

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER.

SHANKER LAL BHARTI. V. THE STATE BANK OF BIKANER
AND JAIPUR & OTHERS.

S.B. CIVIL WRIT PETITION NO.4846/2005,
under Articles 226 & 227 of the Constitution of
India.

DATE OF ORDER: 29.9.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS.

Mr.S.N.Trivedi,)
Mr.Nitin Trivedi)
Mr.Sardul Singh) for Petitioner.
Mr.Ram Milap)

Mr.M.S.Singhvi, for Respondents.

BY THE COURT:

REPORTABLE

By this writ petition, petitioner has prayed that by a writ, order or direction, the respondents may be directed that the direction given by the Inquiry Authority vide letter dated July 29, 2005 (Annexure 1) may be quashed and set aside and photo copies of the original documents (Exhibits 18 and 19) may be taken on record and the petitioner may be given full opportunity of hearing during the proceedings of the enquiry.

Brief facts giving rise to the instant petition are that the petitioner was appointed as an Award Staff in the State Bank of Bikaner & Jaipur (hereinafter referred to as 'the Bank'). Subsequently, he was promoted to the post of Junior Management Grade Scale – I. At present, he is working as Assistant Manager, City Branch, Bikaner.

It is averred by the petitioner in the instant petition that while he was working as Branch Manager at Punrasar Branch, State Bank of Bikaner & Jaipur, District – Churu, he was served with a Memorandum along with statement of allegations and a list of documents vide letter dated 14.10.2004. The main allegation levelled against the petitioner is that he has violated the prescribed procedures, misused his official position and displayed gross negligence which is unbecoming for the Bank officials and these constitute serious acts of misconduct in terms of Regulations 50 (1), 50 (3), 50 (4) and 57 of the State Bank of Bikaner and Jaipur (Officers) Service Regulations 1979 (for short, 'the Service Regulations'). Thereafter, the petitioner demanded the inspection of records and certified copies of the relevant documents.

Respondent No.2 – the General Manager-cum- Disciplinary Authority (Operations), vide letter dated November 25, 2004,

appointed Respondent No.3 - Shri K.K.Vishwakarma, Manager, Stationery Depot, State Bank of India & Jaipur, Bikaner as Inquiry Authority. The petitioner demanded again relevant documents from the Inquiry Authority, but the said documents were not supplied to him. Thus, in the absence of the inspection of records and relevant documents, the petitioner submitted his explanation to prove his innocence. The Inquiry Authority started the inquiry proceedings.

It is also averred in the instant petition that by way of filing a civil suit, the petitioner also approached the Court of the learned Civil Judge (Junior Division), Bikaner praying therein that the proceedings in pursuance of the Memorandum dated 13.10.2004 may be proceeded after following the principles of natural justice and due process of law. A reply has been filed by the respondents and the matter is pending before the Civil Court, Bikaner, for final adjudication.

During the disciplinary proceedings, on July 29, 2005, it was recorded that the Presenting Officer has made available photo copies of the two relevant documents No.18 and 19 as per the list of documents submitted by the Presenting Officer on behalf of the respondent – Bank. It was also recorded that so far as verification of these documents is concerned, the same shall be made by way of producing witnesses during the course of inquiry. The Presenting Officer, therefore, stated that these

photo copies may be treated as Bank documents and the same may be exhibited.

The defence counsel on behalf of the petitioner submitted that these photo copies of the relevant documents Exs. 18 and 19, which pertain to list of loan account sanctioned/disbursed by the petitioner while working as Branch Manager and the representation made by the Organisation respectively, neither can be taken on record, nor photo copies of the photo copies can be exhibited as these copies are not admissible in evidence.

Thereafter, the Inquiry Authority – Respondent No.3 gave his finding that verification of its originals shall be done, meaning thereby the originals shall be verified through witnesses during the course of inquiry. Therefore, it was decided to take the photo copies of the documents Exs. 18 and 19 on record and exhibit the same in the interest of the Bank.

The petitioner through his defence counsel represented to the Disciplinary Authority - respondent No.2 and submitted that the Inquiry Authority – Respondent No.3 is acting in flagrant violation of the principles of natural justice and is not providing him full opportunity of hearing, so the inquiry proceedings may be stayed or the Inquiry Authority may be changed.

