

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 25.02.2016

ORDERS PRONOUNCED ON: 31.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE Mr. JUSTICE N.KIRUBAKARAN

Writ Appeal Nos.1559 to 1570 of 2014

& M.P.Nos.1 & 1 of 2014

1. K. Rengarajan ...Appellant in W.A.1559, 1560, 1569/14
in W.P.Nos.10242, 13703, 16945/14
2. A.Thomas Balan ...Appellant in W.A.1561, 1564 in
W.P.14435, 16946/14
3. S.Muthuraj ...Appellant in W.A.1562 in W.P.14436/14
4. A. Kandasamy ...Appellant in W.A.1565/14 in W.P.15055/14
5. M.Umapathy ...Appellant in W.A.1567/14 in W.P.15056/14
6. M.Nedunchezian ...Appellant in W.A.1568/14 in W.P.15057/14
7. M.Balasubramanian...Appellant in W.A.1563/14 in W.P.15058/14
8. R.G.Swaminathan ...Appellant in W.A.1570/14 in W.P.15713/14
9. S.Sounthirarajan ...Appellant in W.A.1566/14 in W.P.17360/14

-vs-

Indain Overseas Bank,
rep by its Chief Manager/
Disciplinary Authority,
No.769, Anna Salai,
Chennai 600 002

सत्यमेव जयते

.... Respondents in all the WAS and Wps

Writ appeal under clause 15 of Letters Patent against the order of a learned single Judge of this Court dated 5.11.2014 made in W.P.Nos.10242, 13703, 14435, 14436, 15055 to 15058, 15713, 16945, 16946 and 17360 of 2014.

Prayer: W.P.No.10242 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Certiorari to call for the records relating to the proceedings of the respondent in Proceeding No.D.O:CDAC/CM (PGS/DA: Vig: 8455-ICS - 2013-2014 dated 26.03.2014 and quash the same.

W.P.No.13703 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Certiorari to call for the records relating to the proceedings of the respondent in Proceeding No.D.O:CDAC/CM (PGS/DA: Vig: 8455-2014-2015 dated 08.05.2014 and quash the same.

W.P.No.14435 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Certiorari to call for the records relating to the proceedings of the respondent in Proceeding No.D.O:CDAC/CM (PGS/DA: Vig: 8407: 1204: 2014-2015 dated 24.05.2014 and quash the same.

W.P.No.14436 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Certiorari to call for the records relating to the proceedings of the respondent in Proceeding No.D.O:CDAC/CM (PGS/DA: Vig:F8407/1152/2014-2015 dated 21.05.2014 and quash the same.

W.P.No.15055 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:SM (KSGS/DA: Vig: 8553:5121: 2013-2014 dated 11.01.2014 pending trial and decision in F.I.R. No.RC MA1 2014 A 0006 dated 27.02.2014 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.15056 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:CDAC: SM (TSN): DA: VIG: 8508:6167: 2013 dated 12.03.2014 pending trial and decision in F.I.R. No.RC MA1 2013 A 0025 dated 04.06.2013 on the file of the Deputy Inspector General of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.15057 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:CDAC:CM (RP): VIG: 8628: 5759: 2014 dated 14.02.2014 pending trial and decision in F.I.R. No.RC MA1 2014 A 0004 dated 31.1.2014 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.15058 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:CDAC:CM(RP): VIG: 8628:5763:2014 dated 14.02.2014 pending trial and decision in F.I.R. No.RC MA1 2014 A 0004 dated 31.01.2014 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.15713 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:DA:SM(GS):VIG: 8540:4130:2013 dated 05.11.2013 pending trial and decision in F.I.R. No.RC MA1 2014 A 0012 dated 21.03.2014 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.16945 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:CDAC/SM (PGS)/DA: Vig:8455:733:2013-2014 dated 10.5.2013 pending trial and decision in F.I.R. No.RC MA1 2014 A 0011 dated 21.03.2014 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.16946 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in C&DAC/SM(PGS)/VIG/8407/2076/2013-14 dated 09.07.2013 pending trial and decision in F.I.R.No.RC MA1 2013 A 044 dated 29.10.2013 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

W.P.No.17360 of 2014 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from in any manner in proceeding with or conducting the departmental proceeding pursuant to the charge sheet in DO:SM (KSGS): Vig: 8346:4420:2013 dated 26.11.2013 pending trial and decision in F.I.R. No.RC MA1 2014 A 0007 dated 28.02.2014 on the file of the Inspector of Police, Anti-corruption Branch, Central Bureau of Investigation, Shasthri Bhavan, Chennai - 600 006.

