



GAHC010058722023

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/1525/2023**

RAMKRISHNA SARMA  
PRESENTLY SERVING AS REGIONAL MANAGER (SENIOR MANAGEMENT,  
SCALE-IV), ASSAM GRAMIN VIKASH BANK, NALBARI REGIONAL OFFICE,  
PNC ROAD, NALBARI, PIN- 781335, DIST. NALBARI, ASSAM, ORDINARILY  
RESIDENT OF HOUSE NO. 124, A-1, SNEHASHISH, M.C. ROAD,  
CHENIKUTHI, GUWAHATI-781003, DIST. KAMRUP(M), ASSAM

VERSUS

ASSAM GRAMIN VIKASH BANK AND 3 ORS.  
REPRESENTED BY THE CHAIRMAN, HEAD OFFICE AT ADAMS PLAZA,  
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI, PIN- 781005.

2:THE CHAIRMAN

GRAMIN VIKASH BANK  
HEAD OFFICE AT ADAMS PLAZA  
CHRISTIAN BASTI  
G.S. ROAD  
GUWAHATI  
PIN- 781005.

3:THE BOARD OF DIRECTORS

ASSAM GRAMIN VIKASH BANK  
REPRESENTED BY THE CHAIRMAN  
HEAD OFFICE AT ADAMS PLAZA  
CHRISTIAN BASTI  
G.S. ROAD  
GUWAHATI  
PIN- 781005.



4:MANOJ KUMAR DAS  
EX-GENERAL MANAGER AND ENQUIRY OFFICER  
ASSAM GRAMIN VIKASH BANK  
C/O- ASSAM GRAMIN VIKASH BANK  
HEAD OFFICE AT ADAMS PLAZA  
CHRISTIAN BASTI  
G.S. ROAD  
GUWAHATI  
PIN- 781005

**Advocate for the Petitioner** : MR. D DAS SR. ADV

**Advocate for the Respondent** : MR. D BANERJEE

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**Date of hearing** : **23.11.2023.**

**Date of judgment** : **23.11.2023.**

**JUDGMENT & ORDER (Oral)**

Heard Mr. D. Das, learned senior counsel assisted by Ms. U. Sharma, learned counsel appearing for the writ petitioner. I have also heard Mr. G. N. Sahewalla, learned senior counsel assisted by Mr. A. Chetia, learned counsel representing the respondents.

2. The writ petitioner herein is serving as Chief Manager in the Assam Gramin Vikash Bank (AGVB) and is presently posted at the Head Office of the Bank at Guwahati. While he was serving as Senior Manager in the Bank, posted at the Nalbari Branch, on 30.08.2022, a Memorandum of Charge (charge-sheet) was served upon the petitioner containing as many as six articles of charges. On 30.09.2022 the



petitioner had submitted his reply thereby denying all the allegations brought against him. However, not being satisfied with the reply submitted by the petitioner, the Disciplinary Authority i.e. the Chairman of the Bank, had decided to hold a departmental proceeding into the charges brought against the writ petitioner. Consequently, Enquiry Officer and Presenting Officer were appointed and the enquiry proceeding was held. On conclusion of the enquiry proceeding, the Enquiry Officer had submitted report dated 21.01.2023 which was forwarded to the Disciplinary Authority i.e. the Chairman of the Bank. On receipt of the enquiry report dated 21.01.2023, by the order dated 01.02.2023, major penalty was imposed upon the petitioner by the Disciplinary Authority. Aggrieved thereby, the present writ petition has been filed.

3. By referring to the articles of the charges, Mr. Das, learned senior counsel appearing for the writ petitioner submits that the materials on record would clearly go to show that the credit facilities were extended to all the six entities after thorough verification of their credentials by the designated committees and also after carrying out inspection of the units by the authorized inspecting team. Mr. Das submits that his client did not take any decision at the individual level but was merely a member of the recommending committee. Considering the fact that the credentials of the defaulting firms had been duly verified by the successive committees and the loan disbursement was processed on the basis of report of the inspecting team, submits Mr. Das, there was no justifiable ground to initiate the departmental proceeding against the petitioner. By relying upon a decision of the Supreme Court rendered in the case of **Bongaigaon Refinery & Petrochemicals Ltd. and others Vs. Girish Chandra**

**Sarma** reported in **(2007) 7 SCC 206** Mr. Das submits that since the petitioner was a part of a committee, hence, he could not have been singled out and made a scapegoat in the entire process when there is no specific role ascribed to the petitioner in his individual capacity.

