

(1976) 02 GUJ CK 0014

In the Gujarat High Court

Case No : Spl. Civil Application No. 1342 of 1974

Sukhdev Ratilal Patel

APPELLANT

Vs

Chairman, Bank of Baroda and Another

RESPONDENT

Date of Decision : 23-02-1976

Acts Referred:

Banking Regulation Act, 1949 — Section 5
Industrial Disputes Act, 1947 — Section 12

Citation : (1977) 2 LLJ 409

Hon'ble Judges : S.H. Sheth, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—The petitioner-agent, who had been serving at Santh Piply Branch, Nadiad, having been dismissed by the order, dated June 5, 1974, communicated on June 10, 1974 at Annexure E, challenges the said order in this petition. The petitioner had joined the service of the original Bank of Baroda in the year 1958 as a clerk. He was promoted as an officer and was appointed as an agent at Santh Piply Branch of the Bank of Baroda at Nadiad. In the course of duties he had purchased some foreign bills (travellers' cheques) at the Santh Piply Branch at Nadiad aggregating to a sum of Rs. 25,000. These bills had come in his possession on behalf of his Bank. He had deposited the amount of the foreign bills in the main branch at Baroda. On enquiry it was found that this was highly irregular and improper and the petitioner's explanation in this connection was, therefore sought by the letter, dated May 28, 1973, at Annexure A for ascertaining the full facts. The petitioner had addressed a letter to the chairman on August 6, 1973, where he had admitted having sold in 2 or 3 cases in unofficial market such foreign cheques. He had also admitted that as the foreign instruments were being realised through Baroda main office, he personally paid the whole cash, for these irregular transactions for rectifying the entry, to the tune of Rs. 60,000. It was also admitted in the letter these fake realisation advices were brought by himself to his branch and faked the advice. Thereafter, the Chairman of the Bank of Baroda gave a notice to the petitioner on September

25, 1973 at Annexure C, in view of the aforesaid voluntary admission because he had committed an act of serious misconduct. The petitioner submitted his explanation on October 9, 1973. Enquiry was held on June 4, 1974, where the petitioner was ably represented by another employee H. J. Manekshaw. Minutes of these proceedings had been recorded on 4th/5th June, 1974. Thereafter the impugned order had passed against the petitioner. The petitioner had, therefore, challenged the said order in this petition on the ground that the principles of natural justice were violated by the Bank and the order was in violation of the statutory Rule 8.7. The Bank has supported the said order. The learned single Judge having referred this matter on the question whether the Bank was "State" under Art. 12, it has come before this Bench.

2. Mr. Shelat has argued that the Bank would be a State falling within Art. 12 of the Constitution on and, therefore, Rule 8.7 being a statutory rule binding on the Bank, the said rule having been contravened and as principles of natural justice were even violated, the dismissal order was, therefore, null and void.

3. The first question which has, therefore, to be determined is whether the Bank would fall within the definition of "State" under Art. 12 of the Constitution, this Banking Corporation has been constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, hereinafter referred to as "the Act". The very preamble discloses a public purpose of this acquisition and the public benefit which has been sought to be secured by constitution of this public Corporation under this Act for carrying out banking business under the Act. It is stated in the preamble that the Act was to provide for the acquisition and transfer of the undertakings of certain banking companies having regard to their size, resources, coverage and organisation, in order to control the heights of the economy and to meet progressively, and serve better, the needs of the development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto. Under Ss. 1 and 2 the Act is to come into force on July 19, 1969. Under S. 3(1) it is provided that on the commencement of the Act, there shall be constituted such corresponding new Banks as are specified in the first Schedule in place of the existing Banks as shown in First Schedule, where one of the Banks is Bank of Baroda. Under S. 3(2) the paid-up capital of every corresponding new Bank so constituted shall be equal to the paid-up capital of the existing Bank in relation to which it is the corresponding new Bank. Under S. 3(3) the entire capital of such corresponding new Bank is vested in and allotted to, the Central Government Under S. 3(4) every corresponding new Bank Shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property, and to contract, and it may sue and be sued in its name. Under sub-s. (5) every corresponding new Bank shall carry on and transact the business of banking as defined in clause (b) of S. 5 of the Banking Regulations Act, 1949, and may engage in one or more forms of business specified in sub-s. (1) of S. 6 of that Act. Sub-section (6) provides for a reserve fund being constituted. Under S. 4, the undertaking of the existing Banks

