
(2013) 10 DEL CK 0109

In the Delhi High Court

Case No : Writ Petition (C) No. 5579 of 1998

Mr. Ashok K. Nanda

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0109

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

**Advocate : Piyush Sharma and Mr. Vikram Saini Advocates, for the Appellant;
Rajat Arora, for the Respondent**

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition under Article 226 of the Constitution of India impugns the orders passed by the departmental authorities; of the disciplinary authority dated 22.9.1997 and the appellate authority dated 18.5.1998; whereby petitioner was visited with the punishment of removal from services. Most of the charges against the petitioner contained in the chargesheet dated 2.6.1992 (and which is accompanied by imputations of misconduct) have been held against the petitioner. With respect to accounts of three customers namely M/s. Savik Vijay Engineering Private Limited, M/s. Tajesh Minerals Enterprises and M/s. Installation and Allied Services India, petitioner was found guilty in failing to ensure compliance of pre-sanction and post-sanction requirements, granting of financial facilities without having powers to do so and concealing the same from the higher authorities, failing to inform Export Credit Guarantee Corporation (ECGC) in time resulting in loosing of bank's entitlement with ECGC etc etc. Before advertng to the arguments urged on behalf of the petitioner, the scope of hearing in a petition filed before this Court under Article 226 of the Constitution of India needs to be set out. This Court does not sit as an Appellate Court to re-apprise the findings of facts and law arrived at by the

departmental authorities. Orders of the departmental authorities can only be challenged on the ground of perversity in the findings, violation of principles of natural justice, violation of rules/law and violation of doctrine of proportionality. On these principles let us examine the arguments which have been urged on behalf of the petitioner.

2. The departmental authorities have found that faults were committed by the petitioner in accounts of three customers namely M/s. Savik Vijay Engineering Private Limited, M/s. Tajesh Minerals Enterprises and M/s. Installation and Allied Services India. With respect to each account several infractions have been alleged against the petitioner. Most of the allegations have been held to be proved against the petitioner except allegation nos. 2 and 4 with respect to the account of M/s. Savik Vijay Engineering Private Limited and allegations no. 3 and 6 with respect to the account of M/s. Tajesh Minerals Enterprises. The summary of the findings against the petitioner is as under:-

3. The arguments which have been urged before me are basically in terms of the pleadings which are drawn up with respect to grounds I, J, K and L which run from pages 49 to 62 of the writ petition. The aforesaid grounds are with respect to the first two accounts and with respect to the third account of M/s. Installation & Allied Services India. What is argued is that since the illegal purchasing of the bills were reported, petitioner stands exonerated.

ACCOUNT M/S. SAVIK VIJAY ENTERPRISES LIMITED

4. With respect to this account lapses and enquiries are alleged against the petitioner both at the pre-sanction and post-sanction stages. Arguments have been addressed before me only with respect to allegations/charges 1 to 4, 5 and 8. Charges against the petitioner with respect to defaults at the pre-sanction stage are as under:-

A/c M/s. Savik Vijay Engineering Private Limited

On the basis of loan proposal forwarded by Shri A.K. Nanda as Manager, B/O K.G. Road, Bangalore and Sh. K.A. Hegde, the then Regional Manager, Regional Office, Madras, the following credit facilities were sanctioned in favour of the company vide Head Office sanction letter No. Cr./87 dates 12.5.88 and Cr/OPC dated 7.6.90.

The following lapses, irregularities were observed on the part of Sh. A.K. Nanda at the pre-sanction stage which indicate that the loan proposal was not at all appraised and Shri. A.K. Nanda did not act in his best judgment while recommending/forwarding credit proposal of the company for setting up a new unit/project by over-looking the following vital factors/deficiencies:

i) The loan proposal was received at B/O K.G. Road, Bangalore on 14.12.87 and the same was forwarded to Regional Office on 16.12.87. This shows that the loan proposal was dealt with in an hurried manner without proper scrutiny.

ii) As per Memorandum and Articles of Association of the Company it was set up on 15.12.86 with the following three Directors:

- a) Shri B. Gopal-Krishnan
- b) Shri B. Muthukumarson
- c) Smt. M. Savithri

Whereas in the loan application (L-107), the company stated the following five persons as Directors:

