

Reserve Bank of India Vs. Jayantilal N. Mistry & Anr.

M.A. No. 2342 of 2019 in Transferred Case (Civil) No. 91 of 2015
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Full judgment text

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[M.A. No. 2342 of 2019 in Transferred Case (Civil) No. 91 of 2015]

[M.A. No. 805/2020 in T.C. (C) No. 91/2015]

[M.A. No. 1870/2020 in T.C. (C) No. 91/2015]

[M.A. No. 534/2020 in T.C. (C) No. 91/2015]

[M.A. No. 1046/2020 in T.C. (C) No. 91/2015]

[M.A. No. 1129/2020 in T.C. (C) No. 91/2015]

[M.A. No. 1646/2020 in T.C. (C) No. 91/2015]

[M.A. No. 1647/2020 in T.C. (C) No. 91/2015]

[M.A. No. 1648/2020 in T.C. (C) No. 91/2015]

[M.A. No. 2008/2020 in T.C. (C) No. 91/2015]

[M.A. No. 560/2021 in T.C. (C) No. 91/2015]

[M.A. No. 573/2021 in T.C. (C) No. 91/2015]

1. Information sought by the Respondents in Transferred Case (Civil) No.91 of 2015 was not given by the Reserve Bank of India (for short, 'RBI') on the ground that such information is exempted from disclosure under Section 8 (1) (a), (d) and (e) of the Right to Information Act, 2005 (hereinafter, the 'Act'). Writ Petitions filed in the High Courts were transferred on the request of the RBI to this Court.

By a judgment dated 16.12.2015 in Reserve Bank of India v. Jayantilal N. Mistry¹, this Court refused to accept the contention of the RBI that the information sought by the Respondents could not be disclosed in view of its fiduciary relationship with the banks. This Court observed that RBI is not in any fiduciary relationship with the banks and that the RBI has a statutory duty to uphold the interest of public at large, the depositors, country's economy and the banking sector. This Court was of the opinion that the RBI has to act with transparency and not hide information that might embarrass the banks and that it is duty bound to comply with the provisions of the Act and disclose the information sought.

2. In some transferred cases, the subject matter of challenge were the orders of Central Information Commissioner by which information was furnished. The orders passed by the Central Information Commissioner giving valid reasons for providing the information were upheld by the aforementioned judgment.

3. Thereafter, Contempt Petitions were filed complaining of willful disobedience of the directions issued by this Court in its judgment dated 16.12.2015 in Transferred Case (Civil) No.91 of 2015. The disclosure policy of RBI dated 30.11.2016 which was contrary to the directions issued by this Court was found to be in willful disobedience of the judgment dated 16.12.2015. During the course of hearing of the Contempt Petition, it was brought to the notice of this Court that another disclosure policy was uploaded on the RBI website on 12.04.2019. Later on, the RBI deleted the said disclosure policy from its website.

Exemptions in the disclosure policy of the RBI which were contrary to the directions issued by this Court were directed to be withdrawn by the RBI through a judgment dated 26.04.2019 in Girish Mittal v. Parvati V. Sundaram & Anr.². This Court observed that violation of the directions of this Court by RBI shall be viewed seriously.

4. M.A. No.2342 of 2019 has been filed by HDFC Bank Limited and Others seeking impleadment in the transferred case and for recall of the judgment dated 16.12.2015 passed by this Court in Jayantilal N. Mistry

(supra). By an order dated 18.12.2019, this Court directed the RBI not to release inspection reports, risk assessment reports and annual financial inspection reports of the banks including the State Bank of India. Other private banks also followed HDFC Bank in filing miscellaneous applications for recall of the judgment of this Court in Jayantilal N. Mistry (supra).

All the miscellaneous applications were listed along with two Writ Petitions that were filed by the State Bank of India and HDFC Bank. It is relevant to mention that the prayer in the Writ Petitions is to strike down the notices issued by the RBI seeking information from the banks relating to inspection reports, risk assessment reports and annual financial inspection reports. A further direction was sought to the RBI not to disclose confidential and sensitive information related to the banks.

5. After hearing the learned Senior Counsel for the Petitioner in Writ Petition (C) No.1469 of 2019 filed by the State Bank of India and Another, we directed de-tagging of the Writ Petitions as they pertain to a challenge of notices issued by the RBI. We make it clear that all questions raised in the Writ Petitions are left open and the order we propose to pass in the miscellaneous applications will not have any bearing on the consideration of the Writ Petitions on their own merits.

