

(2006) 02 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18652 of 2001

Bhagwati Prasad

APPELLANT

Vs

U.P. Cooperative Land Development Bank Ltd. and Others

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 6 AWC 6451

Hon'ble Judges : Umeshwar Pandey, J;A.K. Yog, J

Bench : Division Bench

Advocate : Sanjeev K. Gupta, S.R. Singh and Indira Yadav, for the Appellant;
J.N. Tiwari, K.N. Mishra, Q.H. Siddiqui and Seema Shukla, for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and Umeshwar Pandey, JJ.—Bhagwati Prasad, the petitioner before us, has approached this Court by filing writ petition under Article 226 of the Constitution of India on the ground that he was appointed in the year 1976 and confirmed in November, 1986; he was suspended on certain charges in October 1996; charge-sheet was issued in August 1997; in defence petitioner submitted a detailed reply; Enquiry Officer submitted his report in November 1998; a show cause notice was issued to the petitioner in January 2000, petitioner submitted reply in April 2000, and again a written representation dated 8.8.2000; and finally he was dismissed from service vide impugned order dated March 30, 2001 (Annexure-15 to the petition). The respondents in spite of notice did not file counter affidavit.

2. Earlier this petition was shown in the cause list on 5.5.2003 and this Court decided aforesaid writ petition vide judgment and order dated 5.5.2003. The Bench, while considering the petition, found that none of the charges was proved and with respect to charge No. 2 the material relating to irregularity in disbursement of loan to the agriculturists, the authority had recorded his impressions disbelieving the petitioner without giving any reason of referring the

material on record. Besides it, this Court found that impugned order of dismissal dated March 30, 2001 (Annexure-15 to the writ petition), did not contain reasons and in absence of the same it did not reflect that concerned authority had applied its mind. For convenience we reproduce the relevant extract of our judgment and order dated 5.5.2003:

The enquiry report submitted by Regional Manager/Enquiry Officer dated 25.11.1998 (Annexure 7 to the writ petition) shows that he has not been found guilty of charge No. 1 pertaining to misappropriation of certain sums in lieu of loans extended to certain persons towards papaya seeds. Charge No. 3 is regarding exploitation and atrocities on Scheduled Caste/Scheduled Tribe persons and being guilty under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Charge No. 4 is regarding petitioner being involved in criminal cases. It may be noted here itself that petitioner has placed copy of the order dated May 1, 2002 passed by Special Judge SC/ST Act to show that the petitioner was discharged for the offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. With regard to charge No. 5 that petitioner while discharging his duties tarnished the image of the Bank. He has been found guilty and without any cogent reason. Charge No. 2 is regarding irregularity in disbursement of loan to agriculturists. Without discussing the material on record, the authority has recorded its impressions and disbelieved the defence without giving reasons. The Enquiry Officer, however, did not find the petitioner guilty of collusion in disbursement and mis-appropriation of money.

Over all enquiry report does not impress since there is no reference to the material on record or the evidence in possession of the employer for holding the petitioner guilty, even in part, of charge Nos. 2 and 5.

The impugned order dated March 30, 2001 (Annexure-15 to the writ petition) by means of which petitioner has been dismissed from service shows that it contains no discussion or reason and hence there is nothing to reflect that the concerned authority had actually applied its mind. It may be noted that the impugned order (from pages 75 to 77 except last two paragraphs) contains history and narration of facts of the case. The last but two paragraphs contains no discussion or reason. The last two paragraphs contains punishment. The entire impugned order shows that reasons are conspicuously absent.

In view of the above, it does not show that the authorities had actually applied their mind and it is not possible to find out as to on what basis and as to why the explanation submitted by the petitioner has not been accepted and on the other hand what is the matter on which the disciplinary authority has arrived at that conclusion. The impugned order dated March 30, 2001 is in nullity and hence cannot be sustained.

In the result, the impugned order dated 30.3.2001 (Annexure-15 to the writ petition) is hereby quashed with a direction to the respondents to pay

petitioner's monthly salary forthwith and shall also to continue paying his future salary in accordance with law. The petition stands allowed. There shall be no order as to costs.

