REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8223 OF 2009

THE CHAIRMAN, STATE BANK OF INDIA
AND ANOTHER ..... APPELLANT(S)

VERSUS

M.J. JAMES ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

The Chairman, State Bank of India, Central Office, Mumbai, and the Chief General Manager, State Bank of India, Local Head Office, Chennai (the appellants) in this appeal assail the order and judgment dated 09.12.2008 of the High Court of Kerala at Ernakulam dismissing their intra-court writ appeal, W.A. No. 2052/2007. The Division Bench, thereby, affirmed the order of the Single Judge in O.P No. 5527 of 1999 dated 14.03.2007, quashing the disciplinary proceedings against Mr. M.J. James (the respondent) on the ground

of violation of Clause 22(ix)(a) of Chapter VIII of the Bank of Cochin Service Code ("the Service Code").

2. Before we proceed further, we need to allude to the factual background necessary for the disposal of the present appeal.

On 09.02.1984, a memorandum of charges was issued to the respondent that while working as the bank manager of the Quilon branch of the Bank of Cochin from February 1978 to September 1982, he had committed grave misconduct by sanctioning advances in violation of the Head Office instructions causing financial loss to the bank. The respondent by the reply dated 30.03.1984 denied the charges stating that there was substantial increase and growth in the business of the bank when he was the manager of the Quilon branch. The deposits had increased from Rs. 20 lakh in 1978 to Rs. 1 crore in 1982, and the advances had increased from Rs. 1.5 crore in 1978 to Rs. 6 crore in 1982. As the bank manager of the Quilon branch, the respondent was aware that the top management of the bank was contemplating a deep trust in advances in view of the comfortable loanable fund availability. He had been asked by Mr. E.K. Andrew, former Chairman of the bank, to grant advances without hesitation. He had got oral instructions from Mr. E.K.Andrew

to allow disbursement/drawings from most of the large accounts. Further, the then Director, Mr. C.B. Joseph from the Quilon branch, was personally involved as he had introduced the borrowers and most of the advances/disbursements/drawings were made on his recommendation/insistence. The respondent had claimed that the bank did not have a fool proof system of delegation of financial and other powers to the branches as powers were conferred on select managers. The respondent was given to understand by the then Chairman and Director that he was vested with adequate powers and the advances would be ratified by the Board in due course. The functioning of the branch and the advances were subjected to periodical inspections by the authorities, including the Reserve Bank of India. The respondent had never been cautioned on the pattern of business conducted by the branch. Subsequently, there were changes in the top management, and abrupt restrictions were introduced, affecting the recovery of the dues.

3. The aforesaid explanation of the respondent was not found to be satisfactory, and an inquiry was directed to be held. Mr. C.T. Joseph, a practising Advocate, was appointed as the inquiry officer. Mr.

Jimmy John was appointed as the presenting officer. The respondent claims that Mr. Jimmy John is a former advocate.

4. On 24.04.1984, the respondent wrote a letter to the Manager (Personnel Department), Bank of Cochin, that he may be permitted to engage services of Mr. F.B. Chrysostom (Syndicate Bank, Mattancherry, Cochin), the Organising Secretary of the All-India Confederation of Bank Officers Organisation, Kerala State Unit. The request was rejected. Thereafter, the respondent wrote another letter to the inquiry officer on 18.07.1984 protesting the denial of permission to be defended by Mr. F.B. Chrysostom stating that this was against all norms of natural justice and in clear violation of the Service Code. The inquiry officer, however, disagreed and passed a ruling holding that in terms of the Service Code, a charge-sheeted officer cannot be defended by an office-bearer of any association or a union except an office-bearer of an association or a union of the employees of the bank, that is, the Bank of Cochin Ltd. To enable the respondent to prepare for representation, the inquiry officer adjourned the proceedings to 06.07.1984 for the evidence of the management. On 05.09.1984, the respondent requested a long adjournment stating that he wanted to assail the order denying him

services of Mr. F.B. Chrysostom before the Board of Directors. While the request for long adjournment was declined, the inquiry officer gave the respondent two weeks to approach the Board and await their directions, making it clear that no further adjournment would be granted. On 20.09.1984, the respondent did not appear and sought postponement of proceedings for one week on medical grounds through his brother. This request was allowed, and the inquiry was posted to 28.09.1984.

