

(2013) 10 DEL CK 0216

Delhi High Court

Case No: Writ Petition (C) 3381 of 2011

Ajay Kumar Gulati

APPELLANT

Vs

Pushpender Nath Pandey and
Another

RESPONDENT

Date of Decision: Oct. 30, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 181, 193, 199, 217, 218

Citation: (2014) 6 AD 267 : (2013) 205 DLT 368

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: Kittu Bajaj, for the Respondent

Final Decision: Disposed Off

Judgement

V.K. Jain, J.

The petitioner before this Court submitted an application dated 30.10.2008 to the CPIO of the respondent-State Bank of Bikaner and Jaipur seeking the following information:

1. Please convey the name and designation of the Officer who audited the Amar Colony Branch of the State Bank of Bikaner and Jaipur on 15.11.1990.
2. Please convey the exact period of audit of the Amar Colony Branch i.e., from 15.11.1990 to which date.
3. Please convey the status of the Audit Report i.e. what were the findings recorded by the Auditors.
4. Please convey the names and designations of the officers working in the Amar Colony branch as on 15.11.1990.

5. Please convey the name and designation of the Officer who was in Charge of the current Account Section as on 15.11.1990 and his duties and responsibilities.
6. Please convey the name and designation of the Officer who was the Accountant in the Amar Colony Branch as on 15.11.1990 and his duties and responsibilities.
7. Please convey the name and designation of the employee who was the Clean Cash Book writer as on 15.11.1990 with duties and responsibilities.
8. Please convey if the Clean Cash book was tallied on 15.11.1990.
9. Please convey whether any written request received by the Bank Authorities from the following staff members for opening of a current account in the Amar colony branch and availing the overdraft in those accounts:-a) Sh. Vinod Ahuja b) Sh. Shyam Lal c) Sh. Vijay Bihari Gupta-General Secretary of SBBJ Employees Union. d) Sh. S.K. Joshi e) Sh. Shyam Singh Rajan.
10. Please convey the overdraft Balance of the following current accounts as on 15.1.1990:
C/D Udyogic Radiographic Services, C/D Ratra Model Works
C/D Shiva Electrical Co., C/D Nisha Electric Co.
C/D Puneet Wears, C/D Manav Apparels, C/D Kamla Fabrics
11. Please convey the name and designation of the Officer in Charge who authenticated to open the current account of M/s. Kashvi Traders and M/s. S.G. Copy House in the Amar Colony Branch with his/her duties and responsibilities.
12. Please convey the name, designation and the duties and responsibilities of the Officer who authenticated to open a current account of M/s. Ram Lal Bros with an address 81, Sant Nagar, Greater Kailash.
13. Please convey on which date the current accounts of M/s. Kashvi Traders and M/s. S.G. Copy House were adjusted and closed.
14. Please convey whether any recovery suit file by the Bank Authorities against M/s. Kashvi Traders and M/s. S.G. Copy House to recover the amount of Loan.
15. Please convey the total amount of overdraft sanctioned by the Branch Manager/Zonal Officer to different current account holders of the Amar colony Branch as on 15.11.1990 and approved by the Auditors.
16. Please convey the details of Cash Credit accounts with names which were opened as on 15.11.1990 and the amount to these accounts transferred from the Current Accounts. Further whether these accounts were approved by the Zonal Office/Head Office and the Auditors.

Vide reply dated 08.6.2009, the CPIO informed the petitioner that the information at serial No. 1, 8, 10, 11, 15 and 16 was not available in material form and, therefore, cannot be provided. Regarding information at Serial No. 9, 10, 13 and 14, the petitioner was informed that the information sought by him pertains to third persons and their bank accounts and, therefore, being governed by Section 8(1), (d), (e) and (j) was exempt from disclosure. The aforesaid communication dated 08.06.2009, according to the petitioner, was sent after intervention of the Central Information Commission.

2. Vide application dated 30.10.2009, the petitioner sought the following information from the CPIO

1. Please supply me the certified copies of the rules and regulations of State Bank of Bikaner and Jaipur in respect of retention period of records, files, documents and the Audited Reports etc. in a case pending in the Court of Law and when the case related to an alleged fraud in the bank.

2. Please supply me the certified copies of the Pages of "Register of Records Destroyed" (listed in the Schedule "M"-Records to be preserved for all times) in which the Audited Report and other related records dated 15.11.1990 of an alleged fraud in the Amar Colony, New Delhi Branch of State Bank of Bikaner and Jaipur were destroyed.

3. Please supply me the name, designation and the present address of the Competent Authority/Officer in charge who had ordered to destroy the records dated 15.11.1990 of the Amar Colony, New Delhi Branch in respect of which legal cases are pending in the Hon'ble Trial Court in Delhi till date.

