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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1481 OF 2013

Shri Keshav Shriyan

.. Petitioner

Vs.

IDBI Bank Ltd.

.. Respondent

Ms.A.P.Purav, Advocate for the Petitioner.

Mr.S.K.Talsania, Senior Advocate i/b Ms.Kanchan Pamnani, Advocate
for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 12th JANUARY, 2015

P.C. :

. Heard Ms.A.P. Purav, learned Counsel for the petitioner
and Mr.S.K.Talsania, learned Senior Counsel for the respondent at
length.

2. By this petition under Article 226 of the Constitution of
India, the petitioner has challenged the findings recorded against issue
No.1 namely 'is the enquiry fair and proper?' by the learned Presiding
Officer, Central Government Industrial Tribunal No. 2, Mumbai (for
short 'Tribunal') in the judgment and Award Part – I dated
05/08/2011. The Tribunal answered that preliminary issue in the
affirmative and held that the enquiry conducted by the respondent
was fair and proper.

3. In support of this petition, Ms.Purav submitted that the enquiry is vitiated on two grounds namely i) the proceedings were not recorded and/or handed over to the petitioner on the same day of the enquiry and the signatures of the petitioner were taken subsequently on the proceedings of the enquiry ii) the Enquiry Officer was biased and helped the bank in all the possible ways. Ms.Purav submitted that the respondent did not examine any witness. The respondent also did not prove any document in the enquiry. The alleged documents relied upon by the respondent were all prepared by the police authorities and these documents did not prove in any manner that the petitioner had obtained the demand draft in question. She submitted that these documents were merely produced in the enquiry by the respondent without examining any witness. These documents ought to have been produced through some witness.

4. She submitted that the petitioner also filed affidavit in lieu of the examination-in-chief and in paragraph 4, it was stated that no witnesses were examined by the respondent and no documents were proved. Despite this the Enquiry Officer relied upon these documents. It is further stated that the Enquiry Officer recorded the proceedings through stenographer who used to take dictation in shorthand. The day to day proceedings were not given to him on every date of the enquiry proceedings, but the same were handed over to him and he was asked to make initials on every page and sign at the

end of each hearing on the 4th date of hearing. The 4th date of the hearing was the last date of the enquiry proceedings. It was further stated that though the enquiry proceedings mentioned exhibits no. 1 to 8, he did not receive copies of such exhibits during the enquiry proceedings.

5. Ms.Purav also invited my attention to the cross examination of the petitioner as also the evidence of Inderpal S.Kalra, the Enquiry Officer. During the course of the cross examination, the the Enquiry Officer admitted that while recording the proceedings, the stenographer used to take the notes in short-hand. He was not dictating her. She was taking the notes. In other words, Ms.Purav submitted that the Enquiry Officer was not dictating the evidence and the stenographer used to take notes in short-hand. She has also invited my attention to the proceedings before the Enquiry Officer and submitted that the Tribunal committed serious error in recording a finding that the enquiry was fair and proper. She submitted that in the first place, the enquiry was conducted in breach of the principles of natural justice and secondly, the Enquiry Officer was biased and lastly, the procedure followed by the the Enquiry Officer was also illegal and improper. For all these reasons, the enquiry is vitiated.

6. On the other hand, Mr.Talsania submitted that the Tribunal while making Award Part - I on 05/08/2011, recorded two findings namely i) enquiry was fair and proper ii) the findings of the

the Enquiry Officer were perverse. Aggrieved by the findings recorded against issue No.2, respondent instituted Writ Petition No. 860 of 2012. Opposing that petition, the petitioner herein made affidavit. He invited my attention to paragraphs 5 to 8 & 10 of the affidavit and submitted that all the contentions which are sought to be raised in the present petition were squarely raised in that affidavit. By order dated 17/10/2012, this Court allowed the writ petition and set aside the Award dated 05/08/2011 passed by the Tribunal. He submitted that the petitioner did not make it clear before the learned Single Judge that he reserves the liberty to challenge the findings recorded against issue No. 1. The Court, thereafter, proceeded to decide the petition on merits. Aggrieved by that decision, petitioner instituted Letters Patent Appeal (Lodging) No. 12 of 2013 which was allowed to be withdrawn with a liberty to file review petition before the learned Single Judge. He submitted that review petition was subsequently withdrawn. He further submitted that after Letters Patent Appeal was disposed of on 21/01/2013, the present petition is instituted on 08/03/2013. He, therefore, submitted that the present petition is filed as an after thought. He submitted that the Tribunal has correctly recorded the findings against issue No.1 and no interference is called for invocation of powers under Article 226 of the Constitution of India.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the

material on record. In the Statement of Claims made by the petitioner, it was contended that the proceedings were not recorded and/or handed over to the petitioner on the same day of the enquiry and the signatures of the petitioner were taken subsequently on the proceedings of the enquiry. It was further contended that the Enquiry Officer was biased and helped the respondent in all the possible ways. The Tribunal has considered this aspect from paragraph 8 onwards. It was observed that the petitioner admitted that he was represented by the Defence Representative Mr.Indulkar. He also admitted signatures on the enquiry proceedings. In paragraph 9, the Tribunal dealt with the grievance that the copies of the proceedings of 1st and 2nd sittings were given to the petitioner on the 3rd sitting and copies of the 3rd sitting were given to petitioner on the 4th sitting. After considering the material on record, the Tribunal held that there was no violation of the principles of the natural justice. The petitioner admitted that the charge-sheet dated 09/04/2003 was served on him. He has filed reply on 17/04/2003 and that the enquiry was conducted by the Enquiry Officer as per the charge-sheet. That apart, no material is brought to my notice that Defence Representative Mr.Indulkar objected at any point of time in writing for not handing over proceedings of the enquiry on the same day. Not only that no material is brought to my notice raising objection in writing that the the Enquiry Officer was biased. It is also material to note that the Defence Representative Mr.

Indulkar has not raised any objection in writing about the correctness or otherwise in recording the proceedings. Ms.Purav submitted that the Enquiry Officer has to conduct the enquiry by observing the principles of natural justice and it was not necessary to raise any objection. It is not possible to accept this submission. The Defence Representative ought to have raised objections (i) for not handing over copies of the proceedings; (ii) on the ground that the Enquiry Officer is biased and (iii) on the ground that the proceedings are not correctly recorded. For all these reasons, I do not find that the Tribunal committed any error in answering issue No.1 against the petitioner.

8. It is also material to note that the respondent has challenged the findings recorded against issue No.2 by instituting Writ Petition No. 860 of 2012. In my opinion, the petitioner ought to have made it clear before the learned Single Judge that he reserves the right to challenge the findings recorded against issue No.1. As noted earlier, the petition was allowed on 17/10/2012 & the Letters Patent Appeal was withdrawn on 21/01/2013. It is only thereafter, the present petition is instituted on 08/03/2013. In my opinion, the petition is instituted as an after thought.

9. In view thereof, no case is made out for invocation of powers under Article 226 of the Constitution of India. Hence, the petition fails and the same is dismissed.

(R.G.KETKAR, J.)