5. On 28.09.1984, the respondent appeared and participated in the inquiry in which statement of witnesses of the management were recorded. The proceeding was adjourned to 06.10.1984 for the recording of defence evidence. On 06.10.1984, the respondent requested for directions to the management to produce documents as enumerated in the list. The presenting officer objected. After due consideration, the inquiry officer directed the respondent to specify the documents indicating their relevancy in the context of his defence. On 17.10.1984, the respondent again raised a request to furnish documents claiming that they were specific inasmuch as he had stated the years to which the returns relate. Further, the

respondent had his own reasons on how these documents were relevant for the inquiry.

6. The inquiry officer passed a detailed order considering each document and held that they were unnecessary and irrelevant. Thereupon, the respondent stated that he had no witnesses to examine, or any other evidence to be adduced, and abruptly stood up and walked out without signing the order sheet.

7. In his detailed report dated 14.01.1983, the inquiry officer referred to the irregularities committed and held that the respondent had made unauthorized advances beyond his discretionary powers without the sanction of the Head Office. In fact, the respondent had admitted violation of the Head Office instructions and the advances made were unauthorized. All the charges were held to be proved.

8. By an order dated 18.04.1985, the Chairman of the Bank of Cochin dismissed the respondent from service with effect from the close of working hours on that day itself. This termination letter refers to the inquiry report and states that the Chairman had carefully gone through the records of the inquiry, connected papers, documents and findings of the inquiry officer. Further, the Chairman had given the

respondent an opportunity for a personal hearing, which he did not avail of. Instead, the respondent had sent a representation on 25.02.1985, which had been already duly considered.

9. On 26.08.1985, the Bank of Cochin, a private bank, got amalgamated with the State Bank of India.

10. Nearly four years and five months after his dismissal, the respondent filed a memorandum of appeal on 20.09.1989 before the Chief General Manager, State Bank of India, Local Head Office, Chennai, which appeal remained unattended and was not listed for hearing for over nine years. The respondent did not represent or protest till 1998, when he filed O.P. NO. 19807/1998 G before the High Court of Kerala at Ernakulam, which was disposed of by a Single Judge on 14.10.1998, recording that the respondent who was a petitioner therein had made a limited prayer for quick disposal of his appeal. The second respondent therein, that is the Chief General Manager, was directed to consider the appeal and pass appropriate orders after rendering an opportunity of being heard to the respondent within ten weeks from the date of receipt of the copy of the order.

11. In terms of the directions above, a personal hearing was granted to the respondent on 22.12.1998. He was also permitted to submit written representation.

12. By the order dated 23.01.1999, the appeal was rejected by the Chief General Manager recording, *inter alia,* that the inquiry officer's report was clear, categorical, and based upon evidence, and concluded that the respondent had exceeded his authorization in grant of credit facilities, flouted head office instructions and had not obtained head office ratification for several guarantees and documentary bills. The charges as proved were grave, and hence the respondent's dismissal from service was justified. The Chief General Manager specifically observed that the defence of the respondent was not of denial, but that of following the instructions of the Director or Chairman. Therefore, malefactions were not factually and legally disputed. The contention that the respondent was not allowed to be defended by an outsider was held to be without substance as the inquiry officer had permitted the respondent to be defended by an officer of the Bank of Cochin of his choice. The respondent had refused to avail of the same. Hence, the respondent could not raise plea of failure of natural justice.

13. The respondent had, thereupon, preferred O.P. No. 5527 of 1999 before the High Court of Kerala at Ernakulam challenging the order of the Chief General Manager dated 23.01.1999 and had *inter alia* prayed to be reinstated in service with back wages. Other prayers made included direction to the opposite party to consider the quantum of punishment, grant of gratuity and other benefits, and an opportunity of inquiry as per the service rules.

