

(1993) 08 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2194 of 1993 (R)

Kedar Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Citation : (1993) 08 PAT CK 0003

Final Decision : Dismissed

Judgement

S.B. Sinha and Amir Das, JJ.—In this application the Petitioner has prayed for staying of the order of the Senior Superintendent of Police, Ranchi contained in Ranchi District order No. 3791/92 against the Petitioner on account of his alleged involvement in Criminal case instituted against him vide Bariattu P.S. Case No. 92/92 u/s 304(B) I.P.C. and for a direction to stay the departmental proceeding against him being Departmental Proceeding No. 48/93.

2. The Petitioner was posted at Ranchi. He is now posted at Daltonganj. His brother-in-law Sri Yogendra Singh lodged a First Information Report alleging therein that the Petitioner and his family members had killed his sister Sunita Devi by sprinkling Kerosene Oil on her, whereafter the order of suspension passed against him was released.

3. The Respondent No. 4, thereafter directed initiation of a departmental proceeding against him. By an order dated 16.11.92 a charge-sheet has also been submitted against him.

4. From a perusal of the charge-sheet it appears that the Petitioner was charge-sheeted for remaining absent for 12 days, (ii) although at the relevant time he was residing in Police Quarter No. 34 but he did not inform about the same to the Senior Officers of the Police Line.

5. The Petitioner allegedly after the order of suspension was passed did not join the post and had been absconding.

6. Mr. Jitendra Nath, the learned Counsel appearing on behalf of the Petitioner has submitted that in view of the decision of the Supreme Court of India in *Kuseshwar Dubey v. Bharat Coking Coal Limited* reported in 1988 B.L.J.R. 755 : 1989 P.L.J.R. 1 (SC), departmental proceedings as against the Petitioner should be stayed.

Kuseshwar 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:

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 General Mills Ltd. v. Kushal Bhan* (1) and *Tata Oil Mills Co. Ltd. v. Its workmen* (2). 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* (3) and *Project Manager, ONGC v. Lal Chand Wazir Chand Chandna*(4). Pathak, C.J., 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 v. Baij Niwari* (5) and some decisions of High courts such as *Rama P.C. v. Superintendent of Police, Kolar and Anr.* (6) *Ali Mohad, and Ors. v. Chairman T.A. and C. Udampur* (7) *Moulindra Singh v. The Deputy Commissioner and Ors.* (8) and *Shaikh Kasim v. Superintendent of Post Office, Chinglepet* (9).

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 ensue.

In the *Delhi Cloth and General Mills"* Case (*Supra*), it was pointed out by this Court:

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 at least of the Criminal Trial Court before taking action against an employee. In *Sri Bimal Kanta Mukherjee v. M/s. Newsman Works* (1) 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 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....

In *Tata Oil Mills*" case (Supra), Gajendragadkar, C.J., spoke for a three Judge Bench thus:

There is yet Anr. 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*, it is desirable that if the incident giving rise to a charge framed against 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 actions 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 proceeding 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, strait-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 think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

It is therefore, clear that in that case, no law as such has been laid down. However, in the *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, and *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , 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.

7. The Petitioner is a member of Police Force. He is facing the charges as mentioned in the charge-sheet and as referred to hereinbefore.

8. Admittedly the Petitioner's conditions of service are governed under Bihar Police Manual. The Petitioner did not have thus a legal right to get the departmental proceeding stayed.

9. It is well known that before a writ of mandamus can be issued, the Petitioner must show existence of legal right in himself 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 Mill (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 Petitioner does not have any legal right to 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 to receive salary and/or subsistence allowance if he is placed under suspension, as the case may be.

10. Mr. Jitendra Nath, however referred to Rules 844 and 847 of the Bihar Police Manual.

11. From a perusal of the aforementioned Rules, it would appear that the same have no application in the facts and circumstances of the case.

In fact, the provisions of the said rules militated against the contention of the Petitioner.

12. For the reasons aforementioned there is no merit in this application which is accordingly dismissed.