
(2007) 02 GAU CK 0054
In the Gauhati High Court

Bank of Baroda

APPELLANT

Vs

Bibek Verma and Others

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Citation : (2007) 2 GLT 970

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. S.C. Shyam, learned Counsel for the petitioner and Mr. K. Khan, the learned Counsel for the respondent No. 1. None appears for the respondent Nos. 2 and 3.

2. The present writ petition has been preferred under Articles 226/227 of the Constitution with a prayer to set aside the impugned order dated 22.11.2001 passed by learned Banking Ombudsman.

At the very outset it has been enquired from the learned Counsel for the petitioner as to whether the present petition is being addressed under Article 226 or Article 227. On this aspect the learned Counsel for the petitioner has submitted that the present writ petition in view of the prayer for invoking writ jurisdiction of mandamus and certiorari is to be dealt with under Article 226 of the Constitution.

3. For and on behalf of the petitioner/Bank of Baroda while challenging the impugned order dated 22.11.2001, the facts have been narrated by stating that : A Saving Bank Account No. 13099 was opened in the name of private respondent No. 1 namely Mr. Bibek Verma on 22.10.1996. The petitioner had received a notice on 15.6.1998 on behalf of the respondent No. 1 stating that an amount of Rs."72,750/- has fraudulently been withdrawn from the said account through three cheques dated 30.9.1996 alleged to have been issued by him. Petitioner repudiated the claim of the respondent No. 1 vide his letter dated 10.10.98 (emphasis supplied). However, about two years of such repudiation of the claim

by the petitioner/Bank of Baroda, the respondent No. 1 submitted a complaint dated 18.9.2000 before learned Ombudsman at Guwahati, from where notice dated 1.11.2000 was issued directing the petitioner/Bank of Baroda to submit para-wise comments which, however, was duly submitted on 13.11.2000, and learned Ombudsman vide its letter dated 29.5.2001 has informed the petitioner "the matter has since been treated as closed at this end." To the utter surprise, the petitioner received a Notice dated 29.10.2001 from learned Ombudsman directing the petitioner to furnish specific informations, with indication that learned Ombudsman has decided to hold a hearing on 22.11.2001. The informations as desired by learned Ombudsman were submitted in addition to showing appearance before learned Ombudsman on 22.11.2001 for participating in hearing of the case. Learned Ombudsman after hearing the Senior Branch Manager, for and on behalf of the petitioner, learned Counsel for the respondent No. 1 and also the Manager (Service) Bank of Baroda and Regional Manager, Guwahati, has decided the case by a judgment and order dated 22.11.2001 directing the petitioner to make good of Rs. 72,750/- alongwith interest from the date of deposit of the cheques at Bank of Baroda, Shillong till the date of payment of the amount at the rate prevailing against the Bank's savings deposit at that time.

4. Being aggrieved by the judgment and order dated 22.11.2001, the petitioner has preferred the present Writ petition basically challenging the maintainability of the petition before the learned Ombudsman, legality of the impugned order dated 22.11.2001 with specific assertions that the impugned order dated 22.11.2001 has not been passed in derogation to the provisions of Clause 16(3) (b) of the Chapter-IV of the Banking Ombudsman Scheme, 1995 (in short called Scheme 1995 hereinafter). In sequence to his submissions learned Counsel for the petitioner has also submitted that the Saving Bank Account No. 13099 in the name of respondent No. 1/Bibek Verma on 22.10.1999 was in reference to the introduction made by an account holder who had been an old customer of the Bank of Baroda and the introducer had been operating his account regularly and was known to the Bank for a long time. The account was opened keeping in consonance to the norms of Reserve Bank of India prevailing at that time and the Bank Authorities had also acted in good faith in discharge of their duties and without negligence and the money was paid to the real claimant in reference to the cheques presented before the Bank and there was no fault on the part of the "Bank Authorities", therefore, no compensation in terms of the prayer made in the complaint of the respondent No. 1 was to be entertained. Since learned Ombudsman ignoring the real fact and point that the claim and complaint was presented before learned Ombudsman by a delay of two years even then learned Ombudsman has illegally exercised jurisdiction and has decided the claim of respondent No. 1 by the impugned order dated 22.11.2001.