- a) Shri B. Gopal-Krishnan
- b) Shri B. Muthukumarson
- c) Shri V.K. Venkatesh
- d) Shri S.G. Subbaratnam

However, no queries were found raised by Shri A.K. Nanda to ascertain the factual number of Directors, dates of joining of new Directors of relevant Board Resolutions in this regard.

iii) In contravention of Head Office guidelines, no pre-sanction inspection was conducted and/or report in respect thereof submitted alongwith the loan.

iv) The credit reports on the Directors as well as associates/sister concern from their existing bankers were not obtained/scrutinised.

v) The Balance Sheet of the companies sister/associate concerns were not obtaining in order to ascertain the financial standing, experience, capability, performance of the Directors/promoters.

vi) The credit facilities sought for by the company were for setting up new unit/ Project, but no efforts were made to ascertain the viability of the project from a qualified Engineer/Chartered Accountant/Government Body. Also no efforts were made to ascertain the experience of the Directors/promoters in the proposed line of activity.

vii) As per proposal, the cost of plant and machinery/project was estimated at Rs. 69.37 lacs and as such the company was not covered under SST, yet the proposal was forwarded treating it as that of SSI unit.

viii) As against a Paid-up Capital of Rs. 3000/- only, credit facilities to the extent of Rs. 83,00 lacs were recommended for sanction. No efforts were made to ascertain as to what source the company/promoters would arrange margin money for availing the credit facilities being recommended.

5(i) The first allegation against the petitioner at the pre-sanction stage with respect to M/s. Savik Vijay Engineering Private Limited was that the loan proposal was dealt in a hurried manner without proper scrutiny. With respect to

this allegation against the petitioner the finding is that the issue really is not of hurried manner of forwarding the loan proposal but actually aspect of hurried manner is to be taken with the aspect of lack of proper scrutiny. Following are the facilities which were proposed in a hurried manner without proper scrutiny.

(ii) The deficiencies are with respect to the petitioner making recommendations without necessary backing of documents and their evaluations as required at the time of recommending the loan. The report of M/s. Pai & Associates which was relied upon by the petitioner was rejected because that report was undated, not addressed to anybody and it did not even bear the signatures of the author of the report, and therefore it was held that this report could not be said to have existed on record of the bank at the time of submission of the loan proposal. If the report was available at the relevant time, then, enquiry officer rightly notes that there was no reason why it was not made part of the loan proposal. The stand of the petitioner of one Sh. L.A. Perumal conveying the message of the Regional Manager, Madras that the higher ups of the bank were interested has been held not to be established by the petitioner because though Mr. L.A. Perumal was produced as a witness by the bank, he was however not cross-examined by the petitioner as to his (Sh. Perumal's) visit to the branch with recommendation of the Regional Manager. With respect to the notings appearing on the reverse of calendar slip where certain particulars were mentioned of the account, the findings were that the same had nothing to do with Mr. L.A. Perumal or the Regional office inasmuch as the said slip bore the initials of the petitioner and was not in the handwriting of Sh. L.A. Perumal.

6(i). The argument with respect to this allegation urged on behalf of the petitioner was that there was no haste of the petitioner in dealing with loan proposal because the record showed that the customer was in touch with the regional office even prior to the loan proposal having been formally moved. The account holder was also in touch with the predecessor of the petitioner in the branch and which is argued to be another reason to show that there was no haste by the petitioner and no basis to the article of charges of hurried manner in which the loan proposal was received at the branch on 14.12.1987 and forwarded to the regional office within two days on 16.12.1987.

(ii) In my opinion, arguments urged on behalf of the petitioner are really to confuse the real issue and which is not so much of the hurried manner of forwarding the loan proposal but really of forwarding of the loan proposal in a hurried manner without proper scrutiny and which was required at the branch level. Scrutiny required at the branch level has to be with respect to the need of the financial limits of the customer, how the margin money will be brought in, whether the account holder has sufficient capital with him, financial standing of the Directors of the company, capacity to re-pay and so on. In fact, even the enquiry officer rightly holds that issue is not of hurried manner of forwarding of the loan proposal received on 14.12.1987 and submitted to the regional office on 16.12.1987, but really of there not being proper scrutiny and availability of the

documents as required for forwarding of a loan proposal.

