

(1996) 11 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 15306-307 of 1987

Karnataka Central Cooperative Bank Ltd., Dharward

APPELLANT

Vs

R.H. Gudagnur and others

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33 (2) (b)
Penal Code, 1860 (IPC) — Section 408

Citation : (1997) 2 LLJ 560

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; M.C. Narasimhan, for the Respondent

Judgement

1. Petitioner, Karnataka Central Cooperative Bank Ltd., Dharwad, in this petition filed under Arts. 226/227 of the Constitution of India, has called in attention the order of the Industrial Tribunal, Hubli, dated April 30, 1987 (Annexure-P) and July 17, 1987 (Annexure-A) in Serial Application Nos. 10 and 11/86, holding that the domestic enquiry held against the respondents is not legal and fair and rejecting their applications seeking approval of order of dismissal of the respondents dated September 22, 1986 under Sec. 33(2)(b) of the Industrial Disputes Act, 1947.

2. Brief facts are, Respondents-1 and 2 were working under the petitioner-Bank as Junior Bank Inspector and Assistant Manager respectively and they were deputed to work in the Taluk Agricultural Co-operative Marketing Society (TAPCMS) with effect from February 1, 1973 and March 24, 1973 respectively. It is stated in the petition that during their services under the establishment of TAPCMS, respondents were involved in series of misconduct such as misappropriation and falsification of accounts etc. The Government Auditors who investigated and inspected the accounts of TAPCMS referred the matter to the Government and the Bank. A criminal complaint had been lodged under Sec. 408

IPC on the basis of the Auditor's report. The complaint was investigated by I.M.F.C., Ron, who found respondents-officials of the Bank guilty and convicted them. The respondents have filed appeals before the Sessions Court against the orders of conviction passed by J.M.F.C., Ron and the matter is pending consideration before the Sessions Court.

3. After the Judgment by J.M.F.C., Ron, the petitioner Bank, by its Resolution dated May 27, 1986 resolved to take action against the respondents. Pursuant to such Resolution respondents were kept under suspension by an order dated August 7, 1985 and a show cause notice was also issued proposing to take disciplinary action against the respondents and they were asked to offer their explanation by way of defence within the time stipulated in the notice. Respondents submitted their explanation to the said show cause notice. The Enquiry Officer who was appointed to inquire into the charges in the show cause notice after an enquiry submitted his report, findings and records of the enquiry proceedings to disciplinary authority. In to his findings, the Enquiry Officer found respondents guilty of the offences charged and recommended the dismissal of the respondents from the services of the petitioner-Bank. The management of the petitioner-Bank accepted the is finding of the Enquiry Officer and by their order dated September 22, 1986, dismissed the respondents from the service of the Bank.

4. Subsequently, petitioner-Bank made an to application to Additional Industrial Tribunal, Hubli, under Sec. 33(2)(b) of the I.D. Act, 1947, seeking approval of the order of dismissal of respondents dated September 22, 1986. On such application by the Management, the Industrial Tribunal issued notice of the said application to the respondents. The respondents resisted the application-containing there, in the management is charge sheet as per issued, that the proper enquiry has not been conducted and the Enquiry Officer had not given them the proper opportunity and has violated the rules of natural justice and further the findings of the Enquiry is Officer are perverse and are not legal.

5. The Tribunal had considered initially whether the domestic enquiry held was fair and legal as a preliminary issue. By its order dated April 30, 1987 the Tribunal has held that the domestic enquiry held against the respondents is neither legal nor fair. Consequently, the petitioner-Bank, was called upon to lead evidence by the Tribunal in support of the action taken by them. The petitioner-Bank had examined Enquiry Officer Sri G. B. Siddaveeranna as MW-1 and had got marked nearly 18 documents Ex. M-1 to M-18. As against this respondents delinquents did not lead any evidence. However, they have cross-examined the only witness produced by the Management. After closing of evidence the Industrial Tribunal has framed the following points for consideration. They are :

- a) Whether the delinquents-opposite party are the workmen within the meaning of the word defined under Sec. 2(3) of the I.D. Act, 1947 ?
- b) If so, whether the applicant-Bank is entitled to the approval of the action

taken against the delinquents-opposite party in that behalf ?

