
(2013) 04 PAT CK 0089
In the Patna High Court
Case No : CWJC No. 499 of 2013

Lalit Kumar Prasad Singh

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Banking Regulation Act, 1949 — Section 36AD
Constitution of India, 1950 — Article 19, 226

Citation : (2013) 3 PLJR 451

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Abhinav Srivastava, for the Appellant; S.D. Sanjay, Akash Chaturvedi in 499 and 570, Tara Kant Jha in 570, for the Respondent

Judgement

Birendra Pd. Verma, J.—In both these writ petitions common questions of fact as well as law are involved. Therefore, with consent of the parties both these matters were heard together, and are being disposed of by this common order. The petitioners of both the writ petitions are Senior Management Grade Scale-V Officers of the respondent State Bank of India (in short "the Bank"), and both of them at the relevant time were posted and working as Assistant General Manager, State Bank of India, Local Head Office, Patna. On 28.8.2012 the petitioner of C.W.J.C. No. 499 of 2013, namely, Lalit Kumar Prasad Singh and petitioner of C.W.J.C. No. 570 of 2013, namely, Anirudh Akhauri, are said to have been holding the post of President and General Secretary respectively of the Central Committee of State Bank of India Officers Association (Patna Circle) (in short Association).

2. The petitioner in both these writ applications have separately approached this Court under Article 226 of the Constitution of India questioning the validity, propriety and correctness of the letter dated 27.9.2012, separately issued to them by the Disciplinary Authority and General Manager, Network-III, State Bank of India, Local Head Office, Patna, whereby both of them have been served with

a charge sheet containing articles of charge and statement of imputation of misconduct against both of them and thereby a disciplinary proceeding in terms of Rule 68(1)(i) of the State Bank of India Officers Service Rules (hereinafter referred to as "Service Rules") has been initiated separately calling upon them to submit their written statements of defence within fifteen days from the date of receipt of the said letter. Both the petitioners have prayed that the aforesaid charge-sheet dated 27.9.2012 and the disciplinary proceeding Initiated against them be set aside, as on the basis of articles of charges they cannot be said to have committed any misconduct under the Service Rules.

3. Though, facts stated in both the writ petitions are almost similar and identical, yet, for convenience, the facts appearing in C.W.J.C. No. 570 of 2013 are being noticed for an effective decision on the issues raised on behalf of the parties in both these writ petitions, unless contrary facts have been pleaded in connected matter.

4. Both the petitioners claim that they are active members of the Association, which is the only recognized Officers' Association within the State of Bihar and Jharkhand. It is the case of the petitioners that they have been holding important offices of the aforesaid Officers Association from time to time, and as stated above, on the relevant date one of them was the President and other one was the General Secretary of the Central Committee of Patna Circle of the said Association. According to the petitioners, in response to the call of the All India State Bank Officers' Federation to stage a protest meeting against the proposal of the Chairman of the respondent Bank for keeping the branches open on all seven days in a week, on 28.8.2012 during the lunch time, a protest meeting was organized at Local Head Office, Patna of the respondent Bank, which was addressed by the petitioners in the capacity of office-bearers of the Association and they reiterated the demand of only five days banking. It is claimed by the petitioners that staging protest meeting against the management's proposal for seven days banking and participation in the same was not in individual capacity as an Officer of the Bank, rather it was in the capacity of an office-bearer of the said recognized Association. It is further claimed that the protest meeting on 28.8.2012 was held not only at Local Head Office at Patna of the respondent Bank, rather protest meeting was organized all over the country.

5. Initially, by letter dated 30.8.2012 (Annexure-2) and again by letter dated 22.9.2012 (Annexure-3) issued by the Deputy General Manager and Circle Development Officer of Local Head Office, Patna of the Bank, the petitioners were informed that demonstration held by their Association on 28.8.2012 within the Bank premises/campus at Local Head Office, Patna and shouting of slogans and incidental actions amount to indiscipline and has resulted in lowering down the Bank's image in the eye of public at large and Bank's customers. The petitioners were called upon to desist from such behavior and not to repeat the same in future. The petitioners took the aforesaid letters as advisory in nature and were under the bona fide impression that no further action would be taken. Suddenly,