For Appellants :: Mr.K.M.Vijayan, Senior Counsel

For Respondent :: Mr.N.G.R.Prasad, Senior Advocate

J U D G M E N T

(Judgment of the Court was delivered by N.Kirubakaran.J)

Writ Appeal Nos.1559 of 2014 to 1562 of 2014 are against the dismissal of the Writ Petitions filed by the appellants challenging the notices of personal hearing issued to them on the proposed punishment of dismissal pursuant in the enquiry conducted by the respondent.

2. Writ Appeal Nos.1563 to 1570 of 2015 are against the order of dismissal passed in the Writ Petitions filed by the appellants seeking Writ of Mandamus forbearing the respondent from proceeding with the departmental enquiry pursuant to the registration of FIR against them.

3. The above said Writ Appeals have been filed against the common order passed by the learned Single Judge, who dismissed all the writ petitions filed by the appellants denying the relief sought for by them. The appeals are against the common order and therefore all the appeals are heard together and disposed of by this common order. Moreover, the learned counsel for both the parties advanced arguments in common in the above appeals.

4. The brief facts which are necessary for the disposal of these writ appeals are as follows :-

" (i) The appellants are the employees of the respondent-bank and they are the office bearers / Regional Committee members of "All Indian Overseas Bank Employees Union". The respondent-Bank took steps to absorb temporary messengers and sweepers working in the respondent-Bank, subject to their fulfillment of recruitment norms. Totally, 438 temporary messengers and 539 part-time sweepers were absorbed in the year 2010-2011. With regard to the absorptions of the aforesaid messengers and sweepers, complaints were received by the respondent-Bank, alleging several malpractices in the absorption. Later, it was found that the certificates produced by the temporary staffs, who were working as messengers and sweepers, were forged and fabricated. On that score, after following the due process of law, those persons, who produced the forged /fabricated documents and gained illegal entry into service, were terminated. Those terminated employees filed complaints complaining that the documents produced by them for absorptions of their service have been forged / fabricated at the instance of the appellants and that the appellants received money with the promise to get employment.

(ii) Based on the above facts, the appellants were suspended and departmental proceedings were initiated. Based on the complaints given by the terminated employees, the first information reports have been registered against the appellants. Charges were framed against them in the departmental proceedings. Subsequently, the Investigation Agency has taken up the investigation based on the F.I.R filed by the terminated employees and the Agency is yet to complete investigation and file charge sheet in all the cases.

(iii) Pursuant to the charges framed against the appellants, enquiry was conducted with full participation of the appellants. The enquiry reports filed by the Enquiry Officers were furnished to the respective appellant. After getting explanation from the appellants, considering the report of the Enquiry Officers vis-a-vis the explanations given by the appellants, the respondent

accepted the findings rendered by the Enquiry Officers. Before taking a decision to impose the punishment of dismissal, the respondent issued notices requiring the personal hearing on the proposed punishment. Those notices of personal hearing were the subject matter of the Writ Petitions filed by the appellants in the Writ Appeal Nos.1559 of 2014 to 1562 of 2014.

(iv) In W.P.Nos.1559 to 1562 of 2014, the notices have been challenged on the ground that there was a pre- determination of punishment even in the Show Cause Notice and if the issue has already been prejudged, there is no point for the appellant in taking part in the proceedings. The said contention was rejected by the learned Single Judge and therefore, the appellants have filed the Writ Appeal Nos.1559 of 2014 to 1562 of 2014."

5. Mr. K.M.Vijayan, learned Senior Counsel appearing for the appellants would submit that the learned Single Judge did not appreciate the dictum laid down by the Hon'ble Supreme Court in K.I.SHEPHARD AND OTHERS-VS-UNION OF INDIA AND OTHERS reported in 1997 4 SCC 431, wherein it has been categorically declared that when a decision has been taken in advance, there is a tendency to uphold it and a representation may not really yield any fruitful purpose. He would further submit that in the impugned personal hearing notices, the respondent already came to the conclusion that the appellants should be awarded the punishment of dismissal and, therefore, the personal hearing is only an empty formality. Hence, the appellants seek for setting aside the impugned notices as well as the order of the learned Single Judge. The other contention made by the appellants is that as the appellants are Office Bearers of the Union, action has been taken with malafide motive.

