

Editorial

RENDEZVOUS WITH DESTINY

"Man is condemned to be free because once thrown into the world; he is responsible for everything he does" (Jean-Paul Sartre)

75 years have passed since the tricolour was hoisted in the flag stand of Red Fort, signaling the end of years of colonial rule. Common Bond joins the nation in saluting the martyrs and freedom fighters who laid down their lives, sacrificing all material pleasures for the motherland. As we celebrate the momentous occasion, we also need to introspect. There is no denying of the fact sweeping changes have taken place between 1947 and 2021. There have been enormous strides in the development and absorption of modern technology. The country has joined the exclusive space club with the successful launching of its lunar mission Chandrayan-I. A new middle class with significant spending power has emerged, coupled with the gradual urbanization of the landscape. There is strong media, print, electronic, and social, with the political space dominance by leaders from a less privileged background. It signals the end of feudal domination of the political space and ensures the emergence of a political system free of so-called dynastic control. The enthusiasm of the rulers and a section of millennials to make India a global superpower are well appreciated. However, there are serious issues confronting our country 75 years after our rendezvous with destiny on 15th August 1947.

In his famous work "Autobiography of an Unknown

Indian", Nirad C. Chaudhuri had penned this unforgettable punch line - India had its political freedom on 15th August, 1947. But the nation was busy setting its foot on the red carpet of independence for a full one year by indulging in a homicide involving Hindus, Muslims, and the Sikhs. The independence came with the bloodshed of the freedom fighters and the blood that flows in the mindless genocide of 1946-47, leading to the country's partition. We all know the migration of the population that followed. The genocide was possible for profound mistrust that exists between the communities. But despite such negativity that engulfed our social fabric in the final years of colonial rule, the first challenge was to the doctrine of John Stuart Mill, which says that universal franchise can be given only after the spread of education. But the independent nation took the momentous decision of having a universal franchise to elect the political establishment. The people had the authority to exercise their franchise at different turnpikes of the nation's history by ousting the unpopular regime. India is amongst the few countries in the world which survived 75 years down the line despite all the fault lines for such existence of pluralistic democracy based on adult franchise in direct contrast to the elitist philosophy of John Stuart Mill.

Political freedom rests on equality of opportunities.

A JUG FILLS DROP BY DROP

Freedom cannot be understood in the same spirit by people living in two virtual worlds, a separation accentuated by growing inequalities. If the advent of a neo-middle class is the fallout of the so-called liberalization, the growing inequality in the society may be its proverbial twin. The skeleton of the illusory dream of economic prosperity that has been propagated with so much fanfare is visible in the naked eye today. Unemployment is rising exponentially, the pursuit of having a healthy, secured life is limited to a few, opportunities for higher education is gradually denied to underprivileged sections of the society, the inflationary trends continue unabated. These factors have all contributed to an air of instability with the dressing of the salad being completed with the all-pervasive covid pandemic and its consequential lockdown with regressive impact on the wheels of the economy. The citizenry has become restive.

The establishment tries to negotiate the crisis by indulging in further liberalization or, to put it bluntly, in desperate privatization. A Bill proposing diluting government holding on public sector general insurance companies has been bulldozed in the parliament. Mega I.P.O. of L.I.C. is in the offing. The defence sector is also getting privatized at a breakneck speed. Inflation is raising its ugly head fuelled by an irrational daily upward revision of petrol/diesel prices. Even the cost of L.P.G., no longer a luxury, is going beyond the reach of ordinary homemakers. People are getting marginalized by the waves of so-called development. The government is poised to demolish the basic tenets of a welfare state, jeopardizing the very existence of man and nature. Fortunately, the voice of dissent and early sign of resistance are discernible. The yearlong protest action by the farmers against the controversial farm bills braving all the oppression of the state has added a new feather in the cap of the resistance movement.

Bankers themselves are on the street. Organized protests on the street and on social media by

the bankers under the leadership of AIBOC have perhaps been instrumental in keeping the decision to amend Bank Nationalisation Act in abeyance as the assembly elections to the key state of Uttar Pradesh is a few months away. Let us not feel complacent in our attitude and preparations. We have to understand clearly that the traditional weapons of protest are waning out with the progress of technology and may not work as effectively as in earlier days. We have to formulate innovative methods of protest. It is indispensable to reach out to all sections of our stakeholders to make the struggle successful. The social media campaign, which is a powerful tool today, has to reach to every single citizen by conscious and organized efforts. This is a colossal task. We have to acknowledge that the fight against privatization of public sector banks is, in effect, a battle for protecting the national assets in national interest. To that extent, it is a fight for keeping the country's economic sovereignty, which in itself guarantees political freedom.

