

(2001) 02 BOM CK 0112

In the Bombay High Court

Case No : Writ Petition No. 377 of 1995 along with Writ Petition No. 2062 of 1996

Bank of Baroda

APPELLANT

Vs

Virsen Santhram Pradhan and Another

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 21, 11(3)
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 2 ALLMR 645 : (2001) 2 BomCR 606 : (2001) 2 BOMLR 513 :
(2001) 90 FLR 401 : (2001) 2 LLJ 733

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Mr. S.K. Talsania, instructed by M/s. Pardiwala and Co. and Mr. C.U. Singh and Ms. Shobhana Gopal, for the Appellant;

Judgement

1. From the impugned award of the Industrial Tribunal in a pending Reference dated 28.9.1994 the present two writ petitions. Writ Petition No. 377 of 1995 has been filed by the Employer. It is contended therein, that Part-1 Award to the extent it has held that the denial of representation by lawyer to the workman vitiates the enquiry, is liable to be quashed and set aside.

2. Writ Petition No. 2062 of 1996 is by the workman contending that even if this Court comes to the conclusion if the findings based on which Part-1 of the Award is liable to be set aside for the reasons given in the order, nonetheless the findings on the other contentions which were raised before the Industrial Tribunal and answered against the workman are perverse. This must result in holding that the enquiry conducted was conducted against the principles of natural justice and fair play, as such the award as made is not liable to be set aside.

Whether a petition against a mere finding is maintainable is debatable. However, the Award is before this Court in a petition filed by the Employer invoking the extra ordinary jurisdiction, under Articles 226 and 227 of the Constitution of India. While considering the award it is open to the Court to consider its legality

and in the event the Court comes to the conclusion that the reason given for setting aside the award is unsustainable, yet the award can still be sustained, if the Court comes to the conclusion that the findings on the other issues raised before the Industrial Tribunal are perverse and those findings are liable to be reversed in favour of the workman.

3. With the above brief narration, I may now address myself to the issues arising in both the petitions. For the purpose of clarity and by agreement of counsel, the facts as set out in Writ Petition No. 2062 of 1996 filed by the workman will be considered for the purpose of discussing the Issues in controversy in both the petitions. Again for the sake of clarity and to avoid conflict, reference will be to workman and employer. Workman joined the service of the employer on 27.7.1972. Workman was suspended on 28.9.1985. By letter of 4.11.1985 workman sought reasons for his suspension. On 9.12.1985 the workman was served with the charge-sheet charging him as under :

(i) With having furnished false information regarding details of certain M.S.A. Borrowers: "

(ii) with having availed of L.T.A. amounts for the years 1981 to 1984 for his mother not dependent on him;

(iii) having earned regular income by engaging in milk business;

(iv) having allegedly sold his flat to one Mr. Patel without prior permission of the first respondent and without liquidating the outstanding house loan granted by the first respondent.

4. On 26.12.1985 workman by his letter requested the Enquiry Officer to direct the employer to furnish documents. On 15.1.1986, Workman filed a detailed reply to the charge-sheet. On 17.1.1986 Enquiry Officer requested the workman to approach the presenting officer for being furnished with the documents. On 21.1.1986 workman informed the Enquiry Officer that not a single document sought by him had been furnished. On 22.1.1986 Enquiry Officer informed the workman that he had directed the presenting officer to furnish the relevant documents. On 25.1.1986 the preliminary hearing of the enquiry against the workman was conducted. On 27.1.1986 workman wrote to the Disciplinary Authority to permit him to engage the services of an Advocate since presenting officer was legally trained. In the minutes recorded on July 28th, 1986 the Enquiry Officer has recorded that the P.O. has been advised to make the documents available which were sought by the workman. By letter of 11.2.1986 the Disciplinary Authority informed the workman that his request to be defended by lawyer was rejected as the case was simple though the charges were serious. Workman again by his letters dated 18.2.1986 and 21.2.1986 renewed request for documents. There was no reply to the same. On 17.3.1986 the enquiry commenced. On 29.3.1986 presenting officer by his letter to the Enquiry Officer furnished some of the documents sought for but did not furnish 8 other documents. The enquiry was concluded on the same day. On 11.8.1986 workman