is transferred to and shall vest in corresponding new Banks. Section 5 provides for the general effect of this vesting. Section 6(1) provides that every existing Bank shall be given by the Central Government such compensation in respect of the transfer under S. 4, to the corresponding new Bank of the undertaking of the existing Bank, as is specified against each such Bank in the Second Schedule. Thereafter, Chapter IV provides for management of corresponding new Bank. Section 7 deals with the head office and management of affairs and business of the corresponding new Bank, which is to vest in the Board of Directors and the Central Government shall constitute the first board of directors. Section 8 provides for the corresponding new Banks to be guided in regard to policy matter involving public interest by the directions of the Central Government issued after consultation with the Governor, Reserve Bank. Section 9 provides that the Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the purposes of the Act. That scheme of management is to provide for various matters in particular mentioned in clause (2). Such a scheme has to be laid before each House of Parliament under sub-clause (5). Under S. 10 in Chapter V the provision is made as to the closure of old accounts and for the new account and their audit, and for disposal of profits. The auditor has to make a report to the Central Government upon the annual balance sheet and account. Under sub-clause (7) the surplus profits are to be transferred to the Central Government. Under sub-clause (8) of S. 10, the Central Government has to cause every auditor's report and report on the working and activities of each corresponding new Bank to be laid before each House of Parliament. Under S. 11, the corresponding new Bank shall be deemed to be an Indian company, and the company in which the public are substantially interested. Section 12(2) in terms provides that every officer or other employee of an existing Bank shall become, on the commencement of the Act, an officer or other employee of the corresponding new Bank, and shall hold his office or service in that Bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the existing Bank had not been transferred to and vested in the corresponding new Bank and continue to do so unless and until his employment in the corresponding new Bank is terminated or until his remuneration, terms or conditions are only altered by the corresponding new Bank. That is why, in sub-clause (4) of S. 12, no retrenchment compensation is payable under the Industrial Disputes Act, 1947, to such employees who stood statutorily transferred to the corresponding new Bank. Section 13 deals with the obligations of the employees as to fidelity and secrecy. Section 18 provides that no provision of law relating to binding up of Corporation, shall apply to a corresponding new Bank and no corresponding new Bank shall be placed in liquidation save by order of the Central Government and such manner as it may direct. Section 19 which is material provides for power to make regulations. Section 19(1) provides that the Board of Directors can make regulations not inconsistent with the provisions of the Act, or any scheme made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Section

19(2) provides for the regulations providing for all or any of the matters specified therein. Sub-section (3) provides that until any regulation is made sub-s. (1), the article of association of the existing Bank and every regulation rule, bye-law or order made by the existing Bank shall, if in force at the commencement of this Act, be deemed to be the regulations made under sub-s. (1) and shall have effect accordingly. A bare perusal of this scheme discloses great public importance of this public Corporation which had been created by acquiring at the cost of the Central Government, which paid the entire compensation under S. 6, the undertaking of the existing Bank so that the national economy could be properly served and needs of its development would be properly looked after in conformity with the national policy and objectives. That is why third public Corporation was created, under this statute for securing this public benefit and it is entirely, of the State ownership and its management, control and even the entire policy is to be laid down by the Central Government. Its dissolution is also under S. 18 not by way of ordinary winding up, but only to be as per the order of the Central Government in such manner as it directs. The provision is made for accounts being duly audited and reports submitted to the Central Government and such report is to put up before each House of Parliament and the balance profits under S. 10(7) are to be transferred also to the Central Government. Therefore, in reality and in substance even though it is a statutory Corporation, it is State agency or instrumentality of the State which has to administer the Act, as per the statutory provisions and under the statutory limitations laid down in the relevant provisions of the Act, the scheme framed under S. 9 and under the relevant regulations under S. 19. So far as these employees are concerned they stand statutorily transferred, without retrenchment compensation on the same terms and conditions, and under S. 19 the Bank has power to lay down binding regulations. Therefore, the Corporation is not only statutory public Corporation created as an instrumentality of the State to carry out this public function for the public benefit, but it has also to administer the Act and is made authoritative by being delegated the sovereign power of making the necessary regulations under S. 19.

