(2002) 05 RAJ CK 0105

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 127 of 2002

National Insurance Company Ltd. and Others APPELLANT

Vs

Mohinder Kumar Bali RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25

Citation : (2003) 1 LLJ 633 : (2003) 2 RLW 829 : (2002) 3 WLC 450

Hon'ble Judges : Shiv Kumar Sharma, J;F.C. Bansal, J

Bench : Division Bench

Advocate : Alok Sharma, for the Appellant; Prem Asopa and J.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—The appellants in the instant Special appeal have assailed the order of the learned Single Judge whereby the charge sheet issued against the respondent by the appellants was quashed. After hearing the submissions in detail we allowed the appeal and passed the following order :

"The appeal stands allowed. The impugned order of the learned Single Judge dated November 24, 2001 shall stand set aside. The petitioner-respondent if he so chooses shall be at liberty to file reply to the charge sheet before the concerned authority and the learned authority shall consider the reply without being swayed by the order passed by us, as expeditiously as possible. The reasons shall follow."

2. The reasons in support of our findings are thus :

Briefly stated the facts of this case are that, one Lallu Prasad Gupta applied for loan under ''Pradhan Mantri Rojgar Yojana'' from the State of Bank of Bikaner and Jaipur, Sikandara Branch, District Dausa (in short the ''Bank''). The Bank approved the loan of Rs. 56,000/- for a cloth shop. Lallu Prasad Gupta got his shop insured with the appellant National Insurance Company Limited (for short the appellant Company) for the period August 8, 1995 to August 7, 1996 for a risk of Rs. 50,000/-. Lallu Prasad Gupta in his application form gave his address as Gurjar Bainada, Tehsil Sikrai, Distt. Dausa. A theft took place in the cloth shop of Lallu Prasad Gupta situated at Sikandra Chauraha which was run by him in the name and style of M/s. Khandelwal Textiles in his proprietorship. Lallu Prasad Gupta lodged an FIR on October 23, 1995 and initiated a claim through his Bank to the appellant company on October 25, 1995. After submission of the claim form, Shri S.S. Khandelwal, Surveyor of the appellant Company has conducted a survey and placed his report on February 17, 1996. One Pankaj Malik, Chartered Accountant, was appointed by the Divisional Manager of the appellant Company to carry on investigation in the case in regard to loss sustained by Lallu Prasad Gupta, proprietor of M/s. Khandelwal Textiles, Sikandara Chauraha, Sikandara, due to theft at his shop. After submission of the report and the claim case, the papers were placed before the respondent Mohinder Kumar Bali, who at the relevant time was Divisional Manager of the appellant Company at its Divisional Office, Sawai Madhopur for approval of the claim which was approved by him.

3. The respondent has been given a chargesheet under Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (for short the Rules of 1975) stating that when he was posted as Divisional Manager Sawai Madhopur, he approved the claim of Lallu Prasad Gupta in most casual manner. The shop where the theft took place was situated at Geejgarh Road, Sikandara Chauraha, Sikandara, whereas the address on the cover note for the property insured was given as Village Gurjar Bainada, Tehsil Sikrai, District Dausa and thus before approving the claim the respondent was required to send the claim file to the competent authority in the Regional Office of the appellant company for rectification in the policy for change in the situation of risk. The respondent approved the claim of Rs. 50,000/- simply on the basis of assessment given by the Surveyor which included stock belong to M/s. Lallu Prasad Gupta and M/s. Khandelwal Textiles whereas the fact was that the appellant company''s liability was only to the tune of Rs. 27,786/-. The respondent acted in gross negligent manner while discharging his duties and violated the norms and procedure prescribed by the appellant company for settlement of the claim.

4. The appellant company filed reply to the writ petition raising preliminary objection that the writ petition is premature. In the reply it was averred that the issuance of charge sheet in a case where prima facie material exists is beyond the scope of the judicial review. It was also averred that the respondent has not challenged the jurisdiction of the appellant company in issuing the charge sheet. The exercise of statutory powers by the appellants cannot be hobbled by such misdirected challenges which are made primarily to delay the proceedings. Examining the correctness of the charges particularly at the stage of framing of the charges is beyond the scope of the judicial review. The grounds stated in the writ petitions were denied by the appellant company.

5. The learned Single Judge after dealing with the facts stated in the writ petition

held that the approval of claim by the respondent does not constitute any misconduct, therefore the enquiry commenced against him by issuance of the charge sheet tantamounts to exercise of powers by the authority illegally. The approval of the claim without completing formality can at best be called technical flow, an error of judgment, and does not bear forbidden quality or character of misconduct.