informed the Enquiry Officer about the various infirmities in the inquiry. On 5.9.1986 after the conclusion of enquiry, the Enquiry Officer forwarded a copy of the rejoinder submitted by the presenting officer to the workman and along with it submitted additional documents which had not been produced or taken on record in the course of the enquiry. Workman by his letter of 24.9.1986 protested against the illegalities. On 5.10.1986 workman protested against the high handed attitude of the Enquiry Officer in not granting him time. On 7.10.1986 the Enquiry Officer held the petitioner guilty of four charges out of the six charges levelled.

The Disciplinary Authority deferred with some of the findings recorded by the Enquiry Officer and thereafter by letter of 14.8.1987, the workman was informed that the Disciplinary Authority had fixed the hearing on the proposed punishment on 24.8.1987"at 8.00 a.m. in his chamber. By the notice of the same date, the Disciplinary Authority informed the workman that he proposes to defer from the findings of the Enquiry Officer to the extent that Enquiry Officer has held the workman not guilty of some of the charges and contended that on the same evidence, the workman was also guilty of the charges of which he had been exonerated by the Enquiry Officer. The workman was called upon to show cause against the proposed punishment. Thereafter by order of 31.10.1987 the workman was dismissed from the services of the employer. Workman preferred appeal which was rejected by the Assistant General Manager on 9.5.1988. On the dispute being raised Reference being No. CJIT-2/49 of 1989 has been made. On 14.2.1990 workman filed statement of claim. On 16.5.1990 employer filed written statement. Thereafter evidence was led by the parties and then the impugned Award Part-1 came to be passed on 28.9.1994.

5. Insofar as Writ Petition No. 377 of 1995 is concerned, It is principally contented on behalf of the Employer that though the charges alleged were in respect of major misconducts on the part of the workman and they were of serious nature, nonetheless the charges were simple and as such the action of the employer refusing the workman the services of a lawyer could not be faulted. The Industrial Tribunal in holding that on failure by the employer to permit the workman the services of a lawyer the enquiry stood vitiated, discloses errors apparent on the face of the record and consequently the award is liable to be set aside. On the other hand on behalf of the workman the learned counsel contends that the charges levelled against the workman were of serious and grave nature which would result in imposing severe punishment on the workman as has been done in the present case. The Regulations provided for the employer to permit the workman to engage a lawyer in serious cases. In the instant case the employer himself is of the opinion the charges are serious. In these circumstances rejection of a lawyer was contrary to the regulations and consequently no interference is called for with Part-I Award of the Industrial Tribunal.

6. Clause 19.12 of the bipartite settlement governs representation by the

workman at a domestic enquiry and amongst others permits the workman with the bank's permission to be represented by a lawyer. In the instant case workman initially had sought permission on the ground that the presenting officer was a legally trained person and in these circumstances he ought to have been permitted the services of a lawyer. That was denied. Subsequently by another representation workman informed the employer that the charges were of serious nature and therefore atleast he should be allowed to be represented by a lawyer. However, he was not permitted the assistance of a lawyer. The question is whether in these circumstances the Industrial Tribunal was right in holding that the enquiry stood vitiated on the ground that the employer had exercised discretion arbitrarily and or based on extraneous reasons and consequently the enquiry was liable to be set aside for violation of the bipartite settlement. As pointed out earlier, in one of the charges, the misconduct alleged was that the workman had engaged in acts which amounted to fraud. This was based on the charge that the workman had carried out survey work of M.S.A. Borrowers to ensure that information given by the borrowers in their loan application were reliable and accurate and that the borrowers were doing their business/activities at the place of business as stated in the application forms. It was set out that the information conveyed was false and inaccurate and that applications of some fictitious and Impersonated borrowers were referred to M.S.A. Loan Committee for sanction. These are the allegations based on which it was alleged that the workman had indulged in acts of fraud. The other charges are in the matter of availing of leave concession, doing business and sale of flat. To defend those charges can it be said that the workman would require the services of a lawyer.

