

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K.V. ARAVIND



**WRIT APPEAL NO.138 OF 2024 (GM-RES)**

**BETWEEN:**

- 1 . VIJAYA BANK  
(NOW KNOWN AS BANK OF BARODA)  
AN UNDERTAKING OF THE  
GOVERNMENT OF INDIA  
INCORPORATED UNDER THE  
BANKING COMPANIES  
(ACQUISITION AND TRANSFER OF  
UNDERTAKINGS) ACT, 1980  
HAVING ITS HEAD OFFICE AT  
NO.41/2, M.G. ROAD  
BANGALORE - 560 001  
REPRESENTED BY ITS  
GENERAL MANAGER.
  
- 2 . VIJAYA BANK  
(NOW KNOWN AS BANK OF BARODA)  
FOREX AND TREASURY MANAGEMENT  
DIVISION, 6<sup>TH</sup> FLOOR, VIJAYA BANK

HEAD OFFICE, 41/2, M.G. ROAD  
BANGALORE - 560 001  
REPRESENTED BY ITS  
GENERAL MANAGER.

... APPELLANTS

(BY SRI S.R. KAMALACHARAN, ADVOCATE FOR  
SRI PRADEEP S. SAWKAR, ADVOCATE)

**AND:**

1 . ABHIMANYU KUMAR  
S/O SRI ASHOK PANDEY  
AGED ABOUT 35 YEARS  
MUH-BARADARI KATARA  
PO-PS BHAGWAN BAZAR DISTRICT  
CHAPTRA (SAM)  
BIHAR - 841 301.

... RESPONDENT

(BY SMT. BHARMAL SHIRIN SHABBIRBHAI, ADVOCATE  
FOR SRI MENTO ISAC, ADVOCATE)

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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF  
THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO  
SET ASIDE THE ORDER DATED 19.04.2023 PASSED BY  
THE LEARNED SINGLE JUDGE IN W.P. No. 6063/2014 AND  
DISMISS THE SAID WRIT PETITION AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT, COMING ON FOR  
PRONOUNCEMENT THIS DAY, JUDGMENT WAS  
PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE  
N. V. ANJARIA  
and  
HON'BLE MR JUSTICE K.V. ARAVIND

**C.A.V. JUDGMENT**

(PER: HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE N. V. ANJARIA)

The present appeal is directed against the judgment and order dated 19.04.2023 passed by learned Single Judge, whereby writ petition came to be allowed and learned Single Judge held that the appellant-Bank-the respondent in the writ petition, since was not justified in recovering the bond amount of Rs.3,00,000/-, it was required to refund the said amount to the petitioner.

2. Two prayers were made in the petition. First was to set aside condition in Clause 11(k) of the letter of selection/appointment issued to the petitioner. It was secondly prayed to set aside the indemnity bond dated 02.11.2011 insofar as it related to recovery of sum of Rs.3,00,000/-. The petitioner prayed to direct the respondents to refund the amount.

2.1 The original petitioner-respondent herein who is a Chartered Accountant, came to be selected for the post of Probationary Manager (Generalist) in the appellant-Vijaya Bank. Pursuant to selection letter dated 07.10.2011, he joined services on 02.11.2011.

2.2 As per Clause 11(k) of the selection letter, the petitioner is required to serve the Bank for a minimum period of three years from the date of joining and was further required to execute the indemnity bond for Rs.3,00,000/-. It was the condition that the amount will be required to be paid, if he leaves the service or resigns from the services of the Bank before the stipulated period of three years.

3. It is the case of the petitioner that prior to his appearing in the selection process by the appellant-Bank, he had applied in August 2011, for employment in the Steel Authority of India Limited (SAIL). The SAIL issued offer letter of appointment on 02.04.2012. It was stated that having received the said letter of offer, the petitioner opted to join the services under the same. The petitioner stated that therefore, he tendered his resignation from the services of the appellant-Bank, on 05.04.2012 stating that he had preferred employment under the SAIL, instead of

the appellant-Bank for the reason that the posting as well as the scale of pay are favourable to him.

3.1 The petitioner thereafter requested the appellant-Bank to relieve him from the employment. The petitioner addressed communication dated 29.05.2012 asking for waiver of the Indemnity Bond. The request of the petitioner was refused by the Bank on 06.06.2012. The Bank also sent the reminder to the petitioner to pay the Bond amount. The petitioner further stated that on 13.07.2012, he was forced to pay the Bond amount which he paid by cheque. The petitioner was given relieving letter dated 21.07.2012. The petitioner subsequently joined the services under the SAIL on 28.08.2012.