Being aggrieved by the direction for taking the photo

copies of the documents on record and exhibited the same vide letter dated 29th July, 2005 (Annexure 1), the petitioner has filed the instant petition.

It is submitted by the learned counsel for the petitioner that the petitioner is not permitted to inspect the original documents and he has been supplied photo copies of documents Exs. 18 and 19 and, according to the learned counsel, the photo copies of the photo copies cannot be taken on record and the same cannot be exhibited as these documents are not admissible in evidence.

It is further submitted by the learned counsel for the petitioner that the documents (Exhibits 18 and 19) are relevant and essential documents, upon which the severe charges of irregularities, misconduct and dereliction of duties are levelled. Therefore, according to the learned counsel, the original documents are essential to be placed before the Inquiry Authority and photo copies of the original documents cannot be taken on record.

It is also submitted by the learned counsel for the petitioner that the Inquiry Authority is conducting the inquiry in flagrant violation of the principles of natural justice and no opportunity of hearing is given to the petitioner as is evident

from the letter of the Inquiry Authority dated August 3, 2005 (Annexure 2).

It is argued by the learned counsel for the petitioner that in the departmental enquiry, denial of full opportunity of hearing to the delinquent is certainly a denial to prove his innocence, which according to the learned counsel, is illegal, unjustified and arbitrary and against the principles of natural justice.

Learned counsel for the petitioner has placed reliance on the case of **Government of Andhra Pradesh v. Karri Chinna Venkata Reddy (AIR 1994 SC 591)**, in which two questions were raised – (i) if the additional documents could have been admitted in the writ jurisdiction and (ii) if reliance could be placed on them as they were only photostat copies. The Court admitted the documents without recording any finding that the respondents made out a case for acceptance of secondary evidence. It was held by their Lordships of the Supreme Court that the admission of additional documents by the High Court in writ jurisdiction is an exercise of discretion with which this Court does not normally interfere. But if the records have been tampered with and fictitious documents have been produced before the High Court, then it certainly vitiates the finding, as the genuineness of the documents goes to the root of the matter. In the instant case, the question is not of admission

of additional documents by the High Court in writ jurisdiction but the question is with regard to supply of photostat copies of documents Exs. 18 and 19 and marking them exhibits in the interest of the Bank. Here, the genuineness of the document is also not questioned and the photostat copies of the relevant documents have been given after the same(documents desired by the delinquent officer) have been got verified from the originals as submitted the Presenting Officer in Annexure 1 dated 29.7.2005. The Presenting Officer has also stated that so far as the original documents (Exs. 18 and 19) are concerned, the same shall be got verified by producing the witness during the course of enquiry proceedings. Thus, this authority is of no help or assistance to the learned counsel for the petitioner.

Learned counsel for the petitioner has also place reliance on the case of **Committee of Management, Kisan Degree College v. Shambhu Saran Pandey and Others [(1995) 1 SCC 404]**, in which the respondent was given a charge-sheet, he sought for inspection of the documents and submitted his reply to the charge-sheet. The enquiry officer then replied that since the respondent had already given the reply to the charge-sheet itemwise, he was at liberty to inspect the documents at the time of final arguments. Then, in such a situation, their Lordships of the Supreme Court held that the delinquent should be given the opportunity for inspection and, thereafter, the enquiry should

be conducted in a proper way by adopting the proper procedure and then the delinquent should be heard at the time of conclusion of the enquiry. As a result of the enquiry, the respondent was dismissed from service. But in the instant case, the question is with regard to supply of photostat copies of documents Exs. 18 and 19 and marking them exhibits in the interest of the Bank. Here, the genuineness of the document is also not questioned and the photostat copies of the relevant documents have been given after the same(documents desired by the delinquent officer) have been got verified from the originals as submitted the Presenting Officer in Annexure 1 dated 29.7.2005. The Presenting Officer has also stated that so far as the original documents (Exs. 18 and 19) are concerned, the same shall be got verified by producing the witnesses during the course of enquiry proceedings. Thus, this authority is also of no help or assistance to the learned counsel for the petitioner.