7. Before deciding the controversy. I may now address myself to the various judgments cited at the bar on behalf of the employer and workman to contend that the employer was right in rejecting the services of lawyer to the workman and on the other the contention of the workman that order of the Tribunal cannot be faulted when it found that employer acted arbitrarily in denying to the workman service of a lawyer. There is a catena of cases of law on the point including judgments on Clause 19, which regulates the condition of service between workman of a bank and the employer. The first judgment cited on behalf of the employer is the case of Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi,". In that case the workman at the domestic enquiry sought to engage the service of a person who was not provided or permitted by the standing orders. In that context the Apex Court held that unless the law so provides the delinquent workman had no right to the representative, counsel or agent. In Harinarayan Srivastava. United Commercial Bank & Anr., Clause 19 of the settlement which is involved in this case was in issue before the Apex Court. In that case also the bank had denied representation to the workman to engage service of a lawyer. The Apex Court observed as under :

"As per the Rule 19.12 of the bipartite settlement, the permission to defend himself with the assistance of the Advocate is one of the option to be given by the Bank. We have perused the charge-sheet in the enquiry now sought to be

proceeded against the petitioner. The allegations are very simple and they are not complicated. Under these circumstances, we do not think that the failure to permit the petitioner to engage an Advocate is violative of the principles of the natural Justice."

In *Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and Ors.*,³ That case involved the certification of standing orders of the Company. There also the Apex Court noted that the basic principle is that an employee has no right of representation in the departmental proceedings by any other person or lawyer unless the service rule specifically provided for the same. In *Cipla Ltd. and Ors. v. Ripu Daman Bhanot & Anr.*,⁴ Again the Issue was the right of the workman to engage the services of lawyer and at departmental enquiry. In that case the Court noted that the rules Indicated that the workman against whom the departmental proceedings had been initiated will be entitled to avail of the assistance of a co-representative of his choice in those proceedings. From the conspectus of these judgments, therefore what is clear is that the right to representation by a lawyer is available only In the event the rules, regulations or settlement so provide. Specifically insofar as Bank employees are concerned. It Is the bipartite settlement which governs the right of representation. In the case of *Harinarayan Srivastava (supra)* as held by the Apex Court the right of representation by lawyer would be In the event the charges are grave and of a complicated nature.

On the other hand on behalf of the workman it has been pointed out that once the charges alleged are grave and serious warranting major misconduct which would deny to the workman the right to his livelihood, the bank was duty bound to permit the workman the services of a lawyer. In *Sri Nilabja Das v. The Zonal Manager. Indian Bank & Ors.*, a Division Bench of the Calcutta High Court observed that if there are serious charges brought against the workman who is not very experienced in the service of the bank, as the workman feels difficulty in conducting his own case it would be only fair to permit the workman to engage the service of a lawyer. In *Antonio B. Furtado .v. Chairman & Managing Director. Bank of India, Bombay and Ors.*, a Division Bench of this Court, silting at Panaji. observed that when the charges are of a grave and serious nature which would result in effecting the reputation and livelihood of the workman, the services of a lawyer should be permitted. This was also considering the Clause 19 of bipartite settlement. *K. D. Anpat&Ors. v. State of Maharashtra & Ors.*,⁵ was a judgment insofar as engaging the service of a lawyer under the Bombay Police Manual. A learned single Judge held that the said rule was not an absolute prohibition to engage the services of a lawyer in the event the case is of a complicated nature or difficult or the person facing the charge is likely to be embarrassed. In *J. K. Aggarwal v. Haryana Seeds Development Corporation Ltd. & Ors.*, the issue before the Apex Court was whether in refusing permission to be defended by a lawyer the discretion was properly exercised. In that case the presenting officer was a person with legal attainment and experience as an administrative officer. The discretion exercised in refusing lawyer was set aside. The Court noted that

the rule itself recognises that when there were charges which are so serious as to entail the dismissal from the services, the enquiry authority may permit the service of a lawyer.