3. The respondent Bank not being satisfied with the aforesaid judgment and order, filed SLP (C) No. 17655 of 2003, U.P. Cooperative Land Development Bank Ltd. v. Bhagwati Prasad and Ors. before Supreme Court which allowed the same (copy of the order is on record and attached with order-sheet). For convenience we reproduce the said judgment and order dated 18.2.2005 passed by the Supreme Court.

Heard petitioner's counsel and the counsel for the respondents. Counsel for the petitioner submits that the High Court disposed of the matter without hearing the petitioner's counsel. This fact is denied by the counsel referred for the respondents. However, the impugned order shows that the petitioner's counsel alone was heard. Counsel for the petitioner's bank was changed but the name of the new counsel was not found in the list because of some mistake which has crept in.

This matter relates to the disciplinary proceedings in respect of the respondents. Having regard to the facts and circumstances of the case, we set aside the impugned order passed by the High Court. The writ petition filed before the High Court would stand restored to the file and shall be considered afresh by the High Court. We request the High Court to dispose of the matter afresh in accordance with law. The counsel for the petitioner is directed to pay costs of Rs. 10,000/- to the respondent's counsel within four weeks from today. Accordingly, the SLP is disposed of.

4. In compliance of the aforesaid order, present petition has again been listed for hearing. When this writ petition was taken up for hearing, it transpired that the Vakalatnama filed by Sri Q.H. Siddiqui Advocate (of the Bank) had certain over-writing on date (vital in case) and some interpolations (in different ink with regard to counsel's signature and Enrolment Number). On the above, the learned Counsel, Shri K.N. Mishra Advocate, was required to produce paper book of SLP on record. In turn copy of synopsis of list and date-along with SLP paper book of the Supreme Court was placed on record. Relevant extract of the Date and Synopsis from the SLP paper-Book is quoted below:

08.04.2003 Sri Qazi Qamrul Hasan Siddiqui was appointed as new Counsel for the Bank and he filed his Vakalatnama. On behalf of the Bank he was also given necessary comments/instructions and also relevant documents to prepare and file counter affidavit on behalf of the Bank and also to appear and defend the Bank on all dates of hearing in the matter before the High Court.

Though the counter affidavit was prepared by the counsel for the Bank, the same could not be filed. In the counter affidavit it was clearly made out that the dismissal order was wholly correct and the writ petition filed by the respondent deserves to be dismissed.

05.05.2003 Writ petition was listed for final hearing on 5.5.2003. However, the name of the new counsel Shri Siddiqui for the Bank was not mentioned in the cause list and, therefore, the counsel missed the case and could not attend the Court when the matter was called up for hearing. True copy of the cause list dated 5.5.2003 is filed herewith and marked as Annexure P-14.

5. Interestingly a vague and passing reference is made - regarding filing of Vakalatnama. There is no categorical averment as to on what exact date said Vakalatnama was filed in the High Court Registry. The above back-ground, was naturally, to give rise to suspicion.

6. To probe, we passed order dated 18.11.2005 which is reproduced:

The application praying for condoning delay and accepting counter affidavit contain no reason/explanation worth the salt.

Learned Counsel for the contesting respondent referred to para 2 of this application, which reads "...took some time in preparing para-wise comments by consulting one table to another of the department.

Such an explanation made casually in a slip shod manner serve no purpose. Respondents have not stated as to when they had received notice of the pendency of writ petition by the concerned. Even the details of alleged processing the matter before filing of the counter affidavit has not been disclosed. Initially respondent No. 3 represented by Km. Seema Shukla, who had stated as per order-sheet dated 10.3.2003 that she was no longer the counsel of the said respondents and Court was pleased to direct for issuing notice to the respondents which was sent to them on 22.3.2003. One Sri Q.H. Siddiqui, Advocate, had filed his Vakalatnama on 18.3.2003 (but Vakalatnama signed by witnesses on 28.3.2003 as per endorsement on the top of the extreme left side of the Vakialatnama dated 5.5.2003). The said Vakalatnama has been signed by Surendra, Managing Director, U.P. Cooperative Land Development Bank, Lucknow.