14. By an order dated 14.03.2007, the writ petition was allowed primarily on the ground that the inquiry officer had wrongly rejected the request of the respondent to be defended/represented by the organizing secretary of the All-India Confederation of Bank Organizations, Kerala Unit. This amounted to a denial of reasonable opportunity, notwithstanding the respondent's participation in the inquiry. Therefore, what weighed with the Single Judge was a wrongful rejection of the respondent's request to be represented by an office-bearer of the organization of his choice as per the Service Code, and violation of the right to be represented purportedly flowing from the principles of natural justice. Significantly, the judgment rejects the argument of the respondent that the charges held to be proved in the inquiry report would at best constitute 'minor

misconduct'. The Single Judge, referring to the allegations of unauthorized advances beyond discretionary powers or without the sanction of head office, held them to be 'gross misconduct'. Further, the Court observed that the charges were specific, and the allegations mentioned in the charge sheet were detailed, though relevant provisions of the Service Code were not mentioned. Therefore, the allegations detailed in the charge sheet constituted 'gross misconduct', governed by Clause 22(iv)(a) of the Service Code. Accordingly, the Single Judge had commended that "if this misconduct is proved in a validly conducted inquiry, I see no reason to find fault with the bank if dismissal is the punishment that is considered appropriate by them".

15. The intra-court appeal, W.A. No. 2052 of 2007, by the appellants was dismissed by the Division Bench of the High Court of Kerala at Ernakulam vide judgment dated 09.12.2008. They agreed with the Single Judge that Clause 22(ix)(a) of Chapter VIII was violated as the respondent was not allowed to be defended by a representative of a registered bank employees' union/association. Interpreting the clause, the Division Bench observed that the article "the" was missing before the bank employees in the said clause, which

indicates that the union/association referred to therein was not only regarding employees of the bank itself, namely 'the Bank of Cochin', and would, therefore, include employees' union/association of other banks also. As the respondent was entitled to be represented by a representative of a union or association of bank employees, his prayer to be represented by Mr. F.B. Chrysostom should have been accepted. The Bench rejected the contention of no prejudice by observing that this was only an assertion by the bank's counsel. Further, the principles of natural justice were incorporated in the Service Code itself, which the authorities were bound to follow strictly. As the authorities had not followed the procedure prescribed, it would be for the appellants to prove that by violating the procedure, no prejudice was in fact caused. That apart, the Division Bench, upon perusal of the proceedings and findings of the inquiry officer, felt that prejudice was caused to the respondent. They observed that an experienced lawyer had conducted the inquiry, and the presenting officer was also a lawyer conversant with the procedure. Noticing that the respondent had retired, it was observed that if the rules permit, the bank would be at liberty to continue the disciplinary proceedings from the stage it had been invalidated. However, if the

rules do not permit such inquiry, the respondent will be entitled to all benefits consequent to his illegal termination.

16. We begin our discussion by reproducing Clause 22(ix)(a) of the Service Code, which reads:

> "ix. The procedure in such cases shall be as follows:
>
> (a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for an enquiry, sufficient time being given to him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross examine any witness and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered Union/Association of bank employees or with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him."

17. In order to interpret, we would like to allude to clause 2(e) of the definition clause in the Service Code, wherein the expression 'bank' has been defined to mean the Bank of Cochin Ltd. and not any other bank. Clause 2(e) of the Service Code reads:

> ""Bank" means the Bank of Cochin Limited."

18. The judgment under challenge seems to have overlooked the implications of clause 2(e) of the Service Code. The objective of definition clauses is to avoid frequent repetition in describing the subject matter to which the word or expression is intended to apply.[1] This is useful when the same word or expression is used more than once in the same enactment.[2] The *raison d'etre* behind the definition clause is that while interpreting a provision, the defined word or expression would carry the same meaning as the defined words or expression are employed and used by the maker in the sense appropriate to the definition. The definition can be with the intent to attract a meaning already established by law; expand the meaning by adding a meaning; or narrow the meaning by exclusion.[3] This general rule of construction laid down by the enactment is subject to the context. *Albeit*, the interpreter, to deviate from the defined meaning, should record reasons to show that the word/expression in that particular provision carries a different meaning. Contrary context is not to be assumed or accepted easily, in the absence of indication and reason to differ from the defined meaning. The repugnancy will