Per contra, it is submitted by Mr.M.S.Singhvi, learned counsel for the respondents that though, the petitioner has approached the learned Civil Judge (Junior Division), Bikaner and filed a civil suit and prayed that the proceedings in pursuance of the Memorandum dated 13.10.2004 may be proceeded after following the principles of natural justice and due process of law. But, the petitioner has conveniently concealed from this Court the material fact that along with the civil suit, the petitioner has

also filed an application under Order 39, Rules 1 and 2, CPC, for granting temporary injunction. But the trial Court has not granted the temporary injunction to the petitioner. Then the petitioner has filed the present writ petition to circumvent the proceedings initiated by him by filing the civil suit. Apart from that, the writ petition filed by the petitioner is premature also as, at present, the enquiry is going on and after conclusion of the enquiry, final decision will be required to be taken by the Disciplinary Authority. Whatever objections the petitioner may have, he can raise the same before the Disciplinary Authority, if he is aggrieved by any of the orders of the Inquiry Authority. If any order is passed against him, then he has an alternative remedy of filing an appeal before the Appellate Authority. Thus, according to the learned counsel, the enquiry, initiated against the petitioner, is at the interlocutory stage, so, the premature writ petition should not be entertained by this Court and the same should be dismissed.

It is further submitted by the learned counsel for the respondents that the conduct of the petitioner is not above the board, as he is facing enquiry for serious allegations of misconduct etc. as mentioned in the charge-sheet (Annexure R/3). Not only this, but also, it is clear from the enquiry proceedings (Annexure R/4) that right from the initiation of the enquiry, the petitioner has been adopting non-cooperative

attitude and making an attempt that the enquiry is delayed for one reason or another.

It is also submitted by the learned counsel for the respondents that so far as the contention of the petitioner that a photocopy of the document cannot be tendered in evidence in view of Section 65 of the Evidence Act is concerned, it is totally incorrect, as in the departmental enquiry, the provisions of the Evidence Act have no application. Apart from that, the petitioner was very much permitted the inspection of the relevant record. The petitioner has been given several opportunities to defend himself before the Inquiry Authority, but he is not co-operating and attempting to prolong the enquiry.

It is contended by the learned counsel for the respondents that the documents referred to by the petitioner have been produced by the Presenting Officer and have been marked as Exhibits 24 and 25. These documents will be proved in the course of enquiry by the Bank's witnesses. The document Exhibit 24 is a list giving the particulars of loan account sanctioned/disbursed by the petitioner while working as Branch Manager, and document Exhibit 25 is a letter addressed by the petitioner to the Managing Director. This letter has been written by the petitioner as General Secretary of State Bank of Bikaner & Jaipur Officers Backward/Scheduled Caste/Scheduled Tribe

Association. These documents are not marked as Exhibits 18 and 19, as alleged by the petitioner, in his writ petition, but these have been marked as Exhibits 24 and 25 respectively. These documents were admissible as an evidence after they were verified with their originals by the Inquiry Authority in the presence of the Presenting Officer and as strict Rules of Evidence are not applicable in the enquiry proceedings, they were taken on record. Apart from that, the contents of the photocopies do not in any way differ from the originals. In the enquiry proceedings dated 29.7.2005, the Inquiry Authority has clearly recorded that the Presenting Officer has verified the photocopies presented therein as Exhibits 24 and 25 and they are true copies of the originals and the contents are also the same. Thus, in such a situation, the documents were presented and taken on record and subsequently, the witnesses of the Bank will be produced to prove these documents. It is submitted that the strict rules of evidence regarding proof of evidence is not available in the departmental enquiries, therefore, the Inquiry Authority has rightly ordered the documents to be taken on record in the proceedings held on 29.7.2005. Moreover, at that time, the original documents were also made available by the Presenting Officer and the contents of the original documents with the photostat copies were duly tallied and were found to be correct.

It is further contended by the learned counsel for the respondents that the enquiry proceedings were not conducted on day to day basis, as contended by the petitioner, but the proceedings were conducted on the following dates : 21.12.2004, 11.1.2005, 12.1.2005, 8.3.2005, 7.4.2005, 27.4.2005, 18.5.2005, 27.5.2005, 7.6.2005, 16.6.2005, 28.6.2005, 12.7.2005, 28.7.2005, 29.7.2005 and 12.8.2005 respectively. According to the learned counsel for the respondents, the petitioner is not cooperating in the enquiry proceedings and is attempting by one way or another to delay the proceedings and is unnecessarily trying to create hindrances in the enquiry proceedings.