Normally it is expected that counter affidavit should have been filed by Km. Seema Shukla, Advocate and/or Sri Q.H. Siddiqui, Advocate as required under Chapter XXII Rule 4, Rules of Court (as amended upto date). Relevant extract of which reads:

...Unless otherwise ordered, the counter affidavit shall be filed not more than three weeks after the service of notice and the rejoinder thereto shall be filed not more than two weeks after the service of the copy of such counter-affidavit on the applicant.

We also note that no interim order was granted to the petitioner, who had approached this Court being aggrieved against impugned order dated 30.3.2001 by means of which he was dismissed from service of the respondent bank. Delay in hearing of the case apparently was to the advantage of the bank. We do not appreciate this kind of litigation at the instance of the respondent, which is a bank since it amounts to abuse of process of court and undue harassment of its

employee/petitioner.

Delay in filing counter affidavit is, however, allowed in the interest of justice subject, however, to the payment of cost Rs. 2,500/- (Rupees Two thousand Five hundred only) to the petitioner.

Since writ petition is already listed for hearing before the bench nominated by Hon"ble the Chief Justice/Senior Judge, we proceed to decide the case particularly in view of the fact no objection has been filed by the petitioner against the said application for condoning delay in filing of counter affidavit and also the rejoinder affidavit in reply to the counter of the contesting respondents has also been filed.

7. In pursuance to our aforementioned order "enquiry" is conducted by the Registry and "enquiry report" along with endorsement of Registrar General dated 23.11.2005 is before us. Sri Alok Kumar Mukherjee, O.S.D. (Classification), in the said report, observed:

In the light of the aforementioned reports it is concluded that the impugned Vakalatnama of Sri Q.H. Siddiqui had neither been filed nor ever received by the Computer Section, Misc. Application Section or concerned Judicial Sections....

8. This shows that Vakalatnama was got inserted in the file of this case by an interesting party, with the help of some clerk/official in the Registry.

9. Sri J.N. Tiwari, Senior Advocate has appearing with Sri K.N. Misra Advocate stated that Vakalatnama in question was signed by the Managing Director of the Bank on 28.3.2003 and dispatched from Lucknow to Allahabad by registered post to the concerned Advocate on 8.4.2003; the Bank official came to Allahabad and collected relevant record/file from the office of earlier counsel Sri J.N. Verma Advocate (since deceased) and handed over the file to Sri Q.H. Siddiqui Advocate on 24.4.2003; Sri Q.H. Siddiqui Advocate had prepared and sent counter affidavit to the Bank on May 20, 2003 (i.e. when writ petition was already decided), which was received by the Bank in May, 2003 and the bank finally collected the file from the said counsel on 26.6,2003 to file SLP in Supreme Court.

10. From aforesaid facts given by Sri J.N. Tiwari, Senior advocate, during arguments, it is clear that even though the Managing Director and witnesses signed the said Vakalatnama in question on 28.3.2003 (as noted above), but it could not be signed on 18.03.2003 by Sri Q.H. Siddiqui, Advocate, as is reflected from the said Vakalatnama on record, as it was admittedly dispatched by Registered Post from Lucknow to Allahabad on 8.4.2003 only. Our order dated 18.11.2005 shows that figure 3 (denoting month) has been over-written by figure 4 which reconciles with the date of dispatch by Registered Post. These attending circumstances show that all was not well on record and that the Bank/respondent has not acted fairly in depicting the facts in its synopsis before the Supreme Court. It is clear that the Bank was fully conscious of the fact that Sri Q.H. Siddiqui could not be appointed as Advocate on 8.4.2003 as resigned the

