
(1995) 08 CAL CK 0024
In the Calcutta High Court
Case No : C.O. No. 71 (w) of 1994

Swapan Bose

APPELLANT

Vs

Ram Krishna Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311(2)

Citation : 100 CWN 29 : (1996) 1 LLJ 1180

Hon'ble Judges : N.K. Batabyal, J

Bench : Single Bench

Advocate : Kashikanta Moitra and Sisir Kumar Bhowmick, for the Appellant;
Bhaskar Sen and Tapan Kr. Sengupta, for the Respondent

Final Decision : Allowed

Judgement

N.K. Batabyal, J.—The writ petitioner was appointed as a Chief Executive Officer in Ram Krishna Cooperative Bank Ltd. (hereinafter called the Bank) registered under the West Bengal Co-operative Societies Act for a probationary period of three months as per annexure - A to the writ-petition. The said appointment was duly confirmed by the Board of Directors of the bank as per annexure A-1 to the writ petition. Subsequently, the designation of the petitioner was changed from Chief Executive Officer to Chief Executive. AM on a sudden, the petitioner received a letter dated February 21, 1993 issued by the respondent No. 2 marked annexure-H to the Writ Petition. It appeared from the letter that National Savings Certificates No. 6 NS/G-67I544 to 671553 dated August 4, 1986 in the names of Smt. Jharna Chakraborty and Sri Parimal Chakraborty which were pledged in favour of the Bank were given to the petitioner with due authorization to encash the same from the Alipore Post Office, Calcutta, on August 10, 1992. The said certificates were encashed by the Writ Petitioner and the Asst. Post Master (N.S.C.) Alipore Head Office Calcutta, handed over a cheque of Rupees one lakh and cash amounting to Rs. 42,000/- as against the said NSC to him. But the writ petitioner deposited a cheque of Rupees one lakh in S.B. A/c. No.

1913 and Rs. 36,000/- in cash in the loan account of the bank instead of Rs. 42,000/- on August 14, 1992. After receiving the complaint from the NSC holders, the bank authority contacted with the Asst. Post Master Alipore P.O. and verified the facts and came to know that the said certificates had been encashed on August 10, 1992 for a cheque of Rupees One Lakh and for Rs. 42,000/- in cash to the person authorised by bank. In that letter it was alleged that there was serious lapse on the part of the writ petitioner, therefore, the Board of Directors of the bank decided to investigate the matter thoroughly. By the said letter, the petitioner was asked to explain the matter in writing within seven days from the date of the receipt of the letter. The petitioner was also suspended with immediate effect. Pursuant to the said show- cause notice the petitioner gave a reply on February 27, 1993. He farther admitted the responsibility and deposited the balance amount of Rs. 6000/- in cash falling short as the party had suffered loss due to inadvertent mistake. He also expressed his sincere regrets due to the inadvertent to conduct. His stand was that the Asst. Post Master who put him into the danger at the relevant time did not show him the interest calculation sheet on the principal amount on the pretext of hurry as the closing hour of office was approaching. The Petitioner in good faith accepted the bunch of currency notes allegedly containing Rs. 42,000/- in cash without counting the amount. Thereafter, a charge sheet was drawn up against the petitioner and an enquiry was held in which he was found guilty of the charges . The Petitioner was not given a copy of the enquiry report. Subsequently, by order dated December, 18, 1993 the respondent No. 2 as per annexure-B issued a letter to the petitioner intimating him that the Board of Directors had decided and approved unanimously the termination of his services from the bank. The petitioner was neither; given a copy of the enquiry report nor was he given an opportunity of making the second show-cause on the proposed penalty of termination of service as required under Rule 48(f) framed under the W.B. Co-operative Societies Act. As the petitioner has been deprived of a reasonable opportunity of defending himself as guaranteed under Article 311(2) of our constitution therefore he has come before this Court for the following reliefs.

(a) a writ of or in the nature of mandamus commanding the respondents not to give effect or further effect to the impugned order of termination dated December 18, 1993 as per annexure-N to the Writ Petition.

(b) a writ of or in the nature of certiorari directing the respondents to produce all the relevant papers before this Court and other reliefs.