4. The relevant tests for determining when such a public Corporation would be a State are now finally settled by the larger Constitution Bench's decision in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, At page 1341 the learned Chief Justice has pointed out that the decisions of the Supreme Court in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, and Indian Airlines Corporation Vs. Sukhdeo Rai, , were in direct conflict with the decision of Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, , which was the case of State Road Transport. The learned Chief Justice further pointed out that the remedy in a case of contractual relationship of master and servant was only of damage because personal service was not capable of any enforcement. In cases

of statutory bodies, however, there was no personal element whatever because of impersonal character of statutory bodies. Therefore, in the case of statutory bodies, it had been said that element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies was enforced by Court by declaring dismissal in violation of rules and regulations to be void. The Supreme Court had repeatedly observed that whenever a man's rights are affected by decision taken under statutory power, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute. Therefore, where a State or a public authority dismissed an employee in violation of the mandatory procedural requirement on ground which are not sanctioned or supported by statute, the Courts might exercise jurisdiction to declare the act of dismissal to be a nullity. The ratio was that the rules or the regulations were binding on the authority. Thereafter, the learned Chief Justice observed that such public Corporations which in a welfare State undertake commercial functions in combination with Governmental functions must be authoritative. It must be able to impose decision by or under law with authority. The element of authority was of a binding character. The rules and regulations were authoritative because those rules and regulations directed and controlled not only the exercise of powers by the Corporation but also all persons who dealt with these Corporations. The earlier decision in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , was referred to, and it was pointed out that an "authority" was a public administrative agency or Corporation having quasi-governmental powers and authorised to administer a revenue producing public enterprise. The expression "other authorities" in Art. 12 has been held to be wide enough to include within it every authority created by a statute and functioning within the territory of India or under the control of the Government of India and, therefore, would include all constitutional or statutory authorities on whom powers were conferred by law. The State itself was envisaged under Art. 298 as having the right to carry on trade and business. The State as defined in Art. 12 was comprehensive enough to include bodies created for the purpose of promoting economic interest of the people, and so, even when they carried on the activities of the nature of trade or commerce, such bodies were not excluded from the scope of the word "State". The Electricity Supply Act showed that the Board had power to give directions the disobedience of which was punishable as a criminal offence. Therefore, this power to issue directions and to enforce compliance was an important aspect. The learned Chief Justice, however, pointed out from concurring judgment of Shah, J., the other tests as the Board was invested by statute with extensive power of control over electricity undertakings. The power of the Board to make rules and regulations and to administer the Act was said to be in substance the sovereign power of the State delegated to the Board. The learned Chief Justice further held at page 1342 that a public authority was a body which has public or statutory duties to perform and which performed those duties and carried out its transactions for the benefit of the public and not for private profit. Such an authority was not precluded from making a profit for

the public benefit.

5. The three relevant Acts were then considered by the learned Chief Justice and at pages 1344-47 it was pointed out that all three Acts clearly indicated that they were setting these public Corporations as agencies of the Central Government. In Life Insurance Corporation Act it was found that it was an agency of Government carrying on the exclusive business of life insurance. The provision disclosed that the voice was that of the Central Government and the hands were also of the Central Government. All these three Corporations were either owned or completely managed or controlled by the Central Government, and in each case even dissolution was to be only by the Central Government. In the background of the provisions of the three Acts, the learned Chief justice observed at page 1347 that in the Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, it was said that power to give directions, the disobedience of which must be punishable as a criminal offence, would furnish one of the reasons for characterising the body as in authority within the meaning of Art. 12. However, the power to make rules or regulations and to administer or enforce them would be also one of the elements of the authorities contemplated in Art. 12. Similarly, the authorities envisaged in Art. 12 were described as instrumentalities of State action. Therefore, on any of these three tests being satisfied, a public Corporation can be held to be a State. His Lordship Mathew, J., in the concurring judgment in terms dealt with the relevant question at page 1349 as to whether the Corporation set up under a statute to carry on a business of public importance was a "State" despite the fact that it had no power to issue binding directions as it had to be decided on other considerations. Therefore, it was the other test which was being considered in this relevant context after considering the various American decisions and the position in other countries. At pages 1356 and 1357, His Lordship pointed out that the ultimate question which was relevant was whether such a Corporation was an agency or instrumentality of the Government for carrying on a business for the benefit of the public. These Corporations were instrumentalities or agencies of the State for carrying on business which otherwise would have been run by the State departmentally. If the State had chosen to carry on these businesses through the medium of Government departments, there would have been no question that actions of these departments would be "State actions". Therefore, there would be no question why the actions of these Corporations should not be State actions. Similarly, because the Corporations had a distinct legal personality, that would not make a difference because the crux of the matter was that the public Corporation was a new type of institution which had sprung from the new social and economic functions of Government and that it, therefore, did not neatly fit into old legal categories. Both the learned Chief Justice and Mathew, J., had in terms removed the basis for the apprehension that by holding that these public Corporations were "State" within the meaning of Art. 12, the employees of these Corporations would become Government servants. At page 1357 Mathew, J. also considered the other aspect that even assuming that these regulations had no force of law,