6. The Tribunal in its order has held the first issue in favour of applicant Bank by holding that the respondents are workmen as defined u/s 2(3) of the I.D. Act. However, on the second issue " the Tribunal has held against the petitioner-Bank.

7. The Tribunal in its order dated April 30, 1987 on a preliminary issue has held that the procedure adopted by the Enquiry Officer is not proper and correct and that the charge sheet issued by the Deputy General Manager is not by a competent authority and further has held that the Enquiry Officer has cross-examined the respondents-delinquents by recording the questions and answers during the enquiry. The Tribunal in its order dated July 17, 1987 has more or less reiterated the reasons for rejection of the application for approval filed under S. 33(2)(b) of the I.D. Act by the petitioner-Bank. The Tribunal in its order has held that the Enquiry Officer is not competent to issue the charge memo. That Rule 6 of the Service Rules framed under Bye-law 27 of the Bank envisages that the Board of Directors shall be the competent authority to execute rules; provided that if the Board of Directors delegates its authority to execute all or any of the rules to the Executive Committee or to a Sub-Committee or to the President, then the Executive Committee or the Sub-Committee or the President, as the case may be, is the Competent Authority to execute such rules. Since the Deputy General Manager was not authorised under the Rules, he could not have issued the charge memo for initiating proceedings for domestic enquiry.

8. The Tribunal is also of the view that since the order of conviction recorded by J.M.F.C., Ron is made subject to the scrutiny of the Sessions Court in Appeals, it is too premature to hold that the delinquents are guilty of offence and misappropriation of funds of TAPCMS.

9. In the petition, petitioner asserts that the domestic enquiry that was held was not only fair but proper and that the Enquiry Officer has issued a show cause notice containing charges and the respondents-delinquents had offered their explanation to the said notice. After considering such objections, and the evidence according to the petitioner-Bank, the respondents were dismissed from the services of the Bank. Petitioner-Bank has also contended that the Enquiry Officer was competent under Rule 6 of the Service Rules framed under Bye-law 27 of the petitioner-Bank to frame and issue charge memo. They also contend that the scope of the Tribunal under S. 33(2)(b) of the Act is very much limited and the Court has to be prima facie satisfied that there was an enquiry against delinquent and that there was prima facie proof of the charge against the delinquent and since the J.M.F.C., Ron had already convicted respondents-delinquents of the offences for which they were charged, Tribunal should not have held that the domestic enquiry is either bad or illegal. Ultimately, they contend that the respondents having participated in the domestic enquiry proceedings conducted by the Enquiry Officer, the assertion of the respondents about the competence of the Enquiry Officer issuing the charge memo pales into insignificance. Therefore, it is contended that the order of the Additional

Industrial Tribunal, Hubli requires to be interfered with by this Court.

10. Respondents are served with notice of the writ petition filed by the petitioner-Bank. They resist the relief sought for in the writ petition through their learned counsel. However, they have chosen not to file their statement of objections.

11. Sri B. C. Prabhakar, learned counsel for petitioner-Bank while reiterating the grounds urged in the petition strenuously contends that the impugned order of the Tribunal is wholly bad, illegal, invalid and inoperative since the same is opposed to the rulings of this Court as well as the law laid down by Supreme Court; in that he contends that the reasoning of the Presiding Officer of the Industrial Tribunal that just because respondents-delinquents have preferred appeals against the order of conviction passed by J.M.F.C., Ron, before the Sessions Court and just because Sessions Court has granted an interim order of stay of conviction, to hold the respondents-delinquents guilty of offence of defalcation of accounts and misappropriation of funds of TAPCMS is premature, is opposed to law laid down by Supreme Court in the case of Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, . That the finding of the Tribunal that the charge memo issued by an incompetent person is also opposed to Rule 6 of the Service Rules framed under bye law 27 of the Bank and also ruling of this Court in Indian Aluminium Company's case 1991 I LLJ 594 (Kant).