3.2 The petitioner's case proceeds to state further that in the month of September 2012, he came to know about the Department of Public Enterprise Guidelines (DPE Guidelines) dated 29.07.2004 and that the said guidelines permitted, according to the petitioner, transfer of Indemnity Bond amount as well as the remainder period of the Bond. The petitioner issued notice dated 25.05.2013 to the Bank seeking transfer of the Bond amount. The request and the claim was refused by the Bank by reply dated 19.08.2023.

3.3 Contending in his petition that he was in unequal position when sought for employment under the appellant Bank, that demand of indemnity bond was an unconscionable contract and that he was made to sign the selection letter by coercion, the petition was filed to claim refund of the amount.

3.4 Contesting the petition, the appellant Bank denying the allegations about the coercion and unconscionable agreement, etc., or that the Bank forced the petitioner to sign the selection letter and conditions therein, submitted that the DPE Guidelines were not applicable to the Bank and that the Bank was under the Department of Finance to be governed accordingly.

4. Learned Advocate Mr. S.R. Kamalcharan for learned Advocate for Mr. Pradeep S Sawkar for the appellant submitted, assailing the impugned judgment and order of learned Single Judge that Clause No.11(k) in the selection letter given to the petitioner was explicit and was binding to the petitioner, requiring him to pay the sum of Rs.3,00,000/- in the event he leaves services of the Bank. It was submitted that having agreed to serve the Bank for a period of three years under the conditions of the Bond, the petitioner voluntarily

opted to discontinue the services of the Bank and joined the other employer.

4.1 It was submitted that, not only the petitioner was bound by the condition, but he also paid the Bond amount. Decision of the Supreme Court in **Cauveri Coffee Traders, Mangalore vs. Honor Resources (International) Company Ltd. [(2011) 10 SCC 420]** for the proposition that when a party to a contract knowingly accepts the benefits of the contract or conveyance or an order, he cannot turn around at a later stage to deny the binding effect thereof.

4.1.1 It was submitted that the post on which the petitioner joined was of Manager (Generalist) which was a post with technical responsibilities and for which the Bank imparted training to the petitioner by investing the amount and incurring the expenses. It was sought to be submitted that in that light also, the payment of the bond amount was justified to be nature of compensation stipulated in the conditions of contract for loss or damage. It was submitted that validity of Clause 11(k) is not under challenge.

4.2 On the other hand, learned Advocate Smt. Bharmal Shirin Shabbirbhai for learned Advocate Mr. Minto Isaac for the

respondent-petitioner supported the judgment and order of learned Single Judge raising all the contentions which was canvassed before learned Single Judge. It was contended that the petitioner was forced to sign the Indemnity Bond which was unjust and unfair. It was sought to be contended that the Bank had an upper hand and he was in unequal position when sought for employment with the appellant Bank, having less bargaining power.

4.2.1 It was next submitted that the Indemnity Agreement was an agreement in the nature of a restraint agreement and amounted to unconscionable contract. Learned Advocate relied on DPE Guidelines, on which learned Single Judge rested his reasoning. It was submitted that the guidelines permitted the transfer the amount as well as the period of the Bond when an employee of the public sector entity joins the services of the Central Government, State Government and autonomous body. According to the contention of the petitioner, he is entitled to the said benefit and it was not permissible for the Bank to ask him to pay the bond amount.

5. Clause 11(k) in the selection letter reads as under,

"You are required to produce certain  
certificate/documents and execute

bonds/agreements at the time of joining the services of the Bank, the particulars of which are furnished hereunder:

(a) Certificates in original along with two Photostat copies as proof of having passed the Final examination of C.A (qualified as Chartered Accountant) organised by the 'Institute of Chartered Accountants of India'

(b) SSLC or its equivalent certificate on original along with two Photostat copies thereof in proof of your age and date of birth. Certificates in original along with two Photostat copies thereof in support of your educational qualifications.

(c) Six copies .....

**(k) You are required to serve the Bank for a minimum period of 3 years from the date of joining the bank and should execute an indemnity bond for Rs.3.00 lakhs. The said amount has to be paid by you in case you resign from the services of the bank before completion of the stipulated minimum period of 3 years. For this purpose, you have to bring a blank non-judicial stamp paper of requisite value procured in the State of your joining (ie., Karnataka @ Rs.100/-)"**

5.1 The respondent-petitioner signed the indemnity bond on 02.11.2011. The indemnity bond contained the following terms and conditions,

"(i) The Officer shall serve the Bank for a minimum period of three years.

(ii) The Officer shall not leave the services of the Bank during the initial period of three years without the written consent of the Bank Management.

(iii) The Officer agrees, undertakes and binds himself/herself to indemnify and pay a sum of Rs.3.00 lakhs (Rupees Three Lakhs only) to the Bank by way of compensation/liquidated damages in the event of leaving/resigning from the services of the Bank before putting minimum service of three years aforesaid."

