

AIR 1968 Cal 59 : (1968) 1 CALLT 393 : (1969) 1 LLJ 50

Calcutta High Court

Case No: C.R. No. 199 (W) of 1963

K.M. Mukherjee

APPELLANT

Vs

Secretary and
Treasurer, S.B.I. and
Others

RESPONDENT

Date of Decision: Feb. 8, 1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 9#Constitution of India, 1950 â€” Article 226#Imperial Bank of India Act, 1920 â€” Section 50#Industrial Disputes Act, 1947 â€” Section 16, 2, 29#State Bank of India Act, 1955 â€” Section 17(1), 2, 3(2), 43, 50#State Bank of India General Regulations, 1955 â€” Regulation 55, 55(1), 56

Citation: AIR 1968 Cal 59 : (1968) 1 CALLT 393 : (1969) 1 LLJ 50

Hon'ble Judges: D. Basu, J

Bench: Single Bench

Advocate: Amal Kumar Chakraborty and Sanjay Kumar Bhattacharyya, for the Appellant; P.C. Barooah and Ajit Choudhury, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Basu, J.

The petitioner was appointed as a clerk in the Head Office of the Imperial Bank in March, 1948. u/s 7 of the State Bank of

India Act, 1955, the petitioner"s services were transferred from the Imperial Bank to the State Bank of India, and in 1961 he was transferred to

the Dinhata Pay-Office in the district of Coochbehar. On the 18th December, 1961, he was suspended and on the 19th February, 1962, he was

served with a notice to show cause on several charges. There was a departmental inquiry held on the charges on the 13th July, 1962, and on the

5th November, 1962, he was asked to show cause why he should not be dismissed from service. The order of dismissal was eventually passed on

the 31st December, 1962, under the terms of para 521 (5) (a) of the ""Shastri Award"", and it is to challenge the validity of that order (Ann. A. p.

9(a) of the petition) that the present petition under Article 226 of the Constitution has been brought on the following grounds:

(1) That while the Appointing Authority of the petitioner was the Chief Accountant, he has been dismissed by the Staff Supdt., an officer below the

rank of the Appointing Authority.

(2) That the inquiry was held in contravention of the requirements of para 521 of the ""Shastri Award.

(3) That the impugned order was made in contravention of the principles of Natural Justice.

2. The contentions raised in the Affidavit-in-opposition inter alia, are:

(a) that the State Bank of India is a company incorporated by statute and that since it does not carry out any public functions, the writ of

mandamus cannot be issued against it.

(b) That the inquiry was held in full compliance with the requirements of para 521 (10) (a) of the ""Shastri Award"".

(c) That the punishing as well as the Appointing Authority of the petitioner was the State Bank of India and hence no irregularity was committed.

(d) That there was no contravention of Natural Justice.

(e) That the petitioner has alternative legal remedy and is not, accordingly, entitled to relief under Article 226 of the Constitution.

3. I, Though I do not agree with the Respondents that a writ under Article 226 of the Constitution would not, in appropriate cases, lie against the

State Bank of India, which is a statutory corporation set up by the State Bank of India Act, 1955, I am clearly of opinion that no such relief is

available in the instant case on the ground of contravention of the provisions of the Award, for the following reasons:

(a) The Petitioner's case is that in making the inquiry resulting in the impugned order, the Respondents have violated the requirements of para 521

of the Shastry Award (as approved by the Desai Award), under which the impugned order purports to have been made.

These Awards, however, have no statutory force. The history of these Awards is to be found in the Introductory Chapter of the Report of the

Desai Award. Shri Shastri, a retired Judge of the Madras High Court, was appointed an Industrial Tribunal, in 1952, u/s 7 of the Industrial

Disputes Act and certain disputes were referred to that Tribunal for adjudication u/s 10 of that Act. The Award given by that Tribunal, in 1953, is

known as the "Shastry Award". In 1960, A National Industrial Tribunal, presided over by Desai J. of the Bombay High Court was set up by the

Government of India, and several disputes relating to Banking Companies and their employees were referred to this Tribunal u/s 10 of the

Industrial Disputes Act. The Award given by this Tribunal in the year 1962 is known as the Desai Award. It modified and substituted the terms of

the Shastry Award in certain respects, into the details of which it is not necessary to go into in the instant case.