8. It is thus clear that unless the rules, regulations or settlement provide for the engagement of a lawyer, the workman cannot demand that he should be represented by a lawyer. It is further clear as per the law enunciated and declared by the Apex Court that where the charges are serious which the workman would not be in a position to defend at a domestic enquiry, then in terms of Clause 19 of the bipartite settlement the workman should be permitted to the services of a lawyer. However, if the charges are simple, in that event the bank would be right in denying to the workman the right to be defended by a lawyer. That would depend on the facts of each case. In the instant case I have perused the charges. Merely because the word fraud is used by itself would not lead to the conclusion that the charges though serious are complicated. In the instant case as I have already pointed out. the charges levelled are that the workman failed to give information about the identity of the borrowers, resulting in the bank disbursing loans to non-existing persons. It cannot be said in these circumstances that the workman could not have defended the charges as those would be based on records. Considering that, to my mind the Industrial Tribunal acted in excess of jurisdiction in interfering with the enquiry on that count. To that extent the finding is liable to be set aside. The question however remains whether the award on that count is liable to be set aside.

9. There Is a petition filed by the workman contending Chat the Industrial Tribunal failed to exercise Jurisdiction in not holding that the enquiry was vitiated on the following points :

(a) That crucial documents relevant for the workman's defence which were in the custody of the employer though directed by the Enquiry Officer to be made available, were not made available and consequently disabled the workman from proving that the charges were unsustainable and as such the enquiry was vitiated;

(b) That the Enquiry Officer in permitting the employer to produce additional documents which were not produced in the course of the enquiry acted without jurisdiction. The said documents which were not proved the workman was not given sufficient opportunity to meet the contents of those documents. Mere forwarding the said documents along with the rejoinder of the employer to the workman after the evidence was concluded would be no answer. The Industrial Tribunal failed to appreciate that this by itself would have vitiate the enquiry;

(c) The Enquiry Officer in terms of the settlement had to put to the workman the evidence gathered at the enquiry. This has not been done and consequently also the order is liable to be quashed and set aside;

(d) The Enquiry Officer and the Disciplinary Authority were two distinct persons. Once that be so, in the event the Disciplinary Authority wanted to defer from the

findings of the Enquiry Officer, the Disciplinary Authority ought to have given a fair opportunity to the workman to give his say as to why the reasons given by the Disciplinary Authority in reversing the findings of the Enquiry Officer cannot be supported. There was a denial to the effect. The Industrial Tribunal has failed to consider this aspect and on this ground also the Part-I award is liable to be set aside.

10. It is no doubt true that on behalf of the employer it is pointed out that the documents in respect of which the workman is complaining were either his own documents or document which were irrelevant and consequently no prejudice has been occasioned to the workman. Insofar as additional evidence is concerned, it is pointed out that though these documents were produced after the enquiry was concluded, nonetheless the Enquiry Officer gave an opportunity to the workman by sending the rejoinder along with the documents and therefore sufficient opportunity was given to the workman to meet the contents of the said documents. It is then contended that merely because the material was not produced at the enquiry, it would not vitiate the enquiry, unless the workman showed that serious prejudice had been occasioned to him. Insofar as the action of the Disciplinary Authority in differing from the findings of the Enquiry Officer, In respect of those charges which he deferred, the workman was given an opportunity and consequently there is no substance in the said contention.