[1] *Nahalchand Laloochand Private Ltd.* v. *Panchali Coop. Housing Society Ltd.*, (2010) 9 SCC 536
[2] *Bhagwati Developers Pvt. Ltd.* v. *Peerless General Finance and Investment Co. Ltd. & Anr.*, (2013) 9 SCC 584
[3] Part XII, Rules of Construction Laid Down by Statute, Sections 199 and 200 at page 517, Bennion on Statutory Interpretation, Indian Reprint, Sixth Edition.

arise when the definition meaning does not agree with the subject in the context. Repugnancy is not indicated and does not arise in the context of Clause 22(ix)(a) of Chapter VIII of the Service Code by mere absence of article 'the' in Clause 22(ix)(a) before the word 'bank', as held in the impugned judgment. This is too weak and feeble a reason to discard and over-ride the defined meaning which is the general norm, and not an exception that has to be justified. Deficiency of 'the' does not disclose abandonment of the express definition of 'bank' vide clause 2(e) of the Service Code. Absurdity or even ambiguity is not obvious or even palpable. The word 'bank' in Clause 22(ix)(a) can be validly and effectively interpreted as per the definition clause as referring to the Bank of Cochin Ltd., and not any or other bank(s).

19. Therefore, the reasoning solely predicated on non-existence of article 'the' before 'bank' in Clause 22(ix)(a) of the Service Code does not justify inference of repugnancy in the context of the subject-matter, including the intent behind Clause 22(ix)(a) of the Service Code.

20. Now, we need to advert our attention on the aspect of the choice of representation in domestic inquiry. Both sides rely on the dictum of

this Court in ***Crescent Dyes and Chemicals Ltd.*** v. ***Ram Naresh Tripathi***[4] and ***National Seeds Corporation Ltd.*** v. ***K.V. Rama Reddy,***[5] which hold that the right to be represented by a third person in domestic inquiries/tribunals is based upon the precept that it is not desirable to restrict right of representation by a counsel or agent of one's choice. The ratio does not tantamount to acceptance of the proposition that such a right is an element of principles of natural justice, and its denial would immediately invalidate the inquiry. Representations are often restricted by a law, such as under Section 36 of the Industrial Disputes Act, 1947, as also by certified Standing Orders. The aforementioned two decisions ascribe to catena of decisions, including English case law on this subject, which accept that the right to be legally represented depends on how the rules govern such representation. Further, if the rules are silent, the party has no absolute right to be legally represented. However, the entitlement of a fair hearing is not to be dispensed with. What fairness requires would depend upon the nature of the investigation and the consequences it may have on the persons affected by it.

[4] (1993) 2 SCC 115
[5] (2006) 11 SCC 645

This Court in ***Crescent Dyes and Chemicals Ltd.*** (supra), observed as follows:

> "17. It is, therefore, clear from the above case-law that the 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…"

Thus, the right to be represented by a counsel or agent of one's choice is not an absolute right but one which can be controlled, restricted, or regulated by law, rules, or regulations. However, if the charge is of severe and complex nature, then the request to be represented through a counsel or agent should be considered. The above proposition flows from the entitlement of fair hearing, which is applicable in judicial as well as quasi-judicial decisions.

21. In ***Dharampal Satyapal Ltd.*** v. ***Deputy Commissioner of Central Excise, Gauhati and Others***,[6] this Court has highlighted that procedural fairness is essential for arriving at correct decisions, by observing:

[6] (2015) 8 SCC 519

> "27. It, thus, cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms."

22. Traditional English Law recognized and valued the rule against bias that no man shall be a judge in his own cause, i.e. *nemo debet esse judex in propria causa*; and the obligation to hear the other or both sides as no person should be condemned unheard, i.e. *audi alteram partem*. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasized that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In ***A.K. Kraipak and others*** v. ***Union of India and Others***,[7] the Constitutional Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or

[7] (1969) 2 SCC 262

capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.

