



***Common Bond  
October - 2012***



## MAN OF WHITE REVOLUTION – NO MORE

**W**ith the death of Dr. Varghese Kurian, the country has lost a great visionary and the father of “white revolution”. Dr. Kurian had proved to the world that a revolution can be achieved not only through the barrels of gun or edges of sword, but also through production of milk for the benefit of millions of the people of the country, which is a symbol of purity.

Dr. Kurian was inspired by the philosophy of Mahathma Gandhi that in the interior of the villages the true India resides. He imbibed Gandhian ideals and firmly believed in them. As the freedom of the country ushered with hunger Pt. Jawararlal Nehru, the first Prime Minister of the country stressed the need of improving agriculture and said India can wait for every thing but not agriculture. The country has accordingly achieved green revolution followed by white revolution.

Dr. Kurian who created the white revolution was neither an economist nor an agricultural scientist. He was an engineer with a masters degree in metallurgy and physics from Michigan University in US after graduation in engineering from Guindy Engineering College from the then Madras state. He adopted Anand a remote unknown village in Kaira district in Gujarat, where he found a rudderless group of poor villagers doing only

dairy farming under the late Shri. Tribuvandas Patel, who was the President of a Milk Co-operative Society promoted by the Shri. Morarji Desai who later become the Prime Minister of the country. Dr. Kurian joined the co-operative movement and modernized the system. He had also undergone training in dairying from National Dairy Research Institute at Bangalore to acquire more knowledge in dairy development. It was the vision and hard work of Dr. Kurain and sincerity and organizing capacity of Tribhuvandas Patel, which created wonders in milk production that became a model to other co-operative movements in the country. By conjunction of politics, nationalization and professional challenges he transformed the face of Gujarat and made the country self sufficient in milk production. Till such time the country was under the mercy of US and receiving milk powder under PL 480 scheme to meet the shortfall. Under the Co-operative system they established a dairy unit in Anand with the help of Unicef that gave more confidence to cattle farmers in improving the production. There after there was no going back for Dr. Kurian and his team. With his dedication, earnestness and vision he transformed the life of the villagers in the Kaira District of Gujarat.

Milk production that was just 17 million tones in the year 1950-51 increased to 121.8 million tones

in the year 2010-11 that was highest in the world. Similarly per capita consumption also increased from 124 gram per day in 1950-51 to 263 gram per day in 2009-10 one of the highest in developing countries an indication that India was growing.,

He created white, revolution through co-operative movement which otherwise is known as 'operation flood' that created an impact on the economy of the country. He had a dream of eradicating poverty among the villagers in India and taken all efforts to achieve it. He had the inspiration from the famous speech delivered by Martin Luther King Jr. that was reflected in his biography titled 'I also have a dream". It was a dream of providing life and light to the poor villagers and he had succeeded in it. He had faith in the farmers and stood up for their rights taking on the high and mighty. He argued that if those farmers could access technology and market their product through Co-operative movement they could become an asset. The success he achieved through white revolution had earned him the honour of becoming the founder Chairman of National Dairy Development Board.

#### **AGAINST LIBERALIZATION :**

Dr. Kurian was against liberalization and globalization. According to him with the reforms India's national boundaries ceased to exist. By accepting liberalization and globalization we are only opening up the market under such terms which means, other countries can put their products in to our market he said.

All those countries subsidise their exports to the level of 65 percent. If you have globalization and others are subsidizing their exports to what position you have exposed the Indian dairy

industry ? he asked. You have created a situation where our dairy industry can be killed. This is an unfair competition he said with concern.

He demonstrated that an Indian brand can challenge and beat haloed multinational in branding and establishing product segment and created the brand 'Amul' that has become a household name in India. Despite criticism he had the conviction of his belief and did not budge from his vision. He hated crooks, charlatans and psychopants. Once when his daughter was given employment in the National Milk Development Board without his knowledge while he was the Chairman of the Board, he became furious, when he got the information and that made his daughter to quit her post. He also insisted that no politician or bureaucrat or civil servant should be involved in the dairy project as dairy should be run by the professionals and that created many detractors during the fag end of his career.

He created the Institution of Rural Management (IRMA) at Anand to create a pool of professional managers to manage the co-operatives .He was also a firm believer in the unmatched combination of farms and professionals working together to service the rural areas.