6. The main contention of the Applicants for recall of the judgment in Jayantilal N. Mistry (supra) is that the judgment has far reaching consequences and the applicants who are directly and substantially affected were not made parties and heard. They relied upon the judgments of this Court in Budhia Swain & Ors. v. Gopinath Deb & Ors.³, Royal Paradise Hotel (P) Ltd. v. State of Haryana & Ors.⁴, Asit Kumar Kar v. State of W.B. & Ors.⁵ and Vishnu Agarwal v. State of U.P. & Anr.⁶ to contend that the application for recall of the judgment is maintainable when there is violation of principles of natural justice. It was also argued on behalf of the banks that an application for recall is different from review.

The learned counsel appearing for the banks submitted that the inherent jurisdiction of this Court should be exercised to recall the judgment in Jayantilal N. Mistry (supra) which failed to consider important questions of law. It was further argued that the judgment in Jayantilal N. Mistry (supra) addressed a limited perspective.

In the said judgment, this Court did not consider the important aspect of violation of the right to privacy which has been held to be an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India in Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.⁷. Another submission made on behalf of the banks is that the judgment in Jayantilal N. Mistry (supra) is per incuriam as certain judgments of this Court have not been considered. An attempt was made to make submissions regarding the correctness of the judgment which was curtailed by this Court on the ground that arguments were being heard only regarding the maintainability of the applications for recall.

7. The learned counsel for the Respondents submitted that it has been held by this Court in Delhi Administration v. Gurdip Singh Uban & Ors.⁸ that applications for recall are filed to avoid filing Review Petitions which are decided by way of circulation. It was held in the said judgment that such applications are not maintainable. The learned counsel further referred to the judgments of this Court in B.K. Pavithra and Others v. Union of India and Others⁹, Saurabh Chaudri (Dr.) & Ors. v. Union of India & Ors.¹⁰ and Rashid Khan Pathan : In Re : Vijay Kurle and Others¹¹.

It was argued on behalf of the Respondents that the judgment in Jayantilal N. Mistry (supra) was delivered after hearing RBI and ICICI Bank. All the banks were aware of the hearing of the case but did not take any step to get themselves impleaded. The Contempt Petition filed for nonimplementation of the directions issued by this Court in Jayantilal N. Mistry (supra) was against the RBI and the Applicants could not have been made parties to the Contempt Petitions. The learned counsel appearing for the Respondents submitted that it is in public interest that the information that was directed to be furnished under the RTI Act by the RBI is revealed.

8. Order XLVII of the Supreme Court Rules, 2013 provides for the remedy of filing application for review. There is no provision in the Supreme Court Rules for filing any application for recall of the judgment of this Court. In Delhi Administration v. Gurdip Singh Uban & Ors. (supra), this Court made it clear that applications filed for clarification, modification or recall are often only a camouflage for review petitions. It was held that such applications should not be entertained, except in extraordinary circumstances. While relying upon this judgment of this Court in Rashid Khan Pathan (supra), this Court was of the opinion that filing applications which are not maintainable amounts to abuse of process of Court. In the said judgment, this Court reiterated the importance of finality of a judgment and held that parties should not be permitted to file

applications to reopen concluded judgments of this Court.

9. The learned counsel appearing for the Applicants cited judgments of this Court in their support to distinguish a review from recall. It was argued that a review petition would require consideration of the matter on merits in case there is an error apparent on the face of record. Whereas, recall applications are entertained only in case the judgment is passed without jurisdiction or without an opportunity of hearing being given to the affected party.

All the judgments that are cited on this point are cases where petitions for recall were entertained when a person directly affected by the judgment was not heard. In the instant case, the dispute relates to information to be provided by the RBI under the Act. Though the information pertained to the banks, it was the decision of the RBI which was in challenge and decided by this Court. No effort was made by any of the applicants in the miscellaneous applications to get themselves impleaded when the transferred cases were being heard by this Court.

The applications styled as recall are essentially applications for review. The nomenclature given to an application is of absolutely no consequence - what is of importance is the substance of the application - *M.C. Mehta v. Union of India*¹². A close scrutiny of the applications for recall makes it clear that in substance, the applicants are seeking a review of the judgment in *Jayantilal N. Mistry (supra)*.

Therefore, we are of the considered opinion that these applications are not maintainable. We make it clear that we are not dealing with any of the submissions made on the correctness of the judgment of this Court in *Jayantilal N. Mistry (supra)*. The dismissal of these applications shall not prevent the applicants to pursue other remedies available to them in law.

10. All the Miscellaneous Applications are dismissed.

1 (2016) 3 SCC 525

2 (2019) 20 SCC 747

3 (1999) 4 SCC 396

4 (2006) 7 SCC 597

5 (2009) 2 SCC 703

6 (2011) 14 SCC 813

7 (2017) 10 SCC 1

8 (2000) 7 SCC 296

9 (2020) SCC Online SC 822

10 (2004) 5 SCC 618

11 2020 SCC Online SC 711

12 (2019) 2 SCJ 640

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