

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.459 of 2013

1.The Executive Director
Corporation Bank
Mangaladevi Temple Road,
P.B.No.88,
Mangalore - 575 001

2.The General Manager,
Corporation Bank Head Office
Mangaladevi Temple Road,
P.B.No.88,
Mangalore - 575 001.

3.The Chief Manager,
Corporation Bank,
Whites Road Branch,
Chennai

...

Appellants

Vs.

...

P.R.Shantharam

Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 03.09.2012 passed in W.P.No.20857 of 2004.

PRAYER IN WP.NO.20857 of 2004:

Petition filed under Article 226 of the Constitution of India praying this Hon'ble Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order bearing Ref.No.PAD/IRW/DISC/368/2004 of the first respondent dated 17.05.2004 confirming the order of the second respondent in Ref.No.PAD/IRW/DISC/1374/2003 dated 29.8.2003 and quash the same and to direct the respondents to reinstate the petitioner in service with back wages and all other consequential benefits.

For Appellants : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.N.G.R.Prasad,
for M/s.T.N.Sugesh

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal is directed against a rather disturbing order by which an apparently corrupt bank official has been exonerated without so much as the primary charges proved against him being discussed in course of the adjudication before the Writ Court.

2. Indeed, so gross were the charges and so conclusively were they proved against the writ petitioner in the domestic forum that the primary charges have been skirted in course of the appeal while referring to the lesser, on-the-fringe charges.

3. The judgment and order impugned is of September 3, 2012 and it covers pages 150 to 189 of the appeal papers. After the initial few introductory paragraphs, all the charges are quoted till page 153 before the contentions raised on behalf of the writ petitioner and the judgments cited on his behalf are noticed with copious extracts therefrom. At page 161 of the appeal papers, begins paragraph 22 of the judgment which appears to record the first charge and the explanation of the writ petitioner to such charge and it is followed up with the remainder of the charges and explanations almost in seriatim. Charge No.2 does not appear to have been covered in course of paragraph 22 of the judgment that spans page 161 to the middle of page 170 of the appeal papers. The explanations furnished by the delinquent were duly reproduced.

4. At paragraph 23 of the judgment, the stand of the employer is quoted from the counter-affidavit going up to page 179. Paragraph 25 at page 179 extracts expansively from a judgment cited on behalf of the employer. The employer's submission is found in the next several paragraphs, with the majority of the pages between 181 and 186 being filled with quotations from the reported judgments cited.

5. The adjudication of the matter is evident from paragraphs 32 to 41 spread over pages 186 to 188 with a substantial part of pages 186 and 187 taken up by a further quotation from a judgment cited on behalf of the writ petitioner which was already quoted at page 157 of the appeal papers under paragraph 10 of the judgment. It is necessary that the basis for upsetting

the findings of the inquiry officer as upheld by the disciplinary authority and affirmed by the appellate authority in exercise of the limited scope of judicial review under Article 226 of the Constitution of India be seen in its entirety:

"32. On consideration, this Court finds that this writ petition deserves to succeed. According to the Corporation Bank Officers Employees' (Discipline and Appeal) Regulations, 1982, the General Manager is the reviewing authority, therefore, the petitioner was certainly prejudiced in his right to avail the remedy of appeal, therefore, the impugned order is violative of principles of natural justice. In view of the law laid down in the in the case of Surjit Ghosh vs Chairman & Managing Director, United Commercial Bank and others (1995)2 SCC 474) holding therein that if an order is passed by the authority which resulted in denial of right of appeal, then the impugned order cannot be sustained.

33. The judgment of the Hon'ble Supreme Court in Chairman, A.P.State Electricity Board and others vs. M.Kurmi Naidu (supra) on which reliance is placed by the respondent will have no application to the facts of the present case, as in the said case irrespective of the authority who passed the order, an appeal remedy was available before the appellate authority.

34. In the case of Electronics Corporation of India vs G.Muralidhar (2001) 10 SCC 43) the Hon'ble Supreme Court was pleased to hold that power to impose punishment cannot be exercised by appellate authority if it results in denial of right to appeal, the termination by appellate authority was held to be bad. Furthermore, the Hon'ble Supreme Court in Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank and others [(1995)2 SCC 474] was pleased to lay down as under:

...