7(i) The second allegation against the petitioner was with respect to not taking proper documentation with respect to who were the Directors of the account company at the time of forwarding of the loan proposal. The charge is that no queries were raised by the petitioner to ascertain the actual number of Directors, their dates of joining and the relevant board resolution inducting the two additional persons as Directors. To this allegation, the defence of the petitioner was that he got the position as to the numbers of the Directors confirmed from the minutes book of the company wherein the names of the Directors were appearing. There is also an argument raised that three Directors were found in the Memorandum/Articles when the company was set up on 15.12.1986 and this became 5 Directors in view of the copy of the minute book furnished by the company.

(ii) With regard to this allegation against the petitioner, it has been held that petitioner did not ascertain how the additional two Directors came on to the Board of the Company and by which resolution these two persons were appointed.

8. The findings against the petitioner are justified inasmuch as admittedly, the minute book relied upon by the petitioner does not show that when the two additional Directors came on Board and how the petitioner made the necessary verifications. I therefore, find that this charge has been validly established against the petitioner. This argument is therefore rejected.

9(i) The next allegation against the petitioner is with respect to the petitioner in contravention of the applicable guidelines failing to conduct pre-sanction inspection and no report in respect thereof was submitted alongwith the loan proposal. The petitioner contended that the pre-sanction inspection was conducted and a report in this regard was submitted. Petitioner placed reliance upon the pre-sanction inspection report aspect mentioned at item no. 9 of the forwarding letter dated 16.12.1987 as also the report again having been submitted on 27.4.1988 (but the inspection date was wrongly written as 27.4.1987).

(ii) The enquiry officer with respect to this allegation has held that the fact that the inspection report was submitted to the head office on 27.4.1988 cannot mean that the same existed as on 16.12.1987 inasmuch as the record of the bank showed that this pre-inspection report was submitted in April, 1988 after considerable follow up by the regional office. The enquiry officer rightly notes that if really the petitioner had inspected the plan/site on 27.11.1987 then there was no reason why the inspection report was submitted in April, 1988 and not sent alongwith the loan proposal in December, 1987. In my opinion, there is no illegality or perversity in this finding of the departmental authorities because simply mentioning of a pre-inspection report at serial no. 9 in the loan proposal does not mean that inspection report was actually attached to the loan proposal.

In fact, therefore, the enquiry officer rightly notes that because this report did not form part of the loan proposal therefore, the regional office pursued the matter with the petitioner and ultimately it was only sent on 27.4.1988. The argument of the petitioner raised qua this issue is therefore rejected.

10(i) The next allegation against the petitioner is that the petitioner failed to obtain the credit reports of the Directors as well as of allied firms from the existing bankers before considering the loan application of a customer. The petitioner is alleged not to have obtained reports of the Directors/Promoters with respect to one allied concern namely M/s. Vijay Jacks & Allied. Enquiry officer in this regard has given a finding that whereas the existing bank M/s. Vijaya Bank had given the report with respect to M/s. Vijay Hydraulics, however, the document D-7 does not mention anything about the other allied concern M/s. Vijay Jacks and Allied. Therefore, it was clear that with respect to M/s. Vijay Jacks & Allied no reports were obtained by the petitioner. The enquiry officer in fact notes that petitioner maintained that he considered it not necessary to obtain such report, and which is held against the petitioner because in terms of the relevant guidelines this was a specific requirement which was not complied with. The allegation against the petitioner was therefore held to have been proved.

(ii) I do not find any perversity in the findings of the departmental authorities because admittedly M/s. Vijay Jacks & Allied was an allied concern and therefore it was necessary to obtain the credit reports with respect to that concern and its Directors, and which requirement was admittedly not complied with by the petitioner. Reliance placed upon by the petitioner on D-7 (14.4.1988) being a letter addressed by the Regional Manager to the AGM at the Head Office does not show that credit report was taken with respect to the allied concern M/s. Vijay Jacks & Allied. I may note that the document D-7 is repeatedly relied upon by the petitioner however, this document has to be taken with a pinch of salt because this is a letter signed by the Regional Manager much later than forwarding of the loan proposal in December 1987 and therefore, subsequent documentation cannot remove the deficiencies which in fact existed at the time of forwarding the loan proposal in December, 1987 and which deficiencies ought not to have existed at the time of forwarding of the loan proposal. It also bears mention that this Regional Manager in fact was charge-sheeted with respect to another account by the bank and punishment was imposed upon him. This argument is therefore rejected.

