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Editorial

BUDGET - 2022

The Budget for 2022-23 was hailed for its growth push despite the record gap in revenue and expenditure: ₹ 15 trillion would be borrowed during the coming fiscal to bridge the gap. We remember that politicians did discuss the borrowing of a particular state to further their argument that the said state economy was poorly managed. We are only wondering about their response to the centre's mammoth borrowing figure of ₹15 trillion in a year and how it explains their economic management. The policy move in the budget comes against a projected 9.2 percent GDP growth marking India as one of the world's fastest-growing economies. A misleading distinction, as it were, given a (-) 6.6 percent fall in the GDP in the previous year and now further confirmed by the borrowing fuelled fiscal expansion.

Although the Reserve Bank of India, in its monetary policy released a few days after the budget presentation, did not spell out how the resources to fund the budgeted spending will be managed, the benign inflation outlook remains the cornerstone of optimism both by the finance minister and RBI. However, the ground reality is something different. India's retail inflation accelerated to a seven month high in January, breaching the central bank upper limit of 4-6 percent band after June 2021 as food inflation hardened with vegetable price rose by nearly 38 percent even while the country was reeling under the cold wave, thereby breaking a tradition that vegetable prices normally moderated during the winter months. We have to keep our fingers crossed with oil prices inching towards \$100 a barrel, the burden of which is yet to be passed

to the consumers, thanks to the election in the politically crucial state of Uttar Pradesh. Once the election is over, diesel prices will start spiralling, upsetting the calculations of the finance minister and her team of bureaucrats in total disarray, compounding the misery of the citizenry's life.

The lofty arithmetic of the budget can also be dissected from another angle. India continues to rank poorly in various global indices that reflect the quality of life, human capital, or human development in the country, such as the human development index (World's so-called fastest-growing economy ranked 131 out of 189 countries, and the world hunger index where it ranked 101 amongst 116 countries). It is well documented that pandemic over the last two years has had a severe impact on the poor and the informal sector workers' health, education, and food security. Several recent reports, notably Oxfam's "Inequality kills" (an abridged version discussed in a separate article in this journal), confirmed that recovery in India is "K-shaped," indicating that the income of the poor is decreasing while that of the wealthiest sections are increasing. In this context, it was expected that the current budget would see an expansion in government spending on the social sector. Greater expenditure on the social sector can contribute to improvement in human development indexes, provide a cushion to the poor during the ongoing pandemic induced economic disaster (leaving aside the slide-in economy observed even before the pandemic), and can contribute to private consumption demand with a multiplier effect on the economy itself. Unfortunately, the budget has covered itself with

A JUG FILLS DROP BY DROP

a conservative veil prioritizing adjustment of its fiscal deficit targets rather than using the opportunity to signal a path of employment centred and inclusive growth.

Overall, the social sector has once again been betrayed, while this is the time when it needed more support. The resources allocated for crucial government schemes in health, education, nutrition, MGNREGA, and other social sectors, including sensitive issues of minimum support price for agricultural products, have either remained stagnant or reduced. They have been declining in real terms ever since 2015. India already starts from a weak position in the critical areas of social protection, education, and health. This continued negligence of social priorities does not bode well for the country's inclusive development.

However, the budget did not mention the fate of the announcement made in the earlier year about the privatization of two public sector banks. This may be a strategic two steps back after moving forward one step. We do not doubt that the government's decision was greatly influenced by the intense struggle launched by the bankers during the entire 2021, braving the pandemic and culmination in two days national strike. The real fire for the movement's success and the strike owes primarily to calibrated struggle plan led by AIBOC breaking the glass pane of four walls and confinement solely within social media. The historic Bharat Yatra, which connected the real stakeholders of the banking arrangement with the movement to protect the dominant public sector character of Indian banking, has set a new parameter for the future move and forced the government to make a strategic retreat for the time being.

This is also not the time to submerge in complacency by assuming that the injured hyena will not again resort to its deadly cackle to initiate the privatization process. As we are giving our finishing touches to this editorial, news surfaced about India's mammoth bank fraud of ₹ 22,842 crore by Gujarat-based ABG Shipyard involving several private and public sector banks. Regrettably, the entire decade is full of loan

sanctions by throwing in winds all the cannons of prudential processing followed by official loot of the public money by writing off a substantial portion of the default under the guise of recovery. It is the two sides of the same coin, with one engaged in sanctioning loans to the fraudsters while the other was busy in writing that off and allowing safe passage to the fraudster. Data suggests that the total amount involved in bank fraud during the last few years has crossed ₹ 5 lakh crore, while the amount written off is around ₹ 8 lakh crore. We are leaving aside the gross NPA at Rs. 21 lakh crore from the ambit of our discussion without losing sight of the fact that the total loss of public money is around ₹ 13 lakh crore. The burden will fall on the banks' financials. The depressed finances of the banks will be used as an alibi to deny pension revision, meet the aspirations of the banking community, and even attempt to rewrite the agreed position on the pretext of financial stringency.

