
(2014) 11 MAD CK 0302

In the Madras High Court

Case No : Writ Petition Nos. 10242, 13703, 14435, 14436 and 15055 to 15058 of 2014, 15713, 16945, 16946 and 17360 of 2014

K. Rengarajan

APPELLANT

Vs

Indian Overseas Bank

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 MAD CK 0302

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Judgement

M.M. Sundresh, J.—Writ petitions in W.P. Nos. 10242, 13703, 14435 and 14436 of 2014 have been filed by the petitioners challenging the impugned notices issued by the respondent, which are notices regarding personal hearing on the proposed punishment of dismissal in pursuant to the enquiry conducted. Though W.P. No. 14436 of 2014 has been filed challenging the notice issued requiring personal hearing for the proposed punishment of dismissal, the same has become infructuous in view of the final orders of dismissal passed on 30.5.2014.

2. Writ petitions in W.P. Nos. 15055 to 15058, 15713, 16945, 16946, 17360 of 2014 have been filed by the petitioners forbearing the respondent from proceeding with the Departmental enquiry in pursuant to the registration of the F.I.Rs against them.

3. In view of the fact that common arguments have been made by both the counsel appearing for the respective parties, petitioners, being the employees of the respondent and the respondent being the same in all these cases, they have been taken up together and disposed of by way of a common order.

4. Brief facts of the case:

The petitioners herein are employees of the respondent. Incidentally they are also the office bearers/Regional Committee members of Indian Overseas Bank

Union. In total, there are about 237 Assistant General Secretaries/Regional Committee members of the Union, of which, the petitioners are few of them. Steps have been taken by the respondent to absorb temporary messengers and sweepers working in the respondent Bank subject to their fulfillment of recruitment norms. 438 temporary messengers and 539 part time sweepers were absorbed in the year 2010-2011. Several complaints have been received by the respondent over the alleged malpractices in the absorption. It has come to light that certificates produced by the temporary staff were forged and fabricated. By following the due process of law, such persons, who had illegal entry in pursuant to the forged/fabricated documents, were terminated. Those persons made complaints stating that the documents have been forged/fabricated at the instance of the petitioners, who received money and in turn promised to get employment. Accordingly, the petitioners have been suspended followed by Departmental proceedings. On the complaints given by the erstwhile employees, who were terminated, first information reports have been registered against the petitioners. Based upon the available materials, charges have been framed against the petitioners. In most of the cases, charges were framed before the registration of the complaints and in few other cases, thereafter. The investigation taken up by the Agency is yet to be completed in all these cases. Following are the factual particulars with respect to all the petitioners before this Court:

5.1. W.P. Nos. 10242, 13703, 14435 and 14436 of 2014:-

5.1.1. Submissions of Petitioners:-

Mr. K.M.Vijayan, learned Senior Counsel appearing for the petitioners submitted that the proceedings are tainted with malafides. Since the petitioners are office bearers/Regional Committee members, in order to brake the Union, the respondent has initiated action. The petitioners do not have any role in the appointments. The orders impugned show predetermination of mind. A notice seeking personal hearing cannot be an empty formality. The respondent has also prejudged the entire issue. Therefore, there is no point in going before the said authority seeking adjudication. In support of his contention, learned Senior Counsel has made reliance upon the following decision:

K.I. Shephard and Others Vs. Union of India (UOI) and Others,)'''.

5.1.2. Submissions of respondent:

Mr. N.G.R.Prasad, learned Senior Counsel appearing for the respondent submitted that the writ petitions, as filed, are premature. Of the 237 Assistant General Secretaries/Regional committee members, proceedings have been issued only against few of them only based upon the materials available against them and there is no malafide involved. The action has been taken against the petitioners for their alleged unlawful activities as the employees of the respondent and not as the Office bearers of their union. The impugned notices have been issued in accordance with Clause 12 of the Bipartite settlement with

respect to disciplinary action. The enquiry reports have been given to the petitioners, their representations were considered and before imposing the punishments, notices requiring personal hearing were issued only on the quantum of punishment. Therefore, such notices cannot be challenged in the eye of law. The petitioners have not established malice either on fact or law. A mere notice cannot be interfered by invoking the discretionary and extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In support of his contention, learned counsel has made reliance upon the following decisions:

""(1) Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, and
(2) Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, .""