4. By referring to the provisions of Rule 10.2(b) of the AGVB Staff Accountability Policy, 2021, Mr. Das, learned senior counsel for the petitioner has further argued that after two regular inspections were conducted pertaining to the disbursement of the loans, there was no scope for the authorities to initiate an enquiry proceeding into the said transactions after the lapse of more than two years since the same was barred under the provisions of the AGVB Staff Accountability Policy, 2021. Notwithstanding the same, the authorities have chosen to initiate the departmental enquiry against the petitioner only to make him a scapegoat. Contending that there is neither any allegation nor any material available on record to indicate fraud, collusion or any malafide action on the part of the petitioner or any of the members of the recommending committee, in view of Clause 10.2(b) of the Policy of 2021, Mr. Das submits that it was not permissible for the authorities to initiate a departmental proceeding in respect of the loan transactions which had taken place more than two years prior to the submission of the charge-sheet.

5. Mr. Das has also invited the attention of this Court to the findings and observations made in the enquiry report to submit that with regard to the Branch inspection reports, the Enquiry Officer had also refrained from recording any finding and had left the matter at the discretion of the Disciplinary Authority, who has also



not dealt with the issue in any manner. As such, submits Mr. Das, the respondents have failed to discharge their obligation of satisfying the mandate of Rule 10.2(b) of the AGVB Staff Accountability Policy, 2021.

6. Mr. Das has also placed reliance on Clause 6.1 of the proceedings of departmental enquiry to submit that the materials available on record were clearly inadequate for waiver of the embargo under Rule 10.2(b) of the AGVB Staff Accountability Policy, 2021. Therefore, the entire enquiry proceeding stood vitiated in the eyes of law. As such, the order of penalty is liable to be set-aside by this Court.

7. Mr. G. N. Sahewalla, learned senior counsel for the respondent Bank, on the other hand, has argued that the other team members of the recommending committee belong to some other bank and as per instructions received by him, enquiry proceeding is being conducted against the said officials as well. However, since they belong to another bank, the outcome of the process is not known to him. As regards the findings of the Enquiry Officer, Mr. Sahewalla submits that three out of the six charges brought against the petitioner have been found to be partially proved and therefore, taking note of the findings and conclusions recorded by the Enquiry Officer, the Disciplinary Authority has rightly imposed the major penalty upon the petitioner. Contending that there is no perversity in the findings recorded in the enquiry report, Mr. Sahewalla has urged that in a matter of this nature, the writ Court, in exercise of jurisdiction under Article 226 of the Constitution, would not interfere with the order of penalty if it is found that charges have been established against the CSO and the punishment is also not disproportionate to the charges brought against him.



8. I have considered the submissions advanced at the Bar and have also gone through the materials available on record.

9. Considering the nature of controversy involved in this proceeding, this Court is of the opinion that it would be necessary to reproduce the articles of charges contained in the charge-sheet dated 30.08.2022. Therefore, relevant part of the charge-sheet contains the article of charges, is reproduced herein below for ready reference :-

**“(A) Article of charges**

*During your tenure of service as Senior Manager, Credit and Recovery from 07.05.2007 to 03.08.2010 (with additional charge of P & D and CS department from 01.12.2010 to 03.08.2011), as Chief Manager (P & D and CS) from 04.08.2011 to 09.12.2011 (with additional charge of credit and recovery department), as Chief Manager (P & D, CS & Recovery) from 11.12.2011 to 18.05.2013, and as Chief Manager (P & D and CS) from 20.05.2013 to 10.12.2014 at Bank's Head Office, you have failed to discharge your duties without negligence with utmost sincerity while recommending loans and advances for sanction. The details of negligence observed in your part are illustrated below :*

**“Account Name : Gargi & Associates Pvt. Ltd.**

**A/C No.: 7281250000073 Sanction date : 28.12.2010**

**B/O Chandmari RO : Guwahati.**

*There was no discussion regarding the margin and its sources in the process note. Also, the credentials of the borrowing company was not verified before sanction of the Limit. You as a recommending authority have failed to ensure proper due diligence before recommending the loan for sanction.*

**Account Name : IR Associates.**

**A/C No.: 7284250000240 Sanction date : 04.10.2013**

**B/O Fancy Bazar RO : Guwahati.**

CIBIL report was not discussed anywhere in the process note. Further, as per statement of account there are only two credit entries amounting to Rs.15 lakh only and both the entries were not related to PWD and IOCL. However, the limit was recommended for enhancement by you within a period of eight months from Rs.65.00 lakh to Rs.100.00 lakhs without any justification or complying with any financial parameters.