There is excess liquidity in the system due to the pro-corporate policy of the government and tailor-made monetary policy being pursued by the R.B.I. to sub serve the agenda of big corporates. Many credit facilities sanctioned by the banking system have reached the stock exchanges and fuelled inflation. As discussed, this has contributed to growing social inequalities. Big corporates and, more particularly, the cronies have taken advantage of lower interest rates and favourable raw material prices. Many industries have been closed, and business has shifted from small and marginal sectors to more organized corporates. Even the definition of MSME has been changed to facilitate the sharks. The process may be irreversible.

The message of freedom is different for the blogger who was murdered from its implication to a person who wants the freedom to choose his profession or who wishes to form a trade union in his workplace to protect his interest. The

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

more violent and vitriolic the attack is, the more intense the realization of the meaning of absolute freedom will be. The dark cloud that is hovering in the sky today has one silver lining. The movement is seeing the worst form of attack that is threatening its very existence. Observance of Independence Day has a more profound connotation today than hoisting of national flag rendering of the national anthem and spending a day of leisure.

We worry that this growing inequality will persist even after the pandemic is over. Inequality is ethically destructive. This has been coupled with a planned attack on all institutes of national importance, including the iconic public sector that has contributed immensely to the consolidation

of political democracy and economic independence. Possibly freedom implies that one has to move with a positive notion with retaining whatever we have earned and to expand the space of retention. The road is strewn with thorns; however, we have to traverse along it with the sole objective of reaching our destination even if we have to bleed. We cannot just abandon our cherished ideals, belief, and commitment and cannot rest till the final goal is reached. This is precisely how we will observe the 75th year of our independence by making each moment count in our determined endeavour to fight for our fundamental rights. This will be a befitting tribute to the freedom fighters and martyrs who gave us freedom from colonial rule.

News

#BankBachaoDeshBachao

Why we oppose privatisation?

We are sharing a story published in Mint which clearly depicts the inside story of private banks and how it could be disastrous for the national economy in particular and to the bank customers across the spectrum in general.

YES BANK GRAPPLES WITH LEGACY ISSUES OF DISGRACED FOUNDER

Two years after Rana Kapoor's exit, Yes Bank continues to grapple with the legacy of its founder—a plethora of loans given out in an alleged quid pro quo where the bank bypassed institutional credit checks.

Since founder Kapoor's departure as managing director and chief executive of Yes Bank, several of these large exposures of the private sector lender have soured. People directly aware of the matter said the chances of recovery in most cases are slim as a large portion of collaterals such as land were grossly inflated in value against the loans given.

According to the people cited above, most of these red-flagged accounts are in the bank's real estate loan portfolio. The loans were given to finance construction, but the value of the underlying

collateral, such as land, was grossly inflated.

The borrowers include the Wadhawan family-promoted Housing Development and Infrastructure Ltd, which is also under investigation in the PMC Bank fraud case, where a similar modus operandi was used to siphon off funds through bogus loans.

In another instance, the bank's current management classified a ₹400 crore loan given to a prominent Mumbai developer as fraud.

The issue was resolved after the bank agreed to take a haircut on the principal through a one-time settlement. Another example is a ₹500 crore loan to Oyster Buildwell, an Avantha group company, which had negligible capital and income at the time the loan was sanctioned.

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

Other controversial transactions include Yes Bank's alleged dealings with a well-known asset reconstruction company (ARC) promoted by the kin of a prominent industrialist, where close to 80% of such bad loans were transferred to the ARC. According to a whistle-blower complaint, these bad loans were indirectly funded by the bank through near-zero cost loans given to the above mentioned ARC. Emails sent to Yes Bank with a detailed set of queries in this regard remained unanswered.

Analysts also questioned the continuing presence of some of Kapoor's former aides in the bank.

In a recent note, independent analyst Hemendra Hazari wrote, "More alarming is the case of Ashish Agarwal, chief risk officer (CRO) and also responsible for corporate loans for more than a decade (March 2009 to May 2020), who appraised and approved all the dubious corporate loans (including Oyster Buildwell), which ultimately brought the bank to its knees: he was rewarded by the board in January 2019 for his "track record" and put forward as a possible successor to Rana Kapoor by elevating him to the post of executive director."

