(2003) 03 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 27675 of 2000

M.P. Krishnappa APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Citation : (2003) 4 KarLJ 1 : (2003) 3 KCCR 2077

Hon'ble Judges : N.K. Jain, C.J;V.G. Sabhahit, J

Bench : Division Bench

Advocate : For Intervenor K. Sathyamurthy, in I.A. No. 1 of 2002, K. Shashikiran Shetty and K. Prasanna, for the Appellant; C. Shashikantha, Additional Central Government Standing Counsel for Respondent-1, S. Vijayashankar, Sr. Advocateand U. Abdul Khader, for Respondent-2, K. Tharanatha Shetty, for Respondent-3, K. Gopala Hegde, for Respondent-4 and R.V.S. Naik and K.P. Kumar, (King and Partridge) for Respondent-5, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner is a practising Advocate having served as Director of the Union Bank of India for 5 years and having technical knowledge of Bank and banking transactions. It is stated that while he was sitting in Court Hall No. 15, matter was argued in W.P. No. 19064 of 2000 filed by B. Vijayabhaskar Shetty, 4th respondent herein against State Bank of India, 2nd respondent herein. The petitioner went through the writ petition and found that malpractice and fraud was committed by the Bank authorities while exercising power in State Bank of India. It is also stated that later it has come to his notice that the 4th respondent herein who was the petitioner in W.P. No. 19064 of 2000 entered into a compromise with State Bank of India and withdrew the writ. Since the Bank has hushed up the matter keeping away the 4th respondent, the present public interest litigation was filed on 17-8-2000 seeking for a direction that an enquiry be ordered through CBI into the Suspense Account and Branch Clearing General Account of State Bank of India Service Branch with an interim prayer to seize the

records.

2. Notice was issued on 21-8-2000.

3. A detailed counter giving parawise reply is filed by the 2nd respondent-State Bank of India denying the allegations made in the petition as false and stating the public interest litigation petition to be misconceived and not maintainable. It is submitted that nothing has been alleged that the statutory provisions have not been implemented or there is any violation or breach of the provisions. It is also submitted that 4th respondent-B. Vijayabhaskar Shetty filed three writ petitions viz., W.P. No. 10344 of 1996 seeking for a direction to the Bank to implement the transfer policy framed by the Bank. The same was dismissed on 17-2-2000 holding that transfer is an incidence of service. W.P. No. 22276 of 1998 was filed praying that the order dated 8-10-1997 transferring him to Kamalapura Branch as Assistant Manager (Cash) be quashed together with orders dated 8-1-1998 and 5-3-1998 passed by the initial authority and Appellate Authority in relation to his transfer orders. The same was disposed of on 27-8-1998 directing the grievance committee formed by the Bank to deal with the grievance raised by the 4th respondent. Thereafter, he filed W.P. No. 19064 of 2000 questioning the constitution of grievance committee and for quashing the transfer order dated 8-10-1997. However, he was retained. It is also stated that he remained absent from 19-6-1997 till 25-8-2000. Disobedience of the transfer order is the subject-matter of the pending disciplinary proceedings. So far as reply to the present writ petition is concerned, the allegations are denied. It is stated that no complaint was received. It is also stated that the Service Branch does not directly deal with the customers and nothing has been furnished regarding general sweeping accusations that the loans are written off. The averments are imaginary, false and unsustainable and the petitioner has no right and cannot be heard in the garb of transfer policy, which is not concerned to him and as he is total stranger to the Bank. The other allegations also are not correct. The petitioner cannot enquire into the facts pertaining to the 4th respondent in the writ and the allegation is also wrong that no steps are being taken to reconcile the old outstanding entries. It is also stated that all entries are reconciled and examined for the year ending 31-3-2000 and unreconciled entries are only to the value of Rs. 34,04,499.58 which are very old and steps are being taken to reconcile and Reserve Bank of India is the body to supervise the entire administration. The Bank holds security created by the borrower and for recovery has filed application O.A. No. 95 of 2000 before Debt Recovery Tribunal, Bangalore and has also lodged a complaint to CBI. It is also stated that the CBI has closed the case after verifying the allegations. It is submitted that the petitioner has therefore no legal right nor there is any violation which can be invoked by the petitioner in this public interest litigation petition. Therefore, the public interest litigation petition may be dismissed with exemplary costs.