**Account Name : Kaushika Tea Industries.**

**A/C No.: 7185250000824 Sanction date : 18.12.2010**

**B/O Moran RO : Dibrugarh.**

Necessary Permission/License for opening tea factory was not obtained from Tea Board. Also there is no discussion regarding draw down schedule for disbursement of Term Loan in the process note. You as a recommending authority have failed to ensure proper due diligence and processing before recommending the loan for sanction.

**Account Name : Progressive Motors.**

**A/C No.: 7220250000040 Sanction date : 11.05.2009**

**B/O Golaghat RO : Golaghat.**

The terms and conditions were not laid down clearly in the power of attorney executed in favour of Mr. Sandip Agarwal. Verification of Genuineness of power of attorney had not been done at the time of sanction of limit. Also, the property under patta no.157 dag no.68/680 belongs to Mrs. Krishna Dol who leased the land to Mr. T. K. Angami, (prop. Of M/S Progressive Motors) for 30 years vide registered deed no.1711/1394 dated 28.09.2000. Thereafter Mr. Angami provided a special power of attorney in favour of Mr. Sandip Agarwal for execution of EM of the property without the consent being taken from Shri Krishna Dal (Lessor) and there is no evidence of joint execution of document with Shri Dol and so, the EM is invalid.

*As per photocopy of hand written sale deed dated 16.06.2005 executed between Mr. T. K. Angami and Mr. Sandip Agarwal for sale of M/s Progressive Motors is not registered with any authority, therefore the transfer of business is*



not valid.

Further, in case of sanction second limit for Rs.178.00 lakh to Mr. Sandip Agarwal it has been seen that Mr. Agarwal applied for change in ownership of M/S Progressive Motors by submitting a sale agreement dated 11.07.2008 between him and Mr. Angami but the change of ownership was not updated in the Trade Certificate.

Also the existence of the mother unit of the MUL Dealership at Dimapur, Nagaland of M/S Progressive Motors was not considered in assessment of WC limit of the concern. Segregation of Current Assets between two units (one at Dimapur and other at Rangajan, Golaghat) was also not considered. You as a recommending authority have failed to ensure proper due diligence and appraisal of the proposal before recommending the same for sanction.

**Account Name : Shree Sanyeeji Rolling Mills.**

**A/C No.: 7284250000268 Sanction date : 05.10.2013**

**B/O Fancy Bazar,Guwahati RO : Guwahati.**

The firm was supposed to tie up with SBI & State bank of Hyderabad for working capital as per the discussions in the lead Bank's process note, but there is no discussion or comments in the process note as to why firm did not take loan from SBI/SBH.

The limit was sanctioned to M/S Shree Sanyeeji Rolling Mills as a partnership firm but as per credit report of CRISIL, it is noticed that the firm got converted to Private limited co. as on 23<sup>rd</sup> January 2012 as per the record available at the MCA site. You, as a recommending authority had failed to gather the correct information. So due diligence regarding the firm/company was not done properly before recommending the loan. The source of Margin Money of the firm was also not discussed anywhere in the process note.

The limit for Rs.1000.00 lakhs to M/S Shree Sanyeeji Rolling Mills as partnership firm was sanctioned on 17.10.2012 by the Board of AGVB. However, as per Certificate of Incorporation dated 23.01.2012 and special resolution of the





company dated 05.03.2012 the existing TMT Rolling Mill unit was taken over by M/S Shree Sanyeeji Rolling Mill. Therefore, the partnership firm which was financed had no existence at the time of sanction of limit. The facts of conversion of partnership to Company was suppressed by the partners of the firm willingly and you as a recommending authorities failed to do proper due diligence of the borrower.