It is also contended by the learned counsel for the respondents that the enquiry is conducted perfectly in accordance with law and in accordance with the principles of natural justice. He submitted that the petitioner has been charged for committing serious misconduct and is trying to prolong the process of enquiry. He pointed out that the proceedings of the enquiry should not be interfered at an interlocutory stage. Apart from that, at this stage, the petitioner cannot doubt the sanctity of the Inquiry Authority, without any just and reasonable cause.

It is argued by the learned counsel for the respondents

that the documents which are made exhibits by the Inquiry Authority were duly verified by the Presenting Officer in the enquiry proceedings dated 29.7.2005. Apart from that, the strict rules of evidence are not applicable in the departmental proceedings, therefore, the photostat copies of the documents can be tendered in evidence. At this stage, only the documents have been ordered to be taken on record and have been exhibited and that too, after the original record was called for and the verification from the original record was done. The Inquiry Authority has also stated that the documents will be proved by producing the witnesses.

In support of his contentions, learned counsel for the respondents has placed reliance on **K.L.Shinde v. State of Mysore (AIR 1976 SC 1080)**, it was held by their Lordships of the Supreme Court that the departmental proceedings are not strictly governed by the rules of evidence as contained in the Evidence Act.

In **Canara Bank v. V.K.Awasthy [(2005) 6 SCC 321]**, it was held by their Lordships of the Supreme Court that Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The

administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

In **Union of India v. A.N.Saxena [(1992) 3 SCC 124]**, it was held by their Lordships of the Supreme Court that the Tribunal should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The allegations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, then it would be extremely difficult to bring any wrongdoers to book.

In **Managing Director, Madras Metropolitan Water Supply and Sewerage Board and Another v. R.Rajan and Others [(1996) 1 SCC 338]**, it was held by their Lordships of the Supreme Court that interference with the disciplinary proceedings at the interlocutory stage is not warranted.

In **K.L.Tripathi v. State Bank of India (AIR 1984 SC 273)**, it was held by their Lordships of the Supreme Court that

the principles of natural justice are applicable to a particular situation. So whether a particular principle of natural justice has been violated or not, has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries.

In *High Court of Judicature at Bombay v. Uday Singh* [(1997) 5 SCC 129], it was held by their Lordships of the Supreme Court that in the case of disciplinary proceedings, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" also has no application. Preponderance of probabilities and some material on record would only be necessary to reach a conclusion whether or not the delinquent has committed misconduct.

Heard learned counsel for the parties.

Admittedly, the petitioner has concealed the material fact that along with the civil suit, he has also filed an application under Order 39, Rules 1 and 2, CPC, before the trial Court. However, no temporary injunction was granted to the petitioner. Apart from that, the argument of the learned counsel for the respondents is also tenable that, at this stage, the writ petition is premature, as the enquiry is going on and after conclusion of

the enquiry, the final decision will be required to be taken by the Disciplinary Authority. If the petitioner is aggrieved by any order of the Inquiry Authority, then he can raise the grievance before the Disciplinary Authority. If any order is passed against the petitioner by the Disciplinary Authority, then he has an alternative remedy of filing an appeal before the Appellate Authority. Thus, in such a situation, at this interlocutory stage of the enquiry proceedings, the petitioner is not entitled to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

It may be mentioned that the conduct of the petitioner is also not above the board as he is attempting to delay the enquiry by one way or the other. So far as Section 65 of the Evident Act is concerned, it may be pointed out that in the departmental enquiry/proceedings, the provisions of the Evidence Act are not made strictly applicable and as laid down by their Lordships of the Supreme Court in K.L.Shinde's case (Supra), the departmental proceedings are not strictly governed by rules of evidence as contained in the Evidence Act. As per Clause © of Section 65 of the Evidence Act, the secondary evidence of a document which is lost or difficult to trace can be adduced in two ways : (1) by oral evidence of persons who were present when the document was executed; and (b) by a certified copy of the original document. Apart from that, when the

original documents are not traceable and can be said to be lost, then certified copies thereof can be received as secondary evidence. Under Section 65, secondary evidence is admissible only of the existence of the contents of a document. However, the execution of the document must be proved by primary evidence. In the instant case, the document Exhibit 24 is a list of giving the particulars of loan account sanctioned/disbursed by the petitioner while working as Branch Manager, while Exhibit 25 is a letter addressed by the petitioner to the Managing Director. These documents are admissible in evidence as strict Rules of Evidence Act are not applicable in the enquiry proceedings.