4. It is needless to say that the Award of an Industrial Tribunal is the decision of an industrial adjudication by a statutory tribunal and can have no

more statutory force than the decree of a civil Court. Either may be executed or otherwise implemented in the manner laid down in the relevant

law, but it cannot be enforced by the prerogative writ of mandamus, as an instrument having the force of law of itself. There is nothing to the

contrary said in the decision in Suprasad Mukherjee Vs. State Bank of India and Another, upon which Mr. Chakravarty for the petitioner relies.

5. My attention was also drawn to Section 4 of the Industrial Disputes (Banking Companies) Decision Act, 1955. Section 17-A of the Industrial

Disputes Act lays down the point of time when an Award of an Industrial Tribunal becomes enforceable; Section 18 enumerates the parties as

between whom the Award becomes enforceable and Section 19(3) lays down the period (one year) during which the Award shall remain in

operation. If the law had stood there, the Sastry Award would have ceased to have effect after the expiry of one year from 1953. Section 4 of the

Act of 1955 was enacted in order to continue the operation of the Sastry Award, as modified by the decision of the Appellate Tribunal, until the

31st March, 1959. It was not intended to confer upon the Sastry Award any legal force superior to that of the Award of a statutory arbitration.

6. As will be shown just now, the Industrial Disputes Act itself provides the modes in which an Award made under the Act is enforceable. The

party aggrieved by its violation may also obtain relief under the general law, in so far as it goes; but the writ of mandamus is not available to

enforce it as if it was a statute or statutory instrument. The observations in *V. Ramiah Vs. State Bank of India*, upon which Mr. Chakravarty relies,

are not applicable inasmuch as they were made on the assumption that the Rules before the writ in that case were statutory Rules.

7. (b) The direct section for the violation of an Award made under the Industrial Disputes Act is to be found in Section 29 of the Act, which lays

down statutory penalty, with provision for compensation to the person injured by such breach.

8. The breach of an Award may itself be raised as an "industrial dispute" as defined in Section 2(k), to lead to another reference to an Industrial

Tribunal vide AIR 1949 148 (Federal Court) . In such a reference, the dismissed employee may claim compensation for wrongful dismissal in

violation of the previous Award, or reinstatement. AIR 1949 148 (Federal Court) .; see also AIR 1949 111 (Federal Court) .

9. Nor is there anything in the Industrial Disputes Act to bar a suit under the general law (S. B of the Civil Procedure Code) to obtain proper relief

for a wrongful dismissal in violation of the statutory Award vide The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and

The Bharat Bank Employees" Union, Delhi, , (sic) Bharat Electronics Ltd. v. Aswathanarayan (1966) 13 FLR 391. Even where there is a bar, e.

g. u/s 22(d) of the Payment of Wages Act, that is narrowly construed vide AIR 1949 150 (Federal Court) .

10. Thus, there exist adequate alternative remedies, and Article 226 of the Constitution is not a proper remedy for the enforcement of the terms of

the Award in question, which has not statutory force.

11. II. If Clause 521 of the Award is not enforceable because it has no statutory force, the contention of the petitioner that he has been dismissed

in contravention of the principles of natural justice, without being offered a reasonable opportunity of defence, will also fail, because -

(a) The rules of natural justice are not available unless the authority who is expected to comply with them has a quasi-judicial obligation. Cooper v.

Wandsworth Board (1863) 148 ER 414 (420); New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., ; Radeshyam Khare

and Another Vs. The State of Madhya Pradesh and Others, ; Capel v. Child (1859) 1 E.&E. 545; R. v. Cheshire Lines Committee (1873) 8 QB

344; Patterson v. Dist. Commr. of Accra (1948) AC 341 (348).

(b) The quasi-judicial obligation, again, can arise only where the authority has the duty to proceed judicially under a statute or rules having statutory

force, either expressly or by implication: R. v. Electricity Commrs. (1924) 1 KB 171; R. v. Legislative Committee of the Church Assembly (1928)

1 KB 411; Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, .

12. But apart from the Award of the Industrial Tribunal, the petitioner has not been able to lay his hands upon any provision of the State Bank of

India Act or any other statutory provision which requires the State Bank authorities to proceed judicially in the matter of dismissing their

employees.

13. The power conferred by Section 43 of the State Bank of India Act, 1955, does not impose any limitations in this behalf:

The State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance

of its functions, and determine the terms and conditions of their appointment and service.

This being an absolute power, no quasi-judicial obligation can be inferred from it.