Dr. Kurian earned the name of 'milkman of India' an epithet for his unstinted devotion to the challenges he had undertaken to change the face of India and uplift the living condition of millions of farmers across the country who progressed from want to self sufficiency. In appreciation of his various achievements he was conferred with many Indian and International awards. Now the best tribute we can pay to this great son of India is to confer on him the highest award of the country "**Bharat Ratna**" ■



## Appointments

### **SHRI K.R. KAMATH of PNB TO BE CHAIRMAN OF INDIAN BANKS' ASSOCIATION**

K.R.Kamath, chairman and managing director (CMD) of Punjab National Bank, will become the new chairman of the India Banks' Association (IBA) for 2012-13. He will take charge on October 1, after present Chairman Alok Misra, CMD of Bank of India (BOI), completes his term.

The management committee chose Shri Kamath to head the body at its meeting, said a senior IBA official. T.M.Bhasin, CMD of Indian Bank, is inducted as deputy chairman. The other two deputy chairpersons are Bhaskar Sen, CMD United Bank of India, and

Chanda Kochhar, managing director and chief executive of ICICI Bank.

He is director on the board of Oriental Insurance Co Ltd and Export Credit Guarantee Corp of India Ltd.

'Common Bond' Congratulates Shri K.R.Kamath for having Chosen as Chairman of the IBA and wish him all Success in Carrying out and his assignments in future. ■

*Source: Business Standard, Date.24 September 2012*



## Articles

### **BHARAT DOES NOT QUITE BECKON YOUNG BANK STAFF**

**W**hile bank managements proudly announce the opening of branches in rural areas, the staff moved to such locations often consider it a 'punishment' posting.

Recently, a 22-year-old engineering graduate who had joined the banking industry a few months ago had commented that young people serving in the rural areas feel acutely the absence of proper cell phone signals, choice of food, and weekend entertainment.

According to Sri. C. H. Venkatachalam, General-Secretary, All- India Bank Employees' Association: "The concern is genuine, for most candidates who join a bank are from the urban areas. They may, therefore, not be mentally prepared to take up an assignment in a rural branch. It can be sorted out though." So, what ails the workforce? "The work environment," said an officer of a public sector bank. The woman, who was sharing her experience of working in a rural branch, said: "It is a lot different from the work we do

in an urban branch. While the work keeps one engaged, it is not always easy to stay away from the family for weeks or months on end. "I was fortunate enough to be posted in a branch that was just three-four hours away from my home in Coimbatore. Imagine my plight had I been posted in some other State or in the North," she said, visibly relieved over not just being posted closer home, but for completing her rural stint. According to Shri. N. K. Thingalaya, a noted rural banker, rural India of today is not like 20 years back. Infrastructure development has taken place in many areas.

He was surprised by the extent of mobile phone penetration during a recent visit to a village in Barabanki in Uttar Pradesh. Young bankers can probably look forward to more positive changes soon. A recent report by Crisil points out that last year, consumption expenditure in the rural areas exceeded that of urban India. Perhaps, that is reason for hope. ■

**SELF HELP IS BEST HELP**

*Common Bond, October - 2012*

## WOMEN IN BANKING

### NOT MOVING UP THE CAREER GRAPH FAST ENOUGH

*Challenge of work-life balance, transfers are speed breakers*

**B**ank jobs have always attracted women. Take any branch in your town or city and you are likely to find quite a few women manning the counters. Most of them join as clerks and a few, as officers. Today, some of the big banks have women at the helm too.

Yet, the representation of women in the executive cadre (at the level of Chief Manager and above), is yet to improve.

According to the Khandelwal committee report on HR issues of public sector banks, till 2009, of the total women workforce of 78,000-plus, only around 300 of them were in executive positions. More than 47,000 belonged to the clerical cadre.

So, why have more women not gone up the career graph?

#### THE CHALLENGES

“It is not that they are incompetent, but the challenges of work-life balance coupled with transfers force them to not go beyond a point in their career,” said Usha Ananthasubramanian, Executive Director, Punjab National Bank.

The Khandelwal committee observed that in spite

of competence, many female employees are not able to move up in the hierarchy. The mobility factor is a principal reason for their inadequate representation in the senior managements of PSBs.