Another former Kapoor aide, Parag Gorakshakar, who was the chief risk officer for the real estate sector

and is currently the chief credit officer of Yes Bank, has been named in the FIR filed by the Enforcement Directorate in the Mack Star Marketing case.

Yes Bank under Kapoor is alleged to have illegally sanctioned a loan of ₹202 crore to Mack Star Marketing, a joint venture of DE Shaw Group and promoters of HDIL Group.

This joint venture was formed to develop a commercial complex called 'Kaledonia' at Mumbai's Andheri suburbs. According to the FIR, the entire loan sanctioned by Yes Bank was siphoned off to HDIL group companies and used for repaying earlier loans taken by HDIL from Yes Bank, which were on the verge of turning bad.

DE Shaw Group holds 78.09% shares in Mack Star Marketing, and promoters of HDIL hold 21.91% shares. The ED FIR has named Gorakshakar, along with Kapoor and several other Yes Bank employees, for aiding the transaction.

Yes Bank's gross NPA as a percentage of total assets stood at 15.6% at the end of June quarter against 17.3% a year ago. Of the total NPAs, corporate loans constitute ₹ 25,561 crore or 27%.

CRISIS SPREAD TO UJJIVAN SMALL FINANCE BANK

Common Bond shares the organizational perception that private sector banking will be ruinous for the Indian economy. In umpteen articles, editorials and shared news that we have published over the years, we have tried to emphasize how one after another private sector banks failed, putting its depositors in distress and finally forcing a public sector bank to bail it out, absorbing its negative net worth. The story is the same ever since the beginning of the 20th century till today. Our readers will appreciate that such systematic failure of private sector banks has put the personal finance of its customers in absolute jittery and forced the public sector banks into trouble by compromising on their financials at the time of takeover. The public sector banks have to provide for huge NPAs in the books of private sector entity

which it is forced to absorb along with related problems of HR, system integration, etc.

We have shared the story of YES Bank as published in Mint in the earlier article. Even before we brush up on the issue for final printing, a report appeared about the impending crisis in Ujjivan Small Finance Bank, a much-touted poster boy of the new licensing policy pursued by RBI. Let us first share the story and conclude with our observation.

"Deteriorating asset quality and the exodus of top executives were the twin concern for Ujjivan Small Finance Bank (USFB). The fact was admitted by Mr. Samit Ghosh, its founder, a day after banks MD & CEO, Mr. Nitin Chugh's exit. Mr. Ghosh, who is currently

OVERCOME ANGER BY LOVE, EVIL BY GOOD

the non-executive director and chairman of Ujjivan Financial Services Limited (the holding company of the bank), has been drafted back on the bank board as a non-executive non-independent director to address these concerns. He had vacated the managing director and CEO post in 2019 on retirement, following which Chugh had assumed office.

The bank's gross non-performing assets for the quarter ended June 2021 was 9.8 percent versus 0.97 percent in the corresponding period of the previous year. The bank reported a net loss of ₹ 233 crore during the June quarter of 2020-21 against a profit of ₹ 55 crore in the year-ago period. Even the pre-provisioning operating profits during the quarter at ₹ 163 crore were down 24 percent from the previous year.

The bank's management had attributed this mainly to the second wave of the Covid pandemic and the consequent restrictions and lockdowns in its key markets — Tamil Nadu, Karnataka, Kerala, Maharashtra and Bengal.

Recently, the bank's chief financial officer Upma Goel and directors Mona Kachhwaha, Harish Devarajan and Mahadev Lakshminarayan resigned.

Clarifying to market analysts, Ghosh said Ujjivan had traditionally remained conservative on provisioning and upfront recognition of stressed assets. But this has fluctuated in the last year — the provision coverage ratio fell from 82 percent in June 2020 to 59 percent in December 2020 before improving to 75 percent in June 2021.

He said while the timing of Chugh's resignation was a "surprise," the bank's board which has now been strengthened, will undertake a "tough" review of

the loan book and begin the recovery process. Ghosh said he would also play a role in coordination between the holding company and the bank on the reverse merger process.

A board meeting is expected on August 25 to decide the future course of action. The board is likely to appoint an interim CEO. Ujjivan old-timer and the bank's head of operations, Carol Furtado, could be given the role till the bank finds a new incumbent."

