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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1759/2016

N K TOMAR

..... Petitioner

Through: Mr Umesh Singh, Advocate.

versus

ALLAHABAD BANK

..... Respondent

Through: Mr Rajesh Kr. Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.09.2017

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

"a. Issue an appropriate writ declaring thereby the act of the respondent of denying the reimbursement of the Advocates fee bills submitted by the petitioner incurred by him, protecting him in FIR no. 338 of 2008 are illegal invalid arbitrary and violative of Article 14, 16, 21 of the constitution of India and contrary to the provisions of the Respondent circular dated 04.12.2009;"

2. The petitioner is an employee of the respondent bank and at the material time was posted as a Manager at Anand Vihar Branch. During the course of his employment, one of the clients of the respondent bank - M/s Trimurti Constructions Developer and Builders - was alleged to have submitted two forged bank guarantees dated 10.11.2007 and 04.02.2008 to third parties. These guarantees were invoked and the respondent bank was called upon to pay the amount guaranteed.

3. The petitioner states that he reported the same to his superiors on the same day, that the bank guarantees were lodged for encashment. The beneficiaries of the bank guarantee lodged a complaint with the police authorities, and an FIR was registered against M/s Trimurti Constructions Developer and Builders, as well as the petitioner.

4. In the context of the said criminal case, the petitioner requested that services of a competent lawyer be provided to him. The respondent bank acceded to the said request and this was communicated to the petitioner by a letter dated 14.03.2009; the respondent bank permitted the petitioner to engage one Sh Attar Singh, Advocate who was practicing at Rohtak.

5. The petitioner states that since the police were harassing him, he moved an application for anticipatory bail, which was rejected. In the circumstances, the petitioner moved the High Court of Punjab and Haryana to seek protection from arrest. The grievance of the petitioner is that the expenditure incurred by him on lawyers has not been reimbursed to him.

6. It is in the aforesaid context that the petitioner filed the present petition, essentially, seeking reimbursement of legal expenses incurred in defending the proceedings instituted against him.

7. Mr Gautam, learned counsel appearing for the respondent bank has contested the aforesaid proceedings. He submitted that by a letter dated 14.03.2009, the petitioner was permitted to engage a lawyer named in the said letter (Mr Attar Singh). However, no permission was granted to the petitioner to engage any other Advocate. Further, in the event that the petitioner desired to approach the High Court of Punjab and Haryana, the

petitioner could have, with due permission, availed of the benefits of lawyers on the panel of the respondent bank. However, the petitioner had preferred to engage Advocates of his own choice and the respondent bank could not be compelled to pay their fees. He also submitted that the respondent bank had also good grounds to believe that the petitioner was complicit in the matter, and had also decided to launch prosecution against the petitioner and, thus, could not be accepted to pay for the petitioner's legal expenses.

8. Mr Singh, the learned counsel for the petitioner had referred to the letter dated 01.01.2009, whereby he had sought permission for engaging the services of a competent lawyer for defending him and also safeguarding the interest of the respondent bank. It was pointed out that the assistant general manager had recommended the petitioner's request. The learned counsel submitted that in this view, the permission granted on 14.03.2009, ought to be read with reference to the petitioner's request. And, this would indicate that the petitioner was entitled to claim reimbursement of legal expenses. He also stated that in similar cases, legal expenses had been reimbursed to other employees who were implicated in similar cases.

9. Mr Singh also contended that the choice of lawyers could not be restricted as the petitioner had a fundamental right to choose his lawyer.

10. I have heard the learned counsel for the parties.

11. Since the petitioner had stated that other persons have been provided reimbursement of expenses for defending such cases, Mr Gautam was asked to take instructions in this regard. He has since confirmed, on instructions,

that the respondent bank has not reimbursed legal expenses for engaging any Advocate other than lawyers who are on their panel, and this would also include employees who were permitted to other legal assistance at the cost of the respondent bank.

12. In view of the statement, this Court is not persuaded to accept that the petitioner had been discriminated against.

13. Undoubtedly, the petitioner would have the right to choose his lawyer, however, the respondent bank cannot mulcted with the cost for the same. The schedule of fees payable by the respondent bank to its lawyers is fixed and it is not unreasonable for the respondent bank to refuse payment to the lawyers engaged by the petitioner, which admittedly, have charged much in excess for the schedule of fee fixed by the respondent bank for lawyers on its panel.

14. It is also seen that by a letter dated 17.11.2009, respondent bank had clarified that the FIR in question (FIR No. 338 of 2008) was lodged against the petitioner, and not against the bank and, therefore, the petitioner's request for legal expenses was declined.

15. The respondent has also produced a copy of the "sanction order" which indicates that the General Manager of the respondent bank has sanctioned initiation of prosecution against the petitioner in connection with the transactions with M/s Trimurti Constructions Developer and Builders. In the circumstances, respondent bank cannot be compelled to bear the legal expenses of the petitioner at this stage.

16. Having stated the above, this Court also cannot ignore that by a letter dated 14.03.2009, the respondent had permitted the petitioner to seek assistance of an Advocate at their cost and it is only on 17.11.2009, that for the first time, the respondent bank had declined to bear the expenses. Thus, the petitioner would be entitled for reimbursement of fees paid for engaging the services of an advocate for a period 14.03.2009 to 17.11.2009. However, such fees would be as per the respondent's schedule of fees; because, as stated above, the respondent cannot be asked to reimburse legal fees in excess of that as stipulated for lawyers on its panel. It is ordered accordingly.

17. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

SEPTEMBER 01, 2017
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