6. On the other hand, Mr. N.G.R.Prasad, learned Counsel appearing for the respondent-Bank would submit that proceedings have been initiated against the appellants on the materials that are available against them with regard to illegal entry of the unqualified persons by producing fabricated and false certificates. Therefore, there is no malafide involved in the disciplinary proceeding. He would also submit that though more than 200 Assistant General Secretaries / Regional Committee Members are functioning in the Union, only against the persons, like appellants, against whom materials were available, the departmental proceedings as well as the criminal proceedings, have been initiated for their misconduct as well as for commission of criminal offences. Due procedures were followed by conducting enquiry, including supply of enquiry report and also consideration of the reply made by the appellants. The impugned notices requiring personal hearing which are all subject matters of the Writ Petitions are issued only on the proposed punishment and such notices, cannot be challenged on the ground that the issue was already pre-determined and Article 226 of the Constitution of India cannot be invoked, to challenge the Show Cause Notices.

7. Mr.N.G.R.Prasad, learned counsel would further submit that the learned Single Judge rightly appreciated the facts and found

that enquiry against the appellants were conducted as per law; the appellants fully participated in the enquiry; copies of the reports were furnished to the respective appellants and their representations were also received, and the respondents have accepted the findings rendered by the Enquiry Officers. Before imposing punishment, notices of personal hearing on the proposed punishment, have been given.

8. The learned Single Judge, relying upon Clause 12 of Bipartite settlement relating to the disciplinary action, rightly found that the impugned notices are in consonance with the said Clause 12. It is appropriate to extract the relevant clause 12 of the Bipartite Settlement, which reads as follows:-

"12. The procedure in such cases shall be as follows:-

(a).....

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him".

Therefore, the learned Single Judge rightly found that the impugned notices have been issued in consonance with Clause 12 of the Bipartite Settlement and such notices cannot be challenged. As rightly pointed out by the learned Single Judge, notices of personal hearing is only on the proposed punishment. After agreeing with the reports of the Enquiry Officer and in terms of Clause 12 of the Bipartite Settlement, the notices have been issued. If there is any violation in Clause 12 of Bipartite Settlement, then there may be a chance for the appellants to approach this Court. When the action has been taken as per the procedure in compliance of Clause 12 of the Bipartite Settlement, it cannot be termed as illegal or arbitrary.

9. The facts in K.I. Shephard case are clearly distinguishable. In that case, the question is about the non absorption of a few employees of erstwhile Cochin Bank, Hindustan Commercial Bank and Lakshmi Commercial Bank, which were amalgamated with Punjab National Bank, Canara Bank and State Bank of India, as the said employer were accused of sanctioning of loans irresponsibly to the customers, which affected the financial stability of the banking company concerned. In those circumstances, the Hon'ble Supreme Court held that the excluded erstwhile employees, who were not absorbed during amalgamation, were thrown out of employment without giving an opportunity of hearing and, therefore, the Hon'ble Supreme Court held that the employees should have the opportunity before any decision is taken which affects them. Paragraph 16 of the Judgment is usefully extracted as follows:-

"We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

(Emphasis supplied)

10. Whereas in this case, the appellants have been proceeded as per law and due opportunities have been given to them. Even, the impugned notices of personal hearing, are only as per law and as per Clause 12 of the Bipartite agreement regarding proposed punishment. Therefore, the said judgment is not applicable to the present case. Moreover, the Hon'ble Supreme Court in the aforesaid Shephard's case held that natural justice requires that persons liable to be directly affected by the proposed administrative acts, decisions or proceedings be given an adequate notice of what is proposed, so that they may be in a position to appear at a hearing or enquiry. The relevant portion of the judgment is extracted as follows:-

12....."On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet."

(Emphasis supplied)

A careful scrutiny of the aforesaid paragraph would reveal that the present impugned notices are in tune with the principles laid down in the above judgment. Therefore, the decision in K.A.Shephard is, in fact, supports the case of the respondent.

11. The learned Single Judge rightly found that mere issuing of notices calling upon for personal hearing cannot be made amenable to the jurisdiction of this Court under Article 226 of the Constitution of India, by relying upon the judgment of the Hon'ble Supreme Court in UNION OF INDIA AND OTHERS - VS - KUNISETTY SATYANARAYANA reported in 2006 12 SCC 228. Since, it is only a show cause notice, the Writ Petitions are not maintainable and the Writ Petitions are premature in nature as rightly found by the learned Single Judge.

12. With regard to the malafides, the learned Single Judge justifiably observed that there is no proof for malafides alleged except certain averments in the affidavit. Though, there are averments found in the affidavit that it is an attempt made by the Bank to divide the Union, as rightly submitted by Mr.N.G.R.Prasad, learned Counsel appearing for the respondent, there are as many as 237 Assistant General Secretaries /Regional Committee Members of the Union and only a few of them are said to have been indulged in commission of misconduct and therefore, they were rightly proceeded with. Hence, plea of malafides miserably fails.