11. The first question, therefore, that will have to be considered, is whether denial of the documents to the workman has prejudiced his case inasmuch as. he was not able to effectively defend the charges. In the instant case from the facts narrated earlier. It is clear that after the workman called on the Enquiry Officer for production of the documents, the Enquiry Officer directed the bank to make available the said documents. The minutes recorded by the Enquiry Officer on January 25, 1986 disclose that the Enquiry Officer directed the presenting officer to make available the documents. The workman all through out has been complaining that his case would be prejudiced if he was not given the said documents. By his reply to the charge-sheet on 11.8.1986 the workman has set out details about the steps taken by the bank to serve the addresses and the postal acknowledgment that were received. The workman had also complained that if the daily reports had been produced they would show that for the period from 1.1.1979 to 31.12.1981 the period wherein the workman was doing work loans were not advanced to fictitious persons. By not producing nor giving examination of the loan ledgers in respect of the six borrowers, which would have proved that those borrowers were existing and in fact depositing moneys, the workman was denied the opportunity of proving his defence. There was also allegation that the postal envelopes which were sought for were not produced. The area report sought for by the workman were also not produced. At the same time it was pointed out that Ex. MD 15 which were the documents which the employer had relied upon after the enquiry was concluded and not proved, were relied upon. Moreover the findings of the Enquiry Officer in respect of term loan Account No. 220423 of Mohamed Aziz Nazis Mohamed. loan Account No. 219798

of Mr. Mohamed Abdil Mohamed Yunus if produced would have shown that the findings were perverse. These are accounts relied upon by the Enquiry Officer to hold the petitioner guilty of the charges. Had those documents been produced before the Disciplinary Authority it would be clear from the list of documents sought for by the petitioner and which are clearly set out in paragraph 4E of the claim statement, that the petitioner was denied effective opportunity of meeting the case. The only answer given by the employer was that these documents were irrelevant and that some of the documents were privileged. From the material on record it is clear that the privilege claimed was in respect of the claims made by the bank to C.G.I.S. That could have been no ground to deny the other documents sought for even considering that the C.G.I.S. claims were privileged.

The other grievance which we find is of taking documents on record after the enquiry was completed. Will the mere fact that the Enquiry Officer made those document available along with rejoinder of the bank after evidence was completed, meet the requirements of natural justice. These documents were not produced at the enquiry. If these documents had been produced, the workman could have cross-examined the witness on the said documents. The said documents also were not produced through a witness. Whatever maybe the nature of the documents and even if the fact remains that on some of the documents the signatures of the workman himself was there, that by itself would not meet the requirement or the test of the principles of natural justice and fair play, as the employer was duty bound to prove these documents by producing them in evidence when the enquiry was being conducted. These are documents relied upon to hold the workman guilty of the charges.

With the above narration of facts, we may now consider the judgments cited at the bar both on behalf of petitioner and the respondents. In Committee of Management Kisan Degree College u. Shambhu Saran Pandey & Ors.,¹ documents were relied in support of the charge. In that case there were voluminous documents. The petitioner was denied inspection of the documents. The Apex Court held that this amounts to violation of the principles of natural justice and fair play. This is what the Apex Court says:

"At the enquiry. If the delinquent seeks support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at the request and cost of the delinquent."

In U. P. State Road Transport Corporation v. Muniruddin, the matter before the Apex Court arose out of the second appeal from the High Court. Carbon copies of the way bills documents were not made available. The contention of the workman was that if the way bills had been tampered with and the carbon copies would show and establish that there was no tampering. The carbon copies were not produced. The Apex Court held that the High Court in holding that enquiry was vitiated on failure to produce carbon copies did not act without jurisdiction. Kan Singh v. State Transport Appellate Tribunal and Ors., was on the issue of

permits and material produced before the R.T.A. In view of the direct Judgments insofar as domestic enquiries are concerned, I do not propose to consider the ratio of the said judgment.