The relevant circular dated 05.05.1999 with respect to retention period, record of the bank in respect of fraud cases and pending court cases is stated to have been supplied to the petitioner on 26.11.2009. Vide order dated 13.05.2010, the Commission directed the CPIO to communicate to the petitioner within 10 working days in a sworn affidavit, those items of information for which the relevant records were no longer available with the bank. An affidavit was accordingly filed and a copy of the same was endorsed to the petitioner on 17.06.2010.

3. On receipt of a complaint from the petitioner, the Commission required the CPIO to his complaint and also offer his comments on the issues raised in his letter dated 22.06.2010. Vide order dated 30.08.2010, the Commission directed closure of the case against the CPIO Shri P.N. Pandey.

4. Vide application dated 17.03.2011, the petitioner sought the following information from the CPIO:

1. Kindly supply me the exact amount of loss, if any, suffered by the bank on account of the current account number 939 of M/s. R.K. Stationers. Further kindly also supply the total amount of loss, if any, suffered by the bank on account of any of the

customers listed in the charge-sheet.

2. Kindly supply me if any recovery suit was filed against Mr. Ram Kumar for the recovery of loan/overdraft with interest.

3. Kindly supply me the responsibility and accountability separately of each of the officers Shri Arun Kumar Sharma (who authorized to open account of M/s. R.K. Stationers) Shri S.K. Joshi (the officer in charge of current accounts at the relevant time). Shri J.B. Gupta (the then Accountant), Shri Niranjana Bardloi (the Regional Manager and the Controlling Authority of Amar Colony Branch), Shri Devender Paul (Asst. General Manager) and Shri Raj Kumar Gupta (the Auditor who audited the Amar Colony Branch w.e.f. the date of alleged fraud i.e. 15.11.1990) in respect to the above stated alleged fraud of overdrafts/loans sanctioned to different customers of the bank.

4. Kindly supply me the certified copy of action taken, if any, against S/Sh. Arun Kumar Sharma S.K. Joshi, J.B. Gupta, Niranjana Bardloi, Devender Paul and Raj Kumar Gupta.

5. Kindly supply the full details of customers including Account numbers, name of account holders and the amount of overdraft/loans sanctioned to each of the customers of Amar Colony Branch, totaling Rs. 38,17,965/- as alleged in the charge-sheet.

The said application was received on 21.03.2011 and was responded on 15.04.2011. The following was the reply to the said application:

1. In the current account no. 939 of M/s. R.K. Stationers at Amar Colony Branch, as per the Charge sheet No. DGM/DPS/159 dated 24.09.1991 issued against you, (copy enclosed as Annexure-I) the amount of loss suffered by the Bank was Rs. 59,941. The total amount of loss suffered by the Bank as per the said charge sheet was Rs. 3.72 lakh.

2. No record is available in this regard.

3. The information sought by you in question 3&4 is not available as the information sought by you is more than 20 years old.

5. No record is available in this regard. However, detail of the parties whose current account had been fraudulently posted with the amount mentioned against their names, as per the said Charge Sheet is available. The photocopy of the said Charge Sheet, therefore, is enclosed as annexure I.

5. Being aggrieved, the petitioner is before this Court seeking the following relief:

I) Kindly pass an order for quashing the order dated 30.8.2010 of the Central Information Commission for closure of all complaints/appeal cases against the CPIO Shri P.N. Pandey of the SBBJ including a complaint of the petitioner dated 26.7.2010.

II) Kindly pass an order to the CPIO/Appellate Authority of the respondent bank to supply the information sought vide different applications of the petitioner filed under RTI Act, 2005 henceforth which information if supplied will prove beyond doubt that the petitioner was falsely implicated in the case and was made an escape goat for the acts of commission/omission, if any, of senior officials of the bank or alternatively for production of the copies of the "Records Destroyed Register" and the orders of the Competent Authority to destroy the records dated 15.11.1990.

III) Kindly pass an order for recommendation of disciplinary as well as criminal action u/s. 181, 193, 199, 217 and 218 IPC against i) S/Shi. Pushpender Nath Pandey, K.K. Singh, Yoginder Pal Sehgal who deposed falsely during criminal trial and even filed a false affidavit dated 17.6.2010 in the Hon'ble Central Information Commission & (ii) Shri A.K. Singh the then CPIO for making a false statement to obstruct the disclosure of information with intent to save or knowing it to be likely that they will thereby save the officers holding senior positions in the State Bank of Bikaner and Jaipur from legal punishment.

IV) Kindly impose maximum penalties u/s 20(1) of the RTU Act on both a) Shri P.N. Pandey (present CPIO) & (b) Shri A.K. Singh (Former CPIO) and Ms. Hamsini Menon, the Appellate Authority of State Bank of Bikaner and Jaipur.

