

A. Sadanand Vs. Y.M. Pai, Dy. General Manager, Syndicate Bank, Hyd.

A. Sadanand Vs. Y.M. Pai, Dy. General Manager, Syndicate Bank, Hyd.

SooperKanoon Citation : sooperkanoon.com/437512

Court : Andhra Pradesh

Decided On : Sep-04-1997

Reported in : 1998(3)ALD590; 1998(2)ALT598

Judge : B.S.A. Swamy, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 12 and 23; Contempt of Courts Rules, 1980 - Rule 27

Appeal No. : C.C. No. 271 of 1997

Appellant : A. Sadanand

Respondent : Y.M. Pai, Dy. General Manager, Syndicate Bank, Hyd.

Advocate for Def. : Mr. K. Srinivasa Murthy, Sr. Counsel for Syndicate Bank

Advocate for Pet/Ap. : Mr. Ganduri Nageswara Rao, Adv.

Judgement :

ORDER

1. This Contempt Case was filed by the petitioner alleging that without complying with the orders passed by this Court in W.P.No. 16216 of 1996 dated 5-11-1996 fully, the respondent is trying to hold the disciplinary proceedings and the same amounts to flouting the orders of this Court.

2. In this case, this Court is called upon to decide not only the issue whether the respondent-Bank flouted the orders of this Court or not but also whether this Court can interdict the disciplinary proceedings in the midst when a serious illegality came to its notice or the proceedings should be allowed to be completed ?

3. By order dated 27-2-1997 notice before admission was given returnable by 13-3-1997. After receipt of the notice, respondent filed a counter-affidavit stating that pursuant to the orders of this Court as many as 179 documents on which the Management intends to rely to prove the charges levelled against the petitioner were furnished, and also particulars of 24 missing vouchers were also furnished by the Bank through its letter dated 5-2-1997. With regard to 11 more documents, the Bank categorically stated that they are missing from the records of the Branch and in fact, a charge to that effect was framed against the petitioner and the same is subject-matter of the enquiry. Hence, the petitioner cannot contend that it has violated the orders of this Court. On the other hand, the petitioner is not co-operating with the Bank to complete the enquiry within the time stipulated by this Court.

4. To appreciate the rival contentions of the parties, a little factual background is required. The petitioner is working as Clerk in the respondent-Bank and was posted to Shah Ali Banda branch on 7-10-1991 and he is being entrusted with Special Assistant duties (temporary) as and when required. He was placed under suspension on 13-4-1996, pending initiation of disciplinary proceedings for certain, serious irregularities that came to the notice of the Bank. Subsequently, the Officer of the Vigilance Department seemed to have conducted a detailed enquiry and submitted a report. But, the Bank for reasons best known to it, without reference to the preliminary enquiry report and at the same time on various commissions and omissions that came to light in the inquiry in proceedings NO.CGS/HYD/ 96/41, dated 25-6-1996 framed as many as six charges including drawal of certain amounts from the accounts of the customers of the Bank, tampering records of the Bank with regard to some others and raising loans from private parties without knowledge and permission of the Bank authorities, which indicates that he is having excessive financial commitments/borrowings outside the Bank with the customers of the Bank. Stating so, the petitioner was charged for commission of

gross misconduct of 'engaging in any trade or business outside the scope of your duties except with the written permission of the Bank' vide Clause No.19.5 of the Bipartite Settlement and 'doing acts prejudicial to the interest of the Bank', vide Clause No.19.5 (j) of the Bipartite Settlement. In the last para of the charge-sheet the respondent directed the petitioner to submit his written statement of defence within (15) days from the date of receipt of the charge-sheet.

5. After receipt of the said proceedings, the petitioner seemed to have requested the Bank authorities to furnish copies of the documents on which the Bank would like to rely to prove the charges. The Assistant General Manager in his proceedings reference No.975/272 (3)/IRS, dated 31-7-1996 informed the petitioner that the documents will be made available for verification at the appropriate stage and advised him to submit his written statement of defence, within seven days of receipt of the letter. Questioning the said proceedings, the petitioner filed W.P.No.16216/1996 and the same was disposed of by order dated 5-11-1996. After advertng to the factual background, I gave a direction to the respondent-Bank that if it intends to proceed with the Departmental Enquiry it shall complete the enquiry and pass appropriate order within six months from the date of furnishing the copies of the documents on which it is placing reliance, provided the delinquent employee co-operates with the Enquiry Officer. After receipt of the orders in the above writ petition, the respondent-Bank by its proceedings dated 16-12-1996 furnished the photostat copies of the documents by stating that the Management intends to rely on those documents to sustain the charges levelled against the petitioner. The petitioner was directed to submit his explanation within seven days from the date of receipt of that letter. To this letter, they seemed to have enclosed the list of documents that are going to be relied on by the Bank to prove each of the charges and the witnesses that will be examined on behalf of the Bank. Having received these documents, the petitioner by his letter dated 26-12-1996 requested the Bank to furnish another (21) documents and also the preliminary enquiry report submitted by the Investigating Officers who were shown as a witness to be examined on behalf of the petitioner to prove the charges. The Bank by its letter dated 5-2-1997 while furnishing particulars of 8 vouchers that are found missing from the slip bundle dated 25-2-1994 and 16 vouchers that are found missing from the slip bundle dated 30-8-1994, and categorically stated that