by the impugned letter dated 27.9.2012 (Annexure-4 in C.W.J.C. No. 570 of 2013 and Annexure-2 In C.W.J.C. No. 499 of 2013), the Disciplinary Authority and General Manager, Network-III, Local Head Office, Patna of the Bank, initiated a disciplinary proceeding in exercise of his powers under Rule 68(1)(i) of the Service Rules and charge-sheet containing articles of charge, statement of Imputation of misconduct, lists of documents and witnesses were served upon both the petitioners separately and both of them were called upon to submit their written statements of defence within 15 days. In response to the aforesaid charge memo, the petitioners claim to have submitted their written statements of defence within the time prescribed denying the charges, and asserting therein that they have not committed any misconduct under the provisions of the Service Rules and, therefore, the disciplinary proceeding itself be dropped.

6. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioners in both the cases, has submitted that if articles of charges and statement of imputation of misconduct are read together, then it is apparent that the petitioners are sought to be proceeded in the instant disciplinary proceedings for their participation in the protest meeting dated 28.8.2012 held at the Local Head Office of the Bank at Patna. It is contended that the protest meeting was held during the lunch time in exercise of their legal and constitutional rights, being the office-bearers of a recognized Association. Therefore, according to him, they cannot be said to have committed any misconduct under the meaning of Service Rules. It is next submitted that articles of charges are so vague that it cannot be effectively answered and, there be no useful purpose shall be served by continuing with the aforesaid disciplinary proceeding and the same is fit to be set aside at the very threshold. In support of his above contentions, he has placed reliance on the judgments of the Hon"ble Apex Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, , *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, , *Sawai Singh Vs. State of Rajasthan*, , and *Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy*, . He has placed heavy reliance on a Division Bench judgment of Calcutta High Court in *Dr. U.N. Biswas Vs. Union of India and Others*,

7. Mr. Tara Kant Jha, learned Senior Counsel, and Mr. S.D. Sanjay, learned counsel, both appearing on behalf of the respondents, have strongly opposed the prayers made in both the writ applications. It is submitted on behalf of the respondents that the petitioners have not stated the facts correctly and if rules 50(4), 50(5), 50(6), 54(1), 54(2) and 66 of the Service Rules are read conjointly, then it would be apparent that on the basis of materials available, both the petitioners have committed misconduct and, therefore, they are being subjected to a disciplinary proceeding validly in terms of Rule 68 of the Service Rules. According to them, a disciplinary proceeding cannot be permitted to be challenged at the very threshold unless and until it is wholly without jurisdiction. It is contended that, in fact, no cause of action has arisen for the petitioners to approach this Court at this stage against issuance of charge-sheet only. The issues raised on behalf of the petitioners are issues of facts and these are yet to

be tested and crystallized by the Inquiring Officer with participation of the petitioners in the disciplinary proceedings initiated against them. It is highlighted that at the initial stage of a disciplinary proceeding, on the basis of the defence of a delinquent, the powers of judicial review is not required to be exercised by the High Court. However, according to them, on conclusion of the disciplinary proceeding, if final order is passed against the petitioners, then they shall have liberty to challenge the same in appeal before the appellate authority in terms of Rule 69 of the Service Rules, and if still aggrieved, then they can assail the validity and correctness of the orders before the High Court and at that stage all the questions raised on behalf of the petitioners can be appropriately considered and decided in accordance with law. On the basis of these submissions, besides others, learned counsel appealing on behalf of the respondents have prayed for dismissal of both the writ petitions with a direction to the petitioners to co-operate for early conclusion of the disciplinary proceeding. In support of their above contentions, the learned counsel appearing for the respondents have placed reliance on the judgments of the Hon"ble Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, *Union of India (UOI) and Others Vs. Upendra Singh*, *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others*, *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, *State of Orissa and Another Vs. Sangram Keshari Misra and Another*, and *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha*, . Apart from the above, reliance has also been placed on an unreported Division Bench judgment (of which I was a Party) of this Court in L.P.A. No. 1195 of 2011 and heavy reliance has been placed on a judgment and order dated 19.12.2012 passed by a learned Single Judge of the High Court of Madhya Pradesh at Jabalpur in Writ Petition Nos. 21358 of 2012 and 21359 of 2012.