Surprisingly, the bank's operating profit has tumbled by 24% on a Y-O-Y basis compared to the industry trend. Public sector banks, despite their faulty design of mergers and covid induced market negativity, posted an impressive operating profit. The failure of USFB to earn an impressive operating profit implies that its current outgo is not matched by current inflow indicating a deposit base packed with long-time liabilities procured at a higher rate of interest not matching with its asset base. Simply put, it implies they have mobilized deposits possibly at a higher rate of interest and tried to capture loan business by offering the same at a competitive rate, putting their net interest margin at stress. Thus, private sector banking is all about the initial glitter, aggressive market penetration, least concern for prudent risk management, and finally bursting into irreversible crisis jeopardizing its customers and the banking system, as mentioned earlier. It is a repetitive story, worse than the worst TV serial but still being viewed assiduously by the crony capitalists and their political masters.

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We are sharing another story published in Mint which tells that even parliamentarians are not comfortable with the grand design of the Finance Minister to kick start the process of privatisation this year itself. Will good sense return?

'STRESS IN BANKING SECTOR SHOULD NOT BE ALIBI FOR PRIVATISATION'

The stress in the banking sector should not be an alibi for privatising state-owned banks; instead, they should be empowered to deal with the present challenges, a parliamentary panel said in a report tabled in Lok Sabha.

The standing committee on finance chaired by Bharatiya Janata Party (BJP) leader Jayant Sinha said in its report that the situation in the banking sector was no doubt grim, but the panel remained optimistic that as most of the large legacy bad loans get resolved

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

either through bankruptcy resolution process or outside it, the consequential recoveries will help the banks to shore up their balance sheets.

It is necessary and prudent that these large legacy non-performing assets are segregated for resolution, and the balance sheet of banks sanitised, allowing them to move ahead with their regular business, the report said.

The committee recommended that the Reserve Bank of India—the regulator—and the government—the shareholder—should formulate coherent policy responses that will enable and empower the banks.

“The committee would like to emphasize that the present crisis, which the committee believes is transient, should not become an alibi for privatization of public sector banks,” the report said.

The suggestion comes at a time the government is working on privatizing two state run banks.

The panel said, quoting information from the finance ministry, that financial health of state-run banks has improved significantly from the end of FY18.

Gross non-performing assets have reduced from ₹ 8.96 trillion in March 2018 to ₹ 5.77 trillion in December 2020, and a recovery of ₹ 2.74 trillion has been made since March 2018 till December 2020.

The finance ministry also informed the panel that occurrence of fraud has declined sharply and asset quality has improved significantly.

As against two out of 21 state-run banks in profit in March 2018, 11 out of 12 state-run banks were in profit in December 2020, the report said, quoting the ministry.

CIRCULARS

59 dated 30th July, 2021: Circular on Dearness Allowance payable to Officers' w.e.f. 01.08.2021.

60 dated 04th August, 2021: Circular on a clarion call to extend all out support to the strike called by Joint Forum of General Insurance Trade Unions on 04.08.2021.

61 dated 24th August, 2021: Text of the Letter No. AIBOC/2021/26 dated 23.08.2021 to MD & CEO, PNB on Long Pending Operational and HR Issues Raised by our Affiliate –AIPNBOA.

JUDICIAL VERDICT

2021 LLR 474

CALCUTTA HIGH COURT

Hon'ble Mr. Sabyasachi Bhattacharyya, J.

W.P.O. No. 280/2020, Dt/-4-12-2020

Palan Chandra Naskar

Vs.

Bank of Maharashtra and Others

A.DISMISSAL – Petitioner was bank employee – Charge was misappropriation of money received from customer but depositing in his account – After holding enquiry, proving charge, his service was dismissed – He challenged order of disciplinary authority in appeal but failed – Then he challenged order of lower authorities by filling writ petition – Held, money

received from customer but not depositing in his account is a grave and serious misconduct – He was also found guilty of not depositing title deeds, while taking loans, which was found a deliberate act on his part – Employee has not made out a case of victimization or patent mala fides – Hence, no interference is warranted.

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

B.MISCONDUCT – Scope of – Held, non-deposit of money received from customer of bank by a bank employee is a grave and serious misconduct – Non-obtaining title deeds of the property mortgaged while disbursing loan to customers is also grave and serious misconduct justifying punishment of dismissal.

C.EVIDENCE – Scope of - Oral and documentary – Evidence of third person cannot be lent credence to override documentary evidence – Oral evidence could at best be corroborative in nature – In absence of plausible explanation by employee question of corroboration does not arise.

D.PAST RECORD – Petitioner – employee was regular habitual defaulter in flouting of bank rules – Even at times he did not deposit title deeds while disbursing loans to customers – Such a conduct is gross negligence causing not only financial risks to the bank but a bad name also.