13. Therefore, for the reasons stated above, this Court to hold that the impugned notices are valid and have been issued as per the terms of bipartite agreement and therefore, the learned Single Judge, on appreciation of facts has rightly dismissed the writ petitions. However, the appellants are given further period of four weeks time from the date of receipt of a copy of this order to appear before the respondent.

Writ Appeal Nos.1563 to 1570 of 2015:

14. It is the contention of the Mr.K.M.Vijayan, learned senior counsel appearing for the appellants that the facts involved in both the criminal cases as well as the departmental proceedings are one and the same and therefore the respondent should not proceed with the departmental proceedings till the criminal proceedings before the Criminal Court is over. He would rely upon the judgment of the Hon'ble Supreme Court in CAPT.M.PAUL ANTHONY VS. BHARAT GOLD MINES LTD AND ANOTHER reported in AIR 1999 3 SCC 679 and INDIAN OVERSEAS BANK VS.P.GANESAN AND OTHERS reported in 2008 (1) SCC 650. He would further submit that Clause 4 of the memorandum of settlement dated 10.04.2002 prohibits action by the respondent departmentally pending a criminal case.

15. However, Mr.N.G.R.Prasad, learned counsel appearing for the respondent would submit that Clause 4 of the memorandum of settlement dated 10.04.2002 has no application as complaints are by third parties. The departmental proceedings and the criminal proceedings are different in the rule of evidence. There is no similarity of the facts involved both in the departmental proceedings as well as in the criminal proceedings and they are different. The departmental proceedings were initiated much earlier and the investigation by the CBI is yet to be over to file the charge sheet. Therefore, the departmental proceedings cannot be stayed till the criminal proceedings were over. He would rely upon the judgment of the Hon'ble Supreme Court in INDIAN OVERSEAS BANK VS P.GANESAN reported in (2008 1 SCC 650) and R.K.SINGLA VS.PUNJAB NATIONAL BANK, (2002 -II - LLJ 172).

16. The appellants are proceeded with departmentally for their misconduct for their alleged role played for absorptions of part-time messengers and sweepers in the Bank illegally based on production of fabricated and false documents for extraneous consideration. Based on the complaint given by the terminated employees, criminal cases have been initiated against the appellants. The learned Single Judge in paragraph 4 in tabular column has given the details of the filing of charges and the allegations in the FIR by CBI Court and it is useful to extract the said tabular column for proper appreciation of the facts and case.

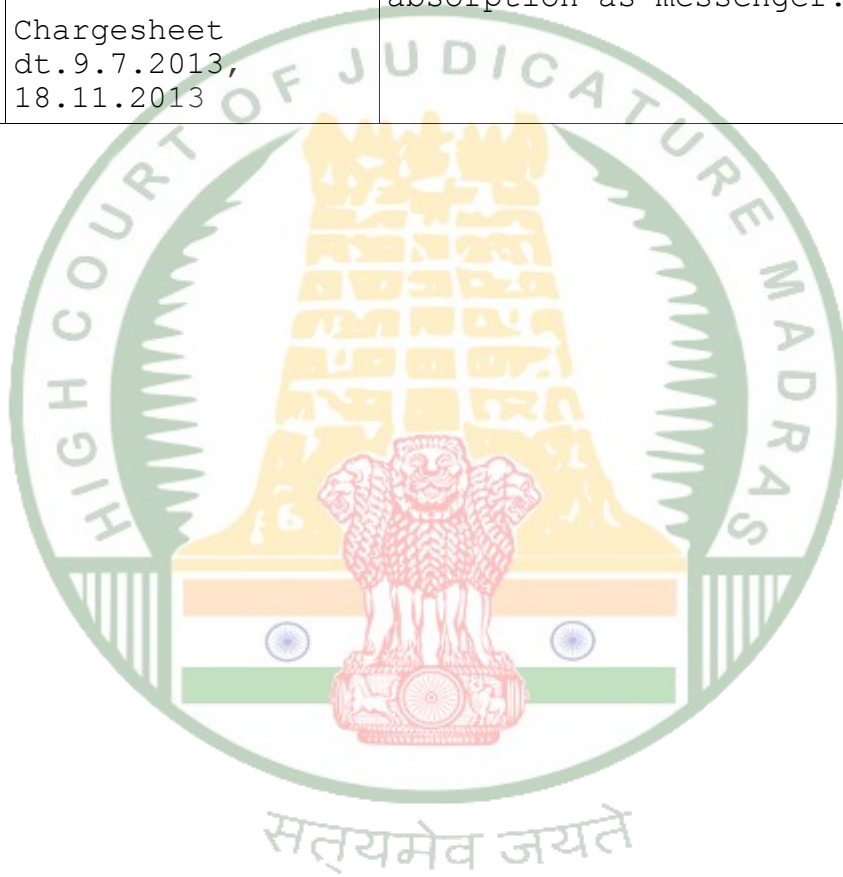
"