8. It would be relevant to mention here that though learned counsels appearing on behalf of the respondent submitted that by holding protest meeting within the premises of the Bank the petitioners are liable to be prosecuted u/s 36-AD of the Banking Regulation Act, 1949, but it was fairly conceded by them that with respect to the protest meeting dated 28.8.2012 no criminal prosecution under Section 36-AD of the aforesaid Act has been launched by the respondent Bank or its functionaries either against the petitioners or against any other members of the Association.

9. It is claimed by the petitioners that protest meeting on 28.8.2012 was organized during the lunch time in support of their legitimate demands in which the petitioners and other members of the Association participated in exercise of their fundamental rights guaranteed under Article 19 of the Constitution of India. Therefore, according to the petitioners, they cannot be said to have committed any misconduct under the meaning of Service Rules and cannot be proceeded in the disciplinary proceedings in question. However, from perusal of the articles of charge and statement of imputation of misconduct, it does not appear that the

said demonstration on 28.8.2012 was held during the lunch time only, rather time during which demonstration was held, has not at all been indicated in the charge memo. Therefore, this is an issue of fact, which requires evidence. Whether the petitioners have discharged their duties with utmost devotion and diligence, and, whether they acted in a manner unbecoming of a Bank official, are also issues of facts, which again require evidence from both sides. Unless and until the issues of facts are crystallized by the Inquiring Officer on the basis of materials produced by the parties, violation of the provisions under rules 50(4), 50(5) and 50(6) read with Rule 66 of the Service Rules cannot be properly and effectively appreciated and adjudicated upon at this stage.

10. Chapter-XI of the Service Rules is with the heading Conduct, Discipline and Appeal. Rule 50 provides for general observance of good conduct, discipline, integrity, diligence and fidelity, etc. Rule 54 provides for participation in demonstration, association. Rule 66 defines misconduct. Rule 68 provides for a decision to initiate and procedure for disciplinary action and Rule 69 of the Service Rules provides for an appeal against punishment or suspension. For better appreciation of the issues involved in the present proceedings Rule 50(4), 50(5), 50(6), 54(1), 54(2) and 66 of the Service Rules are reproduced hereinbelow:--

50(4). Every Officer shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank official.

50(5). Every Officer shall maintain good conduct ad discipline and show courtesy and attention to all persons in all transactions and negotiations.

50(6). Every Officer shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.

54(1). No Officer shall engage himself or participate in any demonstration which is prejudicial to the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign State, public order, decency or morality, or which involves contempt of the court, defamation or incitement to an offence.

54(2). No Officer shall join, or continue to be a member of an association, the objects or activities of which are prejudicial to the interest of the sovereignty and integrity of India or public order or morality.

66. A breach of any of the provisions of these Rules shall be deemed to constitute misconduct punishable under Rule 67.

11. As indicated above, the question as to whether the petitioners have observed good conduct, discipline and integrity as required of them in terms of Rules 50(4), 50(5) and 50(6) of the Service Rules, are dependents on the issues of proven facts. According to the petitioners, the protest meeting was organized only during lunch time, but that is not being accepted by the respondents. The articles of charge as also statement of imputation of misconduct, which are part of the charge sheet issued to the petitioners, are contrary to the defence taken by the petitioners and, therefore, these issues are required to be tested and crystallized by the Inquiring Officer on the basis of materials produced by the parties and only thereafter, it can be concluded that the petitioners have committed any misconduct or not.

12. It is true that the petitioners, being citizens of India, have fundamental rights to freedom of speech and expression, to assemble peacefully and without arms, to form associations or unions as provided under Article 19 of the Constitution of India, but the aforesaid fundamental rights of a citizen can be regulated by imposing reasonable restrictions. One must bear in mind that the petitioners are not only the citizens of India, but they are also the Officers of high rank/scale of the respondent Bank. They owe certain duties towards the Bank and its well being. Their livelihood is dependent on the well being of the Bank and its financial position. Interest of customers of the Bank cannot be allowed to be compromised in the name of holding protest meeting during bank's working hours. Apparently there is a relationship of Master and Servant between the petitioners and the Bank. Master is required to take care of the Interest of its servant, but at the same time, servant is also required to protect the interest and well being of its Master. In fact, survival and well being of the Bank vis-?-vis its employees are inter-dependent. Neither the interest of the Bank can be protected in isolation nor the employees in isolation can prosper and can claim better amenities. In fact, financial growth of the Bank and well being of its employees are two sides of the same coin and are fully dependent upon each other.