23. Legal position on the importance to show prejudice to get relief is also required to be stated. In ***State Bank of Patiala and Others*** v. ***S.K. Sharma***,[8] a Division Bench of this Court distinguished between 'adequate opportunity' and 'no opportunity at all' and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infracted, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words:

[8] (1996) 3 SCC 364

> "32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (*iii*) be in the interests of justice *or* would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

24. Earlier decision in ***M.C. Mehta*** v. ***Union of India and Others***,[9] examined the expression 'admitted and undisputable facts', as also divergence of legal opinion on whether it is necessary to show 'slight proof' or 'real likelihood of prejudice'; or legal effect of 'an open and shut case', with reference to the observations in ***S.L. Kapoor*** v. ***Jagmohan and Others***,[10] and elucidates in the following words:

> "22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See *Malloch* v. *Aberdeen Corpn*. (per Lord Reid and Lord Wilberforce), *Glynn* v. *Keele University*, *Cinnamond* v. *British Airports*

[9] (1999) 6 SCC 237
[10] (1980) 4 SCC 379

Authority and other cases where such a view has been held. The latest addition to this view is *R.* v. *Ealing Magistrates' court, ex p Fannaran* (Admn LR at p. 358) (see de Smith, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be "*demonstrable beyond doubt*" that the result would have been different. Lord Woolf in *Lloyd* v. *McMahon* (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy* v. *Grant* however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is "real likelihood — not certainty — of prejudice". On the other hand, *Garner Administrative Law* (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. *On the other side* of the argument, we have apart from *Ridge* v. *Baldwin*, Megarry, J. in *John* v. *Rees* stating that there are always "open and shut cases" and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience and justice are often not on speaking terms". More recently Lord Bingham has deprecated the "useless formality" theory in *R.* v. *Chief Constable of the Thames Valley Police Forces, ex p Cotton* [1990 IRLR 344] by giving six reasons. (See also his article "Should Public Law Remedies be Discretionary?" 1991 PL, p. 64.) A detailed and emphatic criticism of the "useless formality theory" has been made much earlier in "Natural Justice, Substance or Shadow" by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* and *Glynn* were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those

> relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are *not* all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "*discretion*", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala* v. *S.K. Sharma*, *Rajendra Singh* v. *State of M.P.* that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.
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> 23. We do not propose to express any opinion on the correctness or otherwise of the "useless formality" theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, "*admitted and indisputable*" facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."

25. In ***State of U.P.*** v. ***Sudhir Kumar Singh and Others***,[11] referring to the aforesaid cases and several other decisions of this Court, the law was crystallized as under:

> "39. An analysis of the aforesaid judgments thus reveals:
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> (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

[11] (2020) SCC Online SC 847

> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
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> (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
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> (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
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> (5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

26. In the light of the aforesaid legal position, we have examined the facts of the present case and have referred to the inquiry proceedings in some detail. The respondent was aware that his request to be represented by a representative of his own choice had been rejected. Even then he took time and decided not to file an

appeal before the Board of Directors against the order of the inquiry officer rejecting his request. He allowed the inquiry proceedings to continue and then filed an application for production of documents. When asked about relevancy, his stance was he had his own reasons on how the documents were relevant. In spite of ample opportunity, the respondent did not adduce evidence or examine witnesses, and abruptly stood up and walked out. Observations and findings in the disciplinary proceedings on the aspect of irregularities regarding exceeding his authority in the grant of advances, acceptance of discovery bills and the issue of bank guarantees etc. are clear and remain uncontroverted. The respondent's defence in the form of *alibi* that he had followed the oral instructions of the then Chairman and the Director, which is of questionable merit, is to be rejected as unproven. On this aspect somewhat reflecting on merits, the Single Judge had observed that the allegations if proven constitute gross misconduct, warranting punishment of dismissal. The Division Bench has not commented on this aspect, but has made observations assuming prejudice was caused, which reasoning in the light of the ratio elucidated in paragraph nos. 23 to 25 (supra) cannot be sustained. The judgments under challenge do not consider the effect of the defence pleaded by the respondent and