E.ENQUIRY – When fair and proper – Compliance of provisions of Evidence Act not required strictly in disciplinary proceedings – Compliance of principles of natural justice, equity and good conscience are sufficient – Petitioner was given due and proper opportunity of hearing – His all contentions were considered in reasoned order.

IMPORTANT POINTS

Money received from customer but not depositing in his account and non-depositing title deeds while disbursing loan against mortgage of property are grave and serious misconducts justifying punishment of dismissal of a bank employee.

In the absence of making out a case of victimization or patent mala fides, interference by the court in the punishment of dismissal from service is not called for.

Oral evidence of a third person cannot be lent credence to override documentary evidence.

Oral evidence could at best be corroborative in nature but in the absence of plausible explanation by the delinquent employee to the charges leveled

against him, question of corroboration does not arise.

Petitioner-employee was regular and habitual defaulter in flouting of bank rules which compel the Bank not only to face financial risks but a bad name to the bank also.

Compliance of principles of natural justice, equity and good conscience are sufficient since strict compliance of provisions of Evidence Act not required in disciplinary proceedings.

Principles of natural justice would stand applied when the delinquent employee has been given due and proper opportunity of hearing and his all contentions were considered in reasoned order.

It was sufficient compliance of principles of natural justice, equity and good conscience if the delinquent employee was given due and proper opportunity of hearing and his all contentions were considered in reasoned order

JUDGMENT

Sabyasachi Bhattacharyya, J – 1. The petitioner has been working as a clerk with the respondent No. 1-bank, Sevoke Road Branch, Siliguri and was deputed at the deposit counter of the said branch during the relevant period. As per the petitioner's version, the respondent No. 4 (Vikash Agarwal) approached the counter on February 23, 2008 to deposit an amount of ₹ 8500/- and handed over the requisite pay-in-slip along with the cash. The petitioner, after affixing the stamp "Received" on the said slip and signing the petitioner's name, noticed that there was no 'scroll number' on the pay-in-slip, allegedly required for deposit of cash as per the norms of the bank. The petitioner returned the voucher to the respondent No. 4, along with the entire amount of money, and requested respondent No. 4 to come back with the scroll number. Subsequently, respondent No. 4 did not return and left the bank, unnoticed by the petitioner. February 23, 2008 was a Saturday and, under the pressure of closing, the petitioner allegedly forgot the episode and did not report such irregularity to any superior authority.

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

the bank and sought to withdraw ₹ 7000/-, which transaction was declined on the ground of 'insufficiency of balance', consequent to which respondent No. 4 reported the matter to the authorities, alleging that he had deposited ₹ 8500/- on February 23, 2008, which rendered the refusal invalid. Vikash also produced the counter foil of the pay-in-slip.

On February 27, 2008. The Assistant General Manager and Regional Head, Kolkata Region issued an office order of suspension against the petitioner vide letter No. AX9/ST/07-08/125/2008.

3. However, according to the petitioner, the respondent No. 4 realized his error thereafter, returned to the Sevoke Road Branch of the respondent No. 1-bank and submitted a letter admitting the actual circumstances. Vikash, allegedly, deposited the amount of ₹ 8500/- with the bank as well. A copy of the said letter, dated March 27, 2008, is annexed at page – 49 of the writ petition.

4. On May 24, 2008, the respondent No. 3, that is, the Disciplinary Authority and Chief Manager, Regional Office, Kolkata issued a show-cause notice bearing Reference No. AX9/ST/BPS/2008, against which the petitioner made a representation to the Assistant General Manager, Bank of Maharashtra, Regional Office on August 6, 2008, denying the allegations made in the show-cause notice.

On February 10, 2009, the respondent No. 3 issued a charge-sheet (Reference No. AX9/CM/DM/2009/1) against the petitioner, to which the petitioner used a reply on April 23, 2009. On May 5, 2009, the petitioner allegedly sought permission from the Enquiry Officer to engage an advocate, to appear on his behalf in the enquiry proceeding, but was refused the same. The enquiry proceeding, the minutes of which were recorded, started on May 25, 2009 and on June 8, 2009 the Presenting Officer produced documents on behalf of the bank management to prove the charges against the petitioner.

Evidence was adduced, both oral and documentary, on behalf of both sides and ultimately, on May 20, 2010, the respondent No. 3 passed the final order (Reference No. AX9/ST/CM/DM/PCN/2010/3199),

inter alia dismissing the petitioner from his service, primarily on the ground of gross misconduct.