Today, the fight to protect the bank, which is an inseparable part of the struggle of protecting the economic sovereignty of the nation, will continue while sharpening our attack on the course of policies being pursued, destabilising the banking system itself paving the ground for eventual privatization on a later date. The struggle for a more inclusive India will continue by forcing the government to change the contour of its budget from a private sector-oriented growth push to social sector-oriented economic development, taking care of the interest of the multi-layers of our diverse society and merging with our ongoing struggle for #BankBachao which will ensure #DeshBachao.

Our greetings of spring and the Holi Festival. Let us keep our gun powder dry.

March on comrades,

#NationAgainstPrivatisation
#StrikeHard
#PowerofUnity
#BankBachaoDeshBachao

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

1. RBI fixes tenure of MD, CEO and WTD; maximum age of 70 years in private banks.
2. Supreme Court rejects banks pleas for recall of 2015 verdict asking RBI to disclose information about them under RTI
3. RBI's new norms on interoperability put mobile wallets on par with banks.
4. The Supreme Court upheld a government move to allow lenders to initiate insolvency proceedings against personal guarantors who are usually promoters of big business houses along with the stressed corporate entities for whom they gave guarantee.
5. Canara Bank to be the lead sponsor of NARCL (Bad Bank) with 12% stake.
6. Banks see 80% average haircut in top NCLT bankruptcy resolutions.
7. The banking sector has recorded its highest ever profits of ₹ 1,02,252 crore in FY21 a year, when the economy was battered by the pandemic. This is a significant turnaround compare to a net loss of nearly ₹ 5,000 crore for the industry in FY 19.
8. Accepting a long-standing demand, the Centre included retail and wholesale traders under the MSME classification making them eligible for priority sector advances by banks and financial institutions per RBI guidelines. 2.5 Crore traders will also get the benefit of government schemes.
9. The government on July 26 tabled the Insolvency and Bankruptcy Code (amendment) Bill in the Lok Sabha introducing a new chapter on the pre packaged insolvency process that provides a resolution mechanism for stressed micro, small and medium enterprises- MSMEs
10. In relief to depositors, Cabinet clears bill to amend Deposit Insurance Act. One can withdraw cash up to ₹ 5 lac even if the bank is placed under moratorium
11. Prime Minister launched e-RUPI, a digital payment instrument via video conferencing on second August. It is slated to make payments easier and more efficient and to an extent looks like the precursor of a Central Bank Digital Currency (CBDC). e-RUPI is a digital payment system developed by NPCI on UPI platform. The recipient of e-RUPI can use this onetime payment mechanism to get access to product or service without using a card digital wallet or net banking.
12. IBC, other reforms helped banks to recover ₹ 5.5 lakh Cr bad debt in the last few years as per finance ministry. This includes close to ₹ 1 lakh crore from accounts that had been technically written off.
13. 10 top lenders including State Bank of India and ICICI Bank jointly launched a Secondary Loan Market Association (SLMA). The Self-regulatory body was set up to promote the secondary corporate loans market in India. The move follows the recommendation of a task force set up by RBI.
14. In what comes as a big relief to consumers in need of cash from ATMs, RBI decided to levy monetary charges on ATMs that run out of cash starting 1st October, 2021.
15. Eight major Banks join the account aggregator network - SBI, ICICI, Axis, IDFC First, Kotak Mahindra, HDFC, Indusind and Federal.
16. PMJDY accounts touched 44 Crore till October 2021
17. 15 banks are joining forces to use Block chain to power letters of credit – a move that would be a boon for MSMEs
18. Stand up India Scheme - 25 000 crore loans given in the last 5 years
19. RBI raises heat on foreign banks over data

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

storage norms violations

20. RBI announced a special on- tap liquidity of ₹ 50,000 crore with tenor up to 3 years at repo rate of 4% for lending to emergency healthcare required to fight Covid crisis

21. RBI has decided to extend a special liquidity facility of ₹16000 crore to SIDBI to support the funding requirements of micro, small and medium enterprises (MSMEs) particularly smaller MSMEs and other businesses, including those in deficient aspiration districts.

22. To expand the coverage of the resolution framework 2.0, RBI announced a doubling of the maximum aggregate exposure to ₹ 50 crore

23. IBC, other reforms helped banks to recover ₹ 5.5 lakh Cr bad debt in the last few years as per finance ministry. This includes close to ₹ 1 lakh crore from accounts that had been technically written off.