It may also be mentioned that the petitioner has been charged for committing serious misconduct, like misuse of his official position, allowing the borrowers to liquidate their loan accounts within one year of sanction. He also violated the prescribed procedure, displayed gross negligence and showed lack of due care, devotion and diligence in the discharge of his duties and ultimately, failed to protect the Bank's interest. He did not obtain equitable mortgage as offered by the borrower and in sheer dereliction of duties, sanctioned the loan beyond his discretionary powers.

The proceedings of the enquiry should not be interfered with at an interlocutory stage and as laid down by their

Lordships of the Supreme Court in Union of India's case (Supra), that if the disciplinary proceedings in such serious matters are stayed so lightly, then it would be extremely difficult to bring any wrongdoers to book. Not only that, but in the case of High Court of Judicature at Bombay (Supra), their Lordships of the Supreme Court held that in the case of disciplinary proceedings, the technical rules of evidence have no application. So far as principles of natural justice are concerned, it may be pointed that a particular principle of natural justice has been violated or not, has to be judged in the background of the nature of charges.

It may be pointed out that under Article 226, the High Court does not sit or act as an appellate authority over the actions of the subordinate authorities. The jurisdiction of the High Court is supervisory in nature. It has to confine itself to correcting any error of jurisdiction by the authorities and cannot assume *suo motu* jurisdiction of the appellate court.

The power of judicial review under Article 226 is not directed against the decision but is confined to the decision making process. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. In the exercise of this discretionary jurisdiction, the High Court should not act as courts of appeal or revision to correct mere

errors of law or of fact, because this jurisdiction is merely supervisory.

The High Court cannot sit as a court of appeal and substitute its own decision. The Court confines itself to the question of legality and is concerned only with (i) whether the decision-making authority exceeded its powers; (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached an unreasonable decision; or (v) abused its powers. The High Court should not interfere with matters that do not involve violation of any law, even through agitated against by a section of people. It has no jurisdiction to assess the decency or indecency of a show about which two view might be possible.

In departmental proceedings, the High Court in writ jurisdiction may not normally interfere with findings of facts unless it is found to be based either on no evidence or that the findings are wholly perverse or legally untenable. The question of adequacy of evidence is outside its purview. So far as the penalty or punishment is concerned, the High Court may not interfere, unless it is impermissible or shocks its conscience. It is an erroneous view that after exhausting departmental remedies, only a writ petition can be filed in the High Court.

The High Court cannot interfere with the disciplinary proceedings at the stage of notice to the delinquent to submit his defence, issued along with the enquiry report. The High Court should not interfere at the investigation stage of a case. Apart from that, when there is an alternative remedy and conduct of the applicant is such that he does not deserve the discretionary remedy or he has concealed, misrepresented or suppressed the material facts and has not come to the Court with clean hands, the High Court can refuse the relief under Article 226 of the Constitution of India. In the instant case, the petitioner has concealed the material fact of moving injunction application under O.39, Rules 1 and 2, CPC, and non-grant of temporary injunction by the trial Court. Thus, the petitioner has not come to the Court with clean hands. Apart from that, the conduct of the petitioner is not above the board as he is facing enquiry for serious allegations of misconduct.

In view of the aforesaid peculiar facts and circumstances of the case in hand, I am of the considered opinion that the proceedings of the enquiry should not be interfered with at an interlocutory stage. If the enquiry proceedings in such serious matters are interfered with and the writ petition under Article 226/227 of the Constitution of India is entertained, then it would be extremely difficult to bring any wrongdoers to book.

Consequently, I do not find any merit in this writ petition.

The same is, therefore, dismissed. The ad-interim stay order passed by this Court on 17.8.2005, stands vacated.

The parties are left to bear their own costs.

(R.P.VYAS), J.

scd.