

(1989) 12 OHC CK 0021

In the Orissa High Court

Case No : OJC No"s. 232 to 245 and 893 to 895 of 1989

Hindustan Aeronautics Employees' Association and Another	APPELLANT
Vs	
Hindustan Aeronautics Limited and Another	RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Citation : (1990) 1 OLR 337

Hon'ble Judges : D.P. Mohapatra, J;A. Pasayat, J

Bench : Division Bench

Advocate : P. Palit, J. Patnaik and H.M. Dhal, for the Appellant; Y.S.N. Murty and K.T. Rao, for the Respondent

Judgement

A. Pasayat, J.—In all these writ applications, Petitioner No. 1 is a Trade Union espousing cause of employees of Hindustan Aeronautics Limited, Koraput Division functioning at Sunabeda in the district of Koraput (hereinafter referred to either as Hal" or employer") and Petitioner No. 2 is an employee. The Petitioners canvass the oft posed plea regarding, non-desirability and impropriety of simultaneously continuing departmental proceedings and criminal investigation trial. Since the points in dispute are identical, the writ applications were heard analogous and are disposed of by this judgment which shall govern all the cases, The factual averments are more or less undisputed except some amount of difference as to the subject-matter of adjudication in the departmental proceedings and criminal investigation trial.

2. The Petitioners claim that on false allegations of improper behaviour and misconduct of Petitioner No. 2 in each of the cases, F.I.R., was lodged and consequently investigation, by police authorities were set in motion. On the basis of a charge-sheet submitted, the matter is pending adjudication in G.R. Case No. 651 of 1988 in the Court of the learned Sub-divisional Judicial Magistrate. Koraput. On the self-same allegations relating to the same alleged incident, departmental proceedings have been initiated and the Petitioners have been required to show cause. According to the Petitioners, continuance of two parallel

proceedings, one in the Court of law and another by way of disciplinary proceedings is unauthorised and would cause irreparable prejudice to the concerned employees. It is submitted that defence of the employees concerned will be greatly impaired and they may be required to disclose their defence in advance in departmental proceedings if the same are not stayed pending completion of the trial by the criminal Court. Strong reliance is placed on a decision of the Supreme Court in the case of *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, , which according to the Petitioners highlights the desirability of keeping departmental proceedings frozen till disposal of the proceeding in the Court of law. On the other hand, the employer-HAL asserts that the Supreme Court never laid down that in all cases departmental proceedings are to be stayed notwithstanding the nature of allegation and the points involved for adjudication. On the other hand, it is submitted, the Court has recognised the rights of the employer to continue the departmental proceedings notwithstanding the pendency of a proceeding before a Court of law. It is also asserted that there is no basis for the employee concerned to claim that his defence shall be prejudiced as he has already submitted a reply in response to the show cause issued in the departmental proceeding. Further the subject-matters of dispute being different, the ratio of the decision in the case of *Kusheshwar Dubey* (supra) has no application. Reliance has been placed on the decision of various Courts in support of the contention that there, according to the Petitioners, after consideration of the aforesaid decision of the Supreme Court, it has been held that departmental proceedings can be continued.

3. On consideration of the rival contentions, the only question that emerges for adjudication is as to under what circumstances two proceedings can be continued simultaneously, and whether there ought to be a stay of the departmental proceeding until adjudication of other proceedings in the Court of law in all cases. In our view, if the case is of a grave nature or involves question of facts and law which are not simple, 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. Where, however, nature of the case is very simple, the employer cannot be faulted if it refused stay of departmental enquiry awaiting decision of the Court. Similar view was expressed by the Supreme Court in the case of *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, . Even in the case of *Kusheshwar Debey* (supra) relied on by the Petitioners, the Supreme Court held that there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated. But there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case in the latter case of cases it was for the delinquent employee, to seek such an order of stay or injunction from the Court. It is neither possible nor advisable to evolve hard and fast straight jacket formula applicable to all the cases and by general application, without regard to the particularities of individual situation.

The issue in the disciplinary proceedings is whether the employee is guilty of the

charges 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. As observed by us above, pendency of the criminal proceeding in all cases does not bar taking of disciplinary action. Power of taking such action is vested in the disciplinary authorities. Civil or criminal Court has no such power. Initiation or continuance of disciplinary proceedings in good faith cannot be said to be a calculated move to obstruct or interfere with the course of justice in the pending, Court proceeding. Our view finds support from observations to similar effect in the case of Jang Bahadur Singh Vs. Baij Nath Tiwari, . The only consideration which weighs merit is as to whether by continuance of the disciplinary proceeding, defence of the delinquent-employee shall be prejudiced in the other trial. Judged in the above background, we find that the concerned employees in the present cases are not right in seeking temporary discontinuance of disciplinary proceedings as they have already submitted their replies to the show cause notices issued to them. Mere assertion that situations forming the basis of departmental proceedings and proceeding in the Court of law are interlinked or intertwined is not always of consequences, unless it is established that continuance of both the proceedings would cause prejudice to the defence of the delinquent employee. There is a vast difference between a misconduct which forms the subject-matter of a departmental proceeding and an offence necessitating the trial in a criminal Court. In the case of the former, the employee is answerable to the master as a servant and in the case of the matter as an individual he is answerable in the society as a whole under the penal laws of the land. Section S.A. Venkataraman Vs. The Union of India (UOI) and Another, . However we find that pursuant to the undertaking given by the employer, departmental proceedings have been kept in abeyance. In such view of the matter, we direct that departmental proceedings may continue, but no final orders shall be passed therein till disposal of G.R. Case No. 651 of 1983 by the learned Sub-divisional Judicial Magistrate, Koraput. To avoid unnecessary delay in the matter, we direct that the same may be disposed of as expeditiously as possible but not later than 30-4-1990. The parties shall appear before the learned Sub-divisional Judicial Magistrate, Koraput, with a copy of our order on 10-1-1990 and move the Court for disposal of the case by the time stipulated by us.

The writ applications are accordingly disposed of, but there shall be no order as to costs.

D.P. Mohapatra, J.

4. I agree.

Writ applications disposed of.