4. Respondent 3-CBI has filed objections stating that it had registered the FIR in R.C.1(E)/2000, dated 6-1-2000 and matter is under investigation and charge-

sheet is not filed. It is further stated that statement of respondent 4 was recorded and report was submitted to take departmental action against erring officials, the managers of Residency Road Branch, and compliance report is received from the Bank and matter was closed.

5. I.A. No. 1 of 2002 is filed for impleading K Sathyamurthy, General Secretary, Financial Vigilance Forum as co-petitioner and counter has been filed. On consideration the Court found that one cannot be permitted to be impleaded in a public interest litigation, however he was permitted to assist the Court as an intervenor vide order dated 22-7-2002.

6. Sri B.K Panda, Assistant General Manager filed counter reply on 13-11-2002 on behalf of respondent 5-Reserve Bank of India, denying the allegations. It is submitted that RBI has power to issue directions to the banking companies and to supervise them and the petitioner is not entitled for any direction in this writ. The Reserve Bank of India had deputed an inspection team at the branch of respondent 2 and on the basis of the available records it was found that the allegation that massive fraud had taken place in the Service Branch of respondent 2 had no basis, and denied the same. It is also submitted that the averment that the petitioner had worked in Union Bank of India, has no relevance, rather he has filed this writ petition merely on wrong facts. However, it is submitted that only a few entries aggregating to Rs. 34.04 lakhs remained to be reconciled in the Suspense Account. It is also stated that a complaint with the CBI is under investigation is in process, awaiting; the result, but no relief can be granted and the writ is liable to be dismissed as not maintainable with exemplary costs.

7. On 27-1-2003, learned Counsel for the petitioner was directed to file an affidavit regarding authenticity of Annexure-F and the documents filed by him and further directed to file a specific reply after going through the reply of RBI and SBI.

8. As directed, additional affidavit was filed by the petitioner on 10-2-2003. It is stated that the petitioner filed this writ petition to see that huge amount due to SBI is recovered in public interest and on seeing the reply filed by the RBI the, entries are reconciled under suspense account, and that he is satisfied though do not have personal knowledge.

9. Respondent 2-State Bank of India filed additional statement of objections on 18-2-2003. It is stated that the entries have been reconciled after clearance from the concerned branches and as alleged by the petitioner no Corporation funds from the State Bank of India have been pumped. It is also stated that none of the reports belonging to Corporate Office Audit, Circle Audit and Statutory Audit ever indicated any fraud or scam as alleged. It is further stated that the petitioner in his additional affidavit has stated that it has to be ascertained whether large sums of money due to State Bank of India have been recovered. It is reiterated that the Service Branch does not maintain the accounts of account-

holders as it is a clearing house for fund settlement for State Bank of India with other Banks and for its own local, branches. The Service Branch deals with approximately sixty thousand negotiable instruments per day and the process of clearing them will have unreconciled entries. It is further stated that the Reserve Bank of India after inspecting the books of account of this branch has opined that there is no fraud or any other irregularity and that the outstanding entries have come down to Rs. 34.04 lakhs. Hence, the allegations of the petitioner are denied as untrue and it is prayed that the petition may be dismissed with costs.

10. Heard M.P. Krishnappa, the petitioner, party-in-person. The 4th respondent and his Counsel are absent. Sri S. Vijayashankar, learned Senior Counsel with Sri U. Abdul Khader Advocate, appearing for respondent 2-S.B.I., Sri K. Tharanatha Shetty, Advocate for the 3rd respondent-CBI and Sri R.V.S. Naik, learned Counsel for respondent 5-R.B.I. and intervenor-K. Sathyamurthy were heard. Affidavit of the petitioner was also seen wherein he has not disputed that entries were reconciled and as his Counsel was not present, the case was adjourned to 12-3-2003. The matter was heard on 12-3-2003. However, in addition to the written statement one more affidavit was filed on 10-3-2003 by respondent 4. We have heard and perused the material on record.