5. Mr. K. Khan, learned Counsel for the respondent No. 1 on the other hand has submitted about two material aspects acknowledged by learned Ombudsman that a cheques for Rs. 72,750/- issued by UTI Bombay, during September 1996

in favour of Mr. Bibek Verma, was not received by him and on inquiry the UTI authorities had informed Mr. Bibek Verma/the respondent No. 1 that the cheques in question had fraudulently been encashed through an account opened in his name in the Bank of Baroda, Shillong. When the complainant himself along with his counsel contacted the Bank Authorities to know the real position they were not satisfied with their response, however the complainant was conveyed vide letter dated 10.10.98 (Annexure-3 to the writ petition) of Bank rejecting the claim of the respondent No. 1 and within a reasonable time of one year a complaint dated 12.2.1999 was sent by registered letter dated 5.2.1999 before the learned Ombudsman which was acknowledged by the Office of the learned Ombudsman vide letter dated 16.3.99 (Annexure-B to the Supplementary Counter Affidavit preferred on behalf of the respondent No. 1), According to the respondent No. 1, the complaint was preferred well within the time prescribed under Clause 16(3)(b) of Chapter-IV of "Scheme 1995".

6. For convenience, the relevant provisions of the Scheme are quoted herein below:

Chapter-III

Jurisdiction powers and duties of banking ombudsman

12. General - The Banking Ombudsman's powers and duties will be : (a) to receive complaints relating to the provision of banking services; (b) to consider such complaints and facilitate their satisfaction, or settlement by agreement, by making a recommendation, or Award in accordance with this Scheme.

13. Specific Ambit of Authority - As regards banking services, the Banking Ombudsman's authority will include:

(a) All complaints concerning deficiency in service such as:

(i) non-payment/inordinate delay in the payment or collection of cheques, drafts/bills, etc.

(ii) Non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;

(iii) Non-issue of drafts to customers and others ;

(iv) Non-adherence to prescribed working hours by branches ;

(v) Failure to honour guarantee/letter of credit commitments by banks;

(vi) Claims in respect of unauthorized or fraudulent withdrawals from deposit accounts, etc.

(vii) Complaints pertaining to the operations in a/c savings, current or any other account maintained with a bank, such as delays, non-credit proceeds to parties accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits;

(viii) Complaints from exporters in India such as delay in receipt of export proceeds, handling of export bills, collection of bills, etc., provided the said complaints pertain to the bank's operations in India; and

(ix) Complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank related matters;

(b) Complaints concerning loans and advances only in so far as they relate to--

(i) Non-observance of Reserve Bank Directives on interest rates ;

(ii) Delays in sanction/non-observance of prescribed time schedule for disposal of loan application; and

(iii) Non-observance of any other directions or instructions of the Reserve Bank as may be specified for this purpose, from time to time.

(c) Such other matters as may be specified by the Reserve Bank from time to time in this behalf.

14. Other powers and duties--(1) General Superintendence and Control.

The Banking Ombudsman shall exercise general superintendence and control over his office and shall be responsible for the conduct of business....

(2) Power to Incur Expenditure The Banking Ombudsman shall have power to incur expenditure on behalf of the office. In order to exercise the aforesaid power, the Banking Ombudsman will draw up an annual budget for his office in consultation with Reserve Bank. The Reserve Bank will indicate the shares to be borne by the concerned banks. The Banking Ombudsman shall exercise the powers of expenditure within the approved budget.

15. Annual report on functioning and working of the Banking Ombudsman's Office--

(1) The Banking Ombudsman shall send to the Governor, Reserve Bank, in My every year, a report containing a general review to the activities, of the Office of the Ombudsman during the preceding financial year, and shall furnish such other information as the Reserve Bank may direct.

(2) The Reserve Bank may, if it considers necessary in the public interest so to do, publish in such consolidated form or otherwise as it deems fit, the report and the information received from the Banking Ombudsman.

CHAPTER-IV

Procedure for Redressal of Grievance

16. Complaint -- (1) Any person who has a grievance against a bank, may himself or through an authorized representative make a complaint in writing to the Banking Ombudsman within whose jurisdiction the branch or office of the bank complained against is located.

(2) The complaint shall be in writing duly signed by the complainant or his authorized representative and shall state clearly the name and address of the complainant, the name and address of the branch or office of the bank against which the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Banking Ombudsman and a statement about the compliance of the conditions referred to in Sub-clause

(3) of this clause.

(3) No complaint to the Banking Ombudsman shall lie unless:

(a) The complainant had before making a complaint to the Banking Ombudsman made a written representation to the bank named in the complaint and either the bank had rejected the complaint or the complaint had not received any reply within a period of two months after the bank concerned received his representation or the complainant is not satisfied with the reply given to him by the bank.