24. RBI has been working towards a phased implementation of the Central Bank Digital Currency (CBDC) with little or no disruption as per T Rabi Shankar Deputy Governor.

25. The first reading of RBIs annual Financial Inclusion Index for the period ended Mar 21 has come in at 53.9, with 100 being the full financial inclusion score. Financial Inclusion grew 24% across FY 17-21 as per RBI. Retail loan defaults fall as recovery improves in July.

26. Nearly 72% of financial transactions of public sector banks are now done through digital channels with customers active on digital channels having doubled from 3.4 Crore in 2019-20 to 7 .6

Crore in 2020-21

27. IBA moves RBI for license to set up NARCL.

28. FM unveiled EASE 4.0 for PSB's customer - centric tech transformation.

29. Few takers for restructuring 2.0 amid demand recovery- Crisil

30. RBI issues fresh Master Directions on Prepaid Payment Instruments (PPI)

31. Equities deposits deal under RBI's watch. The regulator is concerned with the move by Equities Small Finance bank to tap into the user base of Google Pay for garnering deposits.

32. No account freezes till Dec 21 for want of KYC - RBI

33. As per DICGC 93% of premium has come from commercial banks

34. As per S&P, four Indian banks are among the 20 largest banks in Asia Pacific region in terms of market capitalisation in Q3. They are HDFC Bank, ICICI Bank, SBI and Kotak Mahindra Bank

35. Government floats four tier plan for PSB staff accountability

36. As per RBI cooperative societies cannot use bank in their names.

37. Branches added by banks in FY21 at a decade low

38. Banks had issued 31.67 Crore Rupay debit cards with free accident insurance cover to PMJDY account holders

BUT FOR WHOM THE ECONOMY GROWS



An impression is sought to be created that the entire pre-liberalisation period was marked by a low growth rate, normally referred to as the Hindu growth rate, along with the prevalence of ever-growing absolute poverty. It is argued that

liberalisation has changed all these. Unfortunately, the reality of India's growth under the so-called liberalised economy speaks otherwise. Poverty estimate in India began systematically in 1973-74. The national sample survey collected data every five-year interval on spending and quantities of food consumed by the people. The percentage of poor was around 56 in 1973-74 in rural India, which rose to 68 in 2011-12.

OVERCOME ANGER BY LOVE, EVIL BY GOOD

The corresponding figure in the urban area was around 65, moving from 59 during the same period. The figure indicates that poverty, which may not be declining appreciably in the pre-liberalisation decade, has climbed up appreciably after the liberalisation process sets in. This was revealed in a large-scale consumer spending survey in 2017-18, which confirmed a drop in real spending and an alarming increase in poverty. The government decided to suppress the survey report and finally discontinued the format in which the survey was conducted. Another story is that Prof. P. C. Mahalanobis the format.

Neo-liberalism in the Indian context has meant two things. One is the withdrawal of state support to peasant agriculture. This has reduced peasant income, made them vulnerable to price fluctuation, and pushed them to greater debt and distress. Millions of poor peasants have migrated to cities in search of employment. The second implication of neo-liberalism has been removing all restrictions on the introducing technological changes; in other words, without integrating the technical changes with the existing social realities, an aggressive step is delinking the technological changes with the reality of the social condition. Possibly, in the run-up for welcoming foreign investment and foreign technology, the policymakers have conveniently strayed from the lesson of appropriate choice of technique for a specific economic conditionality. Such technological changes are invariable labour saving and capital intensive, ensuring both relative and absolute decline in employment growth rate in urban areas. In aggregate, the neo-liberal economic changes, even though they have contributed to so-called fanciful GDP growth, have ensured contraction of employment in the country, which contributed to the growth of poverty and malnutrition apart from redistribution of wealth to the rich given the capital intensive nature of production. Demonetisation, hasty introduction of

GST, and successive covid waves have only contributed to accentuating the trend which emerges out of pursuance of a neo-liberal policy and not a fall out of pandemic or pandemic like economic decisions of the present ruling regime.

In passing it may be mentioned that neo-liberal policy has also ensured the sharing of a given amount of work amongst more workers increasing their relative work burden. It has also reduced the bargaining strength of the organised worker hurting their real wages. All these have accentuated poverty. We have mentioned earlier that the government has halted the survey to unearth poverty and even changed the methodology. Fortunately, Oxfam India is not under the control of the Government of India, and their recent report on rising inequality says that while 4.6 crore Indians are estimated to have fallen into extreme poverty in 2020, the number of Indian billionaires grew from 102 to 143 during the pandemic period. The collective wealth of India's 100 richest people hit a record high of ₹ 57.3 lakh crore (\$775 billion) in 2021. In India, the wealth of billionaires during the pandemic (from March 2020 to November 30, 2021) increased from ₹ 23.1 lakh crore (\$313 billion) to ₹ 53.2 lakh crore (\$719 billion).