11. No doubt in an appropriate case, this Court can issue directions if there is any gross violation of fundamental right or if the issue touches the conscience of the Court, but at the same time no direction can be issued for personal gain, publicity, political motive or for espousing the cause of other person in the garb of PIL.

12. As per the facts culled out, the instant case is filed espousing the cause of 4th respondent in. the garb of public interest. As per the counter filed by the 2nd respondent-State Bank of India and 5th respondent-Reserve Bank of India, they are following the policies and banking regulations and appropriate steps are being taken to reconcile the entries of suspense account. The 4th respondent-B. Vijayabhaskar Shetty, who was admittedly served on 2-9-2000 and never appeared or filed any counter despite sufficient time granted. He and his Counsel remained absent on the last date when the case was heard. However, the matter was adjourned as the Counsel for the petitioner was also not present. Now respondent 4-B. Vijayabhaskar Shetty has filed this affidavit on 12-3-2003 in reply to the affidavit filed by the petitioner on 10-2-2003 which cannot be considered in absence of any cause of action against 4th respondent at this stage. Otherwise also the petitioner cannot espouse the cause of respondent 4, in this case. Therefore, it is not acceptable. Moreover, the learned Counsel for petitioner submits that he has nothing to say against the affidavits filed by R.B.I. and S.B.I. except the fact that only entries to the value of Rs. 34.04 lakhs is the subject-matter of actual verification. Once the affidavit has been filed by the Competent Authority and the supervisory body - RBI, it has to be accepted. Otherwise also, this Court cannot investigate in the writ jurisdiction particularly in PIL, though in appropriate case, if there is any violation of fundamental right,

direction can be issued. But, as stated learned Counsel has not been able to show violation of any fundamental rights. In view of the counter and in the facts of the given case, no direction can be issued as prayed for. This petition which has been filed in the garb of PIL for espousing the cause of 4th respondent who is an employee of respondent 2-SBI, is liable to be dismissed.

13. It is also seen that State Bank of India (SBI) is a banking company created under the State Bank of India Act, 1955 and is controlled by the Union of India and Reserve Bank of India. No doubt, transparency in dealings must be clearly reflected in the books of accounts. As per the counter and the material on record it is clear that respondent 2 is only a service branch and does not maintain the accounts of account holders and that it is a clearing house for funds settlement of SBI with other Banks and for its local branches. There are approximately 60,000 negotiable instruments which are dealt with per day and as stated unreconciled entries are bound to occur and it is not possible to reconcile all entries. As per the counter, the unreconciled entries remain only to the value of Rs. 34.04 lakhs. Periodic statutory audits are conducted and in the audit no fraud is pointed out. Respondent 5-RBI is the Principal Monetary Authority of the country and Banker to Bankers in India entrusted with the statutory obligation of administering provisions of Banking Regulation Act had arranged for a quick scrutiny at respondent 2 Branch and it has not discovered any fraud and according to them no fraud has been discovered as alleged by the petitioner. It is also stated that as per the letter on 21-12-2001 that clearing differences pertaining to 1993-97 as alleged in the petition have been reconciled and accounts are now reconciled on day-to-day basis which is confirmed by scrutiny. That apart, all these questions are questions of fact which cannot be gone into nor can be investigated by this Court. The learned Counsel has also not disputed the same, except stating that they should be verified. As per the affidavit and the statement made before the Court only Rs. 34.04 lakhs is subject-matter of actual verification. It is also stated that the Bank Authorities will further monitor. Under the circumstances, this is nothing but to protract the proceedings without any public interest. Nor the affidavit filed by the 4th respondent now can be considered and taken on record, as he is not a petitioner. As already stated, no direction can be issued as prayed for. The affidavit of respondent 4 filed now cannot be taken on record, as already stated.

14. On overall consideration and as stated above, we find that this PIL is nothing but filed to espouse the cause of the 4th respondent in the garb of public interest and no relief can be granted to the petitioner, as stated. We find no ground to entertain the petition. The same is liable to be dismissed and accordingly dismissed. However, dismissal of this petition will not preclude the Bank Authorities from monitoring and to keep on monitoring the suspense account as per the requirement in accordance with law. It is also made clear that the dismissal of this PIL will not affect the investigation pending, if any. In view of what we have discussed above, this PIL petition is dismissed.