5.1.1 The aforesaid Clause in the selection letter and stipulation in the bond are clear. It is stated that if the petitioner wants to leave the service before completion of three years, he will have to pay the bond amount of Rs.3 lakhs. In other words, the selection and appointment of the petitioner to the posts of Manager was on condition that he would serve with the bank for minimum three years. Admittedly, the petitioner left before three years and joined the service under SAIL. On similar lines were the terms and conditions contained in the bond which bind the petitioner.

5.2 The petitioner accepted those conditions at the time of entering the services of the bank. He consciously accepted the selection on such terms and conditions including the bond amount and the payability thereof. Having agreed to and

accepted the conditions, it is not open for the petitioner to resile therefrom when admittedly he left the bank before three years without completing the agreed and stipulated period of service.

5.3 It was sought to be contended by the petitioner that he was made to sign the bond and the bond conditions out of coercion. Not only that there is nothing to suggest that the petitioner is pressurized or acted under coercion to enter the service with the aforesaid conditions, the bald averments in this regard amount to approbating and reprobating. The petitioner blew hot and cold in his conduct to suit his convenience.

5.4 It is well settled that the plea of coercion, duress or undue influence has to be cogently established. The Supreme Court in **New India Assurance Co. Ltd. vs. Genus Power Infrastructure Ltd. [(2015) 2 SCC 424]**, after discussing the decisions on the line, held that 'it is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prima facie establish the same by placing material before the Chief Justice/his designate'. The Court was addressing the issue about receipt of payment under insurance policy and that the

respondent had signed the letter of subrogation in favour of the appellant.

5.4.1 The Supreme Court observed,

“...the plea raised by the respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence.”

(para 10)

5.5 Decision of the Madras High Court in **Bindu Kelunni vs. Blue Dart Aviation Ltd.**, which was A.S. No.77 of 2012 decided on 02.06.2017, contained the similar facts, though it arose from the civil proceedings. The trial court had held that the appellant-defendant was liable to pay certain sum with interest for committing breach of the bond executed by her. It was held that the submission on the part of the defendant that the bond was obtained by misrepresentation was not acceptable, for, the defendant had undertook to pay certain

sum in the event of her leaving the services of the plaintiff within three years. It was stated that abrupt exit by her resulted into inconvenience and loss to the employer and that the amount of bond was a pre-estimate of damages.

5.6 The plea raised by the petitioner that the clause in the selection letter and the conditions in the bond were obtained from him by way of misrepresentation or through undue influence, was taken for the sake of taking. The petitioner while tendering his resignation by letter dated 05.04.2012 had confirmed that he was willing to serve for three months notice period and that will pay the bond amount of Rs.3,00,000/-. Extracting the same from the said letter of resignation of the petitioner,

“I am willing to resign from my office due to my selection with SAIL. I further wish to let you know that I am ready to pay the exit amount as referred in the terms and conditions of my appointment letter. I am ready to serve the three month's notice period starting from 05.04.2012.”

5.7 The Department of Public Enterprises Guidelines would not apply. Learned Single Judge could not but misdirected himself in relying on the said Guidelines to hold that the Bank was in error in demanding and collecting the sum of

Rs.3,00,000/-. The petitioner was intimated by letter dated 6<sup>th</sup> June 2012 that the DPE Guidelines were not applicable since the banks were not covered thereunder.

5.7.1 The public sector banks which are the nationalized Banks are guided by the instructions issued by the parent Ministry which is the Department of Finances and Services and Department of Economic Affairs (Banking Division), Ministry of Finance. The guidelines by the Department of Public Enterprises/Bureau of Public Enterprises, Ministry of Heavy Industries and Public Enterprises are not applicable to public sector Banks. They are applicable only to the public sector enterprises which have different service conditions packages and lateral movement of public officials.

5.7.1 The relevant part of the guidelines figures on record which also mentions that '2. All the administrative Ministries/Departments are requested to kindly issue necessary instructions accordingly to public sector enterprises under their administrative control'. The bank is not the department of Government nor is a public sector enterprise in that sense to which the aforementioned Public Sector Guidelines aforementioned may apply.

6. For all the aforesaid reasons and discussion, learned Single Judge committed an evident error in allowing the writ petition of the respondent-petitioner. The impugned judgment and order dated 19.04.2023 is liable to be set aside. The same is accordingly set aside.

7. The present appeal stands allowed.

**Sd/-  
(N.V. ANJARIA)  
CHIEF JUSTICE**

**Sd/-  
(K.V. ARAVIND)  
JUDGE**

KPS