In contrast, the report cites the Consumer Pyramid Household Survey data collated by CMIE for 2021 to point out that it is estimated that 84% of households in the country suffered a decline in their income in a year marked by unprecedented loss of life and livelihoods. It says that 142 Indian billionaires own more wealth (\$719 billion) than 555 million people (\$657 billion, bottom 40%). The richest 98 have the same wealth (\$657 billion) as the poorest 555 million people (bottom 40%). "If each of the ten richest Indian billionaires were to spend \$1 million daily, it would take them 84 years to exhaust their current wealth. Indian billionaires have seen their combined fortunes more than double during the pandemic. Their number shot up by 39%," an Oxfam statement said.

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A BOLD EFFORT AT PUBLIC INVESTMENT-LED GROWTH

But the Budget barely mentions the fall in share of private consumption in GDP and rising economic inequality.

The Union Budget starts with a self-congratulatory announcement that India's domestic output (GDP)

is likely to grow 9.2% this year (2021-22) over last year - the highest among the world's large economies. What is unsaid is that India's output contraction the previous year (2020-21) was among the worst in the world. Compared to the pre-pandemic year (2019-20), the current year's GDP will be marginally higher by 1.3%,

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

Common Bond, March -2022

as per the Economic Survey. If the adverse effect of the ongoing wave of the Omicron virus is factored in, the (estimated) modest rise in GDP may vanish. Thus, it is worth starting with the factually accurate picture that India lost two years of output expansion. In other words, per capita income today is lower than it was two years ago. Regarding sources of demand, the share of private consumption declined by three percentage points of GDP between FY2020 and FY2022. The Government stepped up its expenditure to mitigate the decline, but only modestly; hence, the marginal output expansion. In contrast, the United States boosted public spending by about 10% of GDP, and its output roared back!

This year's Budget seeks to boost public investment by 35.4% at current prices over last year to raise its share in GDP to 2.9% from 2.2% last year. With grant-in-aid for state investments, the Budget hopes to increase public investment share to over 4% of GDP. The Budget hopes to trigger a virtuous investment-led output and employment growth by arguing in favour of the "crowding-in" effect of public investment on private investment. The theory is sound and is a welcome change from the past policy stance. The crux will be to mobilise resources to finance the investment as the Budget seeks to reduce the fiscal deficit ratio, as per the schedule laid out in the last Budget. The critical question is whether additional tax and non-tax revenue (that is disinvestment proceeds) will be sufficient to finance the investment plan.

To refresh our memory, last year too, public investment was sought to be raised by about the same proportion (34.5%). I had written, "These figures certainly look impressive. The realisation of these investments would crucially depend on tax revenue realisations, disinvestment proceeds, sale of rail and road assets and the Government's ability to raise resources from the market, without raising interest rates for the private sector." It is ditto and holds for this year as well. Indeed, public investment has picked up in the current fiscal, by barely 0.2% of GDP. With the threat of higher (imported) inflation (on account of rising international oil prices) and rising interest rates (on account of the US Federal Reserve's decision), meeting the ambitious investment target would be challenging, but it is worth attempting.

On the employment crisis: But the larger question is: how will it address the sharp decline (of three percentage points of GDP) in private consumption, which is likely to be caused by loss of employment? The derived demand for labour from an infrastructure boost may be limited, as the suggested projects are machinery intensive, not labour intensive. The Budget does not directly address the employment crisis caused by the novel coronavirus pandemic and the lockdown. The employment crisis would call for enhanced allocation for the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and initiating a similar scheme for meeting urban unemployment. Instead, shockingly, the Government has slashed the allocation for MGNREGA by 25% over last year.

Industrial slowdown: The manufacturing sector's share in GDP has been stagnating at around 15% of GDP for quite awhile. The annual industrial growth rate has sharply slowed down from 13.1% in 2015-16 to minus 7.2% in 2020-21. Perhaps a most telling example of the industrial slowdown is the fall in two-wheeler sales. As per news reports, it fell to 11.77 million units in 2021, below 11.90 million units sold in 2014. Expectedly, employment has contracted, most of which in the informal or unorganised sector. Lack of demand is then real problem, with low capacity utilisation. Indeed, the proposed public investment would create demand for capital and intermediate goods. But if a substantial share of such investment "leaks" out as imports, then the industrial output may not get the desired boost.

It is essential to appreciate that India has become an import-dependent economy, especially on China. Despite the clarion call for Atmanirbhar Bharat, India's imports have shot up. Research reports show that India's trade deficit with China has gone up from ₹57.4 billion in 2018 to \$64.5 billion in 2021. The figure would be much higher by China's official trade account. And the deficit would be even higher if exports from China and Hong Kong to India are combined.