5. The petitioner preferred on July 16, 2010, before the Appellate Authority, an appeal against the final order. The petitioner alleges that no hearing was given to the petitioner in respect of such appeal. The petitioner moved a writ petition, bearing W.P. No. 20536(W) of 2011, which was subsequently withdrawn with the leave to file afresh on the self-same cause of action. Thereafter, the petitioner filed W.P. No. 37926(W) of 2013. A Co-ordinate Bench set aside the order of the Appellate Authority and directed the appeal to be heard afresh and to be disposed of by a reasoned order within four months from that date.

6. Thereafter, hearing of the appeal was conducted by the Authorities on March 21, 2015 and, vide Order dated March 31, 2015, the Appellate Authority upheld the order of the Disciplinary Authority, that is, the respondent No. 3.

The order dated May 20, 2020 as well as the appellate order dated March 31, 2015 have been challenged in the present writ petition.

7. Learned counsel for the petitioner submits that relevant documents, including Exhibit – ME 13 (the letter allegedly submitted by the respondent No. 4) and the oral evidence of D.W. 1, and employee of the bank itself who was on duty near the counter of the petitioner of the relevant date. It is argued that the sole witness of the bank (M.W. 1) admitted that the respondent No. 5 accompanied Vikash when ME 13 was submitted by the latter. The respondent No. 5 (D.W. 2), in his evidence, corroborated the version of the petitioner. These factors, according to the petitioner, were not considered at all in holding the petitioner guilty of an offence not committed by him.

That apart, in spite of the fact that the allegations against the petitioner were 'disproved', as envisaged in the India Evidence Act, 1872, the authorities proceeded on the premise that those were, at best, 'not proved'.

Moreover, it is argued that the impugned orders are 'non-speaking' in nature and, hence, ought to be set

aside on that score as well.

While controverting such arguments, learned counsel for the respondent-authorities argues that the petitioner has failed to prove any mala fides or arbitrariness on the part of the respondents. It was well within the bank's powers to take disciplinary action against the petitioner.

It is further argued that the Disciplinary Authority took into consideration all the contentions raised by the petitioner and came to a conclusion upon taking into account all relevant circumstances.

8. It is submitted that the petitioner has been a habitual defaulter, not merely in respect of allegations as to the misappropriation of ₹ 8500/- but also in respect of taking loans and delaying the repayment of those on several previous occasions. In fact, contrary to the rules of the bank, the petitioner failed to deposit title deeds regarding his property against loan advanced to the petitioner by the bank.

9. It is argued that the entire conduct of the petitioner was considered by the authorities and detailed reasons provided in the orders impugned, before dismissing the petitioner from service. Placing several portions of the final order dated May 20, 2010, as well as the decision of the Appellate Authority, it is submitted that none of the orders was nonspeaking; rather, it is reflected from the impugned orders that all the previous conducts of the petitioner were considered while passing the orders.

It is further submitted that the petitioner failed to justify his action in granting receipt for the amount of ₹ 8500/- to the respondent No. 4 while failing to deposit such amount in the accounts of the respondent No. 4. Moreover, the petitioner, admittedly, did not disclose the developments of February 23, 2008 to any of his superior authorities, either on the relevant date or subsequently. Only after the respondent No. 4 came to withdraw an amount, which was declined on the ground of insufficiency of balance, and the authorities sought for an explanation, did the petitioner set up his concocted defence.

It is further argued that the alleged letter written by the respondent No. 4 ipso facto does not prove the

innocence of the petitioner.

As such, it is argued that the authorities acted well within their jurisdiction in dismissing the petitioner upon a proper enquiry being held.

10. Upon considering the submissions of the parties, it is revealed that, upon the matter being remanded by a Co-ordinate Bench of this court, the authorities gave a proper hearing to the petitioner. Moreover, the orders impugned in the present writ petition are well-reasoned and cannot, by any stretch of imagination, be considered to be non-speaking.

That apart, the petitioner failed to explain his conduct in returning the cash amount of ₹ 8500/-, along with the receipt, to the respondent No. 4 instead of depositing the same.

11. If the discrepancy in accounts was never discovered, either at the behest of the respondent No. 4 or by the authorities on their own, it is doubtful as to whether the petitioner would have disclosed the incident to the authorities at all. Despite getting sufficient opportunity to do so, the petitioner chose not to give an explanation or report the matter to the authorities, until called upon to do so on the discrepancy in accounts coming to light due to Vikash's request of withdrawal of ₹ 7000/- being declined by the bank.