2. In the affidavit-in-opposition filed on behalf of the Bank it has been stated that the petitioner was an employee of the Bank as stated in ; the writ Petition. It has been stated that the petitioner admitted his responsibilities and deposited the balance cash amount accepting his delinquency in the matter. According to the bank, the petitioner has come with a baseless and fabricated story to save his skin. He received a cheque of Rupees one Lakh and Rs. 42,000/- in cash from the Asst. Post Master Alipore P.O. and gave a receipt therefore. This is also

evident from annexure - A to the affidavit-in-opposition dated February 17, 1993, which is a letter written to the Post Master Alipore P.O., Calcutta by the Bank in reply to that letter. The Asst. Post Master NSC, Alipore P.O. has made an endorsement at the bottom of the said letter under his signature and seal that the National Savings Certificates were encashed on August 10, 1992 for Rupees One lakh by cheque of Rs. 42,000/- in cash for interest by the authorised person of the bank. It has further been stated in affidavit in opposition that all opportunities were given to the writ petitioner to defend himself in the proceeding case. In para 16 of the A.P. it has been specifically stated that the petitioner was not entitled to get a copy of the inquiry report. There was no violation of the principles of natural justice as alleged by the writ petitioner. It has been stated that the termination of service of the writ petitioner was not illegal or without jurisdiction and the said order has been done according to law after giving all reasonable opportunities to the writ petitioner to defend himself.

3. In the affidavit in reply on behalf of the writ petitioner the material allegations made in the A.O have been denied. The petitioner has reiterated his stand as stated in the writ petition.

4. In this connection, it may be stated that an application for further order was filed by the writ petitioner on January 30, 1995 and affidavit in opposition against that application was filed on July 28, 1995. The learned advocate for the writ petitioner has submitted that as the main matter has been taken up for consideration therefore he is not pressing the said application.

5. Mr. P.K. Roy Learned Counsel appearing on behalf of the petitioner along with Mr. Bhasker Sen Learned Counsel and Tapan Kumar Sengupta learned Advocate has submitted that as the bank in this case, cannot be described to be an instrumentality of the State under Article 12 of the Constitution, therefore the writ petition does not lie. Mr. Kashi Kanta Moitra Learned counsel appearing with Mr. Sisir Kumar Bhowmick, learned Advocate has submitted that it is not his contention that a co-operative Bank, as is the case here, is an instrumentality of the State under Article 12 of the Constitution.

6. Mr. Moitra has, in this connection referred to the principles laid down by a Divn. Bench of our High Court in Arjed Ali Gazi v. State of W.B. (1990) 2 CHN 284. In that case, Arjed Ali Gazi was an employee of Dakshin Barasat Service Co-operative Society. The Secretary of this Society passed an order dismissing the service of the writ petitioner, Arjed Ali Gazi who was an employee of this society. The learned Single Judge before whom the matter was pending found that there were conflicting decisions of Single Bench of Calcutta High Court on the question of maintainability of a writ petition against a cooperative Society. According to him, the matter should be considered by a larger bench. Accordingly the matter was referred to a Division Bench of this High Court. Held a Co-operative Society formed by private initiation of its members is not a statutory body or an instrumentality of the State and the decisions in this respect are specific. Ordinarily, a writ does not lie against the private body but the position will be

entirely different if such private body is vested with statutory duties and functions. For inaction relating to such statutory duties or improper action contrary to statutory provisions, such private body becomes amenable to writs. Held further, the conditions of service of the petitioner in that case, were not controlled by the terms of a contract but, in the absence of terms of a contract of service, such conditions were left to be controlled by Rule 108 of the West Bengal Cooperative Societies Rules, 1987, which undoubtedly, is a statutory Rule. The Society had therefore, an obligation to comply with the said statutory Rule in the matter of discipline relating to the employment of the petitioner. Therefore, if there was a breach of such obligation under Statutory Rules, a writ petition was maintainable.

7. Their Lordships in the case above relied upon the principles laid down by the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . In that case it has been held that power to issue writ under article 226 is not confined to statutory authorities and instrumentalities of the State . Such writ can also be issued to any other person or authority performing public duty. Such duty need not be imposed by statute. It has been held further that the term "authority" under article 226 must receive a liberal construction unlike "State" under article 12.

8. Their Lordships in the above Division Bench decision of our High Court also relied upon the principles laid down in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, , where it has been indicated by the Supreme Court that for enforcing a personal contract of employment as a general Rule, writ cannot be enforced but where the conditions of service are controlled by statutory Rules & Regulations, for breach of such Rules and Regulations appropriate writ may be issued.