documents mentioned by the petitioner in his letter dated 26-12-1996 at Sl.Nos.1, 2, 3, 6,9,12, 15 and 17 are missing from the records of the Branch and the same forms part of a charge in the departmental proceedings. Lastly, the respondent-Bank stated 'further, please note the report of the Investigating Officer is not relied on to prove the charges and hence the same is not being sent and ultimately the petitioner was asked to submit his explanation within three days. Instead of taking advantage of the statement made by the respondent-Bank about the missing of the documents, the petitioner seemed to have written another letter dated 15-2-1997 stating that unless the copies of those documents are given he may not be able to give reply to the above charge-sheet for which a suitable reply was sent by the respondent-Bank through its letter dated 28-2-1997. At this stage, the petitioner filed the present contempt case.

6. Though this Court did not stay the enquiry, from the record now it is seen that while the petitioner was avoiding to face the enquiry, the Management representative was insisting for the completion of the enquiry under the guise of the orders of this Court whereunder a direction was given to complete the disciplinary proceedings within six months. With the result, the Enquiry Officer commenced the enquiry on 9-6-1997 by observing, 'I intend to keep the cross-examination of the Management witnesses till the depositions of Management witnesses are concluded. In case, the CSE appears before the enquiry forum before conclusion of deposition of Management witnesses he may utilise the opportunity of cross-examining the witnesses by a request made before the Management concludes deposition of all witnesses. If no request is received expressing his desire to cross-examine the management witnesses before conclusion of deposition of Management witnesses it will be treated as that the CSE is not interested in cross-examining, defending his case on the evidence of the management will be then treated as concluded.' Stating so, he started enquiry ex parte on behalf of the management and marked all the 179 documents that were furnished as Ex.MEXI to 179 and five witnesses were examined in-chief by the management from time to time and the chief examination was closed on 8-7-1997 with the following endorsement, '.....and the next date of the enquiry will be communicated to the CSE. The CSE would be informing him to his willingness to appear before the enquiry forum and to go ahead with the cross-examination of

the witnesses and also to lead his evidence, if any in his defence. In order to avail this opportunity he should intimate me in time his willingness so as to advise the MR to make arrangements for calling for the witnesses before the enquiry forum.'

7. From the narration of the facts, it is to be seen whether the respondent flouted the orders of this Court dated 5-11-1996 in W.P.No.16216/1996 as contended by the petitioner. It is not in dispute that the respondent-Bank categorically stated that some of the documents required by the petitioner were found missing from the records of the Branch and in fact, the petitioner is facing a charge on that account. Likewise, the respondent-Bank refused to furnish the copies of the preliminary enquiry report by stating that the Bank is not relying on the same.

8. In the light of the categorical stand of the respondent-Bank that some of the documents sought for are found missing, and the petitioner is facing a charge on that account, the petitioner instead of participating in the enquiry petitioner having received the notice about the time and date of the enquiry at every stage went on giving representations that the disciplinary enquiry cannot go on as the orders of the High Court dated 5-11-1996 in W.P.No. 16216/96 were not complied with and the Contempt Case filed by him is pending adjudication by the Court, though this Court never stayed the enquiry proceedings.

9. In the light of the factual background stated above, I cannot hold that the respondent flouted the orders of the Court and they are liable to be punished under the provisions of the Contempt of Courts Act, as contended by the petitioner. Accordingly the Contempt Case is closed.

10. But, during the course of the arguments in the contempt case, the Court is confronted with the situation whether to interdict the disciplinary proceedings even before completion of the enquiry having noticed the serious irregularities in conducting the disciplinary proceedings or to wait till the completion of the enquiry and till the petitioner exhausts the remedies available under law. I prefer to choose the first course as the illegalities noticed by this Court goes to the very root of the disciplinary proceedings and the proceedings are likely to be declared as ab initio void.