12. Post-computerization of banks, the recording of deposits in accounts is not necessarily preceded by a deposit scroll being handed out. Even prior to the era of digitization, the issuance of a deposit scroll and the recording of deposits were internal matters of the bank. There could not have been any justification in the petitioner issuing a receipt, along with the money itself, to respondent No. 4, requesting the letter to obtain the corresponding deposit scroll. Basic banking norms militate against such callousness on the part of a bank employee, more so in the case of an experienced bank employee like the petitioner.

13. As far as the return of ₹ 8500/- to the customer is concerned, the explanation given by the petitioner is as lame as can be, since there could not have arisen any occasion for the money to be returned to the customer, even if no deposit scroll was issued. It was

for the petitioner to do the needful in the event such an error occurred and not the duty of the customer to ensure compliance of such rules. Thus, the story of return of ₹ 8500/- to respondent No. 4 is not credible even to the most gullible, let alone a prudent person.

14. As far as the evidence is concerned, the oral deposition of a colleague of the petitioner and a regular customer of the bank, other than the respondent No. 4, cannot be lent credence to override documentary evidence. Such oral evidence could at best be corroborative in nature, in support of a plausible explanation, if given by the petitioner. In view of the total absence of any plausible explanation coming from the petitioner's end in the first place, there arises no question of 'corroboration'.

15. As regards the purported letter given by the respondent No. 4, the same merely indicates that the respondent No. 4 was 'returning' an amount of ₹ 8500/- to the bank, which was cash which he got from the bank. The said document, by itself, is not proof enough of the attending circumstances for such return and cannot be co-related directly with the incident dated February 23, 2008. Although the said letter says that Vikash (respondent No. 4) was mentally disturbed and could not understand "the right situation", such a blanket statement cannot lead to the conclusion which the petitioner offers by way of explanation. The petitioner failed to report the matter to anyone in the bank, let alone his superior officers, not only on the date of occurrence, but thereafter, before he was prodded to do so by the authorities. Moreover, the petitioner showed no inclination at any point of time to justify the patent discrepancy in the bank's transactions for the day, before being called upon to do so.

16. There might have been umpteen reasons for which Vikash wrote, or was compelled to write, the purported letter dated March 27, 2008. The discrepancy in the bank's accounts might well have been a tool to coax the respondent No. 4 into taking the responsibility for the same upon himself, by way of a veiled threat of legal action against Vikash for the happenings of February 23, 2008. In any event, one cannot but resort to conjecture as to what impelled the respondent No. 4 to author the said letter, if he did

so at all. That apart, the mere verbal statements of the defence witnesses in the disciplinary proceedings, regarding the petitioner having returned the amount to the respondent No. 4 does not find resonance in the documentary evidence, including the glaring inconsistency in the accounts of the bank. The gap between plausibility and the petitioner's explanation for having allegedly returned the amount of money to respondent No. 4 is wide enough to belie such explanation.

17. That apart, although the previous actions of the petitioner did not have direct bearing on the incident of February 23, 2008, such past conduct was also part of the allegations against the petitioner in the show-cause notice. There appears to be utter absence of proper explanation for such conduct. As regards the habit of the petitioner to regularly default in repaying loans and in asking for loans in the first place, there was no answer, worth the name, from the petitioner.

18. Regarding the flouting of the bank's rules regarding depositing title deeds against loans taken by the petitioner from the bank, the Disciplinary Authority specifically considered the fact that such title deeds were pre-mortgaged with some other bank unerringly indicating towards the petitioner being guilty of suppressing material facts while taking the loan from respondent No.1. Non-deposit of title deeds, though seemingly innocuous by itself, attains larger proportions while coupled with the fact that the intention of the petitioner behind such non-deposit was deliberate as the property was previously encumbered.

19. In the present case, no case of victimization or patent mala fides and / or abuse of the process of law have been made out by the petitioner. The decision taken by the bank in its disciplinary capacity was a plausible one, in the facts of the case, and it would be against all settled law to disturb such decision merely by replacing the views of the court of the court with those of the Disciplinary Authority merely because another opinion was possible.

20. The Indian Evidence Act, cited by the petitioner, need not be strictly followed in disciplinary proceedings. The principles of natural justice and the

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

concepts of justice, equity and good conscience, which are yardsticks even in administrative law, were complied with by the authorities in expelling the petitioner. The petitioner had his opportunity of hearing and all relevant contentions were considered by the Disciplinary Authority and the appellate Authority, both of which came to reasoned conclusions.