9. Nothing has been placed before this Court on behalf of the respondents to controvert the propositions of law as enunciated by the learned Advocate for the writ Petitioner. In the circumstances, this Court finds that there is substance in the contention of the Ld. Advocate for the writ petitioner. Accordingly, this Court holds that the writ petition is maintainable.

10. The next point which has been argued by Mr. Moitra, Id advocate for the writ petitioner is that in paragraph 16 of the Affidavit-in-opposition it has been stated as follows:.

16. With reference to paragraph 21 of the said petition, I say that the petitioner is not entitled to receive a copy of the enquiry report. I deny that the opportunity was not provided to the petitioner to defend his case or that the authority of the respondent Bank has violated the principles of natural justice".

11. Mr Moitra, Id. advocate has submitted that in paragraph 21 of the writ petition, it has been stated categorically that no copy of the report of the enquiry submitted by the inquiring officer was served upon the petitioner and as such he

was quite in the dark about the findings of the inquiring officer as well as of the connected papers and documents which were relied upon by the inquiring officer.

Mr. Moitra has argued that the position that no copy of the enquiry report was served upon the petitioner, therefore, stands uncontroverted.

12. The Learned advocate relying upon the principle laid down in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has submitted that since it is the right of the employee to have a copy of the enquiry report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right whether, therefore, the employee asks for the report or not the report has to be furnished to him. Mr. Moitra, learned Advocate has also submitted that the apex Court of our land as in that case, held that the law laid down in Union of India and others Vs. Mohd. Ramzan Khan, should apply to employees in all establishments, whether Government or non-Govt, private or public. This will be the case whether there are Rules governing the disciplinary proceeding are not and whether they expressly prohibit the furnishing of the copy of the report or not are silent on the subject. Whatever the nature of punishment, whenever the rules require an enquiry to be held for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiring Officer before the Disciplinary Authority records its findings on the charges levelled against him. In the case at hand the entire matter cropped up after November 20, 1990 which is the date from which the Rule laid down in Ramzan Ali's case is made applicable.

13. It has been submitted on behalf of the respondent-Society that all opportunities were given to the writ petitioner to defend his case and as he had nothing to say in the matter, therefore, the copy of the enquiry report was not given to him. The failure of the authority to furnish the copy of the report cannot show any illegality in this case. It has further been argued by the Id. advocate for the respondent society that it had no control over the Inquiring Officer who was an independent agent appointed by the society. Therefore the society cannot be held responsible for non furnishing of the copy of the report to the delinquent. Mr. Moitra, Id. advocate has submitted that the inquiring Officer is a delegate of the society and the society cannot wash its hands off simply by saying that the inquiring officer was an outsider. I find no substance in the contention of the Id. Lawyer for the respondent society as the delinquent was clothed with an entrenched right to get a copy of the enquiry report where the Enquiry Authority was not the Disciplinary Authority. Secondly, there is no substance in the contention of the Id. advocate for the Society that it is not responsible for the remissions of the delegate if any.

14. The next point which has been raised by Mr. Moitra, Id. advocate for the writ petitioner is that the Rule, learned advocate for the writ petitioner is that the Rule 48(f) of the W.B. Cooperative Society Rules, 1987. provides that no employee of a co- operative Society shall be dismissed or removed from service

except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of making a representation on the penalty proposed. Nothing has been submitted on behalf of the Co-operative Society before this Court to show that any opportunity was given to the delinquent Officer of making a representation on the proposed penalty. It is true that the second show cause against the proposed penalty then unless that opportunity was given, the authority imposing upon the punishment] acts beyond jurisdiction. Here in the case at hand the authority concerned has exactly done the same.

15. In view of the discussions made above I hold that the writ petition succeeds. Accordingly the Writ petition is allowed. The impugned order of termination marked annexure-N to the writ petition dated December 18, 1993 issued by the respondent No.2 is quashed but this order will not prevent the respondent authority to proceed according to law afresh if not otherwise barred. In the circumstances, no order is made as to costs.

Later on.

The learned Advocate for the respondent Bank prays for stay of operation of the order for two weeks. The learned Advocate for the Writ Petitioner opposes. Considered their submissions, the prayer is rejected.