
(1993) 07 KL CK 0040
In the High Court Of Kerala
Case No : O.P. No. 7101 of 1983-G

Kurian

APPELLANT

Vs

State Bank of Travancore and Others

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 226
State Bank of India (Subsidiary Banks) Act, 1959 — Section 63
State Bank of Travancore (Officers) Service Regulations, 1979 — Regulation 68(2)

Citation : (1993) 07 KL CK 0040

Hon'ble Judges : T.L. Viswanatha Iyer, J;P. Krishnamoorthy, J

Bench : Division Bench

Advocate : M.C. Cherian, for the Appellant; Pathrose Mathai, V. Jayakumar and Sirijagan, for the Respondent

Final Decision : Dismissed

Judgement

T.L. Viswanatha Iyer, J.—The question arising in this case is really concluded against the Petitioner by the decision of a Division Bench of this Court in W.A. No. 1008 of 1987 which confirmed the decision of a learned Single Judge in Subramonia Sharma v. State Bank of Travancore 1987 (2) KLT 632. We shall however state the facts leading to the case briefly, and also deal with the points raised by Counsel for the Petitioner.

2. Petitioner was appointed as the Manager of the Kuttippuram Branch of the second Respondent Bank in the year 1976 where he continued in service till August, 1977 when he was suspended from service for irregularities committed by him at Kuttippuram during his tenure from September, 1976 to August 1977. Petitioner was subsequently served with a memo of charges and eventually an enquiry was held by the third Respondent who was appointed as the enquiring authority. Before the enquiry commenced, the Petitioner was informed by the disciplinary authority by the letter Ext. P-3 that the third Respondent was appointed as enquiring authority, that one K.E.V. Nair, Inspector of Police, Central

Bureau of Investigation, Cochin had been appointed as the Presenting Officer, and that, in case the Petitioner desired to take the assistance of an officer or public servant as his representative in the enquiry under Regulation 68(2)(vii) of the State Bank of Travancore (Officers) Service Regulations, 1979 hereinafter referred to as the Regulations, he may advise the name and designation of such officer to the enquiry authority. Ext. P-3 mentioned that engagement of a legal practitioner for the purpose was not possible. Petitioner replied by Ext. P-4 stating that the Presenting Officer being a C.B.I. Officer, he should have proper assistance of a person with some experience, for which he nominated one Abraham Kurian a retired Deputy Postmaster, presently a practising advocate. But the disciplinary authority informed the Petitioner by Ext. P-5 dated 23rd July 1981 that the engagement of a legal practitioner as the Petitioner's representative in the enquiry was not permitted under the Regulations aforesaid and therefore he was unable to comply with the Petitioner's request.

3. The enquiry was thereafter held on 13, 14 and 15th of October 1981 at which thirteen out of the sixty two witnesses included in the witness list were examined. The Petitioner did not cross examine any of these witnesses except one by name Kochappu. Two hundred and forty documents which were mostly cheques issued in different names by the petitioner, promissory notes executed by these beneficiaries and copies of notices sent to them were also marked at the enquiry. There were further postings for arguments, and the Petitioner was permitted to file his notes of arguments which he did as per Ext. P-16. The order Ext. P-10 was thereafter passed on 15th July, 1983 dismissing the petitioner from service. Petitioner challenges Ext. P-10 in this Original Petition mainly on the ground that the refusal to permit a legal practitioner to represent him at the enquiry constitutes violation of the principles of natural justice. He also seeks the quashing of Regulation 68(2)(vii) mentioned earlier which prohibits the engagement of legal practitioner, as unconstitutional and void as offending Articles 14, 16 and 19 of the Constitution of India.

4. There is a detailed counter affidavit filed on behalf of Respondents 1 and 2 in which inter alia they have pointed out that there has been no violation of the principles of natural justice in not granting the Petitioner's request for the appointment of an advocate to present his case, that the rules governing the matter prohibit appointment of an advocate in such circumstances and that in any event there was no merit in the Petitioner's case to sustain an attack on Ext. P-10.

5. The enquiring authority against whom certain allegations have been made, has filed a separate counter affidavit in which he has controverted the various charges made against him.