A regional head of a PSB in Managalore said that nearly 65 per cent of the new clerical recruits who joined his bank in Dakshina Kannada district this year were girls. On an average, the number of women joining banks is more than 50 per cent, he said.

Meera Arhanha, the first woman to become an executive and general manager in the 88-year-old Karnataka Bank, said that women are now inspired by seeing more of their ilk at the top now. That is an attraction for younger generation, and they aspire to hold such position in the bank, she said.

Meera Arhanha felt that the technology advancement has made the banking job more comfortable for the young new entrants. Since they are techno savvy, they are more comfortable in this sort of an atmosphere.

The All-India Bank Employees' Association General Secretary C.H.Venkatachalam observed that women earlier were expected to take up counter service, but now they are taking up even challenging assignments. ■

*Source: Business Line, Date: 15-09-2012*

## WAR AGAINST CORRUPTION A LOSING BATTLE

**S**ri. Anna Hazare, the social activist had been fighting a relentless battle against corruption in India that has been, deep rooted in the society. The agitation is the symbol of frustration of the nation's helplessness against corruption and venality of persons in office.

2G Spectrum Scam was one of the biggest scandals exposed in recent times, when the minister concerned was allowed to take independent decision even ignoring PMO, affecting the credibility of the Government.

Many more scams have been exposed by CAG in recent times such as Air India. Indian Airlines merger, Oil and Natural Gas, Coal Gate etc. The systems have been corrupted due to political interference. Most surprisingly the perpetrators of scam go scot free due to their political clout, instead they are being continued in their ministerial posts or elevated or honoured. Politicians not only squander public money but hinder productivity with their unwanted call for bundh or hartal. Our political or administrative system is not affective against the corrupt officials or politicians who are in the habit of taking

**BE TRUTHFUL, BE FEARLESS**

shelter under the weak, protracted legal system. Many leaders against whom corruption cases pending are taking shelter under pious dictum, innocent until proved guilty', that gives him sufficient chance to destroy the evidence. It is a paradox that less qualified or experienced politicians are occupying ministerial positions lord over much more qualified civil servants who are more experienced and trained in their specialized field. Success of any public governance rests with people who handle it. Lack of administrative experience and integrity leads to corrupt practices in the administrative system. When the corruption is rampant it affects the welfare of the state and its people. Still there are people who are honest and dedicated to the nation who can enforce discipline, cleanse the system and regain the tarnished image. If no sincere efforts are taken, public may view the entire community with contempt. If one section of the society is corrupt it is only natural in the eyes of the general public every one in the society will be corrupt. The system will improve only when the leadership is competent.

As a part of his mission, Shri. Anna Hazare undertook fast on many occasions to alert the authorities. Sensing the seriousness of the response of the general public against corruption, government woke up and passed a 'sense of the house', resolution to pacify Shri. Anna Hazare, urging him to call off the hunger strike, with the promise of bringing up a strong Lokpal Bill.

Accordingly after four decades of wait a Lokpal Bill was introduced in the Parliament for the ninth time with the object of eradication of corruption from the society. Country needed a crusader like Shri Anna Hazare to bring up a Lokpal Bill once again. However many of the provisions as demanded by the Citizens Forum in the bill may go against the government as by supporting the bill many parliamentarians will be signing their own death warrant. As such there was a calculated attempt to scuttle the bill from the initial stage itself. Government has appointed a Parliamentary Standing Committee to vet the bill. However there was no unanimity among the members. One of the contentious issues was the delinking of Central Bureau of Investigation from the government clutches, which is being misused against the political opponents of the ruling party. This situation

had made the government dilly dally with the passing of the bill, who had mobilized support from various affected parties against the bill, irrespective of political affiliation. They had also mobilized courage in attacking the civil society through irrelevant and intolerant statements issued by certain members of the government. There was even a sarcastic comment from one of the members of the drafting committee that it is never heard in the history that a person is going for hunger strike to get a bill passed, a question the British government would have asked Gandhiji who undertook many hunger strikes to get the country liberated. They have also taken the argument that the parliament is supreme and that the people who have elected them have no voice in deciding their destiny. Since the election process is the epicenter of corruption in India, Team Anna has also demanded electoral reforms requiring more accountability for the peoples' representatives, with the power for the people to recall their representatives if they fail to come up to their expectations. It is also felt necessary to make the electorate more aware of the social and ethical standing of the candidate and prevent criminals from entering the portals of power. If the people do not elect the right candidates they will get only representatives they deserve. Of late the government has also become rigid and insensitive to the many fasts conducted by the Sri. Anna Hazare and his team members and refused to hear their voice, demanding an effective Lokpal Bill. Any attempt on the part of the government in delaying in passing the bill on flimsy ground, they will be losing their credibility in the eyes of the public.