these employees of such public Corporations, which were State agencies, would have a status which would enable them to obtain a declaration for continuance in service if they were dismissed or discharged contrary to the regulations at page 1360 finally, Mathew, J., observed that apart from the fact that these regulations were statutory regulations, as the employments were under the Corporations created by statutes for carrying out business of public importance, they were public employments. Therefore, even if the regulations had no force of law the settled principle must be applied that an executive agency must be rigorously held to the standards by which it professes its action to be judged. Therefore, the procedure or norms fixed for dismissal from employment had to be scrupulously observed by such State agency. It was pointed out that this judicially evolved rule of administrative law was firmly established because he who took the procedural sword must perish with that sword. Therefore, this decision completely settles the entire question before us because the Rajasthan Electricity case (supra) has now been explained that the binding directions and power to punish for disobedience is not the sole test, but the other material test is whether such a statutory public Corporation is a public authority in the sense of its actions being authoritative, i.e., it is delegated sovereign power of making binding rules and regulations and it has to administer or enforce the Act for carrying on this public undertaking for the public benefit. The limitations laid down by the relevant scheme of management or the relevant regulations under the statutory power would be statutory fetters on the said statutory Corporations, and their contract of employment would not be a simple contract of master and servant, but the employees would have statutory status or element of public employment, so that whenever such servants are dismissed in violation of these mandatory provisions of the necessary rules or regulations or in contravention of the principles of natural justice, a declaration of nullity would be available to these employees by way of protection of their public employment. The same result is also reached because these are State agencies or instrumentalities of the State which are created by the statute for administering this Act as public authority for public benefit, and to whom statutory powers are given to make these binding regulations under S. 19 in respect of these employees.

6. The learned Government Pleader, however, vehemently argued that in those cases the provisions which made a difference were provisions regarding the power to give binding directions or business being a monopoly business or that the employee was made a public servant or that there was some vestige of sovereign power, as for example, right of entry on others premises or because indemnity of acts in good faith done was given. These are incidental factors which had been considered but the test has not been narrowed down only to such bodies, which could only give binding directions and where punishment is provided for non compliance of the binding directions. The other test of Shah, J. of delegation of power to make binding regulations, in Rajasthan State Electricity Board case (supra) had been in terms applied, along with even the further test of

public Corporation being a State agency or instrumentality of the State when such important public functions are discharged for public benefit by such public body or authority. A conspectus of provisions which we have analysed of the present Act leaves no doubt that the present Bank is also a State within the meaning of Art. 12 as per the aforesaid settled tests. The learned Government Pleader had also vehemently relied upon the decision in *Ramesh Krishna Rao Vs. State Bank of India*, ; where the State Bank was held not to be a State by the Division Bench of the Bombay High Court and in *B.V. Mokashi Vs. Mysore State Road Transport Corporation and Others*, , by the Full Bench of the Mysore High Court where the Mysore State Road Transport Corporation was held not to be a State. Both these decision had applied only the first test of binding direction in *Rajasthan State Electricity Board case* (supra). Therefore, these authorities would be of no use after the aforesaid settled legal position. Similarly, the decision of the Patna High Court in *S.M. Zaki Naqui Vs. Custodian, Union Bank of India and Others*, , would also be not of any use because it merely held that the Bank employees were not Government employees governed by Art. 311; which is also the settled ratio of *Sukhdeo Singh's case*. The last decision which he had relied upon was by the Division Bench of the Delhi High Court in *J.S. Sachdev and Others Vs. Reserve Bank of India, New Delhi and Another*, , where the Reserve Bank was held to be a State by relying on the test that it was an instrumentality of the State for administering the Act in question. It is this very which can also be relied upon even in the present context for holding the present Bank to be a State even under the scheme of the present Act. Therefore, the first contention raised by Mr. Shelat must be accepted and we must proceed on the footing that the respondent-Bank is a State.