सत्यमेव जयते

WEB COPY

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
1	K.Rengarajan W.P.No.10242 of 2014, W.P.No.16945 of 2014 (Chargesheet dt.10.05.2013) W.P.No.13073 of 2014 (chargesheet dt.10.09.2013) Suspended on 10.9.2013 Chargesheets Dt.10.05.2013, 10.09.2013, 28.02.2014	Charge dt.10.05.2013 1. Received Bribe of Rs.1 Lakh from Karuppiah for his absorption of sweeper post, for which bogus 8th Std failed transfer certificate arranged. 2. Rs.30,000/- from Soundaram, arranged 7th Std. Failed certificate to make her eligible for being absorbed as sweeper After termination, Soundaram started working through outsourcing agency, Petitioner forced the Outsourcing agency to terminate her from their rolls. 3. Holding benami account in the name of Malathi and Mayandi. Collecting money from other staff members various amount ranging from Rs.1000 to 68,500/- from other staff members through the said account and utilizing the same. Chargesheet dt.10.09.2013 1. Demanded and accepted bribe of Rs.30,000/- from Sundaram promising to expedite his promotion to clerical post. Received additional amount of Rs.20,000/- promising that he will be given posting in and around Karakudi.	FIR dt. 21.03.2014 Complaint not given by anyone. Relates to bribe amount obtained from Karuppiah and Soundaram only.

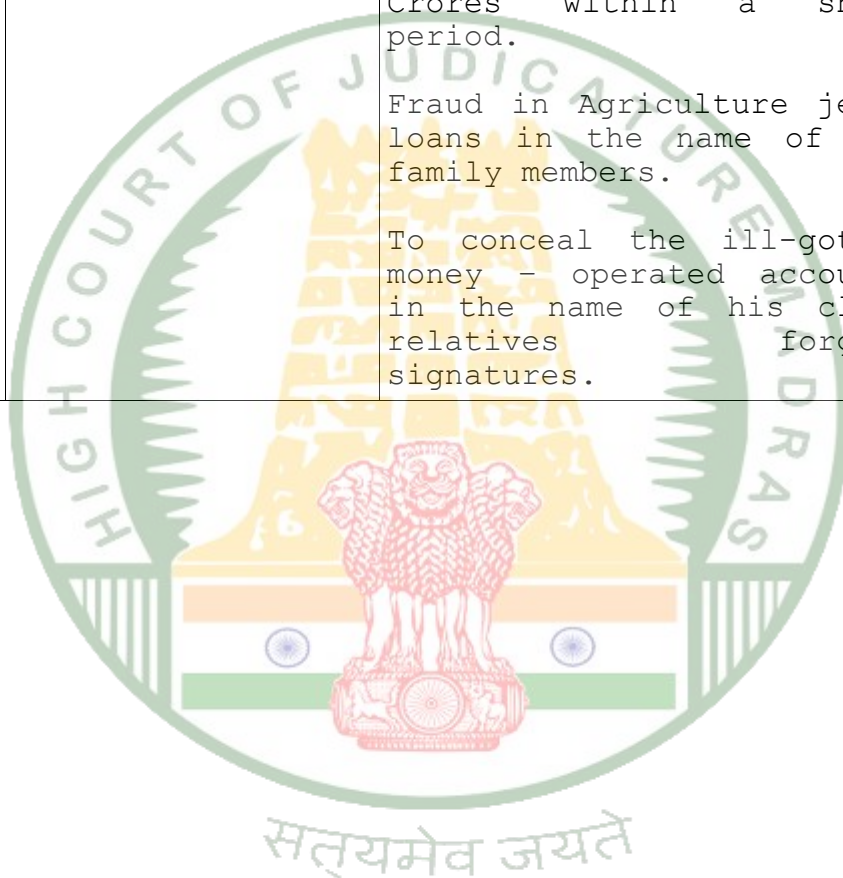
S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
2	A.Thomas Balan W.P.No.14435 of 2014 W.P.No.16946 of 2014 Suspended on 14.03.2013 Chargesheet dt.9.7.2013, 18.11.2013	Chargesheet dt.9.7.2013 Received Rs.3 Lakhs from K.Vellaichamy, for arranging bogus educational certificate in order to make him eligible for absorption as messenger.	FIR dt. 29.10.2013 Rs.3 Lakhs Bribe amount paid by K.Vellaich amy to petitioner .