6. We have heard both the parties and scanned the material on record.

7. The appellant company filed the special appeal raising the following grounds:-

(i) The learned Single Judge ought not to have interfered with the charge sheet at the stage of its issuance and should have, held that the writ petition as filed was premature. The respondent had not even filed a reply to the charge sheet before approaching this Court under Article 226 of the Constitution of India.

(ii) The learned Single Judge ought not to have entered into disputed question of fact in the exercise of jurisdiction under Article 226 of the Constitution of India and proceed to arrive at factual findings wholly perverse in nature.

(iii) There was no challenge on the jurisdiction of the authority issuing the charge sheet.

(iv) Even otherwise from the facts and record and the admission of the respondent with regard to the change of location of the shop after insurance and the doing of additional business therefrom in the name of M/s. Khandelwal Textiles was sufficient to prima facie make out a case of gross negligence against the respondent in passing the claim without reference to the Regional Manager of the appellant company.

8. Mr. Alok Sharma learned counsel for the appellant company cited before us Air India Ltd. v. M. Yogeshwar Raj (1), Union of India and Anr. v. Ashok Kacher (2), Madan Mohan Choudhary v. State of Bihar and Ors. (3) and Dy. Inspector General of Police v. K.S. Swaminathan (4).

9. On the other hand Mr. Prem Shankar Asopa, learned Senior Advocate cited Zunjarrao Bhikaji Nagarkar v. Union of India and Ors. (5), and Ranjit Thakur v. Union of India (6), and submitted that the findings of the learned Single Judge are perfectly justified in quashing the charge sheet.

10. It appears from the perusal of the writ petition that the respondent has not questioned the jurisdiction of the disciplinary authority to issue the impugned charge sheet. In a similar situation their Lordships of the Supreme Court in AIR India Ltd. v. M. Yogeshwar Raj (supra) indicated that where the jurisdiction of the disciplinary authority was not questioned the High Court should not have pre-empted a factual decision of the disciplinary authority on the issues when the competence of the disciplinary authority was not in doubt.

11. In Union of India and Anr. v. Ashok Kacher (supra) it was indicated thus:-

"The respondent has the full opportunity to reply to the charge sheet and to raise all the points available to him including those which are now urged on his behalf. This was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge sheet and the appropriate course for the respondent was to file his reply to the charge sheet and invite the decision of the disciplinary authority."

12. In Dy. Inspector General of Police v. K.S. Swaminathan (supra) their Lordships of the Supreme Court propounded thus :

"It is settled law by a catena of decisions of this court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the tribunal or the court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges i.e. whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo."

13. In the instant case, as already stated the appellant company allthough submitted detailed reply and raised preliminary objection to the maintainability of the writ petition but the reply of the appellant company was not at all considered by the learned Single Judge. The learned Single Judge entertained the writ petition on the ground that approval of claim by the respondent Divisional Manager does not constitute any misconduct, therefore the enquiry commenced against him by issuance of the charge sheet tantamounts to exercise of powers by the authority illegally. The technical flow, an error of judgment, does not bear forbidden quality or character of misconduct. With respect we find unable ourselves to agree with this finding. We are of the view that when jurisdiction of the disciplinary authority was not questioned learned Single Judge should not have preempted a factual decision of the disciplinary authority.

14. The respondent has full opportunity to reply to the charge sheet raising all the points available to him and the appropriate course for the respondent was to file reply to the charge sheet and invite the decision of the disciplinary authority thereon.

15. The citations on which reliance is placed by the learned counsel for the respondent are distinguishable. In Zunjarrao Bhikaji Nagarkar v. Union of India and Ors. (supra), it was indicated that "in other words, to maintain any charge sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g. in the nature of some extraneous consideration

influencing the quasi judicial order." Ratio of this citation is not applicable to the facts of the instant case.

16. We do not want to express our opinion into the merits of the charge sheet as it may affect the inquiry but in our considered opinion this is not a stage at which truth or otherwise of the charges ought to be looked into.

17. In view of what we have discussed hereinabove we allow the special appeal and set aside the impugned judgment of the learned Single Judge.

18. In the result the appeal stands allowed. The impugned order of the learned Single Judge dated November 24, 2001 shall stand set aside. The petitioner-respondent if fie so chooses shall be at liberty to file reply to the charge sheet before the concerned authority and the learned authority shall consider the reply without being swayed by the order passed by us, as expeditiously as possible.