Due diligence of collateral security was not done by you as recommending authority before recommending the loan. It was mentioned in the process note that the bank may accept the title search opinion of the empanelled lawyer/advocate of PNB on the various properties offered as securities by the firm for the aggregate WC credit exposure. As per sanction letter No.AGV/B/CR/LC/17/2012-13 dated 22.10.2012 it was mentioned that M/S Shree Sanyeeji Rolling Mills shall provide a sketch map of the properties, to be certified by the firm, where it has its existing facilities. It should clearly state the access path/route to its unit from the public road. However, as per the sketch map it is found that there is no direct access to some of the properties and some of the mortgaged properties are occupied by other company/firm impacting the salability/marketability of the properties. You as a recommending authority have not ensured the actual position of the properties and relied on the declaration of the firm. Thus the due diligence of the collateral security was not done by you before recommending of the loan for sanction.

**Account Name : Sri Goverdhan Prasad Atal**

**A/C No.: 720330000930 Sanction date : 14.02.2011**

**B/O Jorhat RO : Golaghat.**

Mr. Goverdhan Prasad Atal has been sanctioned a loan for Rs.23.74 lakh for construction of residential apartment by way of taking over from SBI Jorhat Branch and as per statement of account of SBI Jorhat Branch, outstanding balance of the loan account was Rs.47.67 lakh and Drawing power was Rs.41.39 lakh. As per record of recovery, the statement of account and



sanction letter of SBI Jorhat branch, the account of SBI Jorhat Branch was NPA and by violating the lending policy of AGVB the account was taken over with almost six-time enhancement without any justification (vide guideline of Take over finance of AGVB lending policy).

Further, the authenticity of infusion of fund through unsecured loan as per declaration of borrower was not verified by you before recommending the loan for sanction.

Mr. Goverdhan Prasad Atal has been sanctioned a loan of Rs.234.74 lakh for construction of residential apartment and as per sanction letter of SBI, the loan should have been adjusted on 31.08.2013. The rating was assumed as AGVBCR-3 for green field project whereas as per the record of recovery the project should have been completed well before the takeover. The rating has not been made at the actual position i.e. existing balance sheet of the borrower. Hence, you as a recommending authority have failed in ensuring proper appraisal of the proposal before recommending the same for sanction."

10. As has been noted herein above, the Enquiry Officer had found that the first three charges brought against the petitioner i.e. those pertaining to the accounts of (1) M/S Gargi & Associates Pvt. Ltd., (2) M/S IR Associates and (3) M/S Kaushika Tea Industries were partially proved whereas, the remaining charges were found to have been not proved. Based on the aforesaid enquiry report, the Chairman of the Bank, who is Disciplinary Authority, had imposed the following penalty upon the petitioner, which is reproduced herein below :-

**“Reduction of Basic Pay by 1 (one) stage with cumulative effect”**

Consequently, his Basic Pay of Rs.89890.00 plus stagnation Rs.5230.00 drawn in the month of January, 2023, shall come down to Rs.87390.00 plus

stagnation Rs.5230.00 with effect from 01.02.2023. Further, he is debarred from appearing any promotional interview/test of the Bank for a period of 1(one) year, with immediate effect."

11. Mr. Das has candidly submitted that his client is due for retirement on attaining the age of superannuation with effect from 30.11.2023 and hence, that part of the penalty pertaining to his debarment from appearing in promotional interview/ test for a period of one year would not be relevant at this point of time. Although Mr. Sahewalla has argued that notwithstanding the penalty, the petitioner was allowed to participate in the promotional process, this Court does not consider it necessary to enter into that aspect of the matter in this proceeding in view of the categorical submission of Mr. Das that the said aspect of the matter has lost its relevance at this point of time.

12. In so far as the other part of the penalty pertaining to reduction of basic pay is concerned, what is to be noted herein that under the Assam Gramin Vikash Bank Officers and Employees Service Regulations, 2010 (herein after referred to as the Regulations of 2010) the grounds on which penalties can be imposed upon an officer of the Bank is described in Regulation 39, which is quoted herein below :-

*"39. Penalties – Without prejudice to the foregoing regulations of this Chapter, an officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence or who commits acts detrimental to the interest of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other acts of misconduct, shall be liable for any one or more penalties as follows, namely, -- "*

From the scheme of the Regulations of 2010 it is clear that unless the conditions

specified in regulation 39 is met, the question of imposing any penalty upon an employee of the Bank, be it minor penalty or major penalty, would not arise in the eyes of law.