Vakalatnama on 18.04.2003 and the same could not be filed by him as shown in the "Date & Synopsis" before Supreme Court. It is clear that the Bank got the Vakalatnama inserted in the record of the case after 05.05.2003 (when writ petition was listed and decided earlier). The Bank deliberately in collusion with the Registry or the counsel attempted to create evidence and also withheld correct facts from the Supreme Court. It is clear that Sri Siddiqui had not filed Vakalatnama (as alleged), on 08.04.2003 or 05.05.2003 and that it has been inserted thereafter, i.e. After preparing counter affidavit on 22nd May, 2003 (S.L.P. was filed in August, 2003). Such a conduct cannot be appreciated nor approved. The other aspect is as to why the Bank did not move an application before this Court for recalling of the order dated 5.5.2003 - as is the usual practice? This is regarding the conduct of the respondent Bank.

11. The Supreme Court set aside judgment and order dated 5.5.2003 on the ground that name of counsel was not printed in cause list (on false representation by the Bank). High Court is also required to dispose of the matter afresh. Before dealing with merit of the case, we may record that the Bank has submitted Bank Drafts No. 888462 and 888463 in favour of Bhagwati Prasad (both dated 23.11.2005) drawn on State Bank of India, Auraiya, for Rs. 4,75,422/- and Rs. 2,500/- respectively (in compliance of the Court order dated 18.11.2005). Bank counsel has also placed original letter dated 23.11.2005 to show that Income Tax (Rs. 1,00,910/-) has been deducted at source. Contents of the letter are- quoted:

^ ^ Jh Hkxorh izlkn] lgk;d QhYM vkQhlj lsokP;qr ds ns;ksa dk Hkqxrku Hkxorh izlkn dks fuyEcu vof/k fnukad%& 08-10-1996 ls 29-03-2001 rd ds thou fuokgZ HkRrk rFkk vU; ns;ksa dk Hkqxrku lacn~/k LFkku {ks=h; dk;kZy;} dkuiqj ls ekfld vk/kkj ij fd;k x;k A ekuuh; mPp U;k;ky; bykgkckn ds varfje vkns"k fnukad%& 18-11-2005 ds vuqlkj bUgsa mDr vof/k ds varj dh /kujkf"k dk Hkqxrku djus ds vykok lsokP;qr fd;s tkus dh frfFk fnukad%& 30-03-2001 ls 18-11-2005 rd ds iw.kZ osru o HkRrksa dk Hkqxrku fd;k tk jgk gS] ftlesa ls vk;dj dh /kujkf"k :i;s 1]00]910@& dh dVKSrh dj yh x;h gSA

ekuuh; mPp U;k;ky; ds vkns"kkuqlkj 12 izfr"kr C;kt dh x.kuk izR;sd foRrh; o"kZ dh vafre frfFk dks vk/kkj ekudj dh x;h gSA blds vfrfjDr :i;s&2]500@& isukYVh dh /kujkf"k ds :i esa vyx ls tksM+ fn;k x;k gSA

le;kHkko ds dkj.k Hkqxrku dh tkus okyh /kujkf"k vufUre gS D;ksa fd iape osrueku ds vuqlkj buds osru dk fu/kkZj.k fd;k tkuk vo"ks"k gSA fooj.k fuEuor~ gS%&

dqy ns; /kujkf"k dqy osru & 4]73]011-67 tksfM+;s& vUrfje lgk;rk & 44]985-48 tksfM+;s&dqy ns; C;kt & 1]45]166-48 &&&&&&&&& ;ksx&v 6]63]163-15 &&&&&&&&&

dqy dVKSfr;kW deZpkjh Hkfo"; fuf/k & 75]346-00 tksfM+;s&lkewfgd chek ;kstuk & 8]720-00 tksfM+;s&deZpkjh dY;k.k dks"k & 2]765-00 tksfM+;s&vk;dj dVKSrh & 1]00]910-00 &&&&&&&&& ;ksx&c 1]87]741-00 &&&&&&&&&

(Ashok Kumar Dwivedi) D.G.M. (A/c's) U.P. Sahkari Gram Vikas Bank Ltd. H.O.,
LUCKNOW.