whether there was no effective denial. Conduct of the respondent, including the opportunities granted during the departmental proceedings, have gone unnoticed. On the *alibi*, the respondent did not furnish any details or particulars of cases or instances and had refused to lead evidence. Clause 22(ix)(a), as worded, envisages that an employee against whom disciplinary action is proposed will be served with memorandum of charges, be given sufficient time to prepare and present his explanation and produce evidence which he may wish to render in his defence. He is permitted to appear before the officer conducting the inquiry, cross-examine the witnesses and produce other evidence in his defence. Further, the officer can also be permitted to be defended by a representative, who must be a representative of a registered union/association of 'bank' employees, which, as held above, means an union/association of the employees of the Bank of Cochin and not association of employees of any or other banks. Notably, the provision does not stipulate that the employee requires permission from any authority or the inquiry officer for representation by a representative of a registered union or association of the Bank of Cochin. Such permission is required if an employee wants a lawyer to represent him/her in the disciplinary proceedings. In this case, contrary to the observations in the

impugned judgment by the Division Bench, the respondent had never prayed or sought permission to be represented by a lawyer. This is despite the respondent being aware of the professional status of the inquiry officer and the presenting officer.

27. Further, the dismissal order passed on 18.04.1985 remained unchallenged for more than four years, as the appeal to the Chief General Manager of the State Bank of India was filed on 20.09.1989. The respondent, however, relies on Clause 22(x) of the Service Code relating to appeals, which reads thus:

> "An aggrieved employee in all such cases may appeal to the Board of Directors whose decision shall be final."

Undoubtedly, the Service Code does not stipulate any time period within which the appeal may be preferred to the Board of Directors whose decision is to be final, but it is well settled that no time does not mean any time. The assumption is that the appeal would be filed at the earliest possible opportunity. However, we would hold that the appeal should be filed within a reasonable time. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days etc. as it depends upon the facts and circumstances of each case. A right not exercised for a

long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

28. The appeal preferred by the respondent with the Chief General Manager of the State Bank of India on 20.09.1989 had remained unattended for almost nine years. The appellants, it is apparent, simply lost track and forgot that the service appeal was filed or pending. The respondent was never an employee of the appellant's bank as his services were terminated on 18.04.1985, nearly four months before the Bank of Cochin, a private Bank, got amalgamated with the State Bank of India. The appellants being at fault must bear the burden and adverse consequences. In ***Ram Chand and Others*** v. ***Union of India and Others***[12] and ***State of U.P. and Others*** v. ***Manohar***,[13] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in ***Union of India and Others*** v.

[12] (1994) 1 SCC 44
[13] (2005) 2 SCC 126

Tarsem Singh,[14] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in paragraph 6 of ***Motilal Padampat Sugar Mills Co. Ltd.*** v. ***State of Uttar Pradesh and Others.***[15] Applying this principle of acquiescence to the precept of delay and laches, this Court in ***U.P. Jal Nigam and Another*** v. ***Jaswant Singh and Another***,[16] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England:

> "12. The statement of law has also been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows:
>
> > "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
> >
> > (*i*) acquiescence on the claimant's part; and
> >
> > (*ii*) any change of position that has occurred on the defendant's part.

[14] (2008) 8 SCC 648
[15] (1979) 2 SCC 409
[16] (2006) 11 SCC 464

> Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

29. Before proceeding further, it is important to clarify distinction between 'acquiescence' and 'delay and laches'. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain.[17] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance,[18] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention.[19] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and inspite of the infringement takes no action mirroring acceptance.[20] However, acquiescence will not apply if lapse of time is of no importance or consequence.

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[17] See *Prabhakar* v. *Joint Director, Sericulture Department and Another*, (2015) 15 SCC 1. Also, see *Gobinda Ramanuj Das Mohanta v. Ram Charan Das and Suyamal Das,* AIR 1925 Cal 1107

[18] See *M/S Vidyavathi Kapoor Trust* v. *Chief Commissioner Tax* (1992) 194 ITR 584

[19] See *Krishan Dev* v. *Smt. Ram Piari* AIR 1964 HP 34

[20] See "Introduction", UN Mitra, Tagore Law Lectures – Law of Limitation and Prescription, Volume I, 14TH Edition, 2016.

30. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel *in pais.* As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person.[21] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.

31. The questions of prejudice, change of position, creation of third-party rights or interests on the part of the party seeking relief are important and relevant aspects as delay may obscure facts, encourage

[21] Refer Footnote 18

dubious claims, and may prevent fair and just adjudication. Often, relevant and material evidence go missing or are not traceable causing prejudice to the opposite party. It is, therefore, necessary for the court to consciously examine whether a party has chosen to sit over the matter and has woken up to gain any advantage and benefit, which aspects have been noticed in ***M/s Dehri Rohtas Light Rly. Co. Ltd.*** v. ***District Board, Bhojpur and Others***[22] and ***State of Maharashtra*** v. ***Digambar***.[23] These facets, when proven, must be factored and balanced, even when there is delay and laches on the part of the authorities. These have bearing on grant and withholding of relief. Therefore, we have factored in the aspect of prejudice to the appellants in view of the relief granted in the impugned judgment.

32. The relief as granted certainly has serious financial repercussions and would also prevent the appellants from taking further action, which aspect has been noticed, though not finally determined in the impugned judgment. The studied silence of the respondent, who did not correspond or make any representation for nine years, was with an ulterior motive as he wanted to take benefit of the slipup though he had suffered dismissal. The courts can always refuse to grant

[22] (1992) 2 SCC 598
[23] (1995) 4 SCC 683

relief to a litigant if it considers that grant of relief sought is likely to cause substantial hardship or substantial prejudice to the opposite side or would be detrimental to good administration.[24] This principle of good administration is independent of hardship, or prejudice to the rights of the third parties and does not require specific evidence that this has in fact occurred, though in relation to withholding relief some evidence may be required. Relief should not be denied for mere inconvenience but when the difficulty caused to the decision maker approaches impracticability or when there is an overriding need for finality and certainty.[25]

33. Learned counsel for the respondent had submitted that the appeal was not dismissed on the ground of delay and laches by the Chief General Manager vide order dated 23.01.1999. This aspect has also appealed to the Single Judge and the Division Bench. We do not agree with the aforesaid views for several reasons. The respondent had approached the High Court through a writ petition in O.P. No. 19807/1998 G**,** whereby directions were issued vide order dated 14.10.1998 for consideration and disposal of the appeal, which, it is apparent, was interpreted as a direction that the appeal should be

[24] *R. (on the application of Parkyn)* v. *Restormel* BC [2001] EWCA Civ 330
[25] *R.* v. *Monopolies and Mergers Commission Ex p. Argyll Group* [1986] 1 W.L.R. 763.

decided on merits. One can appreciate the predicament of the Chief General Manager who had to adjudicate the appeal in terms of the direction of the Constitutional Court and, therefore, his reluctance to dismiss the appeal on the ground of delay and laches. The appeal was dismissed on merits. These aspects cannot be ignored as the exercise of writ jurisdiction is always discretionary which has to keep in view the conduct of the parties.

34. By the order dated 04.12.2009, the dues payable to the respondent in terms of the impugned judgment were released to him on furnishing security to the satisfaction of the Chief General Manager. During the course of hearing, it was stated that the amount released has been kept in a fixed deposit. The payment released is directed to be returned and restituted to the appellant bank without interest within a period of six weeks from the date of pronouncement of this judgment. However, in case payment is not made within the aforesaid period, the respondent would be liable to pay interest @ 8% per annum from the date of this judgment till actual payment is made. In addition, the appellants would be entitled to enforce the security furnished by the respondent.

35. In the light of the aforesaid discussion, the present appeal is allowed and the impugned judgment is set aside and quashed. We uphold the order of dismissal and consequently the writ petition filed by the respondent would be treated as dismissed. There would be no order as to costs.

.....J.
(L. NAGESWARA RAO)

.....J.
(SANJIV KHANNA)

NEW DELHI;
NOVEMBER 16, 2021.