Premature on PLI scheme: India launched a production linked incentive scheme (PLI) for numerous technology-intensive products, starting with mobile phone assembly a few years ago to augment production and reduce imports. The Budget has mentioned the overwhelming response to the scheme.

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

However, evidence on the number of such projects that have taken off, their investment and employment generation and rise in domestic content in such industrial units is too sparse. Hence, it is premature to claim the success of the PLI scheme.

India launched the "Make in India" initiative in 2014-15 to raise the manufacturing sector's share in GDP to 25% and create 100 million new jobs in the industry by 2022. However, the Government diagnosed the principal barrier to increasing manufacturing in India as excessive and dysfunctional regulation holding back the private initiative.

The solution, it was argued, was to improve India's rank in the World Bank's Ease of Doing Business (EDB) index. India did splendidly to improve its rank – from 142 in 2014 to 63 by 2019-20. But the improved ranking failed the industrial sector miserably, with a steady slowdown, noted above.

Last year, the World Bank scrapped the index as it was flawed globally and reportedly politically motivated.

Yet, the present Budget harps on improving the EDB index and reducing regulatory constraints on industry and infrastructure to boost growth. It appears shocking as the Government refuses, to learn from past mistakes.

To sum up, the Budget for 2022-23 is a bold effort at public investment-led growth—quite similar to last year's. The widely discussed concerns of the unemployment crisis, fall in the share of private consumption in GDP, and rising economic inequality (caused by the pandemic and the lockdown) have been barely mentioned in the Budget. Instead, the Budget pins its hope on investment to boost employment, as derived demand for labour. Without fully committed funds for capital investment, the success of the ambitious effort remains questionable.

R. Nagarajis with the Centre for Development Studies, Thiruvananthapuram

CIRCULARS

04 dated 31st January, 2022: Circular on D.A. payable from 1st February, 2022 to 30th April, 2022

05 dated 08th February, 2022: Text of UFBU Letter No. 2022/01 dated 07.02.2022 on proceedings of UFBU meeting held on 07.02.2022

02 dated 07th January, 2022: Text of Letter No. AIBOC/2022/01 dated 07.01.2022 to Hon'ble Finance Minister regarding safety measures to be initiated on COVID 19 Pandemic : Omicron variant

03 dated 17th January, 2022: Text of UFBU circular dated 17.01.2022 on the demise of Com K. K. Nair, former Chairman UFBU and former General Secretary INBOC

JUDICIAL VERDICT

2022 LLR 120
SUPREME COURT OF INDIA
Hon'ble Mr. M.R. Shah, J.
Hon'ble Mr. Sanjiv Khanna, J.
CAJCA No. 7451/2021, Dt/- 04-01-2022
The Rajasthan Marudhara Gramin Bank (RMGB) & Anr.
vs.
Ramesh Chandra Meena & Anr.

ENQUIRY – Representation in enquiry by retired employee of employer – Scope of – Bank Manager committed irregularities while granting loans to farmers – Charge-sheet was issued – Bank Manager denied the charges – Enquiry was initiated – Branch Manager was allowed to take assistance of defence representative in accordance with regulation – Branch Manager demanded assistance of legal practitioner which was declined since Presenting Officer was not legal practitioner or Legal Officer – Branch Manager requested for assistance of a retired Bank Officer but request was turned down – Branch Manager approached High Court in writ petition – Writ Court

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

allowed assistance of retired Bank Officer – Bank filed appeal before Division Bench but could not succeed – Then Bank filed appeal before Supreme Court – Held, relevant Regulation was not challenged – Basic principle is that an employee has no right to representation in enquiry by another person or lawyer unless the Service Rules so specifically provide – Procedures of Bank do not allow the delinquent employee to choose any outsider or a legal practitioner as defence representative – Ex. employees who were subjected to disciplinary proceedings or who were part of Vigilance or Audit are enabled to be defence representatives – High Court has not considered such facts – Enquiry is to be completed within 6 months – Denial of defence representative through legal practitioner or retired employee cannot be said to be in violation of principles of natural justice – A delinquent has no right to be represented through counsel or agent unless the law specifically provides so – Relevant rules provide representation through serving official / employee from the Bank – Hence, impugned orders are not sustainable – Appeal is allowed.