14. Nor can any such obligation be inferred from the corresponding provision in Section 50 of the Imperial Bank of India Act, assuming that the

petitioner is still governed by that provision, which says:

The Central Board and, subject to the provisions of this Act, the Local Boards shall have power -

(a) to appoint such officers and servants as may be necessary to conduct the business of the Bank, --

(b) to suspend or remove any officer or servant of the Bank.

15. In the case of such absolute power (AS distinguished from a statutory power to dismiss for a specified cause), the ordinary law of master and

servant will prevail, S.R. Tewari Vs. District Board Agra and Another, . The petitioner cannot accordingly, invoke the certiorari jurisdiction of this

Court under Article 226, though he may have remedies under the general law.

16. III. Nevertheless, the petitioner is entitled to succeed on another ground, namely, violation of the statutory provisions as to the authority

empowered to dismiss.

17. The point taken in para 14-A of the petition was that though the petitioner was appointed by the Chief Accountant of the Imperial Bank, he

has been dismissed by the Staff Superintendent of the State Bank who is lower in rank to the Chief Accountant. The order of dismissal, as would

appear from Ann. A to the petition, was issued by the Staff Super-intendment. The petitioner has not been able to produce anything to show that

he had been appointed by the Chief Accountant of the Imperial Bank, but relies upon the fact that the averment made in para 18 of the counter-

affidavit does not deny the petitioner's allegation. There it is simply stated that-

With reference to para 14-A of the petition, I state that the punishing authority and the appointing authority in the case of the petitioner was the

State Bank of India.

18. It must be said that this averment is cryptic to the extent of being misleading, and the petitioner is entitled to show that he has not been

dismissed by the State Bank as pleaded by the counter-affidavit, whoever might have been his appointing authority. Mr. Ginwala for the

Respondents has drawn my attention to the provisions of Section 7 of the State Bank of India Act to show why the petitioner must be deemed to

have been appointed by the State Bank. Section 7(1) says-

Every officer or other employee of the Imperial Bank.....shall, on and from the appointed day, become an officer or other employee, as the case

may be, of the State Bank, and shall hold office or service therein by the same tenure, at the same remuneration and upon the same terms and

conditions ...and shall continue to do so unless and until his employment in the State Bank is terminated or until his remuneration, terms and

conditions are duly altered by the State Bank.

19. The result is that the service of any employee of the Imperial Bank which was transferred to the State Bank may be terminated by the State

Bank, in accordance with the provisions of the State Bank of India Act, irrespective of the person who had appointed him- Let us now see how

the power to terminate the services of an employee can be exercised by the State Bank under the new Act.

20. Under Sections 7(1) and 43 of the State Bank of India Act, read with the General Clauses Act, the State Bank shall have the power to dismiss

its employees. The statutory powers belonging to the State Bank which is a statutory corporation (Section 3(2)), are exercisable by its Central

Board, as defined by Section 2(b), to mean the Central Board of Directors of the Bank. Section 17(1) says -

The general superintendence and direction of the affairs and business of the State Bank shall be entrusted to the Central Board which may

exercise all powers and do all such acts as may be exercised or done by the State Bank and are not by this Act expressly directed or required to

be done by the State Bank in general meeting.

(The above provision, it may be pointed out, corresponds to Section 24 of the Imperial Bank of India Act).

21. In para 3 of the counter-affidavit, it is urged that the petitioner was dismissed by the State Bank and not by any of its officers. Mr.

Chakrabarty, for the petitioner, urges that the Impugned order, having been made by the Staff Supdt. and not by the Central Board, as required by

Section 17 (1), is *prima facie*, *ultra vires*.

22. Mr. Chakrabarty further argues that the powers belonging to the Central Board can be exercised by any other person only if there is a

regulation made u/s 50 (2) of the Act by the Central Board. The relevant portions of Section 50 may be noticed at once:

(1) The Central Board may, after consultation with the Reserve Bank and with the previous sanction of the Central Government make regulations,

not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving

effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for

(h) the delegation of powers and functions of the Central Board to the vice-chairman, the managing directors or other directors or officers or other

employees of the State Bank.....