On the other hand on behalf of the employer it was contended relying upon State of Tamil Nadu v. Thiru K. V. Perumal & Ors..³ that if the documents had been denied, it was incumbent on the workman to establish prejudice and show the relevancy thereof. In the instant case it is pointed out that the workman has not been able to show relevancy or prejudice which has been occasioned on the failure to produce the documents. In State Bank of Patiala & Ors. v. S. K. Sharma, in the matter of State Bank of Patiala (Officers'') Service Regulation, the Apex Court had again stated that in the case of violation of a procedural provision excepting in case falling under no notice, no opportunity and no hearing, the matter should be examined from the view of prejudice. In that case copies of some statements were not furnished. The Apex Court on the facts of that case held that no prejudice had been shown by the delinquent workman. In Chandrama Tewari v. Union of India,. The Apex Court noticed that failure to supply documents having no bearing on charges would not amount to violation of the principles of natural Justice and fair play. The ratio of 20th Century Fox Corporation (India) (P) Ltd. v. F. H. Lala and Ors.. really does not apply to a case of departmental enquiry, as that was in the matter of wage demand and the direction to the employer Company to produce some documents which it contended were not available to everybody. That was considering Section 113(b) and Rule 21 of the Rules framed and Order 11 of the C.P.C. From the above what emerges is that if the document sought for by the workman are irrelevant and or on the failure to supply the documents, the workman is unable to show prejudice has been occasioned, then the enquiry cannot be set aside on the ground that there is failure of the principles of natural justice and fair play.

12. In the instant case as noted above the documents on which the workman had relied were documents relevant to the enquiry and the charges sought to be established against him. These were in the possession of the employer alone. It was the contention of the workman that if those documents were produced it would show that the persons to whom loans were given, were not fictitious, as the loans were being operated and moneys deposited in the loan account. It was further the case that recommendations made by him would disclose whether he had observed that the loan should be granted or not. It is further in evidence that apart from the workman there were others who were operating in the area after he had been transferred from the said area. Not only that the employer was permitted to produce evidence after the evidence had been completed in support of one of the charges in respect of which the workman was not permitted to lead any additional evidence. It is no doubt true that the workman was sent copies of the said documents along with the rejoinder but that is no answer. Also the said document ought to have been taken on record by the Enquiry Officer only if they had been brought on record through a witness or by consent. It must be reminded that the workman was appearing in person at the enquiry. All this to

my mind has occasioned failure of justice, inasmuch as document not relied in the enquiry were later on allowed to be produced without an opportunity to the workman and relevant documents sought were denied though the Enquiry Officer had directed that they be given.

These points were urged before the Industrial Tribunal. However the Industrial Tribunal rejected the said contentions. In my opinion, the Industrial Tribunal acted without Jurisdiction in failing to hold that the enquiry was conducted in violation of principles of natural justice and fair play on account of failure to produce documents or taking documents on record not produced at the enquiry. The reasonings given by the Industrial Tribunal in paras 11 and 13 of its Part-I award therefore will have to be set aside.

Though the contention of the employer on the findings by the Industrial Tribunal insofar as representation by lawyer are liable to be set aside, nonetheless the Part-I Award for the reasons that I have held, that enquiry stands vitiated on account of failure to produce document and taking documents on record after the evidence was concluded will have to be ultimately upheld. In view of the findings on these aspects, I am now dealing with the other contentions raised by the workman. In the light of that, the following order :

ORDER

Writ Petition No. 377 of 1995 made partly absolute to the extent of the findings as now recorded.

Writ Petition No. 2062 of 1996 is also made partly absolute to the extent of the findings as now recorded.

The Award of the Industrial Tribunal is upheld. Rule absolute accordingly.

In view of that each party to bear their own costs. Considering that the reference was made to the Industrial Tribunal as far back as in 1989 the Industrial Tribunal is directed to dispose of the reference at any rate within nine months from today- Certified copy expedited.

Court Stenographer to give ordinary copy of this order to the parties.

All concerned parties and authorities to act on an ordinary copy of this order duly authenticated by the Sheristadar of this Court.