IMPORTANT POINTS

- ➔ Basic principle, in departmental enquiry, is that an employee has no right to representation in enquiry by another person or lawyer unless the Service Rules so specifically provide.
- ➔ Since the Procedures of the Bank do not allow that delinquent employee to choose any outsider or a legal practitioner as defence representative, he has no such legal right.
- ➔ Ex-employees who were subjected to disciplinary proceedings or who were part of Vigilance or Audit are unable to be defence representatives to avoid unnecessary delay in enquiry.
- ➔ Denial of defence representative through legal practitioner or retired employee cannot be said to be in violation of principles of natural justice.
- ➔ Since the relevant rules provide representation through serving official / employee from the Bank, assistance of an ex-employee / officer cannot be allowed.
- ➔ In departmental enquiry, the legal right to delinquent is that he be given proper opportunity to submit his defence and not to engage defence assistant of his choice from outside.

JUDGEMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.07.2021 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Special Appeal Writ No.311 of 2021, by which, the Division Bench of the High Court has dismissed the said Appeal and has confirmed the judgment and order dated 28.01.2021 passed by the learned Single Judge, by which, the learned Single Judge allowed the writ petition preferred by the respondent herein (hereinafter referred to as the original writ petitioner) and directed the appellant Bank to allow the original writ petitioner to be represented by a retired employee of the Bank in the departmental inquiry, the Appellant Bank has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

2.1. That the respondent herein – original writ petitioner was working as Cashier-cum-Clerk (office Assistant). While working as a Branch Manager is alleged to had committed certain irregularities amounting to misconduct. A show cause notice was issued by the Bank dated 24.4.2019 whereby it was stated that while working at Rawstar Branch, he had committed irregularities while granting loans to farmers / villagers under the loan scheme and he did not take adequate precautions and without written mandates of borrowers, he transferred the loan amount in favour of another person and had thus committed misconduct. One another similar show cause notice was issued on dated 24.6.2019. Departmental Inquiry was initiated against him. A charge-sheet dated 1.11.2019 was served upon the original writ petitioner by the Bank in terms of Rajasthan Marudhara Gramin Bank (Officers and Employees) Service Regulation, 2010 (hereinafter referred to as the Regulation, 2010). A written reply was submitted by the original writ petitioner to the charge-sheet issued. He denied the charges leveled against him. Not satisfied with the reply, the Bank initiated departmental inquiry. One Shri K.C. Gupta was appointed as an Enquirer Officer. An opportunity was afforded to the original writ petitioner to take assistance of a defence representative (hereinafter referred to as DR) in accordance with Regulation, 2010 as also in accordance with guidelines issued by

the Bank. However, the original writ petitioner informed the Enquiry Officer that he may be allowed to defend himself in the inquiry through a legal practitioner. Keeping in view the restrictions under Regulation 44 of the Regulation, 2010 on engagement of legal practitioner during the inquiry, vide communication dated 17.3.2020, his request permitting him to defend himself through a legal practitioner came to be declined by the Enquiry Officer. A request was made to the Disciplinary Authority by the original writ petitioner permitting him to engage a legal practitioner as his DR. Having considered that no complicated legal question has been involved in the matter and the Presenting Officer appointed by the Disciplinary Authority is neither Law Officer nor a legal practitioner and keeping in mind the Regulation 44 of Regulation, 2010 on engagement of legal practitioner during the inquiry, the request to permit him to represent through legal practitioner came to be declined by the Disciplinary Authority, which was communicated to him vide communication dated 27.5.2020. Again a request was made by the original writ petitioner to permit him to engage a legal practitioner as his DR in the inquiry proceedings, which again came to be rejected. During the inquiry proceedings on 11.08.2020, the original writ petitioner submitted a consent letter of one Shri Mahesh Kumar Atal to be engaged as his DR. The said request was turned down. Again a request was made to permit him to engage any legal practitioner or any retired officer from the Bank as his DR, which again came to be turned down by the Disciplinary Authority. Aggrieved by the order passed by the Disciplinary Authority dated 19.08.2020, the original writ petitioner approached the High Court by way of SB Civil Writ Petition No. 8363 of 2020 inter alia, praying that he may be permitted to engage any legal practitioner or retired officer of the Bank as his DR. The said writ petition was opposed by the Bank. Regulation 44 of Regulation, 2010 and the Circular dated 31.01.2014 as also the guidelines issued by the Bank in respect of disciplinary proceeding that no outsider, not associated with the Bank can be permitted to act as a DR were pressed into service. That by judgment and order dated 28.1.2021, the learned Single Judge allowed the said writ petition and directed the Bank to permit the original writ petitioner to be represented through retired officer of the Bank in the disciplinary proceedings. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the Bank preferred appeal before the Division Bench of the High Court. By

impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal mainly on the ground that since circular dated 31.1.2014 and the Regulation 8.2 did not prohibit the utilization of the services of ex-employee of the Bank, therefore, judgment and order passed by the learned Single Judge is not to be interfered with.

2.2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court directing the Bank to permit the original petitioner to be represented through retired officer of the Bank in the disciplinary proceedings, the Bank has preferred present appeal.

