

(1997) 04 PAT CK 0072
In the Patna High Court
Case No : C.W.J.C. No. 12299 of 1996

Reyazul Haque

APPELLANT

Vs

The Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 466

Citation : (1997) 1 PLJR 853

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Arshad Alam, Shailendra Kumar Sinha and Gulnar Begum, for the Appellant; Sharavan Kumar, Rajiv Nayan Singh and Sanjiv Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

N. Pandey, J.—Petitioners, at the relevant time, were serving the Bihar State Financial Corporation (in short "Corporation") in different capacities. In view of certain allegations of financial irregularities, under various transactions, defalcation and misappropriation etc. of money by sanctioning and disbursing of loans to non-existent units, the Respondents authorities have placed them under suspension and charges were framed by the Managing Director under several heads. At the same time, criminal cases were also lodged for the offences under Sections 406, 409, 420, 466, 467, 471 and 120B, I.P.C.

2. The Petitioners have, therefore, challenged the order of suspension as well as departmental proceeding on the ground that with respect to same and similar allegations, criminal cases have been started. Therefore, in case, Petitioners are compelled to disclose their defence with relation to the charges in the departmental proceeding, their defence in the criminal trial would adversely affect. It is stated a bare, reference to the charges framed in the departmental proceeding and the allegations as made out in the complaint petition would show that disciplinary proceedings are grounded upon same set of facts on which

criminal cases have been started. Therefore, it would be in the interest of justice to stay the disciplinary proceeding until conclusion of the criminal trial. To sound the legal position on this issue, reliance was placed to the decisions of the apex court in the cases of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, as also of this Court in the case of Randhir Singh Rana Vs. The State Being the Delhi Administration, and two other unreported decisions in C.W.J.C. No. 12003 of 1996 and C.W.J.C. No. 7021 of 1991 disposed of on 18.12.1996 and 3.5.1993, respectively.

3. There is no dispute that in such matters, it is neither possible nor advisable to evolve a hard and fast formula valid for all cases. The principles as laid down in the abovementioned cases, have to be examined with regard to the particulars of individual cases. Thus solitary question emerges whether in the instant cases allegations in criminal cases and disciplinary proceedings are based upon same set of facts and whether for the alleged charges on which departmental proceeding has been initiated, the criminal court would be competent to record punishment.

4. A counter affidavit has been filed on behalf of the Respondent Financial Corporation stating that a bare comparative study of the charges on which the departmental proceeding has been started and the allegations in the criminal case would indicate that criminal Court would not be able to record punishment for most of the charges even proved. It is stated that on a mere reference to the charges in the departmental proceeding one can gather that Petitioners have been charged for sanctioning/granting and disbursing loans to non-existent firms in utter disregard to the statutory requirements and settled norms. It has also been alleged that approval was granted for supply of machines etc. to such firms which were not authorised dealers. There is also allegation that in collusion with fake promoters by misusing official position cheques were handed over to fake firms by the respective Petitioners. Therefore, submission is that for such offences neither charges can be framed by the criminal Court not punishment can be recorded.

5. Mr. Alam, contended that in the case of Kusheshwar Dubey v. Bharat Coking Coal Ltd. (supra) the apex court as well as this Court in C.W.J.C. No. 7021 of 1991 and in the case of The State of Bihar and Ors. v. Ram Lakhan Singh (supra), have already held that such questions are to be examined, with, regard to the particular facts of each case. Therefore, the Respondent authoritise be directed to examine such matters in detail and to ascertain whether in the background of ratio laid down in the abovementioned cases, it would be possible for them to proceed in the departmental proceeding.

6. I have already indicated that it is not possible to evolve a hard and fast formula valid for all cases. Therefore, the disciplinary authority or a Court of law as tin case may be, are certainly required to examine facts of each case to find out whether charges in both the proceedings are same.

7. But in the background of the facts noticed above, I, after hearing the learned Advocate myself perused the copy of charges framed in the departments proceeding as well as the allegations made out in the complaint petition. In my view, most of the charges in the departmental proceeding are not the same for which criminal prosecution has been launched. As I have already indicated that in case charges of dereliction of duty, misuse of official position, disbursement of loans to non-existent and, take firms, issuance of cheques for supply of machines to unrecognised firms etc. are proved, the criminal Court would not be competent to investigate such charges and record punishment. Therefore, no useful purpose would serve if the authorities are asked to examine such things again.

8. That apart, in a case of such nature, where huge loss running into lacs of rupees has been caused to the exchequer, the court should adopt a pragmatic approach relating to the nature of allegations. Therefore, even some of the charges may be common in the departmental proceeding and the criminal cases, no interference is warranted. To support such approach, reference can be made to the case of *The State of Bihar and Ors. v. Ram Lakhan Singh* (supra).

9. Apart from what has been noticed above, most of the alleged irregularities against the Petitioners are with respect to the period of 1988-89. In the counter affidavit, there is specific averment that charges were served against the Petitioners much in advance and in some cases, conducting officers have virtually completed the inquiry. This also cannot be denied that most of the charges against the Petitioners are very serious. Therefore the approach of a disciplinary authority in the departmental proceeding and that of the criminal court may be altogether distinct and different. In a disciplinary proceeding, a question may arise whether the Petitioners are guilty of such misconduct, which may require an order of removal from service or lesser punishment, as the case may be. But in the criminal case, if charges are established the Court will at best impose sentences. Therefore, as held by the apex court in the case of *State of Rajasthan Vs. B.K. Meena and others*, , the standard of proof, the mode of inquiry and also the rules governing inquiry and criminal trial are entirely different and distinct.

10. Apart from the aforesaid settled norms and views expressed by me, I have already dismissed a writ petition on 13.2.1997 bearing C.W.J.C. No. 12254 of 1996 filed on behalf of one Md. Nafix who is also facing the departmental-proceeding.

10. Therefore, considering the facts and circumstances as noticed above, I am of the opinion that no case has been made out by the Petitioners for stay of departmental proceeding. Accordingly, all the writ petitions are hereby dismissed, but without costs. The Respondent Disciplinary authority as well as the Conducting Officer shall now proceed expeditiously with the departmental proceeding without waiting for the result of the criminal proceeding.

Later Order

11. When I signed the order, Mr. Alam expressed apprehension that unless specific direction is given, Respondent authorities may dispose of the proceeding, even without supplying copies of relevant documents.

12. In my view, apprehension of Mr. Alam has no substance. The authorities shall certainly take precaution that copies of documents are supplied to the Petitioner. If, however, they are not able to supply certain documents, then an opportunity be given to the Petitioner to inspect such records.