(b) The complaint is made not later than one year after the bank had rejected the representation or sent its final reply on the representation of the complaint.

(c) The complaint is not in respect of the same subject-matter which was settled through the office of the Banking Ombudsman in any previous proceedings whether received from the same complainant or any one or more of the parties concerned with the subject-matter.

(d) The complaint is not the same subject-matter, for which any proceedings before any Court, Tribunal or Arbitrator or any other forum is pending or a decree or Award or order of dismissal has already been passed by any such Court, Tribunal, Arbitrator or forum.

(e) The complaint is not frivolous or vexatious in nature.

7. The learned Ombudsman has taken note of the pleadings and the rival contentions as well as documents and correspondences amongst the parties available on records and has observed that the complainant did not receive three cheques issued to him by the UTI as those cheques were sent to him from the UTI authorities to his Patna address but those were fraudulently encashed at the Bank of Baroda, Shillong, and when the complainant and his counsel approached the petitioner/Bank of Baroda, it was brought to the notice of the complainant that the account for these three pre-dated cheques was opened. The learned Ombudsman has also taken into consideration the statement of Shri O. Chakraborty, Senior Branch Manager of Bank of Baroda. During the course of examination of the records, the learned Ombudsman has also noted that petitioner/Bank of Baroda had allowed the introduction for opening the Account in the name of Mr. Bibek Verma, by an old account holder who had a nil balance in his ledger account on the relevant date and this aspect was treated as serious

lapse on the part of the Bank to accept introduction from such a person who had no balance in his credit for the last many months. Therefore, it was regarded a clear case that the person concerned offering introduction was not known to the Bank. It was also observed by the learned Ombudsman in the impugned order dated 22.11.2001 that the petitioner/Bank of Baroda could not ever produce proof of sending letter of thanks to the address of the newly opened account holder nor could produce any proof for obtaining secondary proof of the address of the account holder viz. copies of ration card, driving licence, electricity bill and telephone bill etc., as required by the guide-lines of the Reserve Bank of India. It was also observed that the Bank did not take any certificate on the body of the cheques that Bibek Verna is one and the same person in whose favour the cheques were issued. The Bank was also found to have opened an account with pre-dated cheques. It was specifically observed that the Bank of Baroda should have exercised much caution when huge amounts were withdrawn against this account within a period of seven days and the fault could have been avoided by the petitioner had the Bank marked the ledger folio "Care New Account". After appreciation of the documents and record, the learned Ombudsman had arrived at a finding that there was apparent lapse on the part of the Bank and after deliberation and adjudication of the matter, the learned Ombudsman has directed to make good of Rs. 72,750/- by means of an account payee draft incorporating the account number therein in the name of the complainant along with the interest from the date of deposit of the cheques of Bank of Baroda, Shillong, till the date of payment of the amount at the rate prevailing against the Bank's saving deposit at that time.

8. The learned Ombudsman also had given choice to the complainant as well as the bank authorities to have a discussion and also to resolve the controversy by mutual deliberation and discussion in order to avoid imposition of any penalty and the outcome of the discussion was to apprise of to the learned Ombudsman latest by 26th December, 2001. However, the parties had failed to resolve the issues amicably therefore, the learned Ombudsman have no option but to give a declaration directing for payment of amount and in the operative part of the impugned order dated 22.11.2001, the learned Ombudsman had very carefully observed as below:

The Bank, however, should make the necessary payment after obtaining indemnity bond signed by the complainant in favour of the Bank. The complainant should also give a declaration that he had not received in the meantime any money from UTI against the captioned cheques and in case he received any money against the encashed cheques at Bank of Baroda, Shillong issued by UTI he would remain obliged to return money to the Bank. A copy of this order should be marked to the UTI office, Mumbai as an utmost precaution to avoid any double payment. The complainant should send a certificate from his Bank about his address and account numbers as well as he can forward a copy of personal identification card such as the copies of voter identity card or ration card etc. to the Bank to establish his bonafide.

9. (i) Natural justice is a great humanizing principle intended to inquest law with fairness to secure ends of justice. The sole of natural justice is fair play in action in view of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , where the passport of the petitioner was impounded by the Government of India in "public interest", without affording an opportunity of hearing to the petitioner before taking the impugned action, therefore, the order was found to be violative of the principles of natural justice.

