(2003) 04 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No''s. 22180 and 22181 of 2001 and WPMP No''s. 32712 and 32713 of 2001

Mrs. Neelaveni Ramachandran — APPELLANT

Vs

National Bank for Agriculture and Rural Development (NABARD) and Mr. P.S. Khuntia — RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 04 MAD CK 0017

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : K. Chandru for M. Ramalingam, for the Appellant; M. Venkatachalapathy for K. Sukumaran, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The facts giving rise to the present writ petitions are as follows :-

2. Petitioner joined the first respondent bank in the year 1979 and in course of time she was promoted to different posts and ultimately she was

promoted and holding the office as Managing Director of Agri Development Finance (Tamil Nadu) Ltd, in short ADFT, which is sponsored by the

respondent No. 1 Bank. She was placed under suspension in July 1999 and thereafter a notice to show cause was issued alleging that the

petitioner while functioning as Managing Director and Chief Executive Officer of ADFT had committed several irregularities. The petitioner in the

interim reply"" denied the allegations and sought for certain documents to enable her to submit a further detailed reply. At that stage the petitioner

also requested the second respondent to allow the petitioner to have the assistance of a legal advisor/lawyer. The second respondent forwarded copies and extracts of certain documents, but certain other documents sought for by the petitioner were not furnished. The petitioner while pointing

out about the non-supply of certain documents, submitted her further reply. Thereafter, the first respondent apparently not being satisfied with the

explanation furnished by the petitioner, issued charge-sheet dated 25.7.2000. The substance of the charge-sheet was to the effect that the

petitioner had acted contrary to the explicit advice and instructions given by the Board, she has produced false and forged version of the Board

resolution purported to have been passed in its 10th Board Meeting for opening of current account in the name of the company with Madipakkam

branch, she had displayed gross negligence and indifference in getting post-dated cheques from M/s. S & S Industries & Enterprises Ltd, she had

indulged in corrupt practices of making/allowing payments to the parties who did not have any business dealings with the company resulting in

embezzlement of company''s funds, she generally being indifferent and negligent in the supervision, management and control of the affairs of the

company, which resulted in misappropriation of company''s money, manipulation of accounts by one of the subordinates and she by her action

brought disrepute to NABARD and failed to promote and protect NABARD interest. Thereafter the petitioner again wrote a letter dated

12.8.2000 to the first respondent requesting to furnish a copy of the NABARD (Staff) Rules and copy of the investigation report based on which

charge-sheet was issued against the petitioner. She had also reiterated her request for assistance of a lawyer to assist her in inspecting the

documents and submitting reply. By letter dated 11.9.2000, the second respondent turned down the reply regarding furnishing of documents. The

petitioner submitted her reply to the charge-sheet trying to explain her side of the story. It was also pointed out by her that she should not be held

responsible for the irregularities committed by one Mr. K. Srinivasan, who was the Vice President of ADFT at the relevant time. Thereafter, the

petitioner received communication dated 20.12.2000 from the fifth respondent intimating that he would hold a preliminary inquiry on 1.1.2001 at

the office of the Central Vigilance Commission, New Delhi. She also learnt that fourth respondent had been appointed as the Presenting Officer.

the petitioner wrote letter dated 29.1.2001 addressed to the fifth respondent intimating that she could not attend the preliminary enquiry on

1.1.2001 due to short notice received by her and difficulty in making travel arrangement. She also indicated that thereafter copies of certain

documents were furnished, but documents mentioned in Serial Nos.11 & 13 were not furnished. Some further correspondence went on regarding

those documents. In the meantime the petitioner also wrote another letter to the first respondent requesting him to permit the petitioner to have the

assistance of a legally trained person to defend her case. On 4.4.2001, the petitioner also made a similar request to the fifth respondent. By letter

dated 17.8.2001, the third respondent has declined the request for assistance of a lawyer. The request of the petitioner for grant of copies of

Internal investigation report by the second respondent and copies of statement made by Mr. K. Srinivasan, the then vice-president of ADFT made

before the team of investigators from NABARD and copies of show cause notice and charge-sheet, etc., issued to the aforesaid Mr. K. Srinivasan

has been rejected.