Instead of accepting the sentiments of the civil society and the general public government is now trying to suppress the mass movement through their machinery of police, IT, Enforcement directorate etc. The Lokpal Bill has now become a mirage. Most astonishingly instead of admitting themselves as corrupt, government is now calling Citizens Forum as corrupt. According to the Citizens forum any attempt to pressurize the government for an effective Lokpal Bill be futile. The indications shows that the bill may not see the light of the day. Frustrated over the insensitivity of the authority, Team Anna has decided to disband the team much to the disappointment of the law abiding, honest citizens

**SUCCESS COMES ONLY TO THOSE, WHO DARE AND ACT**

of the country as in the current climate hunger strike is not a prudent tool.

When the Bastille prison in France was stormed in France in the year 1789, as part of the French revolution it was their hope that, with the fall of prison a new heaven and new earth would be born ending the evils and corruption at one stroke. But the corruption and nepotism continued. Anna phenomenon is in a similar frame of reform against the state, while corruption continued unabated. It is only the beginning of the end of corruption in the system if not today. Efforts may take years to fructify but it will be worth to wait.

Disbanding Team Anna will only spell doom for the people of the country in their fight against corruption movement.

British raj and Gandhian era were the things of the past when India had a strong social culture. Much water had flown through Ganges thereafter, by the time society had vitiated beyond repairs. Under the circumstances Team Anna should remain as a pressure group, and continue the social movement. They should go to grass root level, make the corruption an election issue and prevent the corrupt and criminals coming to power in the interest of the nation. ■

### *Banking*

#### **RRBs CAN OPEN BRANCHES IN TIER 2 CITIES WITHOUT RBI PERMISSION**

The Reserve Bank allowed regional rural banks (RRBs) to open branches in Tier-II cities without taking its permission. Accordingly, RRBs will be allowed to open branches in Tier –II centers (with population of 50,000 to 99,999 as per census 2001) subject to certain conditions. Similar provisions are applicable for opening branches in Tier 3-6 centers. Regional rural banks with capital adequacy ratio of 9 percent and net non –performing assets of less than 5 percent and net profit in the last financial year would be allowed to open branches in such cities on automatic route basis.

However, RRBs are required to take RBI's permission for opening of branches in Tier –I centers (With population of 100,000 and above as per census 2001). RBI has also notified that it has decided to delegate powers to the regional offices of the Reserve Bank to take decision on the applications of RRBs for opening, shifting, merger or conversion of branches without reference to the concerned Empowered Committees in order to expedite the process. ■

*Source: The Indian Banker, September, 2012*

### *Judicial Verdict*

#### **RECOVERY UNDER COMPROMISE SETTLEMENT DOES NOT ABSOLVE CRIMINAL OFFENCE -SC**

*Ashok Sadarangni*

*Versus*

*Union of India*

*Writ petition (CRL) No.22 of 2011 in the  
Supreme Court*

*Decided on 14.3.2012*

With the advent of computerization in banking the frauds, forgeries and cheating have increased manifolds. In all such criminal cases the top priority of the bankers remains the recovery of the amount involved in fraud. The bankers have least

concern about the punishment to the guilty. As a result fraudsters go scot –free after entering into a compromise settlement. The judgment under reference shall act as an eye-opener for the criminals and tool in the hands of the bankers for recovery of

**NEVER BEND BEFORE THE INSOLENT MIGHT**

the amount involved in the frauds. The frauds of the type reported in the judgment are very common in the banking business, as for a large number of advances the properties are mortgaged by deposit of the title deeds which may be super fine Xerox copies of the originals or forged ones.