11. The next allegation against the petitioner is that petitioner did not obtain the balance-sheet of sister/associate concern in order to ascertain the financial standings/experience/capability/performance of the Directors/promoters. The defence of the charge-sheeted officer in the departmental proceedings was that he did not consider this necessary. According to the petitioner the letter D-7 dated 14.4.1988 shows that this aspect was evaluated by the Regional Manager and therefore, this requirement should be held to be complied with. The enquiry

officer has in view of the defence of the petitioner noted that since he considered obtaining of the reports as not necessary, it was a clear cut admission that the required reports were not obtained and hence there was violation of the guidelines. The argument of the petitioner that the book of instruction is an incomplete document relied upon by the bank is a misconceived argument because if the petitioner had relied upon an incomplete instruction book, what prevented the petitioner from filing the complete book of instruction. This obviously the petitioner did not do because it is an elementary aspect in banking circles that whenever a loan proposal is forwarded, surely to determine aspects of financial standing etc, complete reports with respect to the Directors and promoters have to be obtained. The argument of the petitioner under this head is therefore rejected.

12(i) The next allegation against the petitioner pertains to the fact that company had a paid up capital of only Rs. 3,000/- whereas the credit facilities of an amount of Rs. 83 lacs were recommended for sanction and the petitioner did not make effort to ascertain what is the source of the company/promoters for arranging the margin money for availing the credit facilities for being recommended.

(ii) In my opinion, the findings of the departmental authorities in this regard of holding the charges proved against the petitioner is correct because even if we look at the documents which are relied upon by the petitioner namely D-7, M-2, M-6, M-7 and D-42, the same do not show that petitioner had made enquiry from the Directors/promoters as to how the company proposed to raise the capital and the source which the company depended upon for increasing the required capital to meet the margin requirements for the facilities to be availed from the bank. In my opinion, merely because the Regional Manager in the letter D-7 in April 1988 mentions that promoters/Directors belong to business community and are doing business for many years and therefore it will not be difficult for them to bring in their contribution which cannot take away the fact that as on the date of forwarding of the proposal the pre-sanction requirement of finding out the basis of how the promoters/Directors will bring in margin money was not complied with. There is nothing inconsistent in the findings of the departmental authorities as is argued before me. This argument of the petitioner is therefore rejected.

13. The next set of allegations against the petitioner pertain to the post sanction stage and they read as under:-

Besides, the following lapses/irregularities were observed on the part of Shri A.K. Nanda at the post-sanction stage:-

i) Shri A.K. Nanda failed to monitor the end use of bank's funds in as much as out of the proceeds of Term Loan, following sums were paid by way of pay Orders drawn in favour of M/s. Vijay Jacks and Allied inspite of knowing that the said firm was a sister/associate concern of the company.

All the aforesaid Pay Orders were handed over to Shri B. Gopalakrishnan, a Director of the Company.

Further, on 25.11.88, a Current Account was opened with Dena Bank, Jayanagar, Bangalore Branch in the name of the firm M/s. Vijay Jacks and Allied under the proprietorship of Smt. M. Savithri (a Director of the company) and aforesaid Pay Orders were deposited therein and subsequently the funds were withdrawn therefrom.

The receipts issued by M/s. Vijay Jacks and Allied in token of having received the payments, were even signed by Sh. B. Muthukumarson, A director of the Company, but Shri A.K. Nanda did not take any steps to ascertain the genuineness of the said transactions/end use of the said funds.

Likewise other pay orders/drafts issued from the loan accounts of the party were found handed over directly to Sh. B. Gopal Krishnan, the Director of the company.

(ii) As per one of the sanction stipulation, the IDBI refinance was to be obtained by the Regional Office before the release of the facilities. The Regional Office obtained the requisite sanction on 28.7.88 and informed the branch till 12.10.90 as the company failed to produce the required certificate from DGTD. Incidentally, as per another sanction stipulation the certificate from DGTD was also required before the release of the facilities but Sh. A.K. Nanda, contrary to the said sanction stipulation released the credit facilities without obtaining the certificate from DGTD. Also the IDBI refinance was obtained on the amount of sanction limit of Rs. 54.00 lacs and not on the cost of the project.

