
(2005) 02 KL CK 0061
In the High Court Of Kerala
Case No : Writ Petition No. 33887 of 2004

Ramakrishnan

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2005) 105 FLR 623 : (2005) 1 ILR (Ker) 522 : (2005) 1 KLT 899 : (2005) 3 LLJ 145

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Shaji P. Chaly and Abdul Jaleel A, for the Appellant; M.C. Sen, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The question that has been raised here is the legality and desirability of the disciplinary proceedings that have been initiated against the petitioners, consequent to the memorandum of charges that have been issued to them. The first petitioner is the Senior Manager of a Public Sector Bank (first respondent herein) and the second and third petitioners are respectively the Manager and Officer of the said Institution. The petitioners are now implicated in C.C. No. 10 of 2002 as accused 4 to 6, now pending before the C.B .I.-II Special Court, Ernakulam, along with certain others. The contention raised is that since charges have been laid and thus when the criminal proceedings are already in progress, disciplinary proceedings concerning the identical issues are likely to cause great prejudice to them. Their defence in the criminal case is likely to be exposed, which would be opposed to the principles of adversarial procedure. Counsel Sri. S.P. Chaly had appeared on behalf of the petitioners.

2. After the charge sheets were issued, formally proceedings have been initiated. The Enquiry Officer had noticed that the petitioners had denied the charges levelled against them. At that point, the petitioners had represented that they

were making a request to the Disciplinary Authority that such proceedings are to be kept in abeyance. However, the request was rejected and the petitioners had thereupon filed a Writ Petition as W.P.(C) No. 23282 of 2004. The petition was disposed of by directing the petitioners to appraise the concerned respondents the reasons for a plea that it was not advisable, desirable and proper to have departmental enquiry before the trial of the criminal case. The Bank was to consider it on merits before proceeding with the enquiry.

3. Representations, in this light, had been submitted, but by Exts.P24, P25 and P26, the General Manager of the Bank had informed the petitioners that the request was being turned down. It had been observed that the charges as against the employees were for violation of Conduct Regulations whereas the C.B.I, has framed charges for the criminal misconduct and there is no need to keep in abeyance the departmental enquiry.

4. This Writ Petition has been filed on the plea that the orders as above were illegal and consideration that was expected because of the judgment had not been appropriately shown. Independently, it is contended by the learned counsel for the petitioners that the disciplinary action is in violation of the principles of natural justice and they are unfair, and the law laid down by the Supreme Court had been overlooked by proceeding in the manner now proposed. The criminal trial proceedings were complicated and closely inter-linked with the allegations in the charge sheet, and such proceedings would have materially affected them to their prejudice. A review of the orders is therefore sought for.

5. Citing the Articles of Charge, that had been issued to the petitioners, Mr.Chaly submits that they emanate from the very transactions, which were found fault with by the Bank, on which the First Information Report was lodged. The learned counsel submits that the first petitioner, representing the Bank, had lodged the First Information Report, which led to the present prosecution and the tables have been turned against him. Adverting to the details in the charge sheet, it is argued that the transactions about which the enquiry is to be made by the C.B.I. Court, substantially are the same, which have been arrayed and referred to the charge sheet and in the statement of allegations.

6. However, these submissions are controverted by Mr. M.C. Sen, who had taken me to the details of the respective allegations. It is pointed out that at the most there may be certain areas where there might be overlapping, but most of the allegations about which the domestic enquiry is proposed, are concerned about the conduct of the petitioners as supervisory officers. The Bank prima facie felt that there were lapses on their parts, who had a duty to adhere to the norms while attending to the Bank's business. According to him, what is enquired is the failure on the part of the employees, whereunder the Bank was exposed to huge financial risk. The allegation was that the officers concerned failed to discharge their duties with utmost devotion and diligence and also neglected to protect and safeguard the interests of the Bank and thereby had contravened the Canara Bank Officer Employees" (Discipline & Appeal) Regulations, 1976. It is

emphatically submitted that this is not the case as far as the charges laid by the investigating authority are concerned. Complicity of the officers with third persons, who had association with the Bank, formed the foundation of such proceedings. Therefore, the scope of the enquiry was wholly different. It is submitted that the allegation that the petitioners were likely to expose their defence was a claim without any factual basis. The learned counsel also submits that even if there were overlappings and even if in a given case the charges were identical, there was no ban of domestic proceedings being conducted during the pendency of the criminal proceedings and the petitioners were wholly misinformed about the rights, liabilities and inter se obligations of the employees and employers.

7. Both sides had adverted to decisions of this Court as well as the Supreme Court and I may examine the veracity of the contentions raised with reference to the decided cases.

8. One of the earlier decision, concerning the issue, is the one reported in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, . The Supreme Court had held that in a case where the employer refused to stay the enquiry till a decision of the Court came did not violate the principles of natural justice. It has been pointed out that in a case of grave nature or where questions of fact or law are involved, it would have been 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.