6. So far as the challenge to the vires of Regulation 68(2)(ii) is concerned, a Learned Single Judge of this Court in Subramonia Sharma v. State Bank of Travancore 1987 (2) KLT 632 upheld the validity of the regulation, and that was affirmed by the Division Bench in Writ Appeal No. 1008 of 1987. The Division

Bench took the view that the regulation in question was not in any manner illegal or unconstitutional. We are in agreement with the said view of the Division Bench, as also of the learned Single Judge, which has considered the matter in elaborate detail. We are not therefore going into the matter with greater discussion. Suffice it to say that even, the decisions of the Supreme Court cited by learned Counsel for the Petitioner, namely *Subramoniam v. Collector of Customs* AIR 1972 S.C. 2158, *Board of Trustees of the Commissioner of Sales Tax, U.P. Vs. Vijai Int. Udyog*, and *J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others*, , do not recognise an absolute right in the delinquent to have the service of an advocate for the purpose of the conduct of defence in disciplinary proceedings. The question ultimately is one of fair play and justice as to whether the delinquent had had an effective opportunity to put forward and present his case fairly and reasonably. If that is satisfied, the fact that an advocate was not permitted to be appointed will not vitiate the disciplinary enquiry. The regulation barring appointment of an advocate cannot be stated to be unconstitutional for the reason that there is no such absolute rule of natural justice applicable to the case, non-provision for which proves lethal to the rule itself.

7. The decisions relied on by Counsel for the Petitioner do not lay down that in all cases and in all circumstances, or as a matter of right, an advocate should be permitted to be appointed to conduct the defence for a delinquent in a disciplinary enquiry. The cases cited were cases where there was no statutory provision barring the appointment of an advocate at the enquiry. Either the rules governing the subject were silent on the point, or they conferred a discretion on the enquiring authority to permit the appointment of an advocate. In these circumstances, the Supreme Court observed that the discretion should be exercised reasonably and having regard to the complexity of the matters that arise, for consideration at the enquiry. The decisions cited are therefore not applicable here, where the matter is governed by statutory regulations framed by the State Bank of India in exercise of the powers conferred on it by Section 63 of the State Bank of India (Subsidiary Banks) Act, 1959. In cases where the matter is governed by a statutory rule, the rule must govern. If the rule is not unconstitutional and void, the rule binds the parties, and they cannot contend that despite the rule, or contrary to the provisions of the rule, an advocate should be allowed to be appointed to defend the delinquent. Petitioner is governed in this case by the State Bank of Travancore (Officers) Service Regulations, 1979, which as stated above are statutory in nature. Being so, and so long as that regulation binds the parties, the Petitioner cannot seek the appointment of an advocate contrary to the said regulation.

8. There is also another circumstance in this case which cuts at the very basis of the Petitioner's complaint. Since the new Regulations of 1979 governing disciplinary proceedings came into force on 1st April 1980, replacing the old rules, Petitioner was given the option to be governed either by the new regulations of 1979 or by the old rules. After some correspondence, Petitioner opted for being governed

by the new regulations, by his letter Ext. R-1 (a), knowing fully well that it contains a provision barring appointment of an advocate for the conduct of defence. Having opted for being governed by the new rules, it is not open to the Petitioner subsequently to turn round and state that the proceedings are vitiated on the ground that he was not permitted to be defended by an advocate, by an action which was perfectly in accord with the rules.

9. Even otherwise, the question whether an advocate should be permitted to be appointed or not is a matter which depends on the nature of the enquiry and the complexity of the issues that arise. Petitioner has not chosen to produce before us a copy of the memo of charges or his explanation to the same, so that it is impossible for us to discern the alleged complex nature of the enquiry which the Petitioner was called upon to face. On the other hand, Counsel for Respondent 1 and 2 submits that the enquiry in question was a simple one and that the Petitioner had practically admitted the various charges made against him. He had conceded and admitted at the enquiry that the statements of various witnesses, copies of which had been given to him earlier, were all true, and that the documents produced though numerous, were genuine. It was in those circumstances that the enquiring officer confined the examination to 13 witnesses out of the 62 witnesses included in the witness list, the statements of the Ors. having been admitted by the Petitioner. It was also stated that the Petitioner had admitted the fictitious nature of the various persons to whom he had advanced loans. The names of these persons are all mentioned in the counter affidavits of Respondents 1 and 2 as well as that of the enquiring officer, the third Respondent. All these admissions made by the Petitioner were voluntary, and therefore there is no question of the Petitioner being prejudiced by the absence of an advocate to defend him. It is stated by the enquiring officer that there was absolutely no compulsion on the Petitioner to admit any documents or statements or sign any of the proceedings on the three dates of enquiry, namely 13, 14 and 15th of , October, 1981. The Petitioner-himself had no case of any compulsion in the notes of arguments Ext. P-16 which he submitted before the enquiring officer, long after the enquiry "was completed. If really the Petitioner had been compelled to sign any document or to make admissions contrary to his interest," he would have highlighted the same in the notes of arguments which he submitted before the enquiring officer.

10. There is therefore no substance in the plea of the Petitioner of violation of the principles of natural justice in not being permitted to engage an advocate to defend him. Practically, the decision at the enquiry was on the basis of the admissions made by him voluntarily and without any compulsion.

We do not therefore find any illegality in the order Ext. P-10, liable to be interfered with under Article 226 of the Constitution of India. The Original Petition is without merit. It is accordingly dismissed without costs.