7. The next ground was raised as these rules were made effect from January 1, 1970 and they laid down service conditions of officers as on December 31, 1969. These rules are called the Bank of Baroda Officer's Service Rules. By an administrative circular, they have been issued for providing terms and conditions of service applicable to officers of Bank of Baroda in India at present and for other matters. They have been arrived at in consultation with All India Bank of Baroda Officers Association. They came into force with immediate effect. Under para 1.4 the Bank had a right to alter, amend, clarify or rescind any of these rules from time to time in consultation with All India Bank of Baroda Officers' Association. It is true that under S. 19(3) until these regulations were made under S. 19(10), the existing rules of the existing Bank which were in force on July 19, 1969, only continued and had been deemed to be regulations made under S. 19. These rules were not existing on July 19, 1969. Even so it is settled legal principle as pointed out by Mathew, J., that the administrative rules in such service matters of such State Employees would have binding effect on the principle of administrative law. Till the statutory regulations would be made by exercising the delegated legislative power, the administrative instructions would be filling up necessary gaps and would be completing the statutory code of service conditions of these officers. In *Dr. Amarjit Singh Ahluwalia Vs. The State*

of Punjab and Others, , their Lordships pointed out that it was well-settled by several decisions of the Supreme Court that where statutory rules were made regulating recruitment or conditions of service, the State Government may always in exercise of its executive power to issue administrative instructions providing for recruitment and laying down conditions of service. That is why the seniority principle laid down by the administrative circular was held to be binding. Further proceeding at page 990, it was pointed out that once this administrative circular was issued laying down the norms, even though the administrative instructions had no force of law, the State Government could not at its own sweet will depart from it without any rational justification and fix any artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of the binding norms, as that would be normally violative of Arts. 14 and 16 of Constitution of India. The sweep of Arts 14 and 16 was wide and pervasive, because these two Articles embodied the principle of rationality and they were intended to strike against arbitrary and discriminatory action taken by the State, within the meaning of Art. 12. It was pointed out that where the State Government departed from a principle of seniority laid down by the administrative instructions and the departure was without reason and arbitrary, it would directly infringe the guarantee of equality under Arts. 14 and 16. Their Lordships do not rest this matter only on this equality guarantee of Arts. 14 and 16 but on the aforesaid settled principle of administrative law, as referred to also by Mathew, J. in Sukhdev Singh's case, on the settled line of American decision that an executive agency must be rigorously held to the standards by which it at professed its action to be judged on pain of invalidation of an act in violation of them. This principle was evolved not on the equality clause but on the rule of administrative law because arbitrariness had to be eliminated from the State action, if Rule of law is to prevail. Therefore, even these rules would be binding and the petitioner would be entitled to a declaration of invalidity or nullity if the mandatory administrative rule in this connection is not followed or principles of natural justice have been violated. The material Rule 8 deals with the conduct and discipline. Rule 8.1 defines various acts of misconduct. Rule 8.2 provides a departmental enquiry to be held against an officer who commits any act of misconduct. The officer against whom departmental enquiry is proposed or likely to be taken shall be given a charge sheet clearly indicating circumstances against him. The enquiry officer shall then given the officers concerned an opportunity to be heard in his defence and shall follow the rules of natural justice in the conduct of the enquiry. That procedure is elaborately laid down therein for the departmental enquiry. Rule 8.3 provides for various punishments if an officer is found guilty of misconduct. The material Rule 8.7 runs as under :

"If an officer charged with misconduct voluntarily admits in writing the charge/s substantially, a departmental enquiry need not be held. In such cases, the management may in its discretion, impose on the officer concerned any of the punishment stated above. However, if such an officer requests in writing for a

hearing regarding the nature of punishment, he shall be heard by an officer appointed for the purpose by the Chief Executive or any other officer authorised in this behalf".

