

(1997) 09 GUJ CK 0013
In the Gujarat High Court
Case No : L.P.A. No. 1331 of 1996

Kirankumar R. Baxi

APPELLANT

Vs

United Commercial Bank and Others

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1947 — Section 5

Citation : (1998) 1 GLR 256

Hon'ble Judges : S.D. Pandit, J;C.K.Thakker, J

Bench : Division Bench

Advocate : K.H. Baxi, for the Appellant; Tushar Mehta and Unserved, for the Respondent

Judgement

C.K. Thakker, J.—This appeal is filed against an order passed by learned single Judge in Special Civil Application No. 4431 of 1996 on September 10, 1996.

2. The appellant is original petitioner. He was serving in United Commercial Bank ("Bank" for short) at Kalol. A show cause notice was issued to the appellant on 1st October 1986 and he was called upon to explain certain irregularities alleged to have been committed by him. Time was sought by the appellant which was granted. It appears that the Central Bureau of Investigation (C.B.I) filed criminal cases under the provisions of the Indian Penal Code and Prevention of Corruption Act, 1947 being Special Case Nos. 45 and 1985, 7 of 1990 and 16 of 1991 against the appellant. All the three cases are pending.

3. During the pendency of criminal cases, fresh charge-sheet came to be issued against the appellant on September 24, 1994 calling upon him to submit his explanation as it was decided to hold departmental inquiry against him. At that stage, the appellant approached this Court for quashing and/or staying departmental proceedings on various grounds.

4. From the order passed by the learned single Judge, it appears that though the

charge-sheet was issued on September 24, 1994, till the date of the order, i.e., till September 10, 1996, the appellant had not submitted reply to the charge-sheet.

5. It was argued before the learned single Judge that since criminal cases were filed against the appellant and were pending departmental inquiry should not be proceeded with. It was also contended that since there was gross and undue delay of about ten years on the part of the Bank in initiating proceedings against the appellant and as noting was done for long time in respect of incidents of 1983, the inquiry must be quashed. The learned single Judge, after considering the facts and circumstances, dismissed the petition.

6. When the matter was placed before the Division Bench, it was stated that one Mr. N. P. Vyas, whose case was similar to the case of the appellant and against whom also, proceedings were initiated, had approached this Court, His petition was entertained by the learned single Judge and ad interim relief was granted. The Division Bench, therefore, issued notice on November 5, 1996. Today the matter is called out for hearing.

7. Mr. Baxi, learned Counsel for the appellant submitted that looking to the charges levelled against the appellant in criminal cases as well as in departmental proceedings, it is apparent that they relate to the same incident. In these circumstances, prejudice will be caused to the appellant if departmental proceedings will not be stayed. Mr. Baxi submitted that the appellant will have to disclose his defence, which would come in his way in criminal trial.

8. We do not see any substance in the contention of Mr. Baxi. Looking to the charges levelled in criminal cases, it is clear that they relate to offences punishable under Sections 467 468 471 420 read with Section 120-B of the Indian Penal Code, 1860, as also u/s 5 of the Prevention of Corruption Act, 1947. So far as departmental proceedings are concerned, they relate to misconduct said to have been committed by the appellant, an employee of the Bank. It is alleged that the appellant failed to ensure and project the interest of the Bank, that he did not discharge duties with utmost integrity, honesty, devotion and diligence; he grossly abused and misused his official position and powers leading to pecuniary loss to the Bank and thereby he acted in a manner unbecoming of a Bank Officer. It, therefore, cannot be said that the charges in criminal cases and allegations in departmental proceedings are same or even similar.

9. So far as legal position is concerned, it is fairly well settled. The Honourable Supreme Court considered this aspect in two recent decisions in State of Rajasthan Vs. B.K. Meena and others, and in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., . In B. K. Meena (supra) after considering previous decisions, their Lordships observed :-

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal for both proceedings to go on simultaneously and then say that in certain situations, it may not be "desirable",

"advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, in a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, "advisability", "desirability", or "propriety" as the case may be, has to be determined in each case taking into consideration all the facts and circumstances, of the cases One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly over-reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interest of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that person accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long period pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

10. The Court was mindful of the fact that sometimes departmental proceedings are initiated on false or frivolous charges, or conducted with oblique motives. But

if it is so, It is all the more necessary and desirable to finalise them expeditiously. It is not only in the interest of administration but in the interest of the officer charged. "Delay in such cases really works against him."

11. Then considering nature and scope of criminal prosecution and departmental proceedings, the Court stated :

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would mean his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed".

12. In Mohd. Yousuf Miya (Supra), quoting the above observations with approval and reiterating the principles formulated". Their Lordships stated that they were in respectful agreement with the view expressed and law laid down in B. K. Meena (supra).

13. From the above cases, it is clear that not only both the proceedings can simultaneously be taken but in the opinion of the Apex Court, ordinarily departmental proceedings must be concluded as expeditiously as possible and they should not be stayed on the ground of pendency of criminal trial. Considering the ambit and scope, nature of allegations; mode of enquiry, object underlying such proceedings; standard of proof, burden of proof; order to be passed; etc., departmental proceedings should not be stayed merely on the ground of pendency of criminal prosecution.

14. In our opinion, therefore, in dismissing the petition, the learned single Judge has not committed any error of law and we do not see any infirmity in the said order. L.P.A., therefore, deserves to be dismissed and accordingly dismissed. Notice is discharged. No order as to costs.

15. So far as Mr. N. P. Vyas is concerned, we are told by the learned Counsel for the respondent-Bank that by now that petition is also dismissed by the learned single Judge and as far as he is aware, no Letters Patent Appeal is filed.

16. Appeal dismissed.