5.1.3. Discussion:-

In pursuant to the charges framed against the petitioners, enquiry was proceeded with through the Enquiry Officer. The petitioners fully participated in the enquiry. The Enquiry Officer submitted his reports. Copies of the reports have been furnished to the respective petitioners. Thereafter, the representations were considered. The respondent, after considering the reports of the Enquiry Officers vis-a-vis the explanations given by the petitioners, accepted the findings rendered therein and before proceeding to impose the punishment of dismissal, issued notices requiring the personal hearing on the proposed punishment. Clause 12 of the Bipartite settlement relating to disciplinary action, the relevant portion of which is apposite here, is extracted hereunder:

""12. The procedure in such cases shall be as follows:

(a)

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.""

Accordingly, the personal hearings have been given to the petitioners on the proposed punishment after finding that the charges levelled against them have been established. Therefore, the impugned proceedings have been issued in consonance with clause 12 of Bipartite settlement. Such an action cannot be termed as a predetermined one. Notice of hearing is only on the proposed punishment and not otherwise. The petitioners' representations were looked into on the charges levelled. After agreeing with the reports of the Enquiry Officer and in terms of Clause 12 the notices have been issued on the proposed punishment. Therefore, this Court is of the view that the contention of the petitioners cannot be sustained in the eye of law. As rightly submitted by the learned Senior Counsel appearing for the respondent, a mere notice issued calling for personal hearing cannot be made amenable to the jurisdiction of this Court while exercising its discretionary power of this Court under Article 226 of the Constitution of India. A fruitful recapitulation of the decision of the Supreme Court in Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, at following paragraphs is apposite:

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others*, *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, *Ulagappa and Others Vs. Divn. Commr. and Others*, *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet."''

The decision relied on by the petitioners has no application to the case on hand. There is no disciplinary proceeding involved therein. There is also no specific clause as that of clause 12 in the present cases. Hence, this Court is of the view that the writ petitions as filed are premature in nature.

5.1.4. Coming to the question of malafides, it is not clear as to whether the petitioners are alleging legal or factual malice. The respondent has not been arrayed in his personal capacity. Be that as it may, when malice is alleged, it is for the person, who alleges so to establish the same. Except the averment in the affidavit that the petitioners are office bearers, no other materials are available to come to the conclusion of malice. Of the 237 office bearers, only few of them were proceeded with. Though the learned Senior Counsel for respondent submitted that there are substantial material including huge amount of money found in the accounts of some of the petitioners, this Court is not willing to go into the merits of the case. Suffice it to hold that the petitioners have not made out a case to impute the respondent with malafides. Therefore, the said contention raised is also rejected.

5.1.5. However, while dismissing the writ petitions in W.P. Nos. 10242, 13703 and 14435 of 2014, the petitioners therein are given a further period of four weeks from the date of receipt of copy of this order to appear before the respondent and put forth their reply. Accordingly, the writ petitions in 10242,

13703 and 14435 of 2014 are dismissed. The other writ petition in W.P. No. 14436 of 2014 is also dismissed as it has become infructuous.

5.2. W.P. Nos. 15055 to 15058, 15713, 16945, 16946, 17360 of 2014:-

5.2.1. Submissions of Petitioners:

As the facts involved in both the criminal cases and the Departmental proceedings are one and the same, it would be just and proper to direct the respondent not to proceed further with the Departmental proceedings. By making the petitioners to face the enquiry, their valuable right in the trial before the Criminal Court would be substantially affected, as their defence would be exposed and it would cause prejudice. Considering the facts and circumstances of the case, the respondent will have to be directed to stop further proceedings awaiting the decision of the jurisdictional Criminal Court. Clause 4 of the memorandum of settlement entered into between the Management and the Union dated 10.4.2002 prohibits action by the respondent departmentally pending a criminal case. The said clause is binding on the respondent. In support of the said submission, learned Senior Counsel appearing for the petitioners made reliance on the following decisions:

""(1) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, ,

(2) Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others, and

(3) Indian Overseas Bank and S. Venkatraman, Enquiry Officer, Indian Overseas Bank Inquiry Cell, Industrial Relations Department Vs. P. Ganesan and Others, .""