In the case under reference the petitioner Ashok Sadarangani, in the name of his proprietorship concern, M/s Internet Impel, Mumbai, obtained cash credit facility of INR 125 lacs, import letter of credit facility of INR 100 lac, bank guarantee facility of INR 20 lacs and forward contracts up to a limit of INR 300 lacs from Bank of Maharashtra. The bank sought additional collateral security from the petitioner, who submitted a lease deed, in respect of an immovable property leased to M/s Nitesh amusements Pvt Ltd by Shri. Homi D Sanjana and his family members, through constituted attorney Shri Kersi V Mehta. Six irrevocable import letters of credit for a total sum of INR 188.01 lacs were opened by the bank of Maharashtra on behalf of M/s internet impact for import of 'Houseware items and rechargeable lanterns' and 'velvet fourway and upholstery materials'. The documents relating to the said letters of credit, including bills of lading invoice and bills of exchange, were accepted and collected by the petitioner on behalf of the firm from the bank and he undertook to make payment on the due date. The petitioner defaulted in payment of the liability of INR 188 lacs towards the bank.

The central bureau of investigation (CBI) registered a case against the petitioner alleging that they and secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign supplies and also by misusing cash credit facility. One of the petitioners surrendered and was on bail and facing trial whereas the second petitioner was yet to be arrested. In the meantime, the bank offered one – time settlement and a compromise was arrived at,

however it was made clear that such compromise should not be construed as a settlement of criminal complaints / investigations / proceedings pending in the court against borrowers / guarantors.

In this background a separate application was made in the writ petition for stay of further proceedings by the CBI and pending before Metropolitan Magistrate Mumbai for criminal offences. The same has also been taken up for consideration along with the writ petition for final disposal.

The petitioner while pleading his case submitted that the issue, which has fallen for consideration in writ petition, has been considered in detail in several decisions of this court as under.

#### **CBI Vs DUNCUN AGRO INDUSTRY LTD [P(1996) 5 SCC 591]**

Where it was held that the claim of the bank had been satisfied and the suit is instituted by the bank has been compromised on receiving the dues, this court was of the view that the complaint and the criminal action initiated thereupon, should not be pursued any further.

In the case of **Nikkil Merchants Vs CBI** [(2008) 9 SCC 677]

It was held that though an offence may not be compoundable, it did not take away the power of this court, to quash such proceedings in exercise of its inherent jurisdiction under Article 142 of the constitution and even Section 320 CRPC could not fetter such powers, as had been earlier held in the case of **B S Joshi Vs a State of Haryana** [2003] 4 SSC 675].

It had been contended on behalf of the Union of India that power under Article 142 of the constitution was to be exercised sparingly and only in rare cases and not otherwise. Keeping in mind the decision in B S Joshi's case and the compromise arrived between the company and the bank and the consent terms, this court took the view that technicality should not

be allowed to stand in the way of the quashing of the criminal proceedings, since the continuance of the same after the compromise had been arrived between the parties, would be a futile exercise.

The petitioner further referred to the case of **Manoj Sharma Vs State** [(2008 16 SCC1)]

Where following the decisions rendered in **B S Joshi's** case and in the Nikhil Merchant's case and after referring to various other decisions this court ultimately came to the conclusion that continuance of the criminal proceedings before the trial court would be an exercise in futility and, accordingly, quashed the same.

While referring to the cases mentioned above the petitioner pleaded that the powers under Article 142 of the constitution, as far as the Supreme Court is concerned, and Section 482 CRPC, as far as the High Court was concerned could not be fettered by reason of the fact that an offence might not be compoundable, but in its own facts was capable of being quashed.

On behalf of the Union of India it was contended that even if the banks and the petitioners, had settled their disputes and had also entered into a compromise settlement, that did not absolve petitioners of the offence, which they had already committed under criminal laws, which was explicitly indicated in the settlement itself. The gravity of the offence would be revealed from the various transactions which were effected by the writ petitioners in order to camouflage their intention of offering as security a property in respect of which they had no title.

The petitioner offered as security a leasehold property, which had been acquired from one Shri Kersi Mehta, who has used a Power of Attorney alleged to have been executed by Shri. Homi D Sanjana and his family members and in respect where of a criminal case had been filed by Shri. Homi against the said Kersi Mehta and the writ petitioner. The entire transaction was based on a fraud perpetrated on Shri Homi D Sanjana and his family

members and, in fact, no title to the property in question had ever been passed to the petitioners.