6. In its counter-affidavit, the respondent has inter alia stated that some of the record being 18-20 years not traceable and the affidavit given by the CPIO was correct on facts. It is further stated in the reply that the CIC having closed the case, the petitioner being a habitual litigant filed complaints on 22.06.2010, 30.06.2010 and 26.07.2010 on the same issue, but, all such complaints were closed by the Commission. It is further stated in the counter-affidavit that penalty of discharge was imposed upon the petitioner and the issue is sub judice before this Court in W.P. (C) No. 7773/2002.

7. When this writ petition came up for hearing on 07.05.2012, the following direction was given to respondent:

The respondent is directed to file a specific affidavit to explain as to what they meant by stating "the information sought is not available in the material form in the branch". They should specifically state whether the same is available in electronic form or in any other form from which the information could be retrieved. They should also specifically state as to which is the applicable circular i.e., circular No. O and M/8/93-94 or circular No. S and P/2/1999-2000 for destruction of the relevant records.

The petitioner points out that the respondent bank had denied to grant information in respect of query No. 2 in RTI application dated 30.10.2008 earlier. The said query was with regard to the exact period of audit of the Amar Colony Branch i.e., from 15.11.1990 to which date. This information was denied by observing that the information is not available in the material form in the branch. However,

subsequently, on 21.06.2011 it has been informed to the petitioner in response to another RTI application dated 02.06.2011 that Shri Raj Kumar Gupta, the Chief Manager, SBBJ, Highway Branch, Jaipur at the relevant time i.e., during 1990 was the person who had audited the branch in the year 1990. The respondent should specifically state as to why this information was not earlier provided and how the same information can be later available.

The petitioner also points out that query No. 7 in the RTI application dated 24.03.2009 was:

Please convey the names of the Asst. General Manager and the Chief Manager posted in the zonal Office/Head Office of State Bank of Bikaner and Jaipur as on 15.11.1990.

Vide reply dated 16.05.2009, the respondent bank has not responded at all to the said query. The respondent shall disclose the information sought in its affidavit to be filed now and should also state that why they have not responded to the said query earlier. Affidavit be filed within six weeks with an advance copy to the petitioner who may file response thereto within four weeks thereafter.

In response to the aforesaid direction, the respondent filed an affidavit stating therein that information in "material form" means information in any form, including records, documents, etc. and data material held in any electronic form, but the information sought was not available in branch in any form. It is further stated that the information is not available in electronic form or in any other form which could be retrieved. As regards circulars dealing with destruction of other records, it was clarified that circular No. O&M and Circular No. S&P/2/1999-2000 are both circulars of the bank dealing with the destruction of records though the circular in vogue is Circular No. S&P/2/1999-2000. As regards the name of the auditor, it is stated in the affidavit that the position was rightly informed to the petitioner. The name of the auditor was not available in any material form. However, an official of the branch, who was posted in Amar Colony in 1990 and who incidentally was present in the concerned branch revealed that Shri Raj Kumar Gupta had audited the branch in 1990 and the said information was provided to the petitioner. As regards omission to reply to query No. 7 in application dated 24.03.2009, it is stated in the reply that the said omission was inadvertent and in any case, the petitioner did not agitate his grievance by way of an appeal.

8. When the writ petition came for hearing on 28.01.2013, the following direction was issued to respondent No. 2:

In view of the above, respondent no. 2 shall file an affidavit stating therein clearly as to whether relevant record has been destroyed and if that is so, whether information with regard to the same has been entered in the Records Destroyed Register. If such a register is maintained, the relevant extract from the said Registrar will accompany the affidavit.

In compliance of the aforesaid direction, an affidavit was filed by the CPIO of the bank stating therein that the information sought at serial No. 7 in the application dated 24.03.2009 is not available in material form. It is further stated in the said affidavit that the name of the Assistant General Manager was given as Shri Davender Pal, who has since retired.

9. In order to bring the whole controversy to an end, the respondent, vide order dated 01.07.2013 was directed to file affidavit of the concerned General Manager responding to the information sought by the petitioner vide application dated 30.10.2008 in respect of items No. 2 to 16. In compliance of the aforesaid order, the respondent-bank has filed an affidavit of its General Manager stating therein that the information sought by the petitioner filed vide application dated 30.10.2008 could not be provided to him as the same was not traceable and is still not traceable in the bank, despite best efforts to trace the said information. In view of the categorical affidavit filed by none other than the General Manager of the Bank, it is quite clear that the information to the extent it is not supplied to the petitioner is not available with the bank in any form. Since the information is not available with the bank, there can be no question of granting any direction to the bank to provide the same to the petitioner.

In the facts and circumstances of the case, no further relief can be granted to the petitioner.

The writ petition accordingly stands disposed of.