These aforesaid Bank Drafts are being handed over to the learned Counsel representing the petitioner.

12. As directed by the Supreme Court we have again heard the counsel for the parties and perused the record.

13. Learned Counsel for the petitioner submitted that the impugned order dated 30.3.2001 is not a speaking order and it shows complete non-application of mind. It does not disclose as to why the evidence/ material filed by the defence/ employee has not been accepted. According to him the impugned order does not reflect as to what weighed with the authority in question for rejecting his defence.

14. The Apex Court and this Court have time and again emphasized upon recording of reasons which are necessary to show that the authority/Court, whose order is under challenge, has in fact consciously applied its mind and so also to indicate the "process" of mind which resulted in accepting or rejecting contentions of either of the parties before it.

15. Here itself we may point out that while this Court had passed earlier judgment dated 5.5.2003, this was the main ground for allowing the writ petition. The learned Counsel for the Bank placed copy of the SLP and it is interesting to find that there is no ground to challenge said reasoning in the judgment of this Court. In other words, the Bank failed to assail the said ground contained in High Court judgment and order dated 05.05.2003. We have again endeavored to look for the reasons, but find none.

16. The learned Counsel for the respondents, however, attempted to place enquiry report and other material, copies of which have been annexed as part of their counter affidavit to justify the conclusion of dismissal order.

17. We are afraid that this is not permissible. The reasons required to be recorded by the concerned authority cannot be supplemented by referring to the affidavit or its Annexures. Reasons must appear in the order itself.

18. We have no hesitation to hold that the impugned order dated 30.3.2001 suffers from manifest error apparent on face of the record.

19. Before parting with the case, it is to be noted that the report submitted by Regional Manager/Enquiry Officer dated 25.11.1998 (Annexure 7 to the writ petition) itself shows that petitioner was not found guilty of charge No. 1 pertaining to misappropriation of certain sums in lieu of loans extended to certain persons towards Papaya seeds. Similar is the position with regard to Charge No. 3 regarding exploitation and atrocities on the persons belonging to Scheduled Caste/Scheduled Tribes as the petitioner was not found guilty of any offence committed under the provisions of Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989. Charge No. 4 is regarding involvement of petitioner in criminal cases. It is to be noted that as per copy of the order dated May 1, 2002 passed by Special Judge SC/ST Act (brought on record by the petitioner), the petitioner was discharged of the alleged offence. With respect to charge No. 2 regarding irregularities in disbursement of loan to agriculturists. The concerned authority disbelieved the defence without giving reasons or even referring to the defence offered by the delinquent employee. Even the impugned order shows that the authority had recorded its impressions and not confirmed reasons to reach to that impression/conclusion. The Enquiry Officer found the petitioner guilty of collusion in disbursement or misappropriation of money. The enquiry report as such does not carry much force and fail to impress as there is no reference to the material on record for holding the petitioner guilty with reference to wholly or partly with reference to charges No. 2 and 5.

20. In the last, Sri J.N. Tiwari, Senior Advocate submitted that in case of dismissal the impugned order being quashed by this Court Bank be given opportunity to pass fresh orders. Having given serious consideration to the said contention, we do not, in the attending facts and circumstances of the present case where that the petitioner was suspended in the year 1996 no charge worth any gravity as per Enquiry report (noted above) was made out and also that the Bank has not approached Court with clean hands since it misrepresented facts before the Supreme Court, should not be harassed further.

21. A further submission is made that considering the nature of charges the petitioner should not be reinstated or continue in service of the Bank, since services of Bank depends upon confidence and trust in its employee. We find no force in the submission and also fail to appreciate the said contention in the facts and circumstances of the present case - particularly the findings recorded in the enquiry report which shows that the petitioner was unnecessarily implicated in several charges which were not found proved.

22. Impugned order dated 30.3.2001 (Annexure-1 to writ petition) is quashed and respondents are directed to treat the petitioner in service without break with all consequential benefits etc.

23. The petition stands allowed with costs, quantified at Rs. 10,000/-