WEB COPY

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
3	S.Muthuraj W.P.No.14436 of 2014 Suspended on 14.03.2013 Dismissed on 30.05.2014	Chargesheet dt.9.7.2013 Colluded and abetted with Thomas Balan, AGS, Thoothukudi Region. Received Rs. 3 Lakhs from Vellaichamy in collusion with Thomas Balan. Acted as middle man and collected funds from Staff members promising to arrange for their transfers. Collected bribe from Jewel Appraises of the bank to continue/ retain them in the same branch. Arranged bogus service certificate for his son Satish Kumar to absorb him as Messenger in the Bank. Prepared bogus Demand Promissory Note Certificate as if Raju has borrowed money from his daughter and it was repaid in order to cover up the bribe amount. Obtained two fictitious housing loans by threatening the Manager for his immediate financial needs.	FIR dt. 29.10.2013 Abetted Thomas Balan in getting Rs.3 Lakhs bribe from Vellaichamy.

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
4	A.Kandaswamy W.P.No.15055 of 2014	Chargesheet dt.11.01.2014 19 allegations, 49 sub-allegations - relating to bribery, disproportionate income with turnover transaction of Rs.5.75 Crores within a short period. Fraud in Agriculture jewel loans in the name of his family members. To conceal the ill-gotten money - operated accounts in the name of his close relatives forging signatures.	FIR dt. 27.02.2014 complaints given by three terminated messenger and sweeper for arranging bogus certificates.



WEB COPY

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
5	M.Umapathy W.P.No.15056 of 2014 Suspended on 14.07.2013	Chargesheet dt.12.03.2014, 9.6.2014 Whereas chargesheet is 21 main allegations, 30 sub-allegations - relating to operating mother in law accounts to conceal the ill gottom money. Fraud in Agricultural jewel loans in various of his family members for a lower interest rate which is meant only for agriculturist. To conceal the ill-gotton money - operating accounts in the name of close relatives forging signatures. About Rs.83 Lakhs in the mother-in-laws account. She has no source of income. Operated his wifes account. Only 2 complaints were mentioned in FIR, whereas the fraud played in respect of 27 members for alleged occupation in the Disciplinary proceedings. Intimidated officers of the bank to issue false services certificates to make those persons absorb though they are not eligible.	FIR dt. 4.6.2013 FIR only with regard to the complaints given by three terminated messenger and sweeper for arranging bogus certificat es. FIR dt. Is 27.02.2014 . Only 2 complaints were mentioned in FIR.

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
6	Nedunchezian M W.P.No.15057 of 2014 Suspended on 9.10.2013 Chargesheet dt. 8.2.2014	Chargesheet dt.8.2.2014 Received bribe from Manickavasagam. Arranged to get false educational certificate and age certificate for Manickavasagam. Received bribe of Rs.20,000/- from Revathy for arranging the job of sweeper. Hamsaveni an illiterate. Arranged bogus educational certificate for her, to make her eligible for absorption and received Rs.20,000/- from her.	FIR dt. 31.01.2014 Connived and colluded with M.Balasubramaniam, Assistant General Secretary of Madras Region in getting illegal gratification from various parties for getting them absorbed as sweepers and messengers Demanded Rs.1,80,000/- from Manickavasagam.

WEB COPY

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
7	Balasubramnaian, M W.P.No.15058 of 2014 Suspended on 9.10.2013	Chargesheet dt.14.2.2014 Received bribe of Rs.1.5 Lakhs from Manickavasagam. Colluded with Nedunchezhan for arranging bogus age and educational qualification certificate. Received bribe amount of Rs.30,000/- from Murugan and arranged bogus Transfer certificate for educational qualification. Demanded Rs.2 Lakhs from Muthukrishnan for his sons appointment as messenger. Since he paid only Rs.70,000/- arranged sweeper post. Received bribe from Revathy, Hamsaveni, Rathinam, K.A.Jai Akash, Vasanthi, K.Nagamani, S.Renganayaki, Vasantha, etc., for arranging certificates and getting employment as sweeper. Falsification of records, collecting money in the guise of donations from customers against Banks guidelines, etc.,	FIR dt. 31.01.2014 Receipt of bribe of Rs.1,50,000 from Manickavasagam through Nedunchezhan and Prabhakaran.