35. I find no force in the contentions of the learned Senior counsel for the petitioner that because of non supply of certain documents, the impugned order could not be sustained in law. It was rightly contended by the learned counsel for the respondents that the documents which were

sought for by the petitioner were not relied upon by the enquiry officer, furthermore, and the reason for non supply was non availability of those documents. The petitioner therefore, cannot take any advantage of the fact that the documents were not supplied.

36. The learned counsel for the petitioner however was right in contending that the findings of the enquiry officer are not based on positive evidence, but on conjectures and surmises. The enquiry officer relied upon the statement of M.W.3 to hold that the petitioner had issued Bank Guarantee in absence of any material on record. It was the duty of the prosecution to produce Bank Guarantee and in case it was submitted to the police department, it could be summoned. Furthermore, the enquiry officer believed the statement of M.W.3 even though he admitted that he had not seen the Bank Guarantee which was said to have been seen only by the Chief Manager. This part of the evidence being hearsay evidence could not be taken note of, to hold the petitioner guilty for issuing Bank Guarantee. The finding of the enquiry officer therefore on this charge can be safely said to be arbitrary.

37. The learned Senior counsel for the petitioner also rightly contended that the authority had proceeded with pre-determined mind, in spite of positive finding that the petitioner had no personal motive to gain and that no loss was caused to the bank, the enquiry officer held the petitioner guilty of serious charges based on oral evidence, and by ignoring the positive evidence showing that the alleged beneficiary had in fact lodged a false criminal case against the petitioner.

38. The learned Senior counsel for the petitioner was also right in contending that the charges were totally vague. The reading of Charge No.1 was failure to adhere operational guidelines in the matter of withdrawal of gold from FBR safe and delivery thereof to the constituent or its authorized representative. This charge does not disclose which operational guideline was

not adhered to and how the petitioner violated the guidelines.

39. The second charge also cannot be sustained, as these allegations were found to be mistake of fact on criminal side. The reading of all other charges also shows that they were general in nature without pointing out any specific lapse.

40. In absence of charge being specific, the petitioner cannot be held guilty. The vague charges itself amounts to violation of principle of natural justice, as it comes in the way of delinquent official to effectively defend himself.

41. Last, but not least, on the proved charges, the punishment awarded is certainly disproportionate to the proved charges which in fact was merely of negligence. It is not the case of respondent that procedural violation or exceeding of jurisdiction was with motive of personal gain or to give advantage to the customer. The judgment of the Hon'ble Supreme Court in Disciplinary Authority-cum-Regional Manager and others vs. Nikunja Bihari Patnaik, (supra), has no application to the facts of this case.

42. Consequently, this writ petition is allowed. The impugned order is set aside. The petitioner shall be entitled to all consequential benefits flowing from this order. No cost."

6. It must not to be missed that at paragraph 35 of the judgment, the primary ground urged on behalf of the writ petitioner - that the entire proceedings were vitiated on account of non-supply of documents - was negatived.

7. The essence of the charges against the writ petitioner was that while dealing with the bullion division at the Chennai Whites Road Branch of the Corporation Bank, he had indulged in malpractices by favouring a particular constituent and by disregarding all banking norms and applicable guidelines to the detriment of the bank, its reputation and its relationship with other banks. It appears that the bullion division at the relevant point of time was headed by one Narasima Rao, who was called as a witness and described as MW-8 in the course of the inquiry report.

8. The action against the writ petitioner appears to have been triggered off by a constituent of the bank by the name of

Sangeetha Jewellers lodging a police complaint that the writ petitioner had made over gold bars meant to be delivered to the complainant to some unauthorized personnel. Though the complaint ultimately resulted in nothing and a report of mistaken facts was submitted, the role of the writ petitioner in transactions pertaining to M/s.Sangeetha Jewellers came to the fore and may have prompted other documents to be looked into for the charges to be brought against the writ petitioner.