12. Per contra Sri. M. C. Narasimhan, the learned Senior Counsel appearing for the contesting respondents at the outset would submit that the orders made by the Industrial Tribunal is justified and in that he would submit that since the order of dismissal passed by the Management was solely depending on the order of conviction passed by learned J.M.F.C. which has been stayed by Sessions Court, in the appeal, preferred by the delinquents, the Tribunal was correct when it observed it was too premature to hold that the delinquents are guilty of defalcation of accounts and misappropriation of funds of TAPCMS.

13. Having heard the learned counsel for the parties to the lis and having given my anxious consideration to the issues involved, in my view, the orders passed by the Industrial Tribunal requires to be interfered by this Court, since the order of the Tribunal suffers from error apparent on the face of the record and the error is an error of law not an error of fact.

14. The scope of enquiry under Sec. 33(2)(b) of the I.D. Act is well settled now. Explaining the scope of enquiry under the aforesaid provision, the Supreme Court in the case of Unni Packer was pleased to observe as under :

"In the case of a misconduct which is not concerned with the pending industrial dispute, the order of discharge or dismissal is subject only to the approval of the Tribunal. The Tribunal in such a case has to consider whether a prima facie case has been made out by the employees for the dismissal or discharge or whether the order is perverse one. If the enquiry has been held in a proper manner and if it does not appear that the order of dismissal or discharge is an act of

victimisation or an act of unfair labour practice or that it appears that the employee came to a bonafide conclusion regarding the guilt of the workman in regard to the misconduct, the Tribunal has to limit its enquiry only to the question whether prima facie case has been made out or not. At that, it is not open to the Tribunal to consider whether the order passed by the employer is proper or adequate or whether it is based on sufficient or satisfactory evidence or whether the punishment imposed is severe or harsh. If it is found that there has been any defect in the enquiry either because of violation of any Standing Orders or because of violation of principles of natural justice, the Tribunal will have to give an opportunity to the employer to produce evidence and the workman concerned to rebut it. In such a case, it is open to the Tribunal to arrive at its own conclusion on the merits on the basis of the evidence adduced before it regarding proof of the alleged misconduct. If it is found that there is no defect in the enquiry as stated above, the Tribunal has to find if the order passed by the employer amounts to an act of victimisation. The Tribunal has to see if the workman has been made victim or scape goat for no real fault of his own. Of course if his guilt has been actually established that will contradict a case of victimisation. If the Tribunal finds that the order is not an act of victimisation or unfair labour practice, it has to grant approval sought for after verifying whether one month's wages has been paid to the employee concerned. It is also open to the Tribunal to see whether the conclusion in the domestic enquiry regarding guilt of the workman is a perverse one. The Tribunal has to see if there has been no legal evidence adduced in the domestic enquiry or whether the evidence adduced is such that no reasonable person could have arrived at the conclusion of guilt. If the Tribunal finds so, it cannot grant approval on the other hand if the conclusion is found not to be perverse, the Tribunal cannot go into the question of adequacy or efficacy of the evidence adduced in the course of the enquiry to sustain the conclusion arrived at by the employer."

15. The provisions of Section 33(2)(b) of the I.D. Act requires that during the pendency of any proceedings before the Labour Court or Tribunal etc., in respect of industrial dispute the employer may for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise any workman provided that no workman shall be discharged or dismissed unless he has been paid wages for one month and the application has been made by the employee to the authority before which the proceeding is pending for approval of the action take by the employer. For 3 deciding the question of approval the Industrial Tribunal has to find out whether there has been fair and proper enquiry and whether prima facie case has been made out or not, the Tribunal has naturally has to go into the evidence as adduced before the Enquiry Officer and also as recorded by the Tribunal itself and if the other conditions prescribed under the provision are satisfied, the Tribunal would grant the approval which would relate back to the date from which the date employer has ordered dismissal. If however the domestic enquiry suffers from any defect or infirmity, the Tribunal will have to find out on its own assessment on evidence adduced before it, whether there

was justification for dismissal and if it so finds, it will grant approval of the order of dismissal which will relate back to the date when the order was passed, otherwise refuse to grant the approval of the application.