3. Shri Rishabh Sancheti, learned counsel appearing for the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in directing the appellant Bank to permit the respondent original writ petitioner to be represented through retired officer of the Bank in the disciplinary proceedings.

3.1. XXXX

3.2. XXXX

3.3. XXXX

3.4. XXXX

3.5. XXXX

3.6. XXXX

3.7. XXXX

3.8. It is submitted that the impugned judgment and order has created an anomalous situation where:

I. Ex-employees who themselves may have been subject of a disciplinary enquiry / charge sheeted / dismissed from service are also enabled to act as Defence Representatives.

II. Ex-employees who were part of Vigilance or Audit Sections who come across a lot of information of confidential nature are enabled to act as Defence Representatives, which would result in grave injustice.

III. The solemn nature of proceedings is taken away and would result in issues of orderliness as well as decorum when a disgruntled ex-employee is enabled to act as a Defence Representative. CVC Circular no.19.9.2021 dated 6.10.2021 prescribes the time limit for completion of departmental enquiry within 6 months and the same has adopted in the Vigilance Handbook page no.55 para 7.2. If an outsider gets permitted completion of departmental inquiry within

prescribed time limit shall be a problem.

IV. It is a matter of record that presently in almost all the pending Disciplinary enquiries, most of the Employees- under- enquiry are now asking for retired officials to act as Drs.

3.9 XXXX

4. XXXX

5. XXXX

6. While considering the aforesaid issue, few decisions of this Court on the right of the employee to make representation in the Departmental Proceedings are required to be referred to.

6.1 In the case of Kalindi and Ors (supra), it is observed and held that ordinarily in inquiries before domestic tribunals the person accused of any misconduct conducts his own case and therefore, it is not possible to accept the argument that natural justice ex-facie demands that in the case the enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union; though of-course an employer in his discretion can and may allow his employee to avail himself of such assistance. The dictum of this decision has been subsequently elucidated.

6.2 In the case of the Dunlop Rubber Co. (India) Ltd v. Workmen, reported in (1965) 2 SCR 139 , after considering its earlier decision in the case of Kalindri and ors (supra), it is observed and held that there is no per se right to representation in the departmental proceedings through a representative through own union unless the company by its Standing Order recognized such a right. It is observed that refusal to allow representation by any Union unless the Standing Orders confer that right does not vitiate the proceedings. It is further observed that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employee should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. It is further observed that denial of such an opportunity cannot be said to be in violation of principles of natural justice.

6.3 In the case of Cipla Ltd. and Ors (supra), it is

observed and held as under:

"13. In N. Kalindi v. Tata Locomotive & Engg. Co Ltd., it was held that a workman against whom a departmental enquiry is held by the Management has no right to be represented at such enquiry by an outsider, not even by a representative of his Union though the Management may in its discretion allow the employee to avail of such assistance. So also in Dunlop Rubber Company vs. Workmen, 1965 (2) SCR 139 : AIR 1965 SC 1392 : 1965 (1) LLJ 426 , it was laid down that an employee has no right to be represented in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same. A Three-Judge Bench of this Court in Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi, (1993) 2 SCC 115 : 1992 Suppl. (3) SCR 559, laid down that the right to be represented in the departmental proceedings initiated against a delinquent employee can be regulated or restricted by the Management or by the Service Rules. It was held that the right to be represented by an advocate in the departmental proceedings can be restricted and regulated by statutes or by the Service Rules including the Standing Orders, applicable to the employee concerned. The whole case law was reviewed by this Court in Bharat Petroleum Corporation Ltd. vs. Maharashtra Genl. Kamgar Union & Ors., (1999) 1 SCC 626 , and it was held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him."

6.4 In the case of Crescent Dyes and Chemicals Ltd. (supra), it is observed and held that in the departmental proceedings right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the case before this Court, the delinquent's right to representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and said right stood expanded permitting

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representation through an officer, staff-member or a member of the Union, on being authorised by the State Government. Holding that the same is permissible and cannot be said to be in violation of principles of natural justice, it is observed that the object and purpose of such provisions are to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly; secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. In the present case also clause 8 permits representation through serving officials / employee from the Bank.

6.5 A similar view has been expressed by this Court in the case of Bharat Petroleum Corporation Limited (supra) as well as in the case of National Sees Corporation Limited (supra).

6.6 In the case of Indian Overseas Bank (supra), it is observed and held that law does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, specifically recognize such a right and provide for such representation.