21. Hence, the orders impugned herein do not warrant interference by this court in its writ jurisdiction. The court cannot usurp the jurisdiction of a fact-finding

authority in its writ jurisdiction and enter into a de novo appreciation of the evidence after the order of the Disciplinary Authority was confirmed by the Appellate Authority.

22. In the light of the above discussions, the writ petition fails. Accordingly, WPO No. 280 of 2020 is dismissed on contest, but without any order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

2021 LLR 525
DELHI HIGH COURT
Hon'ble Mr. Vipin Sanghi, J.
Hon'ble Ms. Rekha Palli, J
CONT. CAS(C) 524/2020 and connected cases,
Dt/- 5-4-2021

**Nagar Nigam Sewa Nivrit Karamchri Kalyan
Samiti and Others**
Vs.
Gyanesh Bharti

SALARY AND PENSION – Receiving is fundamental right of an employee – Cannot be withheld on account of short of funds – Vide order dated 09.03.2021, the High Court had directed all municipal corporations to clear arrears of salaries and pensions of employees by 05.04.2021 – Corporation has filed an application seeking extension of time upto 30.04.2021 since they have not received Basic Tax Assignment from GNCTD – On 24.03.2021, Court had directed GNCTD to release BTA to corporation in budget for F.A. 2021–22 by 31.03.2021 – BTA stands paid to applicant Nr. DMC – Held, non-payment of wages / pension directly impinges on employees' right to life and liberty under Article 21 of Constitution of India – It is for the Corporation to find ways and means for paying salaries and pensions to its employees – Non-availability of fund cannot be an excuse – Application is dismissed.

For Petitioner: Mr. Tarun Sharma and Ms. Akanksha Kapoor, Advocates.

For Respondents (GNCTD): Mr. Sandeep Sethi, Sr.

Advocate with Mr. Satyakam, ASC.

For Respondents (SDMC): Mr. Divya Prakash Pande, SC with Ms. Pooja Sharma, Advocate.

For Respondents (Nr. DMC): Mr. Divya Prakash Pande, SC with Ms. Pooja Sharma, Advocate.

IMPORTANT POINTS

Receiving salary and pension is fundamental right of an employee which cannot be withheld on account of short of funds.

Application filed by corporation seeking extension of for paying arrears of salary and pension is dismissed since it non-payment of wages / pension directly impinges on employees' right to life and liberty under Article 21 of Constitution of India.

It for the Corporation to find ways and means for paying salaries and pensions to its employees and

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non-availability of fund cannot be an excuse.

ORDER

CM APPL. 12356/2021 in W.P. (C) 3511/2020

Vipin Sanghi, J. – 1. This is an application moved by Nr. DMC seeking extension of time from 05.04.2021 to 30.04.2021 to clear the arrears of salaries / pensions. In terms of our order dated 09.03.2021, we had directed all the municipal corporations to positively clear the outstanding arrears of salaries and pensions of the respective employees by 05.04.2021.

2. One of the primary reasons given by the corporations for not paying up to salaries and pensions was non-receipt of the Basic Tax Assignment (BTA) from the GNCTD to the extent that the same should have been paid. On 24.03.2021, after considering the application moved by one of the corporations being CM APPL. 10875/2021 we had directed the GNCTD to make payments of the remaining amounts due towards BTA to the corporation on the basis of their own revised estimates presented in the budget for the financial year 2021–22. The said amount was directed to be paid within the financial year i.e. by 31.03.2021. Admittedly,

the remaining amount towards BTA in terms of our order dated 24.03.2021 stands paid qua the applicant Nr. DMC.

3. Learned counsel for the applicant / Nr. DMC states that pension / salaries stand fully paid till January 2021. Further, in respect of Safai Karamchhari, the salaries and pensions have been fully paid till February 2021.

4. We have considered the submissions made in the application, as well as the facts and figures stated therein. The right of the employees and the pensioners to receive their salaries and pension is a fundamental right and non-payment thereof directly impinges on their right to life and liberty enshrined under Article 21 of the Constitution of India. We are therefore not inclined to pass any order which would adversely impinge upon this right of the employees and the pensioners. Since the applicant / corporation has employed personnel to render their services for and on behalf of the corporation, it is for the corporation to find ways and means for making payment of salaries and pensions to its employees and pensioners, and non-availability of funds cannot be an excuse for non-payment of salaries and pensions on time. We, therefore, dismiss this application.

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