
(1993) 09 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 1794/1993 (R)

Bikram Purti and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-1993

Acts Referred:

Citation : (1993) 09 PAT CK 0027

Final Decision : Dismissed

Judgement

S.B. sinha, J.—Prayer of the petitioners in this application is that the departmental proceedings pending against them be quashed and/or stayed pending trial in criminal case. Petitioner No. 1 is a Head Constable and petitioner No. 2 is a Nayak in the Railway Protection Force and posted at Chakradharpur. A first information report (F.I.R) as contained in Annexure -1 to the writ application was lodged alleging, inter alia, that a theft of heavy iron materials of the railway was detected and 16 persons were arrested. During inquiry, the complicity of the petitioners also came to light and it was alleged that the petitioners had taken Rs. 50Q/- from the said thieves so as to enable them to stealthily take away the railway property. They were found covered with blankets in a second-class waiting room and a sum of Rs. 778/- was recovered from petitioner No. 1. Petitioner No. 2 also confessed his guilt that he had taken Rs. 500/- from an outsider,

2. On the basis of the said allegation, apart from lodging a criminal case, departmental proceedings had also been initiated against the petitioners and charge-sheets were issued against them on May 20, 1993 as contained in Annexures-2 and 271 to the writ application. The petitioners filed a representation on May 29, 1993 that the departmental proceedings be stayed as they were facing criminal cases.

3. Mr. P.S. Dayal, learned Counsel for the petitioners, had submitted that in view of the decision of Hon"ble Supreme Court in Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, departmental proceedings as against the petitioners

should be stayed.

4. Kuseswar Dubey "s case (supra) arose out of a suit wherein an order of injunction was passed by the learned trial court. In that, case, it was held as follows:- (PP 471-473) :

"According to Mr. Jain for the appellant, the legal position settled by this Court supported the stand that the disciplinary action had to be stayed till the criminal case was over. He relied upon the decision in The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Tata Oil Mills Co. Ltd. Vs. Its Workmen, He also referred in the course of his submission to the decisions of different High Courts in support of his propositions. Two cases out of the several ones of the High Courts he relied upon are Kusi Ram v. Union of India 1974 LIC 553 and Project Manager ONGC v. Lal Chand Wazir Chand Chandna 1982 (1) SLR 654 Pathak CJ. as he then was in the Himachal case indicated that fair play required the postponing of the criminal trial and Thakkar, J. as our learned brother then was in the Gujarat case had also taken a similar view.

We would like to point out that there are authorities in support of the position that there is nothing wrong in parallel proceedings being taken, one by way of the disciplinary proceeding and the other in the criminal Court. Reference may be made to decision of this Court in Jang Bahadur Singh Vs. Baij Nath Tiwari, and some decisions of High Courts, such as, Rama P.C. v. Superintendent of Police, Kolar and Anr. AIR 1967 Mys (54) -220, Ali Mohd. and Ors. v. Chairman, T. A. and C., Udampur 1981(2) SLR 225 Moulindra Singh v. The Deputy Commissioner and Ors. (1973 LIC (6) 1564) and Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another,

Mr. Jain contended that we should settle the law in a straight jacket formula as judicial opinion appeared to be conflicting. We do not propose to hazard such a step as that would create greater hardship and individual situations may not be available to be met and thereby injustice is likely to ensure."

In the The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan,

"It is true that very often employers stay enquiries pending the decision of the criminal trial Courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision atleast of the Criminal Trial Court before taking action against an employee. In Sri Bimal Kanta Mukherjee v. Newsman Printing Works (1956 I LLJ 453) this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not sure, it would be advisable for the employer to await the decision of the trial Court, so that the defence of the employee in the criminal case may not be prejudiced,"

In Tata Oil Mills" case (supra), Gajendragad-kar, CJ, spoke for a three Judge Bench thus (Tata Oil Mills Co. Ltd. Vs. Its Workmen, :

"There is yet another point which remains to be considered. The Industrial

Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the _ said criminal proceedings. As this Court has held in the Delhi Cloth and General Mills, Ltd. v. Kushal Bhan, (supra) it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case....."

In Jang Bahadur's case (supra) this Court said:--

" The issue in the disciplinary proceedings is whether the employee is guilty of the charge on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a Court. But the pendency of the Court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal Court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending Court proceeding. The employee is free to move the Court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.

The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should be or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not intend to lay down any general guideline."

5. It is, therefore, clear that in that case, no law as such has been laid down. However, in the Delhi Cloth & General Mills Ltd. v. Kushal Bhan, (supra) and Tata Oil Mills Co LTD v. Its workmen (supra) the Supreme Court has clearly pointed out that it is a matter between the employer and the employee. It is, therefore, clear that the question as to whether the departmental proceedings should be stayed pending criminal trial or not depends upon facts and circumstances of each case and no hard and fast rule can be laid down therefor.

6. The petitioners are the members of the Central Railway Protection Force. They

are facing charges for dereliction of duties and for having accepted an illegal gratification.

7. Their service conditions are governed by statutes and statutory rules. They do not have any legal right to get the departmental proceeding stayed. It is well known that before a writ of mandamus can be issued, the petitioners must show existence of legal right in themselves and corresponding legal obligations in the respondents. Further, the delinquent must be involved in a case of grave nature which involves complicated question of fact and only in such case, it has been held by the Supreme Court in *Tata Oil Mills and Delhi Cloth Mills Ltd.* (supra) that it would be desirable that the employer himself should stay the departmental proceedings. Even in terms of the decision of the Supreme Court, the petitioners do not have any legal right which can be enforced by issuance of a writ of mandamus. This Court can take judicial notice of the fact that some times criminal cases remain pending for years together. In such a situation, it may not be prudent to stay the departmental proceedings for such a long time so as to enable the delinquent to continue to be in service and to receive salary and/or subsistence allowance if he is placed under suspension, as the case may be.

8. Further, this aspect of the matter has also been considered by a Division Bench of this Court in *Gaffar Khan v. Bharat Coking Coal Limited* in 1989 C.W.J.C.1841 of disposed of on March 7, 1990. In the aforementioned case, this Court upon taking into consideration the decisions referred to hereinbefore, held as follows:-

"20. It is, therefore, clear that the question as to whether the disciplinary proceeding should be stayed by the employer in a given case or not depends upon the facts and circumstances of each case, and as has been held by the Supreme Court itself that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and /or general application without regard to the particularities of the individual situation. A similar view has been taken by the Madras High Court in a recent decision reported in 1990 (1) LLN 121 (*S. John v. Indian Airlines Corpn.*).

9. We do not find any merit in this application. The application is accordingly dismissed.

Narayan Ray, J.

10. I agree.