2. W.P. No. 22180 of 2001 has been filed for quashing the order rejecting the request for supply of relevant copies and W.P. No. 22181 of 2001

has been filed challenging the order refusing the request of the petitioner for assistance of a lawyer.

3. Separate but similar counter affidavits have been filed in two cases. It has been indicated that the documents in question were considered

irrelevant for the purpose of the enquiry and therefore, there was no necessity to supply those documents. It has been also indicated that the prayer

regarding assistance of a legal advisor/lawyer has been rightly turned down.

4. Charges had been framed under Rule 47 of the National Bank for Agriculture & Rural Development (Staff) Rules, 1982 (hereinafter called

NABARD Rules in short). Rule 47(1) indicate the various penalties including the penalty of dismissal. Other rules indicate the procedure to be

followed. Rule 47(6)(ii) & (iii) relate to consultation with Central Vigilance Commission under certain contingencies. It is not disputed that in the

present case, after such consultation with the Central Vigilance Commission, enquiry officer has been appointed by the Central Vigilance

Commission, which has been done apparently in accordance with Rule 47(6)(iii). The procedure contemplated neither prohibit nor prescribe

anything regarding availing assistance of any lawyer during the enquiry. When the petitioner requested for assistance of a lawyer, the Inquiry officer,

respondent No. 5, forwarded the same to the respondent Nos.1 & 2 by observing that the matter was within the discretion of the employer or the

disciplinary authority. Thereafter the third respondent by communication dated 17.8.2001 has communicated the order of rejection of such request

by making the following communication:

. . . Please refer to your letter dated 04 July 2001 addressed to Shri P S Kuntia, Inquiring Authority on the captioned subject. On being referred

by the Inquiring Authority, the issue was examined by the Chairman - Competent Authority. Taking into account the nature of the charges

mentioned in the Charge-Sheet dated 25 July 2000 and the overall circumstances of the case, the Competent Authority regrets that your request,

to be represented by a legal person/legally trained person to examine the documents and defend you in the Domestic Enquiry, cannot be acceded

to. . . .

5. It is the contention of the petitioner that the Presenting Officer, who was a very senior officer in NABARD, was in Central Vigilance

Commission of NABARD and had wide experience as Presenting Officer in many such enquiries. Even though he may not be a law graduate, by

virtue of his experience it must be taken that he is having clear grasp and knowledge over the legal matters. Moreover, the enquiry is being

conducted by an officer deputed by the Central Vigilance Commissioner, having wide and varied experience in such matters. In addition to the

above aspects, the allegations also appear to be serious as well as complicated and if found guilty, the possibility of the petitioner being dismissed

from the service looms large. In the above view of the matter, the request for availing the assistance of a lawyer should not have been rejected as a

matter of routine. Learned counsel appearing for the petitioner has placed reliance upon the decision reported in 2001(3) LLN 677 (S.

GNANASAMBANDAM v. TAMIL NADU CEMENTS CORPORATION LTD., REP. BY CHAIRMAN AND MANAGING DIRECTOR

AND ANOTHER) and Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, in support of his submission.

6. The aforesaid contention has been refuted by the learned counsel for the respondent by stating that the petitioner herself was a high ranking

officer. It has been further submitted that the question of permitting the petitioner availing service of a lawyer is a matter of discretion of the

disciplinary authority and such discretion having been exercised in a reasonable manner and since there is no provision in the rules entitling the

petitioner from utilising the service of a lawyer, the prayer in the writ petition should be rejected.

7. Learned counsel for the respondents has placed reliance upon several decisions including the one reported in J.K. Aggarwal Vs. Haryana Seeds

Development Corporation Ltd. and others, . This decision relied upon by the counsel for the respondents makes interesting reading. In the

decision, ultimately considering the facts and circumstances of the case, the Supreme Court allowed assistance of a lawyer by observing as

follows:-

9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a

proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was

a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive

and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls Board of Trustees of the Port

of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, that in defending himself one may tend to become ""nervous"" or ""tongue-tied"".

Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of

natural justice.

8. It is of course true that in the said case, the rules contained a provision authorising the enquiry officer to permit the delinquent be represented by

a counsel if the charge or charges likely to result in dismissal of the person from the service.