(iii) Contrary of H.O. instructions for getting the requisite margin deposited in the account before releasing payments to the supplier of machineries, Shri A.K. Nanda relied upon the Cash Receipts produced by the company as advances made to the supplier of the machinery by the company and treated the same as margin.

In fact, the company was having no funds to meet the margin requirements and the said aspect was overlooked by Sh. A.K. Nanda at the time of recommending the limits. Even the Balance Sheets of the sister-concern received on a subsequent date but before the release of facilities were not properly looked into. The said Balance Sheet clearly indicated that there were no funds to meet the required margin.

Shri A.K. Nanda, as such, failed to ensure whether proper margin has been constituted by the company at the time of machinery purchased from M/s. Avery India Limited, a sum of Rs. 2.80 lacs were released against the cost price of Rs. 3.07 lacs. Likewise, in the case of machineries purchased from M/s. Pillar Induction (O) Pvt. Ltd. the required margin was not obtained.

(iv) No bills/invoices in respect of machineries purchased were obtained/held on record.

(v) No post-sanction inspection was conducted to ensure the end use the bank funds.

As on 24.3.92, the various account of the company were showing an aggregate outstanding of Rs. 106.55 lacs which were/are proving difficult of recovery. The aforesaid acts on the part of Sh. A.K. Nanda have attributed for putting the aforesaid bank's funds into jeopardy.

14. With respect to the post sanction stage allegations the arguments have been addressed before me only with respect to allegations/charges no. 1, 3 and 5.

15(i) The first allegation is with respect to failing to monitor the end use of the funds because pay orders were drawn in favour of M/s. Vijay Jacks & Allied in spite of knowing that the said firm was a sister/associate concern of the company. The pay orders were handed over to B. Gopalakrishnan, a director of M/s. Vijay Jacks & Allied. These pay orders were deposited in an account opened with Dena Bank, Jayanagar, Bangalore Branch and funds were withdrawn therefrom.

(ii) In this regard, the enquiry officer has held that it was not disputed that pay orders were given to Mr. Gopalakrishnan, Managing Director instead of being handed over to the suppliers and that the concern M/s. Vijay Jacks & Allied was a sister concern. As regards the photographs filed as documents D-8, enquiry officer has commented that the photographs do not bear the date and there is nothing on record to show that these photographs were part of the inspection at the relevant time. The charge has been held to be proved against the petitioner on account of vagueness in the documents including the photographs, which were filed.

(iii) Petitioner in this regard before this Court has relied upon the inspection report dated 4.9.1993 showing existence of current assets at Rs. 30,000/- for the year 1989-1990, Rs. 7.13 lacs for the 1991 and Rs. 10.94 lacs for the year 1991-1992. This report is also relied upon because the inspector states that installation of the machinery has been verified. Reliance is also placed by the petitioner upon the letter dated 11.9.1991 of the valuer Mr. H.N. Srinivas alongwith which valuations have been given in the form of a statement of various machineries.

(iv) In my opinion, though two views are possible in view of the arguments urged on behalf of the petitioner, however, merely because there are two views possible cannot mean that there is perversity in the findings for this Court to interfere in the findings of the departmental authorities more so because filing of photographs will not show the specific dates of proper utilization of funds for purchase of the machineries. Machineries would only be shown to exist but not with its co-relation of proper end utilization of funds at the time of release of the loan amounts. Also, the fact that the valuer's report of Sh. H.N. Srinivas simply contains details of the machinery without in any manner giving proof of dates of installation of such machinery alongwith the relevant bills and other documentary

proof. Since this Court does not sit as an Appellate Court to re-apprise the findings and conclusions of the departmental authorities, the arguments urged on behalf of the petitioner under this head are rejected.

16(i) The next allegation against the petitioner is with respect to the third charge in the post sanction stage that he did not obtain deposit of margin money and relied upon cash receipts of deposits made with suppliers of machineries for being treated as margin money.