The respondent submitted that in **Rumi Dhar Vs State of West Bengal** [(2009) 6 SCC 364], a bench of two judges while considering the maintainability of criminal action, where liability was both civil and criminal had occasion to consider the effect of a judgment in civil proceedings in respect of loan obtained by fraud. As an offshoot of the aforesaid question, an other question raised was regarding the continuance of the criminal proceedings after settlement and repayment of a loan, wherein it was held that where settlement is arrived by and between the credited bank and debtor, the offence committed as such does not come to an end.

Reference was also made to the case of **Sushil Suri Vs CBI** [(2011) 5 SCC 708], in which the bench was called upon to deliberate the very same issue, as has been raised in the present writ petition. After referring to a large number of decisions the court observed that while the jurisdiction of dispute, the exercise of such power would, however, depend upon the facts and circumstances of the each case.

The Supreme Court while dismissing the writ petition held as under:

Once the circumstances in a given case were held to be such as to attract the provision of the Article 142 or Article 32 and 226 of the constitution, it would be open to the Supreme Court to exercise its extraordinary power under Article 142 of the constitution to quash proceedings, the continuance whereof would only amount to abuse of the process of the court.

In the instant case the dispute between the petitioners and the banks having been compromised, we have to examine whether the continuance of the criminal proceedings could turn out to be an exercise in futility without anything positive being ultimately achieved.

In the present case, the fact situation is different from that in **Nikhil Merchant's case** (Supra), while

in **Nikhil Merchant's** case the accused had misrepresented the financial status of the company in question in order to avail of the credit facilities to an extent to which the company was not entitled, in the instant case, the allegation is that as part of a larger conspiracy, property acquired on lease from a person who had no title to the leased properties, was offered as collateral security for loan.

Apart from the above, the actual owner of the property has filed a criminal complaint against Shri Kersi V Mehta who had held himself out as the Attorney of the owner and his family members. The ratio of the decision in **B S Joshi's** case and in **Nikhil Merchant's** case or for that matter, even in **Manoj Sharma's** case, does not help the case of

the writ petitioners.

In **Nikhil Merchant's** case, this court had in the facts of the case observed that the dispute involved had overtures of a civil dispute with criminal facets. This is not so in the instant case where the emphasis is more on the criminal intent of the petitioners than on the civil aspect involving the dues of the bank in respect of which a compromise was worked out.

In the different fact situation of this case and those in **B S Joshi's** case or in the **Nikhil Merchant's** case (Supra) we are not inclined to grant relief prayed for in the writ petition and the same is accordingly dismissed.■

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**[2012 (132) FLR 994]**  
**(BOMBAY HIGH COURT)**  
**Dr.D.Y.CHANDRACHUD and A.A.SAYED,JJ.**  
**O.O.C.J.Writ Petition No.604 of 2011**  
**January 19, 2012**  
**Between**  
**SHAPOOR M.MEHTA**  
**And**  
**ALLAHABAD BANK**

***P***ension-Payment of-Stopped on decision of Bank to discontinue the scheme of payment of pension in lieu of gratuity pending amendment to Officer Service Regulations-Even if the conditions of service could be altered by employer, they have to be altered in accordance with law-Deprivation in the present case has taken place patently in violation of law and is violative of guarantee of equal protection under article 14 of constitution-Hence the action of bank in stopping pension of petitioner is set aside-Payment of pension to petitioner shall stand restored forthwith-Banking companies (Acquisition and Transfer of Undertakings) Act, 1969-Sections 12 (2), 19-Pension rules, 1890-Clause 9-Constitution of India, 1950-articles 14 and 226 [Para 8]

**JUDGMENT**

**Dr. D.Y.CHANDRACHUD,J.-** By consent, the Petition is taken up for hearing and final disposal.

The Petitioner is an eighty-seven years old senior citizen. On 30 May, 1986 he retired from the Allahabad Bank, the first Respondent, as a Special Assistant after thirty-nine years of service. The

Petitioner it is undisputed belongs to the category of award staff. In the Allahabad Bank as it was prior to nationalisation there was a pension scheme governed by Pension Rules which stipulated that special assistants clerks (including typists) and cash clerks would be entitled to pension at the rate of 35% of the full monthly basic pay drawn during the twelve months immediately preceding the date of retirement with a minimum pension of ₹ 50/- per month. The

**DUTY FIRST, RIGHT NEXT**

Petitioner continued to receive pension under the Pension Rules even after the nationalisation of the bank.

