank of India issued specific instructions to the Punjab National Bank to prepare a list of "wilful defaulters" and the Punjab National Bank by complying with such direction sent the name of the writ petitioner No. 1.

9. In our view, if the Reserve Bank of India has really published the name of "wilful defaulters" and has included the name of the writ petitioner No. 1 in the Internet, as a State, it had a duty to verify even the recommendation of the concerned Bank before publishing those names in the Internet and equity demands that the concerned authority whose name is shown as "wilful defaulter" should be given an opportunity to defend the allegation. Therefore, a specific direction should be given to the Reserve Bank of India for making provision of giving adequate opportunity to the concerned account holder of the Bank before any perilous step is taken. We are, however, not in a position to verify whether the allegation of the writ petitioner is correct or not and whether the Reserve Bank of India really published those names without giving opportunity of hearing to the writ petitioners unless we hear the Reserve Bank of India on this point.

10. Therefore, on the basis of averments made in the writ application, the Reserve Bank of India is a necessary party and no effective order can be passed in the absence of the Reserve Bank of India.

11. We, accordingly, hold that the writ application must be held to be not maintainable in the absence of the Reserve Bank of India and the learned Trial Judge erred in law in disposing of the writ application by merely passing a direction upon the Punjab National Bank to give an opportunity of hearing though the Reserve Bank of India may not be satisfied with the recommendation of the Punjab National Bank even after giving such opportunity to the writ petitioners.

12. This Court has been given to understand that the Punjab National Bank have already given an opportunity of hearing to the writ petitioner and according to Mr. Anindya Mitra, the learned Advocate appearing on behalf of the writ petitioner-respondent, by giving such opportunity, the Punjab National Bank had waived its right to prefer this appeal.

13. In our opinion, since no effective order can be passed in the absence of the Reserve Bank of India, we propose to set aside the order passed by the learned Trial Judge by giving liberty to the writ petitioners to implead the Reserve Bank of India

as party-respondent within ten days from today and the learned Single Judge will dispose of the writ application after the Reserve Bank of India is made party. We make it clear that we have not gone into other points taken by the Punjab National Bank in this mandamus appeal and we keep all questions open before the learned Trial Judge for disposal after the Reserve Bank of India is made party.

14. After impleading the Reserve Bank of India, the writ petitioner will be entitled to pray for appropriate interim order and if such application is filed the learned Trial Judge will decide such application in accordance with law.

15. The appeal is, thus, allowed by setting aside the order of the learned Single Judge and the matter is remanded back to the learned Trial Judge for decision of the writ application afresh in the light of the observations made in the order.

16. In the facts and circumstances, there will be, however, no order as to costs.

Debasish Kar Gupta, J.

17. I agree.