9. In the present case, there is no specific rule either prohibiting or authorising engagement of a lawyer. The Enquiry Officer himself has left the

matter to the discretion of the disciplinary authority. The order of the disciplinary authority appears to have been passed in a mechanical manner.

Even though the Presenting Officer himself is not a lawyer or a legally trained person or a law graduate, it is obvious that the Presenting Officer by

his experience has acquired substantial knowledge about the intricacies of the procedure. The Presenting Officer has also worked under the

Central Vigilance Commission and he is obviously experienced in such matters. The charges framed are serious and complicated enough to

warrant engagement of a lawyer.

10. The Supreme Court in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, as observed as follows:

. . . In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a

miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a

presenting officer who is trained in law. Legal adviser and a lawyer are for this purpose somewhat liberally construed and must include ""whoever

assists or advises on facts and in law must be deemed to be in the position of a legal adviser"". In the last analysis, a decision has to be reached on a

case to case basis on the situational particularities and the special requirements of justice of the case. . . .

11. In somewhat similar circumstances, this Court in the decision reported in 2001 (3) LLN 677 (cited supra) had permitted engagement of

lawyers. The decision of the Supreme Court in Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, relied upon by

the learned counsel for petitioner is also relevant.

12. For the aforesaid reasons, in the interest of justice, I am inclined to accept to the request of the petitioner for assistance of a lawyer.

13. One passing thought. In all such matters where the question of engagement of a lawyer is involved in disciplinary proceedings or domestic

enquiry, the Management has the general tendency to refuse the request of the delinquent for being represented through a lawyer. It seems there is

a general distrust in such matters. The reason for such distrust is beyond comprehension. The procedures which are followed even in disciplinary

proceedings or domestic enquiries are by no means simple. A delinquent facing a grave charge would be always on tenter-hooks while defending

his own case. Experience shows that it is difficult even for the experienced lawyers to effectively examine and cross-examine the witnesses. To expect a person ignorant in the intricacies of the law and procedure to defend himself, however highly qualified, is just like a mirage. Just as a

person suffering from disease should not cure himself by trying to read and digest some books on medicine and should leave the matter to an

expert, namely the Doctor, similarly a person facing a departmental enquiry or domestic enquiry or even enquiry before the Labour Court or similar

other forums, should be allowed to, if he wants, defended by an expert in law.

14. The other writ petition relates to supply of documents. In this matter also, again, the respondents and their Senior Counsel in the Court have

taken a hyper technical stand by stating that the disciplinary authority or the Management is not bound to supply all the documents relied upon by a

delinquent and the delinquent should show the relevancy of such documents.

15. Learned counsel for the respondents has relied upon the decision reported in State of Tamil Nadu Vs. Thiru K.V. Perumal and others, for the

aforesaid purpose. While there cannot be any quarrel with the proposition laid down by the Supreme Court, the question has to be again examined

in the background of each case. As a matter of fact, in the said case, the Supreme Court was considering the decision of the Administrative

Tribunal, where the Tribunal had quashed the order of punishment merely because certain documents were not furnished without examining the

question as to whether the documents were relevant and as to whether the delinquent was prejudiced by non-supply of such documents. In other

words, the decision of the Supreme Court was at the end of the enquiry after the punishment had been inflicted and had been quashed by the

Administrative Tribunal. The Supreme Court remanded the matter to the Tribunal for fresh consideration to decide as to whether the documents

are relevant and as to whether the delinquent was prejudiced.

16. In the present case, the enquiry is at a nascent stage. From the materials on record, it is apparent that the petitioner has been requesting for

those documents right from the beginning. It is obvious that the petitioner is considering that those documents would be some assistance to her

during her defence. The documents relating to the notice and reply against Mr. Srinivasan cannot be termed as irrelevant, as such allegation has

some nexus with the conduct of the case of Mr. K. Srinivasan. Even the other document requested by the petitioner appears to be relevant in the sense that on the basis of such enquiry, report of which is bring sought for, advise has been given to initiate proceedings under Rule 47. It is not the

case of the respondents that the documents are confidential in nature and therefore, cannot be disclosed.

17. For the aforesaid reasons, the other writ petition is allowed an the respondents are directed to furnish the copies of the documents as required

by the petitioner.

18. In the result, both the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.