13. From a careful reading of the articles of charges, this Court finds that although there are statements of allegations contained therein, yet, there was no specific charge framed against the petitioner, within the meaning of regulation 39. From the charge memo it is not clear as to in what manner the alleged lapses would amount to misconduct within the meaning of Rule 39. There is also no finding recorded by the Enquiry Officer that the petitioner had violated any of the regulations of the Bank or has acted in a manner contrary to the interest of the Bank or has shown inefficiency or is found guilty of any other form of misconduct including breach of discipline etc. leading to loss being suffered by the Bank. All that the article of charges indicates is certain lapses on the part of the petitioner, in his failure to verify certain documents and/or records which he ought to have done as a member of the recommending authority. However, what is to be noted herein is that as per the materials on record, at no point of time was the petitioner individually processing the loans as he was all along a part of the team of recommending committee which had processed the proposals. That apart, it is also evident from the materials on record that there are other organs of the Bank which were actively involved in processing the loan which included the inspection team. There is nothing on record to show as to in what manner, such other officials had discharged their responsibilities in processing the loans.

14. The Hon'ble Supreme Court has held in the case of **Bongaigaon Refinery & Petrochemicals Ltd. and others** (supra) that where the decision was taken by the committee, one individual member of the committee cannot be held responsible for the decision. What would be significant to note herein is that the materials on record do not even remotely indicate as to what was the decision taken by the petitioner which had caused loss, if any, to the Bank. There is also no individual role ascribed to the petitioner in the entire matter. It cannot, therefore, be said that even a proper charge sheet was served upon the petitioner, giving him an opportunity to effectively defend his cause.

15. Coming to the other argument advanced by Mr. Das by relying on Clause 10.2(b) of the AGVB Staff Accountability Policy, 2021, it would be pertinent to extract Clause 10.2(b) herein below for ready reference:-

*"10.2(b) Further, in case of investigation conducted subsequent to two Regular inspections after sanction/disbursement of credit facilities, no fresh "pre sanction lapses" other than those pointed out through Regular Inspection Report be considered for fixing of accountability unless there is element of fraud/malafide etc., within the following stipulations – (i) If the fraud has been perpetrated by the borrower on the bank, the clause of two successive inspection report shall continue. (ii) In case of malafide action or collusion of staff with the borrower or fraud is perpetrated on bank by the staff members, then the time line shall not be applicable. (iii) If a fraud is perpetrated/committed by any staff member, stern action will be taken against such staff member in terms of this policy."*

16. A plain reading of Clause 10.2(b) of the Policy goes to show that the said policy clearly puts in place a time line beyond which, the Bank would be debarred



from enquiring into any lapses regarding sanction of loan and/or pre-sanction lapses.

The only exception provided under the aforesaid clause is pertaining to cases of fraud or collusion involving the Bank's employees or staff.

17. As noted herein above, there is no allegation of fraud and/or collusion against the petitioner in this case. If that be so, it is apparent on the face of the record that the departmental proceeding was clearly time barred and therefore, hit by Clause 10.2(b) of the AGVB Staff Accountability Policy, 2021 which clause was obviously binding even on the Bank and its officials.

18. The petitioner has also taken the plea of violation of the principles of natural justice due to non-furnishing of relevant documents along with the charge-sheet. However, such allegation has been denied and disputed by the Bank. Be that as it may, for the reasons indicated herein above, this Court is of the unhesitant opinion that the departmental proceeding conducted against the petitioner was not only in breach of embargo imposed by Clause 10.2(b) of the AGVB Staff Accountability Policy, 2021 but the same was also conducted in violation of the principles of natural justice as well as the provisions of the Service Regulations, 2010 thus causing serious prejudice to the interest of the petitioner. That apart, there was no justifiable ground for the Disciplinary Authority to impose the major penalty upon the petitioner in the manner indicated herein above,

19. In the result, this writ petition succeeds and is hereby allowed. The order of penalty dated 01.02.2023 is hereby set aside.

20. Before parting with the record, it is made clear that since the decision of the



authority not to promote the petitioner, pursuant to his participation in the promotional process, is not the subject matter of challenge in this writ petition, this Court refrains from expressing any opinion on the said aspect of the matter and leaves the parties at liberty to avail appropriate legal remedy, as may be available to them, under the law, if so advised.

Writ Petition stands allowed.

Original records be returned.

Parties to bear their own cost.

**JUDGE**

*T U Choudhury/Sr. PS*

**Comparing Assistant**