(ii) The enquiry officer by an assessment of the evidence before him has come to a finding with the accepted position which is that the margin money was not deposited in the bank and the customer only produced receipts issued by the supplier towards deposit of advance which was argued for being taken as margin money. The enquiry officer also notes that balance sheet D-40 of the company as on 27.11.1987 showed that the company was not having any funds to meet the margin money requirements and therefore, the petitioner was held guilty of not ensuring that the company raised or increased the capital to meet the margin requirements before release of the facility. In effect the enquiry officer has held that the fact that machineries may have come into existence subsequently cannot mean that there is in fact a compliance of the requirement of the customer paying in bank the margin money before release of the funds for the purchase of the machinery. The important conclusion which has been given by the enquiry officer, and which was also with respect to the earlier similar allegation at the post sanction stage, was that filing of proof of existence of machinery cannot be so read as to show that machineries were in fact installed at the relevant point of time when the funds were released. Ultimately, some machinery may be found to exist, however, the relevant question for consideration as noted by the enquiry officer was that it was the duty of the petitioner to obtain margin money before release of funds and admittedly with respect to which no evidence was produced to establish that customer deposited margin money in the bank.

(iii) In my opinion, once again merely because two views are possible in terms of the arguments urged on behalf of the petitioner cannot mean that this Court is entitled to interfere with the findings of the enquiry officer in exercise of powers under Article 226 of the Constitution of India and more so because issue really is not of existence of machineries at a subsequent point of time but of deposit of margin money in the bank at the relevant point of time when the funds were released. Therefore, to the extent that there has been infraction of the requirement of non-deposit of margin money at the time of release of the funds, the same stands established against the petitioner and the argument under this head raised on behalf of the petitioner is rejected.

17(i) The next allegation on which arguments were addressed before this Court is with respect to allegation 5 of the post sanction stage violation and which pertains to not conducting of post sanction inspection to ensure end use of funds.

(ii) In this regard, arguments which have been raised are similar with respect to the arguments raised under earlier heads of proper end utilization of funds by existence of machineries etc, and therefore the arguments would stand rejected in terms of discussion given hereinabove.

18. Also, an important aspect to be noted is that merely because the banks subsequently sought to give additional facilities would not mean that there were no infractions at the relevant stage and subsequent sanction would condone all the lapses on the part of the officials at the time of earlier grant of financial limits. In my opinion, the enquiry officer is justified in giving a finding in this regard against the petitioner because for many commercial reasons, once financial limits are found to be sanctioned earlier, then, banks take pragmatic decision to sanction additional facilities so as to help either the unit to recover or for ensuring recovery of the finances lent, and therefore, subsequent fresh sanction cannot be taken in favour of the petitioner that no infractions took place at the earlier stage. Also, the enquiry officer in this regard rightly notes that the subsequent documents of additional sanction of financial limits cannot help the petitioner because the party was yet to avail the additional facilities sanctioned because the party/customer failed to comply with the terms and conditions of the fresh sanction of financial limits. This argument urged on behalf of the petitioner is therefore rejected.

Account M/s. Tajesh Minerals Enterprises

19. With respect to this account, following are the charges against the petitioner:-

A/c M/s. Tajesh Minerals Enterprises

i) Contrary to Head Office guidelines to conduct inspection of securities charges with the bank at the regular interval, Shri A.K. Nanda did not conduct inspection of securities and/or send the inspection reports at the regular interval.

ii) In violation of Head Office instructions, the fresh PCL was released to the party in November, 1989 to adjust the earlier PCL allowed to the party. As a consequence thereof, ECGC rejected the claim lodged by the bank on the ground that overdue earlier PCL was not adjusted out of the export proceeds. Besides, it was also commented by the ECGC that the bank being aware of the incapability of the exporter, should have taken more care and prudence in monitoring the account.

iii) ECGC premium was found debited to the party's account from May, 1990 and not from the availment of Packing Credit Loan/beginning of the account.

iv) In violation of Head Office instructions, the stocks charged with the bank in the PCL Account were not got insured.

v) The loan documents were found obtained blank and signed by only one partner instead of all the partners.

vi) Contrary to sanction stipulations, the second charge of the bank on the Rice

Mill was not got registered at the time of release of the PCL.

vii) Default committed by the party in adjusting the PCL was reported to ECGC after a delay of four months thereby violating the procedure set out in FE Circular No. 66/90.

ix) The overdraft account allowed to the party should have been got covered, under DICGC-SSI-1987. However, the said overdraft was not covered under the DICGS Scheme and no premium was found paid to DICGC.

x) The sanction of PCL facility was not reported to the ECGC at the time of release of the same and the ECGC was kept in dark till the account became overdue which was also one of the reason for rejecting the bank's claim.