Therefore, Rule 8.7 dispenses with the holding of a departmental enquiry as contemplated by Rule 8.2 in those cases where the officer charged with misconduct voluntarily admits in writing the charge or charges substantially. In such cases the management may in its discretion impose on the officer concerned aforesaid punishment, mentioned in Rule 8.3. A provision is also made that if the officer concerned requests in writing for a hearing regarding the nature of punishment, he shall be heard. This rule substantially complies with the requirements of the principles of natural justice because there would be no question of enquiry for establishing a charge, which the delinquent himself voluntarily admits in writing substantially. As this rule dispenses with the entire departmental enquiry contemplated by Rule 8.2, it is obvious that it comes into operation when the delinquent faces a serious charge against him. We cannot construe this rule so narrowly by confining it to the stage when a formal charge sheet had been served and departmental enquiry had commenced against the delinquent under Rule 8.2, because that would frustrate the very purpose of Rule 8.7 to dispense with the elaborate departmental enquiry procedure contemplated by Rule 8.2. Even in the context of Government servants who have the constitutional protection of Art. 311, in such cases when the concerned Government servant admits the relevant facts about his misconduct, it is settled legal position that such an enquiry need not be held. In *Channabasappa Basappa Happali Vs. The State of Mysore*, , where a police officer had remained absent without leave and had resorted to fast and demonstration against the action of the superior officer, it was held that the indiscipline was fully established from facts admitted by the delinquent. Their Lordship pointed out that at the departmental enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he was charged and to lead his defence. Where, however, the delinquent admitted all the relevant facts on which the decision could be given against him, it could not be said that the enquiry was in any breach of principles of natural justice. Their Lordships also pointed out that there was no distinction between admission of facts and admission of guilt. When the delinquent admitted the facts, he was guilty and his plea amounted to a plea of guilty on the facts on which he was charged. In that case the delinquent had later on tried to explain that he went on fast quite a different reason and still on improbability of such plea their Lordships held that this was a clear admission of guilt of the relevant facts necessary to establish charge against him. That is why in *Jankinath Sarangi Vs. State of Orissa*, . Their Lordships point that a fetish of the principles of natural justice should made when no prejudice had been caused. Therefore, Rule 8.7 is as per the settled legal position to dispense with the enquiry in those cases where the officer charged with misconduct voluntarily admits in writing charges against him substantially,

as there would be no prejudice in such cases and the course of natural justice would not be deflected. That is why the only provision which is made while punishment is imposed that if the delinquent asked for a hearing, he should be heard regarding the nature of punishment. In the present case this procedure has been completely followed by the competent authority. The delinquent was, first by the notice, dated May 28th 1973, at Annexure A, asked to state full facts about the purchases of these bills (travellers-cheques) in foreign currency aggregating to a sum of Rs. 25,000. He was also thereafter, by Annexure B dated July 14, 1973, asked to see the Chief Vigilance Officer at Bombay on July 16, 1973. The admission which is annexed at Annexure A to the affidavit in reply has been given by the delinquent before the Vigilance Officer on August 6, 1973 in his own writing addressed to the Chairman which is in continuation of his explanation on June 9, 1973 in respect of these foreign currency transactions which had been irregularly done by him while he was agent at Santh Piply Branch at Nadiad. He has stated that the foreign parties used to present travellers' cheques, drafts, drawn in foreign currency. These instruments were purchased and with the proceeds either savings accounts were opened or fixed deposit receipts were issued. He has stated that out of 5 or 6 such transactions, in 2 or 3 of them, he had taken off the instruments and sold them in unofficial market, while other transactions were dealt with in the regular course. Then he had stated that as the foreign instruments were being realised through Baroda main office he paid cash personally at Baroda main office in case of irregular transactions for rectifying the entry. The amount of irregular transactions was about Rs. 6,000. He also admitted that the take realisation advices were brought by himself to the branch office and he had faked the advices. Such a categorical admission that he had sold these foreign instruments in unofficial market and that he had personally paid up the amount of Rs. 60,000, after faking up realisation advices of the head office, conclusively established his serious misconduct alleged against him. In the explanation which he had given on October 9, 1973 at Annexure D, the petitioner did not raise any plea of undue influence or coercion as was subsequently sought to be suggested. He had taken up the plea that he had no sufficient staff and this work of dealing with foreign currency instruments being complicated required great care and caution. He could not personally cope with all the work. That is why stated that in 2 or 3 transactions he had adopted irregular procedure. Money was deposited in the savings bank account or deposit receipts were issued to the customer. He, however, stated that there was no loss to the Bank. It was only an unfortunate event that the instruments were misplaced or lost or some mischief might have been played with them. At the time when the instruments were to be forwarded to the main office at Baroda he could not find them and he got nervous as the amount involved in each of these transactions was big and he got confused and perplexed. His immediate mental reaction was to see that the Bank's interest did not suffer and, therefore, he collected the amount on each occasion from his relatives and/or personal resources and made good the amount by depositing the same in the main branch. For the purpose of adjustment of account the only