9. One of the charges pertained to a bank guarantee being furnished to favour M/s.Sangeetha Jewellers though there was no record in such regard maintained with the bank. In the context of such bank guarantee, much is sought to be made out on behalf of the writ petitioner that the original bank guarantee had never been produced and, in the absence of such document, the relevant charge could not have been considered and it was the gravest instance of the violation of the principles of natural justice. To boot, a Supreme Court judgment reported at (2000) SCC L&S 85 (Hardwari Lal vs. State of Uttar Pradesh) has been cited on such aspect. In that case, two key witnesses, whose statements had been relied upon for rendering a finding of indiscipline, had not been examined; and, in such circumstances, the Supreme Court observed that the charges founded on the statements of persons who had not been examined could not have been upheld. The facts in that case were a far cry from the seriousness of the charges levelled against the writ petitioner herein and how the inquiry officer meticulously dealt with the charges and rendered the findings after sifting through the confusing maze of the written statement that the writ petitioner had furnished.

10. The sheet-anchor of the writ petitioner's submission, particularly in course of the appeal, is that the matters pertained to the year 2001 or thereabouts and the bullion division at the relevant branch had been inaugurated only in the year 2000. According to the petitioner, there were no guidelines at that time for how the bullion division would work and, at any rate, there was a chief manager who was the head of the bullion division, the same person who has been described as MW-8 in the inquiry report, and the writ petitioner merely followed the instructions of his superior in matters pertaining to bullion transactions.

11. It is also submitted on behalf of the writ petitioner that though the writ petitioner was dismissed from service, the concerned manager whose instructions the writ petitioner followed was allowed to obtain voluntary retirement within days of the order being passed against the writ petitioner. Again, the writ petitioner says that such differential treatment was completely arbitrary and the petitioner is also entitled to, at

least, being allowed to voluntarily retire though, at the relevant point of time, the petitioner would still have had another eight years of service left.

12. The writ petitioner also seeks to wipe the slate clean and say that the entirety of the departmental action ought to be quashed on the ground that an officer other than the one designated under the Rules had acted as the disciplinary authority in the petitioner's case, though such official was qualified to be the reviewing authority from the appellate authority's decision in departmental proceedings brought against the rank of officers to which the writ petitioner belonged. In such connection, the petitioner has relied on a judgment reported at AIR 1995 SC 1053 (Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank), a decision that so impressed the Writ Court that the same lengthy passage therefrom was quoted twice over in the impugned judgment. In Surjit Ghosh, upon a higher official discharging the duties of the disciplinary authority in that case, the right of appeal of the delinquent was altogether lost. The Supreme Court noticed the argument on behalf of the employer that a higher official than the designated authority always had the right to inflict the same punishment, but found injustice having been done since the appellate route was completely closed to the delinquent in that case. The principle is completely inapposite here as the writ petitioner preferred an appeal in this case and such appeal was duly dealt with on merits.

13. The writ petitioner has relied on another judgment report at (2013) 10 SCC 39 (Uttar Pradesh Power Corporation Ltd. vs. Virendra Lal) for the proposition that it is the designated authority who should act in course of the departmental proceedings, or else, the proceedings may be irregular and susceptible to being annulled upon a challenge in such regard. However, what is evident from the judgment is that the Supreme Court held that a higher authority could pass an order imposing a punishment and the same would withstand scrutiny if the right of appeal of the delinquent was not taken away.

14. In the present case, there is no doubt that a lower official ought to have been the disciplinary authority pertaining to the charges brought against the writ petitioner, but it was a general manager who passed the order of punishment. However, as a consequence of the officer, who would have been the appellate authority or reviewing authority, exercising the powers of the disciplinary authority, no prejudice was occasioned to the writ petitioner since the writ petitioner's right to prefer an appeal remained and the writ petitioner exercised such right whereupon the Executive Director of the bank entertained the petitioner's appeal and passed a speaking

order while dismissing the same.

15. Ordinarily, in matters pertaining to departmental proceedings, the Writ Court is engaged more with the decision-making process rather than the decision itself unless the decision is absurd or appears to be unreasonable in the meanest sense. The exercise undertaken at such level is also to ensure whether a fair procedure was adopted, due opportunity was afforded to the delinquent to place his version and the explanation sought to be furnished was considered by giving cogent reasons in support of the order of punishment. Once the Writ Court finds a fair procedure to have been adopted, the principles of natural justice not to have been violated and reasonable grounds asserted in support of the order of punishment, the Writ Court does not have the authority to supplant its views over that of the disciplinary authority or to delve into the matter with a tooth-comb to reappraise the evidence that was before the inquiry officer. The authority that is exercised at such level is kind of supervisory and to ensure that there is no manifest miscarriage of justice. The Writ Court does not have the authority to reassess the matter as an appellate court would.