As a consequence of the aforesaid lapses, irregularities committed by Shri A.K. Nanda in the aforesaid accounts, the bank's funds to the extent of Rs. 1.72 lac involved in the account have fallen into jeopardy for recovery whereof the bank has to file a civil suit against the party.

20. Before me, arguments have been addressed with respect to allegations/charges (i), (ii), (v), (viii) and (ix).

21(i) First allegation against the petitioner in this account is that the petitioner failed to conduct inspection of the securities charged at regular intervals and did not send the inspection reports at regular intervals to the higher authorities.

(ii) In this regard the enquiry officer has noted that petitioner admitted that he did not visit the quarry/factory site at Kallahalli and that he only relies upon the inspections submitted by the technical inspector M/s. Himalyan Agencies. Petitioner contradicted himself by stating that he also did inspections and relied upon documents, D-61, D-62, M-42 and M-43, but the enquiry officer rightly notes that documents D-61 and D-62 are letters written after the petitioner had left the branch and therefore the same cannot help the petitioner. In the document M-42 being the godown inspection register of December, 1989, enquiry officer found the same to be unreliable as the columns of date and time of inspection bear the initials of the petitioner without date and time of inspection and therefore the same rightly cannot have credibility for acceptance as evidence in favour of the petitioner. So far as document M-43 is concerned, this inspection report is dated 28.7.1990 i.e. after the petitioner had been transferred from the branch and therefore was not a report given by him. The report by M/s. Himalyan Agencies did not confirm the quantum of stocks so as to co-relate the same with the advances given by the bank. The enquiry officer finally notes that petitioner did not ever visit the site for inspection as was admitted by him during the departmental proceedings.

(iii) I do not find any perversity in the findings by the departmental authorities because no inspection report, much less regular inspection reports existed, showing that the petitioner inspected the site or gave such inspection reports to the higher authorities. The arguments urged on behalf of the petitioner under

this head are accordingly rejected.

22. I may note that it was sought to be argued on behalf of the petitioner that the loan account of M/s. Tajesh Minerals Enterprises stands settled, and since there is no loss to the bank, the petitioner accordingly should be exonerated, however, I cannot agree to the argument urged because the fortuitous circumstance of account having subsequently settled cannot mean that at the relevant time lapses were in fact not committed by the petitioner, and which aspects the facts of the case show were deliberately committed and were not unintentional. I therefore reject the argument urged on behalf of the petitioner that subsequent settlement of accounts should result in setting aside of the findings against the petitioner.

Account M/s. Installation & Allied Services India

23(i) The allegation against the petitioner with respect to this account is that he acted beyond his powers by purchasing bills of the amount of Rs. 6.44 lacs and out of which an amount of Rs. 2.84 lacs was released to the party without any authority and setting up of a regular limit. The aspect of indebtedness to the extent of Rs. 2.84 lacs, and that too without any authority, was not disclosed in the loan proposal which was thereafter forwarded and put up to the regional office. Power of attorney which was executed by the party with respect to the collection of bills were not got registered with M/s. BHEL which was the drawee of the bills, and as a result of which M/s. BHEL made direct payment to the party and party did not adjust the outstanding bills purchase entries.

(ii) Enquiry officer has given the findings, and which cannot be disputed before me that, the petitioner had no power to sanction financial limits by purchasing bills from the party concerned. The result of the blatantly illegal acts of the petitioner in giving loans without having any authority was that the party was accommodated as on 30.11.1989 to the extent of Rs. 5,30,924.10 and as on 1.12.1989 to the extent of Rs. 5,89,924.90/-. The enquiry officer has rightly come to the conclusion that petitioner in the subsequent proposal document M-45 to regional office on 27.9.1989 for recommending sanctioning of various limits did not mention the details of bills already purchased from the party. Even in the subsequent correspondence, the enquiry officer rightly notes that, petitioner concealed the aspect of the purchasing of the bills from the higher authorities and only two days prior to his being relieved from the branch petitioner recommended the cancellation of limits in favour of the party although the recommendation was infructuous because limit itself was never released and lapsed with the efflux of time. The defence of the petitioner was rejected that the bills were purchased under the oral instructions of the Regional Manager by keeping of the necessary margin. This defence was rejected because document D-74 filed by the petitioner himself negated the defence because the charged officer was in fact asked to give comments of accommodating the party beyond his powers without prior approval of the Regional Manager. The other documents filed by the petitioner only showed that the transaction of 23.6.1989 was