7. Applying law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the respondent employee / respondent delinquent has no absolute right to avail the services by ex-employee of the Bank as his DR in the departmental proceedings. It is true that Regulation 44 puts specific restriction on engagement of a legal practitioner and it provides that for the purpose of an enquiry under Regulation, 2010, the Officer or Employee shall not engage a legal practitioner without prior permission of the competent authority. Therefore, even availing the services of legal practitioner is permissible with the leave of the competent authority. However, Regulation does not specifically provides that an employee can avail the services of any outsider and / or ex- employee of the Bank as DR. Therefore, Regulation, 2010 neither restricts nor permits availing the services of any outsider and / or ex-employee of the Bank as DR and to that extent Regulation is silent. If the reasoning of the High Court is considered, the High Court is of the opinion that as there is no complete or absolute bar

even on engaging a lawyer, it is difficult to accept that a retired employee of the Bank cannot be engaged to represent a delinquent officer in the departmental inquiry. However, the High Court has not appreciated the effect of the Handbook. As per Clause 8 of the Handbook Procedure which has been approved by the Board of Directors and it is applicable to all the employees of the Bank and Clause 8 is with respect to the defence representative, it specifically provides that DR should be serving official / employee from the Bank. The said Handbook Procedure which has been approved by the Board of Directors of the Bank is binding to all the employees of the Bank. The High Court has considered Regulation 44 of the Regulation, 2010, however has not considered clause 8 of the Handbook Procedure on the ground that the same cannot be said to be supplementary. However, we are of the opinion that Handbook Procedure can be said to be supplementary. The same cannot be said to be in conflict with the Regulation 44 of Regulation, 2010. As observed herein above, neither Regulation 44 permits nor restricts engagement of an ex-employee of the Bank to be DR. Therefore, Clause 8.2 cannot be said to be in conflict with the provisions of Regulation, 2010. Provisions of Regulation, 2010 and the provisions of Handbook Procedure are required to be read harmoniously, the result can be achieved without any violation of any of the provisions of Regulation, 2010 and the Handbook Procedure. The objects of Regulation 44 of Regulation, 2010 and Clause 8 of the Handbook Procedure seem to be to avoid any outsider including legal representative and / or even ex-employee of the Bank. At the cost of repetition, it is observed that there is no absolute right in favour of the delinquent officers to be represented in the departmental proceedings through the agent of his choice and the same can be restricted by the employer.

8. As per the Bank there is a justification also to permit the delinquent officer to be represented in the departmental proceedings through serving official / employee from the Bank only. The Bank has justified its action of not permitting ex-employee of the Bank as DR and according to the Bank, the ex-employee who themselves may have been subject of a disciplinary enquiry/ charge-sheet / dismissed from service; the ex-employee might be a part of vigilance or audit sections who come across a lot of information of confidential nature and therefore, if they are allowed to be DR in the departmental

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proceedings, which would result in grave injustice; the solemn nature of proceedings is taken away and would result in issues of orderliness as well as decorum when a disgruntled ex-employee is enabled to act as defence representative; they may adopt delay tactics in departmental enquiry and may not permit completion of department enquiry within six months as mandated by the CVC Circular and as per Vigilance Handbook adopted by the Bank. For all the aforesaid reasons not permitting the delinquent officer to be represented through ex-employee of the Bank in the departmental enquiry cannot be said to be in any way in breach of principles of natural justice and / or it violates any of the rights of the delinquent officer. As per settled proposition of law and as observed herein above, in decisions referred to herein above, the only requirement is that delinquent officer must be given fair opportunity to represent his case and that there is no absolute right in his favour to be represented through the agent of his choice. However, at the same time, if the charge is severe and complex nature, then request to be represented through a counsel can be considered keeping in mind Regulation 44 of Regulation, 2010 and if in a particular case, the same is denied, that can be ground to challenge the ultimate outcome of the departmental enquiry. However, as a matter of right in each and every case, irrespective of whether charges is severe and complex nature or not, the employee as a matter of right cannot pray that he may be permitted

to represent through the agent of his choice.

9. Now so far as reliance placed upon the decision of the Allahabad High Court in the case of Rakesh Singh (supra) by the learned counsel for the respondent is concerned, it is required to be noted that at the time when the High Court decided the matter no such Clause 8 of the Handbook Procedure was in force. Handbook Procedure has been adopted by the Board of Directors in its meeting held on 15.3.2019. Therefore, the said decision shall not be applicable to the facts of the case on hand.

10. In view of the above and for the reasons stated above, the High Court has committed an error in permitting respondent delinquent officer to be represented in the departmental enquiry through ex-employee of the Bank. The view taken by the learned Single Judge confirmed by the Division Bench is unsustainable. Accordingly, present appeal is allowed and the impugned judgment and order passed by the learned Single Judge confirmed by the Division Bench permitting the respondent delinquent officer to be represented in the departmental proceedings through ex-employee of the Bank is hereby quashed and set aside. Present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

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