2. The Retired Employees Association of the bank had moved the High Court of Allahabad in assertion of the statutory right of the retired employees to receive gratuity under the payment of Gratuity Act, 1972. The High Court held that the retired employees of the bank were entitled to the benefit of gratuity under the act. The judgment of the High Court was carried in appeal to the Supreme Court. On 15 December 2009 in **Allahabad Bank v. All India Allahabad Bank Retired Employees Association** the Supreme Court dismissed the appeal filed by the bank. The Supreme Court held that the payment of gratuity under the Act was a statutory right unless an exemption was granted by the appropriate Government under the Act. The Supreme court noted that pensionary benefits or retirement benefits, whether governed by a scheme or rules constitute a package and pensionary benefits may include the payment of pension as well as gratuity. Upon the dismissal of the appeal filed by the bank a circular was issued on 30 October, 2010 stating that it had been decided to discontinue the scheme for payment of pension in lieu of gratuity pending amendment to the Officers Service Regulations. The Petitioner was in receipt of a princely sum of ₹5660/- per month towards pension which came to be stopped with effect from 1 October, 2010. Aggrieved, the Petitioner is before this Court in proceedings under article 226.

3. Counsel appearing on behalf of the Petitioner submitted that-

(i) The payment of pension as a retiral benefit is not a largesse, but constitutes a valuable right in property; (ii) The sudden stoppage of pension to a retired employee aged eighty-seven years is patently in violation of the principles of natural justice and even otherwise unlawful; (iii) Payment of pension was governed by the Pension Rules which were in force even prior to nationalisation; (iv) Under section 12

(2) of the Banking companies (Acquisition and Transfer of Undertaking) Act 1969 the service of every employee in an existing bank were to continue on the same terms and conditions in the corresponding new bank *inter alia* with the same right to pension gratuity and other matters until his employment in the new bank was terminated or until his remuneration terms and conditions were duly altered. Under Regulation 19, a power has been conferred upon the Board of Directors to frame regulations inter alia in regard to the establishment and maintenance of pension funds; (v) The conduct of the First Respondent in withdrawing the payment of pension by an administrative circular is completely arbitrary and violative of the fundamental rights of the Petitioner *inter alia* under Article 14 of the constitution. Besides as a member of the award staff the rights of the Petitioner could not have been divested ostensibly pending an amendment to the regulations governing the officers.

4. On the other hand, Counsel appearing on behalf of the First Respondent urged two submissions: (i) The Petitioner has not moved this Court with clean hands since in paragraph 3 of the Petition he has stated the he was never given an option to forego his gratuity under the Payment of Gratuity Act and opt for pension in lieu thereof whereas at his retirement, the Petitioner was given an option and had opted for pension on retirement; (ii) The issue before the Supreme Court in the decision noted earlier in the case of the **Allahabad Bank v. All India Allahabad Bank Retired Employees Association** related to the payment of statutory gratuity under the Payment of Gratuity Act 1972 only. Since the bank is required to pay gratuity under the Payment of Gratuity Act 1972, it was within its right to withdraw pension particularly since clause (9) of the pension scheme empowers the bank to amend vary rescind or modify the rules.

5. There is no merit in the submission which has been urged that the petitioner has suppressed facts from this Court. The affidavit in reply would show that on 14 January 1986 an option was given to the

Petitioner to opt for pension or gratuity and that on 6 March 1986 he had opted for pension on retirement. As the Supreme Court noted, it was not the case of the bank that at the time of superannuation of the employees there was a scheme for payment of gratuity which was more beneficial in comparison to the provisions of the Payment of Gratuity Act 1972. In any event even the bank does not dispute the fact that the Petitioner was entitled to the payment of the pension under the old pension scheme and that he was in receipt of pension until it was unilaterally stopped with effect from October 2010.