(ii) The principle of natural justice has to be considered in the context of the facts situation and in view of the scheme and the rules applicable in a particular case. If an employee remains absent for more than a stipulated period and stature rules or standing order provide for automatic termination of his services in such an eventuality, without holding inquiry or giving opportunity of being heard, observance of principles of natural justice is mandatory proposition. The Supreme Court has categorically held in a catena of decisions that a statutory rule is void if it stipulates for automatic termination of services of an absenting employee after expiry of a stipulated period [in the light of the decision in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, ; *Gujarat State Road Corporation and Anr. v. Mulu Antra* AIR 1994 SC114; *Scooters India Ltd. v. EV Eldred* (1998) 6 SCC; *Uptron India Limited Vs. Shammi Bhan and Another*, and *Scooters India Ltd. v. Mohammad Yaqub and Anr.* (2001) 1 SCC 61

(iii) It is well settled legal proposition that every action complained of is to be tested and analysed on the touchstone of doctrine of prejudice Major G.S. Sodhi Vs. Union of India (UOI), ; *State Bank of Patiala and others Vs. S.K. Sharma*, ; *S.K. Singh Vs. Central Bank of India and Others*, ; *Rajendra Singh v. State of M.P.* AIR 1966 SC 2736.

(iv) Just as principles of natural justice ensure fair decision where the function is quasijudicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative *Assistant Excise Commissioner and Others Vs. Issac Peter and Others*,

(v) The principles of natural justice as integral part of the guarantee of equality assured by Article 14 of the Constitution. *D.K. Yadav Vs. J.M.A. Industries Ltd., The State of West Bengal Vs. Anwar Ali Sarkar*, per majority, a seven Judge bench of the Supreme Court held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi* (supra) another bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14 [*D. K. Yadav* (supra)].

(vi) Strict adherence to rules of Natural Justice is essential while taking decision affecting rights of a person so observed in *Ram Chander Vs. Union of India (UOI) and Others*, "It is a fundamental rule of law that no decision is to be taken which will affect the rights of any person without first giving him an opportunity of

putting forward his case. Both the Privy Council as well as the Hon^{ble} Supreme Court have in a series of cases required the strict adherence to the rules of natural justice where a public authority or body has to deal with rights."

(vii) The observance of the rules of natural justice is not referable to the fatness of the stake but is essentially related to the demands in a given situation. It does not supplant but supplement the law, *Jain Exports (P) Ltd. and Another Vs. Union of India (UOI) and Others*,

(viii) A fair hearing must be given before taking decision affecting rights of any person as observed in *O.P. Gupta Vs. Union of India (UOI) and Others*,

It is a fundamental rule of law that no decision should be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. There is always "the duty to act judicially" wherever the rules of natural justice are applicable. There is, therefore, the insistence upon the requirement of a "fair hearing".

(ix) In *Mangilal Vs. State of Madhya Pradesh*, the Supreme Court while dealing a situation where the statute was silent about the observance of the principles of natural justice has held that such statutory silence implies requirement of compliance of principles of natural justice *moreso*, where substantial rights of parties are considerably affected. In view of *Mangila (supra)* the application of natural justice becomes presumption unless found excluded by express words of statute or necessary intendment.

(x) The requirement of "fairness" implies that even an administrative authority must not act arbitrarily or capriciously and must not come to a conclusion which is perverse or is such that no reasonable body of persons properly informed could arrive at; *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*,

(xi) Once the test of "fairness" is substituted for a "hearing" in this area of administrative decisions, it would follow that it cannot require that much of hearing when a person is charged with some offence or misconduct. Notice of the penalty sought to be imposed with an opportunity for making a representation and consideration of that representation in a fair and just manner, would suffice.

(xii) Where the administrative function is statutory the Court must read into the statute the requirement of fairness, which means the minimum principles of natural justice, *Union of India v. Nambudri* AIR 1991 SC 1261, paragraph 9.

(xiii) However, in *K.L. Tripathi Vs. State Bank of India and Others*, the Supreme Court has observed as under:

It is not possible to lay down rigid rules, as to when the principles of natural justice are to apply, nor as to their scope and extent...there must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirement of natural justice must

depend on the facts and circumstance of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with, and so on so forth.

10. The rules of natural justice were originally only two viz:

a. Audi alteram partem i.e., the person(s) to be affected by an order of the authority should be heard before the order passed, and

b. The rule against bias.