11. By doing so and correcting the mistake at the threshold not only the time that is likely to be consumed in conducting the departmental proceedings but also the public moneys will be saved apart from minimising the agony to which the delinquents will be subjected.

12. In his case, having refused to furnish the copy of the preliminary enquiry report submitted by the officials of the Vigilance Department of the Bank on the ground that the Bank is not relying on it, chose to examine both the officers of the Vigilance Department who conducted the preliminary enquiry and unearthed various illegalities said to have been committed by the petitioner. A look at the ex parte proceedings conducted by the Enquiry Officer makes it abundantly clear that the Bank intends to prove the charges levelled against the petitioner only through these two witnesses. When the Bank does not want to rely upon the enquiry report, the question of examining the officers who conducted the enquiry does not arise as they are not competent to speak about the alleged irregularities committed by the petitioner. They are not having any personal knowledge about the commission of the alleged irregularities nor they were the affected parties. The information gathered by them during the enquiry from the records of the Bank can termed as hearsay or secondary unless and until the information gathered by them is proved through a competent witness to speak about the commission of the alleged offence, with reference to the documentary evidence, their evidence is not admissible in evidence.

13. I have gone through the ex parte evidence recorded by the Enquiry Officer MWI-Vasantha Krishna who joined as Manager at Shah Ali Banda Branch only on 5-7-1995 was examined to speak that by the time she took over the charge the Savings Bank head of account was left untallied for more than two years and except one charge all other charges relate to the period prior to her joining the Bank as Branch Manager on 5-7-1995, One Madhitsu Sudan was examined as MW2 to speak that he has given the statement to the Vigilance Unit that he paid Rs.10.00Q/- to the petitioner on 25-2-1994. MW3 i.e., Mr. Srinivasulu and MW4 Sambasiva Rao were the Officers working in the Vigilance Unit of the Bank who conducted the preliminary enquiry and who were made to speak in the enquiry in extenso covering all the charges levelled against the petitioner. The only other

witness that was examined was one Narendra Singh working as Deputy Government Examiner of Questioned Documents to prove that certain entries in the ledgers were tampered by deciphering the original numbers and putting new numbers. If the evidence of the MW3 and MW4 is eschewed, I am of the opinion that there is nothing left to prove the guilt of the petitioner. If the respondent-Bank wants to rely upon the evidence of these witnesses the delinquent is entitled to have a copy of the report wherein these officers have recorded their own impressions after going through the records of the Bank to confront them with the findings recovered by them if their deposition before the Enquiry Officer runs counter to their earlier version. Hence, the action of the respondent-Bank in not furnishing the report submitted by these witnesses while examining them as management witnesses vitiates the entire proceedings and they are liable to be set at naught. If the respondent-Bank is prepared to prove the charges levelled against the petitioner without the assistance of these two witnesses they may do so, but as long as they refuse to furnish the copies of the reports submitted by these two witnesses the Enquiry Officer is directed to eschew the evidence of these two witnesses while determining the guilt of the petitioner.

14. The above direction is given to the Enquiry Officer by relying on Rule 27 of the Contempt of Court Rules, 1980 framed by the High Court in exercise of its powers conferred under Section 23 of the [Contempt of Courts Act, 1971](#), which is as under :

'The Court may pass such orders as the justice of the case requires.'

15. The petitioner raised another contention stating that the proceedings are liable to be set aside, as the enquiry was conducted in the absence of the petitioner. I do not find any substance in the contention as the petitioner himself failed to avail the number of opportunities given by the Enquiry Officer so as to enable him to participate in the enquiry. Even now, the Enquiry Officer furnished the depositions of all the witnesses and gave an opportunity to the petitioner to cross-examine the witnesses, if he so wishes by giving at least four days advance intimation so that the management representative can produce the witnesses on the next date fixed for cross-examination of the witnesses. In fact, the Court repeatedly asked the

petitioner about the prejudice caused to him by proceeding with the enquiry ex parts, he has no answer. Accordingly this contention of the petitioner is rejected.

16. Both the Counsels cited number of judgments in support of their contentions. I have gone through them carefully. But, the ratio laid down in those judgments has no application to the facts of this case. Hence, I have not referred to those judgments in depth in this judgment.

17. In the light of the foregoing discussion, the C.C.NO.271/97 is dismissed as devoid of merits. But, at the same time, the Enquiry Officer is directed to eschew the evidence of MWs.3 and 4 while determining the guilt of the petitioner in the light of the stand taken by the respondent-Bank in furnishing the copy of the preliminary enquiry report to the petitioner.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com