5.2.2. Submissions of respondent:

The writ petitions are misconceived on facts. Clause 4 of the memorandum of settlement dated 10.4.2002 has got no application. The complaints have been given by the third parties. They were ex-employees, who were dismissed by the respondent. The facts involved and the scope of both the proceedings are different. The rule of evidence in both the cases is also different. There is no bar for proceeding departmentally. In most of the cases, proceedings being initiated much prior to the registration of the F.I.R, the period of one year mentioned as mandatory in clause 4 by the memo dated 10.4.2002 is also over. The police is yet to file charge sheet. There is no complicated question of fact and law involved. Therefore, no interference is required. In support of his contention, the learned counsel relied on the following decisions:

""(1) Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others, ; and

(2) Sh. R.K. Singla Vs. Punjab National Bank and Another, .""

5.2.3. Discussion:-

The employees, who were dismissed by the respondent after coming to the

conclusion that the documents produced by them are forged/fabricated, made complaints to the police against the petitioners. The respondents after having found the malpractices suspended the petitioners much prior to the registration of the criminal complaints by the third parties. As seen from the details in the tabular column above, in most of the cases, except a few, charges have been framed much prior to the registration of the F.I.R. In all these cases, the charge sheets are yet to be filed. Till the charge sheets are filed, there could be no proceedings before the Court. Therefore, there is no question of starting of trial at this stage as the final reports have not been filed. These are the admitted facts.

5.2.4. Coming to Clause 4 of the memo of settlement dated 10.4.2002, it deals with the action on the part of the respondent against an employee to get him prosecuted for an offence. Only in such cases, where steps have been taken by the respondent either to prosecute or to get him prosecuted, clause 4 would come into operation. The said clause deals with a waiting period for the Management. The period mentioned therein is one year. Therefore, even assuming that the complaint given by the third party is deemed to be complaint of the respondent, the period of one year having been over long time back, the petitioners cannot make any reliance upon the same. Admittedly, in the present cases, final reports are yet to be filed. Therefore, there is no question of any "criminal trial" before the competent court. The clause merely deals with a criminal trial. It is not in dispute that the respondent is the competent authority to initiate the departmental proceedings. Since the power of the respondent is not in dispute, it cannot be contended that merely because a third party has given FIR, till a final report is filed, taken on file before the jurisdictional Court and the trial is completed, no action can be taken by the Management. Therefore, the reliance made by the petitioners on Clause 4 of the settlement dated 10.4.2002 is hereby rejected.

5.2.5. Though much arguments have been made on the decision rendered by the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , as followed in subsequent decisions of the Apex Court as well as this Court, they have no relevancy or applicability to the present cases. The stage of trial before the Criminal Court is yet to come. One cannot speculate about the proposed action to be taken by the investigating agency on the complaints registered against the petitioners. Even otherwise, staying of the Departmental proceedings is not a matter of right. In other words, such an yardstick is an exception to the general rule of simultaneous proceedings as held by the Supreme Court in Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others, . On perusal of the charges framed against the petitioners vis-a-vis the criminal cases registered at the instance of the third parties it is seen that they stand on a different footing, as indicated in the above tabular column. The petitioners have not shown that the charges involve complicated questions of fact and law. This Court also do not find any complicated issues of fact and law. It is in the interest of both sides that departmental proceedings are to be completed

promptly. Therefore, the submission made on behalf of the petitioners that the departmental proceedings will have to be kept in abeyance till the conclusion of the criminal trial has got no factual or legal basis and hence deserves to be rejected. Accordingly W.P. Nos. 15055 to 15058, 15713, 16945, 16946, 17360 of 2014 are dismissed.

However, there is no order as to costs. Consequently, all the connected miscellaneous petitions are closed.