16. Now coming back to the facts, the petitioner management after passing the order of dismissal from the service of respondents made necessary application under Sec. 33(2)(b) of the Act before the Industrial Tribunal, Hubli for approval of its action as required under the I.D. Act. Since an industrial dispute was pending before Industrial Tribunal in I.D. No. 19/1984, on such application being filed by the management, the Tribunal taking cognizance of the application issued notice to the respondents. In the counter statement, respondents requested the Tribunal to reject the application mainly on the ground that against the order of conviction passed by J.M.F.C., Ron the appeals are pending before the Sessions Court and there is also an order of suspension of the conviction. Based on the pleadings filed by the parties to the lis, the Tribunal as a preliminary issue considered whether the domestic enquiry held by the petitioner management is fair and legal. On the materials available and based on the records of the Enquiry Officer, the Tribunal being of the view that the inquiry proceedings initiated by issuing a charge memo by an incompetent person is opposed to Rule 6 of the Service Rules framed under Bye law 27 of the Bank and further since the Enquiry Officer had cross-examined the respondents by recording questions and answers, and since no evidence was produced in support of its finding that the domestic enquiry that was held by the management was neither fair nor proper proceeded to hold the preliminary issue against the management.

17. After this preliminary stage, the Tribunal permitted the management to adduce evidence in support of its action in dismissing the respondents. The Management merely examined the Enquiry Officer and got marked several documents through him. Though respondents cross-examined the Enquiry Officer, but they chose not to lead any evidence before the Tribunal.

18. The Tribunal based on the evidence adduced by the management rejected the application filed by the petitioner-Management on two counts. They are, since the Sessions Court has granted an interim stay of the order of conviction passed by J.M.F.C., Ron it is too premature to hold that the delinquents are guilty of offences of defalcation of accounts and misappropriation of funds of T.A.P.C.M.S. Secondly that the charge memos have been issued by incompetent Officer and that would invalidate the disciplinary enquiry proceedings.

19. In my view, the Tribunal was wholly in error of law on all counts. The enquiry that was initiated by the petitioner-Management in my view not on mere conviction of respondents by JMFC., Ron. It was the conduct which lead to their conviction was the subject matter of enquiry proceedings. While completing the domestic enquiry proceedings, a charge sheet had been issued by the Management through its Enquiry Officer. This has been faulted by the Tribunal. According to the Tribunal, charge memos have been issued by an incompetent

officer and that person had not been properly delegated with authority. Therefore, where the enquiry had taken place on a charge memo issued by an incompetent person, it would invalidate the disciplinary law declared by this Court in the case of *S.Nagaiah v. Management of Indian Aluminium Co. Ltd.*, (Supra). In that case, charge memo as a precursor to the domestic enquiry proceedings had been issued by the General Production Superintendent to inquire into certain misconduct said to have been committed by one Sri Nagaiah-Workman in the Indian Aluminium Co. Ltd. A contention had been raised that the charge memos had been issued by an incompetent person and in view of that, enquiry could not have been held and the ultimate order of dismissal cannot prevail. Negating the said contention a Bench of this Court was pleased to observe as under :