9. I find that no absolute prohibition as such has been laid down there. As pointed out by Mr. Sen, the trend has been generally shifting against the principle that domestic enquiry proceedings are to be stayed so long as the criminal proceedings were continuing. It should have been more an exception than the rule. Advertence was made to the decision in *State of Rajasthan Vs. B.K. Meena and others*, . The Court had held then there was no legal bar for both the proceedings to go on simultaneously. However, the desirability and advisability depended on the charges, which were being enquired into. It was further held that not only the charges must be grave, but the case must involve complicated questions of law and fact. In paragraph 14, the Court had explained the principles and had held that "one of the contending consideration is that the disciplinary enquiry cannot be-and should not be-delayed unduly." The Court observed that "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 ever reach a prompt conclusion." The ultimate finding was that "stay of disciplinary proceedings cannot be, and should not be, a matter of course". With regard to the scope of enquiry by the two authorities, light is thrown by the judgment under reference. The approach and 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 merit his removal from service or a lesser punishment, as the case may be. In criminal proceedings, the question is as to whether in case the crime is established, what sentence should be imposed upon the person. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are different.

10. In fact, the above trend of the decision has been kept on, as could be seen from the later decision, namely Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., and by the Kerala decision in Jose Mathew v. Kerala State Industrial Enterprises (2000 (2) KLT 108 = 2000 (1) KLJ 994) In the earlier case, the Court held that stay of departmental enquiry is not warranted unless serious prejudice to the delinquent's defence is established. The facts of the case indicated that the conduct of a driver of a public transport of negligently driving the bus, whereby he had caused an accident, leading to the death of a cyclist, was the issue both before the Domestic Tribunal as well as the Criminal Court. The Supreme Court held that the employer was holding the enquiry in the region where the charge was of failure of the employee to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence. Mr. Justice Arijit Pasayat, in the Kerala decision, had profusely relied on Meena's case (referred to earlier) and the principles as above have been stated by quoting a catena of decisions of the Supreme Court.

11. Another case referred to was the one reported in Kendriya Vidyalaya Sangathan v. Srinivas (2004 (3) KLT 719) The Supreme Court had gone to the extent of saying that even if the charges were identical in nature, there was no justification for staying the disciplinary proceedings on the plea that criminal proceedings were going on. The Court held that a general principle of course may not be possible, as the facts and circumstances of each case are to be taken notice of.

12. Mr. Chaly submits that when the matter was considered by this Court on an earlier occasion, the Bank had been directed to examine the matter with all propriety and the impugned orders do not show that such a consideration had been made. The reply of Mr. Sen is that the opinion of one of the parties to the proceedings might not be really relevant and always the Court had to sit in judgment over the dispute.

13. An examination of the charge sheet and the Memorandum of Allegations lead me to conclude that although there might be overlapping, it cannot at all be stated that the charges before the Criminal Court are "grave", as is normally understood. The accusation practically concern with allegation of moral turpitude, in the matter of financial transactions. Maintenance of discipline in an establishment is the prime prerogative of an employer. In a case, where it is alleged that the officers had exceeded their limits and powers or had flouted the business rules, the circumstances have to be viewed seriously, so as to maintain discipline in the establishment. Perhaps after entering a finding, it may have to

proceed against the officers, by civil claims or recovery proceedings, if it is necessary and advisable. Indefinite delay in disposal of a criminal case, about which they have no control, according to me, should not be mixed up with disciplinary action. If the argument is accepted, even the issue of a charge sheet and seeking of explanation could be characterised as an attempt to get the defence exposed. This is also one of the issues to be borne in mind, while such matters are being examined.

14. Though not directly on the point, I may also refer to a recent decision of the Supreme Court, rendered in *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara* AIR 2004 SC 6900. It was a case where a suit had been filed by the employer against an employee, who according to them, was guilty of misappropriation. In the meanwhile, an industrial adjudicator had held that the disciplinary proceedings against the workman was not sustainable, and had directed his reinstatement. The operation of the award had been stayed by the High Court. The argument of the workman was that the civil suit was not maintainable. Though the bar spoken to by Section 10 of the C.P.C. was highlighted by the workman, the Supreme Court held that the contention was not acceptable. The reason given was that the subject matter of two proceedings is entirely distinct and different. To my mind, the decision points out to the requirement of a realistic approach to such issues, apart from a doctrinaire evaluation.

15. In the aforesaid view, I hold that the petitioners have no legal right to insist that the enquiry proceedings against them are to be stayed till such time the Criminal Court concludes its trial. Possible prejudice to the interest of the employer also might have to be noticed, as it cannot be a one way traffic, and they are not expected to silently suffer in the bargain.

The Writ Petition is, therefore dismissed.