16. In the present case, the inquiry officer found that the charges had been proved. Some of the observations of the inquiry officer and the findings rendered need to be noticed.

17. In respect of the third and fourth charges, which were taken up together by the inquiry officer, the official observed that it was evident from one of the documents exhibited that "on 33 occasions between the period 06.12.1999 and 29.04.2000, PMD (Precious Metal Division) delivered gold without holding the prescribed margin even after reckoning the late cash receipts ...". It was further observed "that PMD was delivering gold to the said party against cheques marked as 'good for payment' by other banks in spite of return of some of the said cheques."

18. Elsewhere, in connection with the same charges, the inquiry officer, after referring to the material before him, held that "the facility of delivery of gold on unfixed price basis was extended to M/s Sangeetha Jewellers without obtaining prior permission from PMD HO, in contravention of the guidelines contained in Ex.M26". The inquiry officer concluded on such account that it was on record that in many such cases, "price was not fixed within the prescribed time limit of 7 days; that branch failed to submit report to PMC, Mumbai as per extant guidelines in case of sale of gold on unfixed basis; that on many occasions the number of TTBs held by the party on unfixed basis exceeded 1000 TTBs as against the permitted maximum limit

of 200 TTBs at any point of time ...".

19. In respect of the fifth charge, the inquiry officer referred to the evidence of several witnesses and found that the writ petitioner had "accommodated M/s Sangeetha Jewellers by allowing kite flying operations in the C a/c of M/s Sangeetha Jewellers by not enquiring the fate of the clearing cheques presented in high value clearing and by delivering gold against uncleared effect."

20. On the sixth charge, the inquiry officer held that the writ petitioner had "unauthorizedly issued letters to IOB (Indian Overseas Bank), earmarking funds in the current a/c No.2876 of M/s Sangeetha Jewellers in respect of a cheque No.974660 for Rs.1.75 crores which was presented by the IOB on 08.05.2000 and which was returned by the branch for want of funds ...". The inquiry officer also found that there were at least two instances of issuance of letters where the writ petitioner "had admitted before them as having issued by him without the permission/knowledge of the Chief Manager of the Branch ...". The inquiry officer concluded on the basis of the material before him that such clandestine acts of accommodating M/s Sangeetha Jewellers had exposed the bank to financial claims from other banks and from the constituent itself. The impression that any reasonable person would get from the material referred to by the inquiry officer and the conclusions drawn thereon, is that the writ petitioner was acting for the material benefit of the relevant constituent by exploiting his position in the bank; often exposing the bank to considerable financial risk in the process.

21. As regards the issuance of the bank guarantee, the inquiry officer referred to all the material and the fact that the document had been seized by the investigating officer in connection with the criminal complaint. The inquiry officer recorded the sequence of events and concluded, "it is evident that the CSO had issued a Bank Guarantee for Rs.80 lakhs fraudulently in favour of MMTC, on account of M/s Sangeetha Jewellers with deliberate intention of facilitating the firm to purchase gold from MMTC ...".

22. In respect of the ninth charge, the inquiry officer found that the writ petitioner had acted at the instance and behest of M/s Sangeetha Jewellers to release Rs.10 lakh in denomination of Rs.100 as late cash to balance the account in the teller's cash book in complete contravention of the relevant norms. In respect of the eleventh charge, the inquiry officer found that the writ petitioner "caused credit of proceeds of an uncrossed demand draft for Rs.49,500/- handed over to him by Shri Sanjeev of M/s Sangeetha Jewellers ... to CSO's CC A/c No.23/97 maintained at the branch ...".

23. After referring to all the documentary material before him and discussing the oral evidence, the inquiry officer rendered findings on each count of charge and summarized the same at the end of his report of July 7, 2003, indicating that all 11 charges had been proved.

24. It is evident from the order of punishment of August 29, 2003 that the disciplinary authority went through the inquiry report, applied his independent mind to the material and matters referred to therein and, for the most part, concurred with the view of the inquiry officer that the substantial charges against petitioner had been proved. In the light of such wealth of material against the petitioner, and two senior officials of the bank having gone through them and accepted such material to hold the writ petitioner guilty, there was hardly any scope for grievance except on hyper-technical grounds.