"20. To our mind it appears that the matter has to be looked at in a proper perspective. Has the workman suffered any prejudice ? Was he in a position to understand the nature and the scope of the charges ? Was he in a position to meet the charges and therefore was he in a position to furnish a proper explanation ? If these are answered in the affirmative, we do not know how it could be contended as is urged by the learned counsel Mr. Rao for the workman that the initiation of the disciplinary proceedings is bad. We should also state at this juncture that the disciplinary enquiry is only for the purpose of establishing the guilt of a particular workman or the delinquent Officer as the case may be. Beyond that there is no logic in stating that the charge memo must be issued by the Competent Officer. There is no question of any competent Officer issuing a charge memo. In this case even the Certified Standing Order 23(d) merely talks of the ultimate order being passed by the General Works Manager. It cannot be contended that the initiation of the disciplinary enquiry leads on ultimately to the order of dismissal and where therefore the foundation has not been properly laid the edifice cannot remain. This argument does not appeal to us for the simple reason that initiation is one thing and the ultimate dismissal is another, though they are part of the same proceedings. It may also be recalled that before Article 311 of the Constitution came to be amended by the 42nd amendment it was thought a domestic enquiry would consist of two parts, namely, issue of charge memorandum and the findings constituting one stage and the issue of second show cause notice and the ultimate order constituting the second stage. Therefore, we are firmly of the opinion that there is absolutely nothing wrong in the General Production Superintendent issuing the charge memos dated April 14, 1980 and April 29, 1980. The workman understood the charge, offered his explanation on April 16, 1980 and May 5, 1980. He was visited with inquiry notice dated April 19, 1980 and May 6, 1980. He participated in enquiry and as on that the report was submitted on June 17, 1980 and August 26, 1980. He was issued a second show cause notice on July 8, 1980 and he replied on July 11, 1980 and it is thereafter on July 14, 1980 the proposed dismissal was passed and he was informed on July 14, 1980 that the application u/s 33(1) would be filed before the Tribunal having regard to the pendency of the Industrial Dispute.

21. Therefore, we hold on point No. 1 that the charge memo issued by the General Production Superintendent (S. S. Saihgal) is valid and does not vitiate the further proceedings resulting in the ultimate order of dismissal.

20. In the case of Inspector General of Police and another Vs. Thavasiappan, the Supreme Court was pleased to hold that the act of instituting a disciplinary proceeding is quite different from conducting the enquiry and further in the absence of specific Rule it is not necessary that charges should be framed only by an authority competent to impose proposed penalty or that enquiry should be conducted by such authority. An authority lower in rank than the appointing authority is competent to issue charge sheet and initiate disciplinary proceedings. While explaining this well settled position of law, the Court was pleased to observe as under :

"7. Before we consider the requirement of Rule 3(b) we will refer to the three decisions cited by the learned counsel for the appellant. He first invited our attention to the 2 decision of this Court in State of Madhya Pradesh and Others Vs. Shardul Singh, . In that case a departmental enquiry was initiated against a Sub Inspector of Police by Superintendent of Police who after holding an enquiry sent his report to the Inspector General of Police who ultimately dismissed the Sub-Inspector of Police from service. The order of dismissal from service was challenged before the High Court of Madhya Pradesh on the ground that the enquiry held by Superintendent of Police was against the mandamus of Article 311(1) of the Constitution as he was incompetent to conduct the enquiry. The Sub-inspector of Police was appointed by the Inspector General of Police. The High Court allowed the petition. The State preferred an appeal to this Court. Rejecting the contention that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should be initiated or conducted by the authorities mentioned in that Article, this Court held as under :

"This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct the enquiry preceding the dismissal or removal of the Officer or even that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed."

This Court further held that "we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article."

21. Keeping in view this well settled legal position, let me now advert to the reasoning of the Tribunal to come to the conclusion that the domestic enquiry is neither fair nor legal in as much as the proceedings for domestic enquiry had

been initiated by an incompetent person. The Tribunal to come to the aforesaid conclusion relies upon Rule 6 of the Service Rules framed under Bye-law 27 of the Bank's Bye Laws. It only says that the Board of Directors shall be the competent authority to execute rules, provided that if the Board of Directors delegate its authority to execute any of the rules to the Executive Committee or to a Sub-Committee or the President as the case may be shall be the competent authority to execute such rules. According to the Tribunal it is the Board of Directors which is the competent authority and if it delegates its power to Executive Committee or Sub-Committee or the President then the said persons would be the competent authority and not the Deputy General Manager who has issued the charge memo. In my view, this thinking of the Tribunal has no substance whatsoever. With regard to initiation of disciplinary proceedings, it is now well settled that it is not necessary that the competent authority to impose the penalty must alone initiate domestic enquiry proceedings and that the proceedings can be initiated by any superior authority who can be held to be controlling authority who may be an Officer subordinate to the appointing authority. Further the respondents had not made any grievance before the Enquiry Officer about the issuance of charge memo by an incompetent person and lastly the respondents have offered their explanation to the charge memo and thereafter participated in the enquiry proceedings. Even before this Court, the respondents are not in a position even to point out how the charge memo issued by Deputy General Manager who according to them is not competent person has caused any prejudice to their defence in the domestic enquiry proceedings. In my view, no prejudice has been caused to the delinquents by issuance of charge memo by the Enquiry Officer since the ultimate order has come to be passed by a competent person. In that view of the matter, the reasoning of the Tribunal is not only opposed to Rule 6 of the Rules but also opposed to the view envisaged by Apex Court and Bench of this Court.