authorized by the Regional Manager and subsequently confirmed by him, whereas all other transactions of bill purchase did not have any confirmation of the Regional Manager. Enquiry officer rightly concludes that there was no faithful reporting of the outstandings and the charge of concealment also stood as established.

(iii) In my opinion, once it is established on record that petitioner acted beyond his powers to grant loans by purchasing bills, and there is no authorization shown of the Regional Manager for any of the transactions of bills purchased except one, and the fact that the matter was never reported to the higher authorities, clearly shows that there is no perversity in the findings against the petitioner and the arguments of the petitioner under this head are rejected. Reliance was placed by the petitioner upon the circular dated 4.9.1984 giving directions to various branches qua reporting of defaults, I do not understand how it can help the petitioner because surely a general circular with respect to follow up action of adjustment of accounts cannot exonerate the petitioner who in fact illegally granted loans. In fact, in my opinion, this document will only go against the petitioner because the same shows that higher authorities of the bank found that there were various lapses in various accounts and therefore strict follow up was desired, failing which strict action was to be taken against the officers.

24. The argument urged on behalf of the petitioner of subsequent reporting even if for the sake of the argument taken as correct does not take away the fact that petitioner in abuse of his power purchased bills and granted financial limits to a customer beyond his powers. In my opinion, therefore there is no illegality or perversity in the findings of the departmental authorities against the petitioner with respect to the account of M/s. Installation & Allied Services India.

25. After having referred to the arguments urged before this Court under various heads and which have been rejected by me as stated above, the following important points also need to be mentioned for dismissing the petition:-

(i) Though the law is that this Court does not sit as an Appellate Court, and this Court can only interfere when there exists a clear cut perversity of findings, arguments which have been addressed before me really are seeking to make this Court into an Appellate Court over the findings and conclusions of the departmental authorities. It may be noted that on two or three of the allegations, at best, case of the petitioner can be of two views being possible, however, existence of two views does not permit this Court to interfere with the conclusions of the departmental authorities, and more so, when as many as 18 odd other charges which have been established against the petitioner.

(ii) The fact that petitioner has not even pleaded or addressed arguments on some of the allegations against him shows that qua those allegations clearly the charges were proved and petitioner is accordingly guilty on that score. Obviously, the petitioner did not argue as regards those allegations established against him where the petitioner did not have a single worthy argument to stand in his favour.

(iii) In fact, there is another chargesheet against the petitioner for various other lapses and with respect to which no action was taken because petitioner was dismissed from services pursuant to the allegations being established in the present chargesheet.

(iv) The letter D-7 signed by the Regional Manager dated 14.4.1988 is by that Regional Manager, Mr. K.A. Hegde against whom chargesheet with respect to other accounts was issued on 25.11.1990 and he was visited with punishment of dismissal from services. Therefore, too much credit cannot be given to the statements made in document D-7, and which in any case do not derogate from the findings of lapses having been committed at the relevant time, at the pre-sanction stage and also at the post sanction stage. It appears that Mr. K.A. Hegde was seeking to help the petitioner however document D-7 does not help the petitioner to explain the lapses committed by him at the relevant point of time. Also a minor error of the enquiry officer stating that Mr. Hegde was proceeded departmentally with respect to the same charges against the petitioner (although it was a different chargesheet) cannot mean that otherwise valid findings/conclusions can be set aside just because of this minor error.

In view of the above, and the detailed report of the enquiry officer, and the orders passed by the departmental authorities, and the fact that nothing has been shown to this Court to justify setting aside of those finding under Article 226 of the Constitution of India, the present writ petition is therefore devoid of merit, and is accordingly dismissed, leaving the parties to bear their own costs.