25. The writ petitioner does not appear to have complained of any violation of the principles of natural justice in course of the inquiry or even when responding to the disciplinary authority upon the inquiry report being forwarded to him. Some technical grounds were urged in course of the appeal, which the appellate authority specifically referred to and dealt with.

26. Factual findings are scarcely interfered with in exercise of the limited authority of judicial review available in the jurisdiction under Article 226 of the Constitution. In particular, it is not the Writ Court's concern to look into the quality and the quantity of the evidence and interference is called for only when there is no evidence at all to sustain a finding or when the finding is *ex facie* contrary to the evidence. The exercise of authority in appellate adjudication is far removed from the exercise of superintendence as available in this jurisdiction, unless there is manifest miscarriage of justice, or the Wednesbury extent of unreasonableness or the result is grossly disproportionate to the cause. Even in such a scenario, it has to be so grossly disproportionate to shock the conscience of a rational and a prudent person. At any rate, when it comes to the functioning of bank officials, their conduct must be beyond reproach and indiscipline of the kind that this petitioner was habituated to could not have been rationally condoned by any liberal yardstick of assessment.

27. What is evident from the judgment and order impugned in this case is the reproduction of the explanations furnished by the writ petitioner in respect of the several counts of the charges, the submission made on behalf of the writ petitioner, quotations from the decisions cited before the Single Bench, the counter-affidavit of the employer being virtually quoted in its

entirety and a few paragraphs from paragraph 32 onwards to complete the exercise of adjudication.

28. At paragraph 32 of the judgment, the Single Bench referred to the Surjit Ghosh case and the dictum therein without noticing that in the present case, the dictum had no manner of application since neither had the right of appeal been taken away from the writ petitioner nor had the writ petitioner failed or opted not to exercise such right.

29. At paragraph 34 of the impugned judgment, it was the same Surjit Ghosh quotation that was repeated before the ground of non-furnishing of documents urged on behalf of the writ petitioner was repelled at paragraph 35. Paragraph 36 of the judgment refers to conclusions based upon the reading of the inquiry report without referring to anything specific or the basis for arriving at such conclusions. The Writ Court also found that hearsay evidence had been relied upon by the inquiry officer and held it to be inappropriate, though in departmental proceedings there is nothing wrong in hearsay evidence being received, as long as there are other corroborative material.

30. At paragraph 37 of the impugned judgment, the Writ Court agreed with the writ petitioner's contention that "the authority had proceeded with predetermined mind ...". Presumably, the authority referred to in this case was the inquiry authority. However, what is glossed over is that the entire body of evidence and the basis for rendering the findings are indicated in the detailed report of the inquiry officer. The findings rendered by the inquiry officer had sufficient nexus with the material before him and were reasonable conclusions founded on the evidence. The Writ Court failed to appreciate that the disciplinary authority had also referred to the inquiry report in some detail and applied his independent mind to the matters considered by the inquiry officer before agreeing with the findings thereon and inflicting the punishment on the petitioner. Such aspect of the matter appears to have been lost on the Writ Court altogether.

31. The specific charges that were levelled and the reasoned findings that were rendered on the basis of the cogent material that was before the inquiry officer do not find any mention in the discussion in the impugned judgment and there are only conclusions to indicate how the Writ Court perceived that the charges were vague or the material relied on was not positive evidence. The judgment is singularly lacking in its discussion on any of the counts of charge. As would be evident from the parts of the inquiry report quoted above, the conduct of this writ petitioner was so despicable that he could have been dismissed on any two of the grounds that found favour with the inquiry officer.

32. The inquiry officer found that all 11 counts had been proved and except one or two minor grounds, the rest of them were serious charges.

33. It is inconceivable, on a meaningful reading of the inquiry report or a mere cursory glance at the order passed by the disciplinary authority or a reference to the appellate order, that there was any injustice done to the writ petitioner or that he was punished any more than he deserved for his transgressions, acts of impropriety and complete indiscipline.