22. In so far as the other reason for rejecting the application filed by the Management for approval of its action in dismissing the respondents is concerned, it is now well settled by the Supreme Court in the case of Deputy Director of Collegiate Education that taking the domestic enquiry proceedings for and passing orders of dismissal, removal or reduction in rank of a Government Servant who has been convicted by a criminal Court is not barred, merely because the sentence or order is suspended by the Appellate Court or on the ground that the said Government servant-accused has been released on bail pending the appeal. Explaining this position the Court was pleased to observe as under :

"We need not, however, concern ourselves any more with the power of the Appellate Court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of

the Government servant who has been convicted by a criminal Court is not barred merely because the sentence or order is suspended by the Appellate Court or on the ground that the said government servant accused has been released on bail pending the appeal."

22A. In view of the above legal position, the reasoning adopted by the Tribunal that in view of the stay granted by the Sessions Court in the appeal filed against the order of conviction passed by learned Magistrate, it is premature to hold that the delinquents are guilty of the offences of defalcation of accounts and misappropriation of funds of T.A.P.C.M.S. is wholly erroneous. The Andhra Pradesh High Court in the case of K. Sampath Kumar v. Food Corporation of India 1996 (3) SLR 666 was pleased to observe as under :

"... If a person has been convicted, he becomes a convict in the eye of law and to continue to borne him on the cadre will amount to entertaining a convict in the service of the Corporation. Unless the conviction is set aside on appeal or revision, as the case may be, the person comes within the category of one who has been convicted of a criminal charge. The fact that a person is convicted on a criminal charge after due trial in accordance with law by a Court of competent jurisdiction is proof enough of the fact that he is guilty of the offence committed by him unless the conviction and sentence is set aside by a superior Court. Therefore, a fortiori, when a person is convicted on criminal charge, he cannot expect the authorities to initiate any enquiry at the departmental level to probe into his conviction and to find out whether he is guilty of the charge or not or indeed whether he is a fit person to be continued in service or not. The conviction on a criminal charge leads to an automatic dismissal from service under the provisions of Regulation 63 of the F.C.I. (Staff) Regulations which clearly mentions the point that We authority shall be at liberty to pass any order which it deems fit and proper in the circumstances of the case."

23. No doubt, such Regulation as we find in Food Corporation of India (Staff) Regulations, 1971, is not found in the Regulation of the petitioner-Bank but to a person convicted by a competent Court of law, he becomes a convict in the eye of law and to continue to borne him on the cadre will amount to entertaining convicts in the service of respondent-Corporation. In my view, the authorities need not have to hold a detailed departmental enquiry to find out whether he is guilty of the charge or not or indeed whether he is a fit person to be continued in service or not Once a person is convicted by a criminal Court, the person concerned loses his right in the job and can be terminated without a detailed domestic enquiry proceeding.

24. In the result, the impugned common order of the Industrial Tribunal in SL No. 10/1986 and 11/1986 dated July 17, 1987 is set aside and the matter is remitted back to the Tribunal with a further direction to revive SL No. 10/1986 and SL No. 11/1986 and reconsider the application filed by the Management under Sec. 33(2)(b) of the Industrial Disputes Act in accordance with law. Parties are at liberty to raise such other contentions which are available to them except

those contentions which are decided by this Court in this order, including the contentions that the alleged offence in the charge memos has no nexus with the discipline of the petitioner management.

25. With these observations and directions, petition is allowed and rule made absolute. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.