23. In accordance with the procedure laid down in Sub-section (3) of Section 50, the State Bank of India General Regulations, 1955, have been

made. Reg. 55 (1) of these Regulations empowers a "Local Board" to exercise "all the powers of the State Bank in respect of the staff serving in

the areas in its jurisdiction."" (The effect of Reg. 50 in Schedule II of the Imperial Bank of India Act was similar). A Local Board is constituted of 4

members in the manner laid down in Reg. 48. Reg. 56 provides for the constitution of a Committee of the Local Board ""which may deal with any matter within the competence of the Local Board.

24. Regulation 55 (2) provides:

The initial appointment of officers, staff assistance and other employees starting on a pay of Rs. 200 per mensem and over shall be made by the

Executive Committee, Officers staff assistants and other employees appointed by the Executive Committee shall not be dismissed from the service

of the State Bank except by the Executive Committee.

25. Regulation 55 (2) (a) expressly relates to employees initially appointed by the State Bank and would not apply to employees appointed by

the Imperial Bank. It is also not evident whether the initial pay of the petitioner would satisfy the requirement of Reg. 55 (2) (a).

26. Nevertheless, the petitioner could be dismissed only by the Local Board or any Committee thereof, as required by Reg. 55 (1) or 56. It is then

only that the petitioner could have been said to have been dismissed by the State Bank, urged in the counter-affidavit. (Even if Reg. 50 of Schedule

II of the Imperial Bank of India Act had continued to apply to the case of the petitioner, he could not have been dismissed by any authority other

than the Local Board). No further delegation of this power has been provided for by the Regulations.

27. Mr. Ginwala, however, refers to the averment in para. 8 of the affidavit-in-opposition filed on behalf of the State Bank on 22-11-65 that-

.... In accordance with the terms of para. 521 (12) of the Sastry Award, Sri S. K. Datta, Superintendent, Staff Section, was appointed as the

authority to take disciplinary action and pass necessary orders imposing punishment.

28. This appointment is to be found in the Memorandum addressed to the Agents of all Branches of the Bank, dated 4-7-62, which is at Ann. A to

this counter-affidavit:

With reference to our Circular. it has been decided that for the time being Shri S. K. Datta, Superintendent, Staff Section at this Office, be

appointed as the authority empowered to take disciplinary action and pass me original orders imposing punishment and that he e deemed Manager

of the Bank for the purpose of passing original order of discharge

29. This appointment was notified to the Staff on the same date, as follows:

In supersession of the notice dated (blank) and in terms of para. 521 (12) of the Modified Sastry Award, it is notified, for general information of

the staff that Shri S. K. Datta, Superintendent, is appointed as the authority empowered to take disciplinary action..... in respect of employees of

the Branch or its Sub-offices. .

30. It is to be noted that the Memorandum was issued by the Deputy Secretary and Treasurer and the Notice was issued by the Secretary and

Treasurer. Nothing has been produced before me to show that these orders were issued by the Local Board of the Calcutta Branch or any of its

Committees.

31. It is, however, contended by Mr. Ginwala, that the said orders have been issued in pursuance of para. 521 (12) of the Award which says:

It also seems to us necessary that a bank should decide which officer shall be empowered to take disciplinary action in the case of each office or

establishment..... We direct accordingly and further direct that the names of the officers or the body who are empowered to pass the original

orders or hear the appeal shall be published on the bank"s notice boards. .

32. It has been rightly contended by the Petitioner in para 4 of the Affidavit-in-reply, dated 17-12-65, that the above directions in the Award ""are

only instructive and not mandatory. This paragraph containing instructions cannot override the statutory provisions of the State Bank of India Act,

1955."" Apart from that, the Award simply says that the "Bank" should empower a particular officer for the purpose, which means the Local Board

and not its Secretary and Treasurer. Secondly, even if some other officer may be empowered to hold an inquiry and to propose a punishment, the

punishment, under the statute, can be awarded only by the State Bank, which, according to the Regulations, means the Central Board, the Local

Board or any of its Committees. A compliance with this requirement has not and cannot have been obviated by the Award. The impugned order of

dismissal at Ann. A of the petition is accordingly ultra vires for non-compliance with the statutory requirements, as to the authority by whom only

the order of dismissal could be made.

33. I would, therefore, allow the petition under this last mentioned Ground. The Rule is made absolute but without any order as to costs. The

Respondents be directed to cancel the impugned order at Ann. A to the petition. They shall, however, be at liberty to proceed afresh in

accordance with the law, and the observations made herein, but nothing herein laid would operate as any pronouncement on the merits of the case

against the petitioner.