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
8	R.G.Saminathan W.P.No.15713 of 2014 Suspended on 9.10.2013 Chargesheet dt.5.11.2013 and 3.2.2014	Chargesheet dt.5.11.2013 Received bribe from the following persons for arranging bogus educational certificate/ false service certificates in order to make him eligible for the post Sekar - Messenger C.Balraj - messenger C.Janardhanam - messenger M.Mohana Munivelu - messenger Vedagiri - messenger S.Sarathkumar - messenger Rajkumar - messenger Sathyamurthy - Messenger Muruganandham - Sweeper Gilbert J.Lawrence - Messenger Anandarajan - Messenger Rajiv Gandhi - Messenger J.Ravikumar - Messenger S.Saritha - Sweeper Chargesheet dt.3.2.2014 Sathishkumar - Messenger B.Mahendran - Messenger C.Jayan - Messenger S.Satish - Messenger	FIR dt. 21.03.2014 Bribe obtained from Janardhana n alone mentioned in FIR.

WEB COPY

S. No.	Name of the Petitioner and Writ Petition	Nature of allegations in charge sheet	Nature of allegation in FIR before CBI
9	S.Soundirarajan W.P.No.17360 of 2014 Suspended on 26.08.2013	Chargesheet dt.26.11.2013 Demanded and received bribe Gopalakrishnan, Elangovan, Kanag G.Mani, P.Mohan, R.Rani, R.Premkumar, Reetamary, Kannabiran absorption, Lakshminarayana, engaging him as jewel appraiser, Kumar, P.Sasikumar, for transfer. Threatened one Shri K.Kadirvel, cashier Thavalkuppam Branch. Usurped the duties of cash Manager allocating staff members for withdrawal and remittance of dash. Also violated strict guidelines pertaining to TA bills other allowances payable to him falsely claiming the same.	FIR dt. 28.02.2014 Arranged false experience certificate for absorption of messengers and sweepers in his region.

The above tabular column would reveal the allegations in the charge sheet in the departmental proceedings and allegations in the FIR filed by the CBI are different and distinct.

17. As rightly found by the learned Single Judge, the dismissed employees after enquiry made complaints to the police against the appellants that they are responsible for fabrication of documents and all malpractices in the absorption of terminated employees. After finding the malpractices of the appellants, the respondent suspended the employees much prior to the registration of the criminal complaints made by the terminated employees, which is described in detail in the tabular column. In all the criminal cases though FIR has been registered, the charge sheet has not yet been filed.

18. Though Mr.K.M.Vijayan, learned senior counsel appearing for the appellants would submit that relying upon the Section 4 of the Indian Penal Code, the registration of FIR itself is a trial of offence, as rightly pointed out by Mr.N.G.R.Prasad, learned counsel appearing for the respondent relying upon the judgment in R.K.SINGLA wherein the learned Single Judge of the Hon'ble Delhi High Court relying upon the judgment of the Hon'ble Supreme Court in COMMON CAUSE VS.UNION OF INDIA AND OTHERS reported in 1997(1)CLR 6, held that the trial shall be treated to have commenced when the charges are framed under Section 28 of the Code of Criminal Procedure, 1973 in the concerned cases. Paragraph 11 of R.K.SINGLA

VS PUNJAB NATIONAL BANK reported in 2002-II-LLJ is usefully extracted as follows:-

11. Learned counsel for the respondent on the other hand referred to the judgment of the Supreme Court in Common Cause Vs Union of India and Others., 1997 (1) CLR 6 whereby phrase "pendency of trial" was considered and the Supreme Court observed as under:

"11. The phrase 'pendency of trials' as employed in paragraphs from 1(a) to 1(c) and the phrase "non-commencement of trial" as employed in paragraphs from 2(b) to 2(f) shall be construed as under:

(i) In cases of trials before Sessions Court the trials shall be treated to have commenced when charges are framed under Section 28 of the Code of Criminal Procedure, 1973 in the concerned cases.

(ii) In cases of trial of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under Section 246 of the Code of Criminal Procedure, 1973.

(iii) In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 253 whether they plead guilty or have any defence to make".