6. On the state of the law as it stands as a matter of first principle retiral benefits including pension and gratuity constitute a valuable right in property. Retiral benefits are paid in recognition of long service rendered by employees to the organisation of the employer. Where the employer is a public employer, those rights are constitutionally protected and their deprivation has to answer the mandate of the right to fair treatment guaranteed under the equality provisions of Article 14. An employer cannot grant or withhold retiral benefits at his whim and caprice. The Petitioner was in receipt of pension under the Pension Rules which were in existence in the bank even prior to nationalisation. The Petitioner was an employee of the erstwhile Allahabad Bank prior to its nationalisation and retired on 30 May, 1986 after thirty-nine years of service. The Petitioner was paid pension under the old Pension Rules. The issue which was raised initially before the Allahabad High Court and thereafter in appeal before the Supreme Court in **Allahabad Bank v. All India Allahabad Bank Retired Employees Association** was whether the retired employees were entitled to gratuity which is a statutory entitlement under the Payment of Gratuity Act, 1972. The Supreme Court upheld the judgment of the Allahabad High Court and came to the conclusion that a statutory right to the payment of gratuity could not be divested unless an exemption was granted by the appropriate Government under the provisions of the Act. The Supreme Court held that pension and gratuity are separate retiral benefits

and hence the statutory right to the payment of gratuity could not be withheld on the ground that the employees were in receipt of pension under a pension scheme or rules. In paragraphs 22 and 23 of the judgment the Supreme Court observed as follows:

“In our considered opinion, pensionary benefits or the retirement benefits as the case may be, whether governed by a scheme or rules may be a package consisting of payment of pension and as well as gratuity. Pensionary benefits may include payment of pension as well as gratuity. One does not exclude the other. Only in cases where the gratuity component in such pension schemes is in better terms in comparison to that of what an employee may get under the Payment of Gratuity Act the Government may grant an exemption and relieve the employer from the statutory obligation of payment of gratuity.

In the result, we find merit in the submissions made by the learned Senior Counsel Shri P. P. Rao appearing for Association that pension and gratuity are separate retiral benefits and right to gratuity is a statutory right.”

7. The judgment of the Supreme Court upholding the right of retired employees to the payment of gratuity under the Payment of Gratuity Act 1972 has been met with a reprisal by depriving the employees of the right to the payment of pension. Nothing more arbitrary can be conceived of. The manner in which the payment of pension has been unilaterally stopped by an executive act is arbitrary. The judgment of the Supreme Court held that the employees were entitled to gratuity in addition to pension since the payment of gratuity was a statutory right. The bank had no basis whatsoever to deprive the Petitioner of his pension to which he was entitled under the Pension Rules.

8. Section 12 (2) of the Banking companies (Acquisition and Transfer of Undertakings) Act, 1969 provides that every officer or other employee

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of an existing bank shall become on the commencement of the Act an officer or 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 inter alia to pension gratuity and other matters as would have been admissible if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and would continue to do so unless the terms of employment are duly altered. The power to frame regulations is contained in section 19. Under clause (f) of sub-section (2) of section 19 the power to frame regulations includes the subject of establishing and maintaining superannuation, pension, provident or other funds. Sub-section (3) stipulates that until any regulation is made under sub-section (1) every regulation, rule, bye-law or an order made by an existing bank shall be deemed to be a regulation made under sub-section (1). Though the old Pension Rules, when they were framed in 1890, contained a power in clause (9) to amend vary rescind or modify those rules, the power cannot be exercised arbitrarily. The status of the First Respondent in any event went through a metamorphosis once the First Respondent became a nationalised bank. All powers by an authority of the state have to be exercised reasonably and fairly. Even

if the conditions of service could be altered, they have to be altered in accordance with law. Pensionary payments constitute an important source of wherewithal for senior citizens to live the years of twilight in dignity. Depriving employees who have put in long years of service of a right which has accrued and vested in them to receive pension cannot be regarded as fair conduct. The deprivation in the present case has taken place patently in violation of law and is violative of the guarantee of equal protection under Article 14 of the Constitution.

9. In these circumstances, we allow the Petition by quashing and setting aside the action of the bank, the First Respondent in stopping the payment of pension to the Petitioner. The deposit which has been made by the bank in this Court in pursuance of the interim order passed by the Division Bench on 23 November, 2011 is permitted to be withdrawn by the Petitioner and the payment of pension to the Petitioner shall stand restored forthwith. Rule is made absolute in these terms. The First respondent shall pay costs to the Petitioner quantified at ₹ 15,000/-.

***Petition Allowed.***

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