course open was to produce the fake realisation advice to his branch from the head office. Thus, he had suffered great monetary loss but the interest of the Bank was properly safeguarded. He had referred to the earlier explanation of June 9, 1973 and June 18, 1973. Thereafter he puts his say regarding this admission of August 6, 1973 by pointing out that subsequently he became nervous. He had a mental picture of his career being at stake and realising that, in view of his irregularities, he had written this letter of August 6, 1973 to the Chairman. He also stated that certain statements therein which though substantially true were not correct as far as they referred to the fact of the sale of these instruments. He was required to see the Chief Vigilance Officer an Central Office, Bombay twice and that made him more nervous. Then comes the material portion :

"Then I believed that if I were to make a statement having sold the instruments as contained in my letter, dated 6th August, 1973 then I may not have to undergo any further inquiry".

It was his say that, therefore, he made this statement in the letter dated August 6, 1973, of his having sold the instruments unofficially while the correct fact was that these instruments were lost. He further admitted that when the instruments were lost and not found in the Bank, it was his duty to report this matter to the Bank, but as the amount involved was a large one, and he had actually issued the deposit receipts, or deposited the amount in the savings bank accounts of the customers, the account of the Bank required to be adjusted and in an unguarded moment he thought to deposit the amount in the main office so that the Bank at least would not be financially put to any loss due to his negligence, and as he had deposited the amount in each case at the main office of the Bank of Baroda, he had to produce fake realisation advice in his branch at Nadiad. Since he adopted this procedure it was not possible for him to inform the proper authorities regarding the loss of the instruments. Under the aforesaid circumstances he said that he had to admit that he committed an irregularity in not informing the proper authority about the loss of instruments and he also committed an irregularity in producing fake realisation advices. In this letter there is no a word of any coercion or undue influence exercised by the Chief Vigilance Officer, Bombay and the whole admission was on the behalf that by stating true facts, he would not face any further enquiry. His whole explanation has been rightly dealt with by the competent authority. In so far as he wanted to retract it, that plea was palpably false, as unless he sold them in unofficial market, he would not have paid such a large amount of Rs. 60,000 by collecting from his friends or from his personal resources, and because he would never fail to report the fact of loss of instruments, if any, loss had actually taken place. He admitted that it was his duty to inform about the loss of instruments, because in that case some prompt, preventive action may be taken by even contracting on telephone so that proper instruments can be given to stop payment and that was the only way he could have avoided this loss. Therefore, such a patently false explanation on the aspect that the instruments were not sold by him in unofficial

market was rightly not accepted by the competent authority. The whole statement was clearly a voluntary statement and when he admitted that he had faked up realisation and had issued deposit receipts or opened accounts of the customers, it is obvious that he had dealt with those instruments in unofficial market as categorically cally admitted by him. Therefore, merely because the Chief Vigilance Officers Deshpande and Bhide, who accompanied him, had not been examined would not be material when this voluntary explanation clearly clinches the entire issue. The competent authority had given very elaborate order and after considering the entire case, he has passed the impugned dismissal order. Therefore, no principle of natural justice has been violated as no prejudice whatever has been caused and the course of natural justice has not been deflected in any manner whatever. Therefore, there is no substance in the contention of Mr. Shelat that either Rule 8.7 or the principles of natural justice were violated in this case.

8. In the result, this petition fails and the Rule is, therefore, discharged with no order as to costs in the circumstances of the case.