
(2004) 10 KAR CK 0015
In the Karnataka High Court
Case No : W.A. No. 3123 of 2004

M. Shivaprasad Rai

APPELLANT

Vs

Vijaya Bank and Another

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 — Section 19
Constitution of India, 1950 — Article 226
Vijaya Bank Officer Employees (Discipline and Appeal) Regulations, 1981 — Regulation 6 (7)

Citation : (2005) 1 KarLJ 208 : (2005) 2 KCCR 84 SN : (2005) 1 LLJ 948

Hon'ble Judges : S.R. Nayak, Acting C.J.; B.S. Patil, J

Bench : Division Bench

Advocate : P.S. Rajagopal, for the Appellant; S.S. Ramadas, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, A.C.J.

1. This appeal is by the delinquent. In the departmental enquiry, the delinquent submitted a letter dated 3.02.2004 marked as Annexure-C to the Disciplinary Authority requesting the latter that the former be permitted to be represented by any one of the five persons mentioned in the order of preference in his letter dated 3.02.2004. The Disciplinary Authority on receipt of Annexure-C issued an endorsement dated 04.02.2004 marked as Annexure-D refusing permission to the delinquent to be represented by any one of the five persons mentioned in the order of preference in his letter on the ground that all of them are Branch Heads. Being aggrieved by the said action of the Disciplinary Authority, the delinquent has approached this Court under Article 226 of the Constitution of India.

2. It is the contention of the delinquent that in - terms of Sub- Regulation (7) of Regulation 6 of the Vijaya Bank Officer Employees" (Discipline and Appeal) Regulations, 1981, for short, "the Regulations", it is the right of the delinquent to be represented by an Officer employee of the Bank of his choice and therefore,

the Disciplinary Authority erred in law in refusing permission to avail services of the named persons in his letter dated 03.02.2004.

3. Per contra, the Disciplinary Authority/ Management defended the impugned action by contending that the exigency of the services would come in the way of sparing the services of Branch Heads as defence representatives. In the premise of that contention, learned Single Judge having examined the law-position did not find any merit in the contention of the delinquent and consequently, dismissed the Writ Petition. Thus, delinquent is before us by way of this writ appeal.

4. We have heard Sri Rajagopal, learned Counsel for the delinquent and Sri. S.S. Ramadas, learned Senior Counsel for the Bank-Management. Having heard the learned Counsel for the parties, a short question that arises for decision is whether in terms of Sub-regulation (7) of Regulation 6 of the Regulations, it is the right of the delinquent to have an officer employee of his choice as his defence representative.

5. Before dealing with the said question, it would be beneficial to notice relevant provisions of the regulations. The regulations are framed in exercise of the powers conferred u/s 19 of the Banking Companies (Acquisition and Transfer of undertakings) Act, 1980, for short, "the Act", by the Board of Directors. Therefore, it is trite that the regulations have statutory force. Clause (j) of Regulation 3 defines the term "officer employee", which reads as under:

"(j) Officer employee means a person who holds a supervisory, administrative or managerial post in the Bank or any other person who has been appointed and is functioning as an Officer of the Bank, by whatever designations called and includes a person whose services are temporarily placed at the disposal of the Central Government or a State Government or any other Government undertaking or any other Public Sector Bank or the Reserve Bank of India, or any other organisation, but shall not include casual, work charged or contingent staff or the award staff;"

6. Regulation 6 deals with procedure to be followed for imposing major penalties. Sub-regulation (7) of Regulation 6 reads as under:

"(7) The officer employee may take the assistance of any others officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits.

7. What falls for our interpretation are the words "any other officer employee". The word "any" as interpreted by the Courts in umpteen number of cases means "each" and " every". If the delinquent in terms of sub-regulation (7) of Regulation 6 of the Regulations is entitled to avail the services of any other officer employee, the clear intendment of the rule is that he is entitled to choose any other officer employee in the establishment. It is trite that in choosing an

officer employee as his defence representative, the liberty of the delinquent should be respected and if that is denied, the very essence of choice would be lost. Therefore, the only reasonable interpretation to be placed on the words "any other officer employee" is to hold that an officer employee includes each and every "officer employee" within the meaning of that term as defined under clause (j) of Regulation 3 of the Regulations. It is not the contention of Sri Ramadas, learned Senior counsel that none of the five persons chosen by the delinquent in his letter dated 03.02.2004 does not satisfy the definition clause (j). If all of them and each of them answer the definition of the word "officer employee" as defined under clause (j), it is trite, it is the liberty and choice of the delinquent to choose any officer employee in the establishment. It is also not the contention of Sri Ramadas, learned Senior Counsel that any of the five persons named in the letter of the delinquent dated 03.02.2004 suffers from the disability noted in the note to Sub-regulation (7) of Regulation 6 of the Regulations.

8. This takes us to the other contention highlighted by Sri Ramadas during the course of hearing that the exigency of the services would not enable the Bank's Management to spare the services of Branch heads, because, they are saddled with onerous responsibilities and functions and if the Bank's Management with a bonafide concern for the smooth functioning of the Bank's management, declines to accede to the request of the delinquent to spare the services of a Branch Head, the Court should not take exception to such policy decision of the management of the Bank. This submission of the learned Senior Counsel is not acceptable to us for more than one reason. If a statute confers a right on the delinquent, the exigencies or convenience of the Bank's Management would not be allowed to impair or take away that right which is otherwise available to the delinquent. We hope this observation would dispose of the above contention of the learned Senior Counsel.

9. Be that as it may, the rationale of the prescription is that the defence representative should be a person to be trusted by the delinquent. A person chosen by the delinquent should enjoy the full confidence and trust of the delinquent. If that is the essence of the matter, it is fair that the management should allow an officer employee chosen by a delinquent as his defence representative.

10. In that view of the matter, we do not find any justification for the Disciplinary Authority to refuse permission for the delinquent to be represented by Sri Ranjan Shetty, who is stated to be the Branch Manager of Devarayana Samudra Branch of the Bank.

11. In the result and for the foregoing reasons, we allow the writ appeal and set aside the order of the learned Single judge. We quash the impugned endorsement dated 04.02.2004 marked as Annexure-D. Let a writ of mandamus be issued to the Disciplinary Authority to permit the appellant to avail of the services of Sri Ranjan Shetty - Branch Manager as his defence representative. No

costs.