Subsequently, some more rules of natural justice are in the process of development e.g. that the administrative authority should give reasons for its decisions, particularly when the decisions affect the rights and liabilities of the citizens.

It must, however, be made clear that the rules of natural justice are flexible, and are not a straitjacket formula. In exceptional cases not only can they be modified but even excluded altogether. Natural justice is not an unruly horse. If fairness is shown, there can be no complaint of breach of natural justice. *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*,

11. As regard the rule audi alteram partem, up to 1964 the legal position in England was that in judicial and quasi-judicial proceedings opportunity of hearing had to be given, but it was not necessary to do so in administrative proceeding. This legal position changed in *Ridge v. Baldwin* (1963) 2 AllER 66 (EL) in which the House of Lords held that opportunity of hearing had to be given even in administrative proceedings if the administrative order would affect the rights and liabilities of the citizens. This view of the House of Lords was followed by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *State of Maharashtra v. Jalgaon Municipal Council* (2003) 9 SCC 73 wherein it was held that administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The expression "civil consequences" means where rights and liabilities are affected. Thus, before blacklisting a person he must be given a hearing, (1989) SCC 229 *Raghunath Thakur v. State of Bihar*.

12. It may be mentioned that a hearing need not always be an oral hearing. In certain circumstances, the Administrator can only issue a show cause notice to the party likely to be affected and on his/her reply can pass the decision without giving a personal hearing to the parties. However, in certain circumstances where the party may be very seriously affected the Courts have insisted that an oral hearing with opportunity of presenting witnesses and cross-examining the witnesses on the other side must be given.

Similarly, the principle that "no man should be a judge in his own cause" disqualifies an Administrator from giving a decision which affects the right and liabilities, if he is biased.

13. It may, however, be pointed out that in *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, the Supreme Court observed that the Minister or officer invested with the power to hear objections to a scheme is acting in his Official capacity and unless there is reliable evidence to show that he is actually biased, his decision will not be liable to be called in question merely because the objects to the government scheme are heard by the government itself or by its officers.

The requirement to give reasons in administrative decisions which affect rights and liabilities has been held to be mandatory by the Supreme Court in *S.N. Mukherjee Vs. Union of India*, . This reduces the chances of arbitrariness on the part of the authority, as the reasons recorded by him are subject to judicial scrutiny by the higher Courts or authorities.

14. I have heard the learned Counsel for the parties and have perused the documents. It appears the cheque of Rs. 72,750/- was issued by UTI Bombay in September, 1996 in the name of Mr. Bibek Verma at his Patna address which was fraudulently encashed by opening a Saving Bank account in the name of Bibek Verma in Bank of Baroda, Shillong, and in that respect Mr. Bibek Verma, (the respondent No. 1/the complainant) when approached to the Bank authorities he could not be satisfied with their response. The representation of the complaint was also declined on 10.10.98 and within a reasonable time of one year, the respondent No. 1/complainant preferred a complaint before the learned Ombudsman as required under the provisions of Clause 16(3)(b) of Chapter IV, of the Scheme 1995. The complaint dated 12.2.1999 was presented before the learned Ombudsman by registered letter dated 15.2.1999, which was duly acknowledged by the Office of the learned Ombudsman on 16.3.1999 and after hearing the complainant represented by Shri Amitabh Sohan, and on hearing Mr. O. Chakraborty, Senior Branch Manager, Bank of Baroda, Shillong, as representative of the petitioner as well as Mr. Ashish Dutta Roy, Manager (Service), Bank of Baroda, Regional Manager's Office, Guwahati, and after taking into consideration the entire record, the learned Ombudsman has passed an order dated 22.11.2001. The order has been passed in consonance to the Principles of "Natural Justice" after affording proper opportunities of hearing the parties and at no stage any point of maintainability was ever raised before the learned Ombudsman for and on behalf of the petitioner. Therefore, there was no question of illegality of any kind in the jurisdiction of learned Ombudsman as the complainant was duly represented before the learned Ombudsman in consonance to the provisions of the Scheme 1995.

15. After careful consideration the learned Ombudsman has passed the impugned order dated 22.11.2001 correctly as such order is not to be interfered with. This Court is not sitting as an appellate authority in reference to the impugned order. No specific points have been highlighted for and on behalf of the petitioner that any of the fundamental rights or any of the provisions of Article 14/19 of the Constitution has been violated, for which discretionary jurisdiction

under Article 226 of the Constitution could be exercised. In these circumstances, the present writ being devoid of merit is dismissed.