Therefore, the contention of the learned counsel for the appellants that the trial commences from the date of the registration of FIR is liable to be rejected and only such trial is to have commenced when the charges were framed against concerned accused under Section 246 of the Cr.P.C, 1973. Admittedly, in the present cases, charges sheets have not been filed and, therefore, the departmental proceedings cannot be stayed till the criminal proceedings are over.

19. In CAPT.M.PAUL ANTHONY case, the delinquent therein was suspended and proceeded departmentally for certain misconduct by the respondent therein and he was dismissed from service on 07.06.1986 after departmental proceedings. In the criminal proceedings, the Criminal Court acquitted the appellant therein on 03.02.1987. After acquittal, the dismissal was challenged by the appellant therein. There, the Hon'ble Supreme Court found that the facts and evidence in both the departmental proceedings as well as the criminal case were same without there being the light of

difference and distinction. Therefore, the Hon'ble Supreme Court held that when there are different proceedings based on the same set of facts, the departmental proceedings have to be stayed till the criminal cases are over. In the present case, as rightly pointed by the learned Single Judge, the stage of trial in the Criminal Court is yet to commence and staying of departmental proceedings as a matter of right and such an yardstick is an exception to the general rule of simultaneous proceedings as held by the Hon'ble Supreme Court in INDIAN BANK AND ANOTHER VS P.GANESAN AND OTHERS reported in (2008) 1 SCC 650. Paragraphs 18 to 22 of the 2008 (1) SCC 650 are extracted as follows:-

...."18. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

19. In Delhi Cloth and General Mills Ltd. v. Kushal Bhan⁵ this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice, observed: (AIR p. 807, para 3)

"3. ... We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

The same principle was reiterated in Tata Oil Mills Co. Ltd. v. Workmen⁶.

657 20. In State of Rajasthan v. B.K. Meena⁷ this Court held: (SCC p. 422, para 14)

"14. ... The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard-and-fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges

must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case."

21. Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.⁸ also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarised its findings as under: (SCC p. 691, para 22)

"22. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

20. That apart, as rightly observed by the learned Single Judge, the departmental proceedings have been initiated by the Bank whereas the criminal proceedings were initiated based on the complaint given by the third parties, namely, erstwhile employees of the bank. Moreover, the allegations in the charge sheets and FIR are different and, therefore, there is no complicated questions of fact and law. Therefore, the learned Single Judge rightly rejected

the prayer for keeping the departmental proceedings in abeyance till the conclusion of the criminal trial.

21. The learned Single Judge made a reference about Clause 4 of the Memorandum of Settlement dated 10.04.2002. As per Clause 4, the waiting period for the management is one year. The said clause is applicable only when the criminal proceedings as well as the departmental proceedings are initiated by the respondent whereas in this case, the criminal cases have been initiated by the third parties. Even assuming that the criminal cases have been initiated by the department, one year period was already over as observed by the learned Single Judge and therefore there is no question of staying of the departmental proceedings, pending criminal trial. Therefore, the learned Single Judge rightly rejected the appellants' contention relying upon Clause 4 of the Settlement Deed dated 10.04.2002.

22. Viewed from any angle, the case of the appellants is liable to be rejected and the appeals are dismissed. The only course available to the appellants is to face the criminal proceedings as well as to appear before the respondent pursuant to the issuance of notices of personal hearing within four weeks from the date of receipt of a copy of the order. The Writ Appeals are devoid of merits and are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23. It has to be noted that many trade union leaders and office bearers are really working and fighting for the cause of the workers. The present cases are exceptions wherein trade union leaders themselves are allegedly involved in misconduct and commission of offences. This Court cannot lose sight of the fact that a few trade union leaders and office bearers are indulging in misconduct and also commission of offences making use of their position as office bearers. The union leaders / office bearers should be above board, when they are supposed to fight for the cause of the workers. When they themselves are alleged to be involved in commission of offence, they cannot discharge their duties / obligation as union leader. Therefore, the workers / staff should be careful enough to elect their office bearers or Union leaders with integrity, honesty and sincerity and commitment to cause of workers and the interest of the institution in which they are employed. Otherwise, this kind of cases, cannot be avoided, which may not be in the interest of the workers as well as the institution / Organisation/Industry.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

srn

To

The Chief Manager/
Disciplinary Authority,
Indian Overseas Bank,
No.763, Anna Salai,
Chennai - 600 002.

1 cc to M/s. N.G.R. Prasad, Advocate, Sr. 19988
1 cc to M/s.K.M. Vijayan, Associates, Sr. 20608

Writ Appeal Nos:1559 to
1570 of 2014

AD (CO)
kk 15/4



WEB COPY