34. Finally, for an order of punishment to be undone, it requires such order to shock the conscience of the Court. Given the nature of the charges levelled against the writ petitioner and how such charges were found to have been established, the ordinary conscience could never have been shocked at the punishment meted out as a consequence. The writ petitioner rightly deserved the order of dismissal that he was rewarded with. The time taken on behalf of the writ petitioner in the appeal was a complete waste and the writ petitioner will rightly pay for it.

35. Against the backdrop of the constitutional ethos in which this democratic republic, wedded to the rule of law, functions, a process of adjudication requires reasons to be furnished in the formation of an opinion and cogent basis to be disclosed in support of the view that is expressed. Feudal justice, on the other hand, would permit an unsubstantiated view or an unreasoned opinion to pass muster. Reasons are indispensable to link the facts to the conclusions and form the bulwark of both a procedure established by law and due process, whatever else the differences between the two may be.

36. W.A.No.459 of 2013 is allowed, by setting aside the judgment and order of September 3, 2012 and by restoring the punishment so appropriately awarded in the domestic forum. W.P.No. 20857 of 2004 stands dismissed. The writ petitioner will pay costs assessed at Rs.50,000/- (Rupees Fifty Thousand only) to the respondent bank.

WEB COPY

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tar

TO:

1.The Executive Director
Corporation Bank
Mangaladevi Temple Road,
P.B.No.88,
Mangalore - 575 001

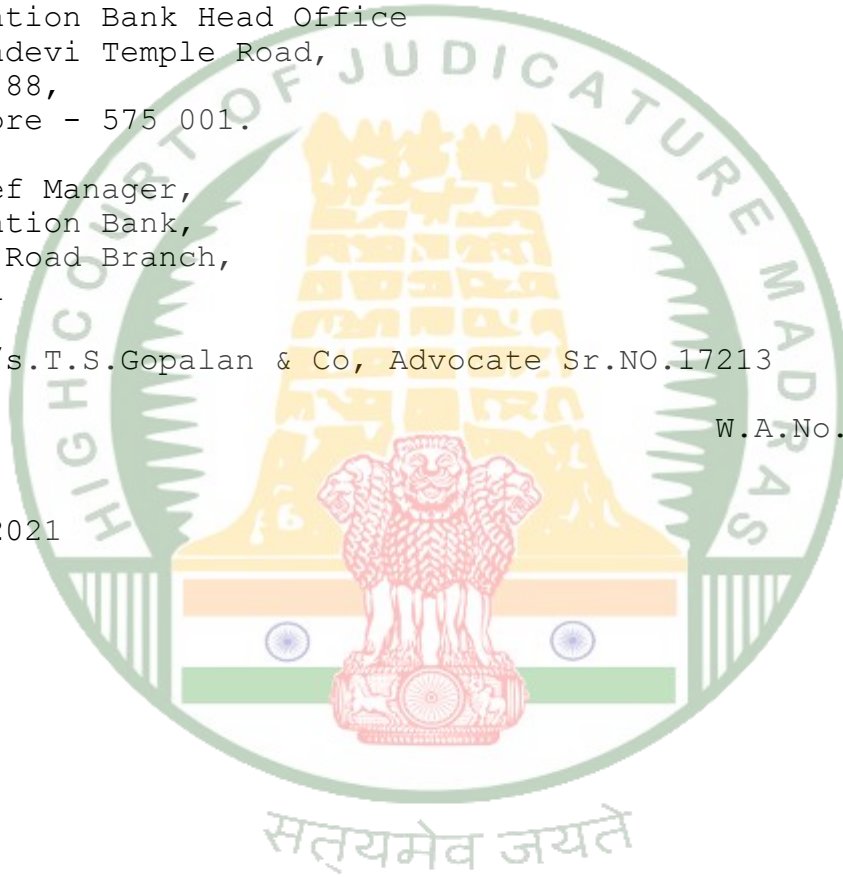
2.The General Manager,
Corporation Bank Head Office
Mangaladevi Temple Road,
P.B.No.88,
Mangalore - 575 001.

3.The Chief Manager,
Corporation Bank,
Whites Road Branch,
Chennai

+1cc to M/s.T.S.Gopalan & Co, Advocate Sr.NO.17213

W.A.No.459 of 2013

SV(CO)
NR 16/04/2021



WEB COPY