13. Now, coming to the judgments cited by the parties, this Court finds that ratio laid down by the Hon"ble Apex Court in *The Manager, Govt. Branch Press vs. D.B. Belliappa* (supra) are not applicable in the facts and circumstances of the present case particularly at the present stage. In the cases of *A.L. Kalra vs. The Project and Equipment Corporation of India Ltd* (supra), *Transport Commissioner, Madras-5 vs. A. Radha Krishna Moorthy* (supra) and *Sawai Singh vs. State of Rajasthan* (supra), it was held by the Hon"ble Apex Court that on the basis of vague charges the departmental inquiry may vitiate, but in several other judgments of the Hon"ble Apex Court interference at initial stage of inquiry has been deprecated. The issues of vagueness or otherwise have been left to be decided after enquiry report is submitted and final order is passed by the

disciplinary authority. It has been consistently held by the Hon''ble Apex Court that disciplinary proceeding at its initial stage can be interfered with in exercise of powers of judicial review at the very threshold only if the order is wholly without jurisdiction. At this stage I am tempted to refer to the judgment of the Hon''ble Apex Court in *State of Uttar Pradesh vs. Shri Brahm Datt Sharma* (supra). Paragraph 9 of the judgment would be relevant and is reproduced herein below:--

The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice.

14. Aforesaid principles have further been reiterated by the Hon''ble Apex Court in *Union of India vs. Upendra Singh* (supra). Paragraph 6 of the judgment squarely covers the issues raised in the present proceeding and is, therefore, reproduced hereinbelow:--

In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court.

15. The Hon''ble Apex Court in the case of *Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh* (supra) has deprecated in strong words about entertainment of a writ petition by this Court against a show cause notice issued by the competent authority. It has been held that at that stage, a writ petition under Article 226 of the Constitution of India against a show cause notice may be entertained, if it is shown to the Court that the authority has no power or jurisdiction to enter upon the inquiry in question. In all other cases, it is

only appropriate that party should be asked to show cause and raise all the objections including the question of jurisdiction, and in the event of adverse decision, it would be open to him to challenge the said order either in appeal or revision or in appropriate cases by invoking jurisdiction under article 226 of the Constitution of India. The Hon"ble Apex Court in *Union of India vs. Kunisetty Satyanarayana* (supra), *State of Orissa vs. Sangram Keshari Misra* (supra) and recently in *Secretary, Min. of Defence vs. Prabhash Chandra Mirdha* (supra) has consistently held that issuance of charge-sheet in a disciplinary proceeding cannot be subject matter of challenge in a writ proceeding at an initial stage unless it is established that same has been issued by an authority not competent to initiate the disciplinary proceeding. Writ petition against show cause notice or charge-sheet at that stage has been held to be premature as it does not give rise to any cause of action. It has further been held that mere issuance of show cause notice or charge-sheet does not infringe right of any person and only when final order imposing some punishment or otherwise is passed adversely affecting a party, the said party can be said to have the valid grievance giving him right to assail the said order in a writ petition under Article 226 of the Constitution of India and not otherwise. The Hon"ble Apex Court has recently crystallized the law in paragraph-13 in *Secretary, Ministry of Defence vs. Prabhas Chandra Mirdha* (supra), which is being reproduced hereinbelow:--

Thus, the law on the issue can be summarised to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

16. After having considered the submissions of the learned counsel appearing for the parties, on consideration of materials available on record, and in view of judicial pronouncements made by the Hon"ble Apex Court, referred to above, as also the judgments of different High Courts including our own High Court, I am of the considered opinion that initiation of disciplinary proceeding against both the petitioners and issuance of charge-sheet to them by the impugned letter dated 27.9.2012 cannot be interfered with at this stage on the basis of a probable defence of the petitioners.

17. Consequently, both the writ petitions have to fail at this stage. However, the petitioners shall be at liberty to raise all the issues, which have been raised in these proceedings before the Inquiring Officer/authority as also before the disciplinary authority at appropriate stages. It is expected that the issues raised on behalf of the petitioners shall be appropriately considered by the authorities

concerned and they shall not be, in any way, prejudiced by rejection of these writ petitions at this stage and shall consider all the issues with open and independent mind. In the result, both the writ petitions are dismissed with observations and directions made above. But, there shall be no order as to costs.