

(2012) 12 MP CK 0112

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 21358 and 21359 of 2012

Samir Banerji

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(a), 19(1)(b), 19(1)(c), 226

Citation : (2013) ILR (MP) 114 : (2013) 3 MPHT 180 : (2013) 1 MPLJ 404

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Shobha Menon, with C.A. Thomas, for the Appellant; R.N. Singh , Rohit Arya and Ashish Shrotri, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—As common questions of fact and law are involved in both these petitions, they are being heard and disposed of analogously by this order. For the sake of convenience, the documents and material available in the record of Writ Petition No. 21358/2012, Samir Banerjee vs. State Bank of India and another is referred to in this order.

2. Petitioner Samir Banerji, in Writ Petition No. 21358/2012, has already attained the age of superannuation and even though he was to retire with effect from 30-11-2012, in view of a departmental proceeding pending against him, his services have been extended by invoking the provisions of Clause 19 of the State Bank of India Officers Service Rules, 1992 (hereinafter referred to as "Rules of 1992") - Annexure P/28. This petitioner was posted as Chief Manager and OSD, in the State Bank of India, and is also the President of State Bank of India Officers' Association, Bhopal Circle, Bhopal.

3. Similarly, Sanjeev Kumar Mishra, in Writ Petition No. 21359/2012, is posted as Manager System in the Bank's Local Head Office at Bhopal, and is the General Secretary of the State Bank of India Officers' Association, Bhopal Circle, Bhopal.

4. The petitioners are aggrieved by issuance of a charge-sheet to them dated 27-9-2012 - Annexure P/1, and initiation of departmental proceedings against them in accordance to the Rules of 1992. Prayer made in both the writ petitions is to quash the charge-sheet and the departmental proceedings initiated.

5. Brief background, which led to issuance of the impugned action, are that All India State Bank Officers Federation gave a call for strike action on 8-9-2011 and 9-9-2011. The call for strike was given as a bilateral negotiation between the Federation and the Management of the Bank did not materialize and it was the contention of the Federation that their grievance and various issues are not being heard and addressed to. For the present, it is not relevant in these writ petitions to go into these questions except to say that in the light of the call given, it is stated that a demonstration was organized throughout the country on 28-8-2012, during the lunch hours of the Bank and both the petitioners herein, in their capacity as President and General Secretary of the Association, participated in a peaceful demonstration. It is stated that for this act, charge-sheet has been issued to the petitioner and the departmental inquiry initiated.

6. Inter alia contending that the charge-sheet issued for the aforesaid acts of peaceful demonstration during lunch hours is nothing but infringing the fundamental rights to freedom and demonstration available to the petitioners and the rights guaranteed to them under Article 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution, is being followed by issuance of charge-sheet and initiation of departmental proceedings. It is argued by learned Senior Advocate that the act of the petitioners in conducting and participating in a peaceful demonstration will not constitute a misconduct, for which departmental action can be taken. It is stated by learned Senior Advocate by referring to Rule 54(1) of the Rules of 1992, that except for the category of prohibited demonstrations as indicated therein, which affects the sovereignty and integrity of the country and other serious infringement to peace of the country as indicated therein, any other demonstration or peaceful protest during lunch hours cannot be curtailed by the Bank and if the employees indulge in such a peaceful demonstration during lunch hours, it does not amount to any misconduct tantamount to violation of Rules 50(4), 50(5) and 50(6) of the Rules of 1992.

7. Smt. Shobha Menon, learned Senior Advocate, took me through the allegations levelled against both the petitioners in the charge-sheet-Annexure P/1 and the imputations contained in Annexure II to the said charge-sheet, and argued that in the present case the petitioners have only participated in a peaceful demonstration during lunch hours, in protest against the illegal activities of the Management, and for this they are victimized and punished by conducting a departmental inquiry. Inter alia contending that the act does not amount to misconduct and for this no departmental inquiry can be conducted, learned Senior Counsel prays for interference into the matter. Taking me through the provisions of the Rules of 1992; the acts complained of; and, the reasons which compelled the office bearers of various association to indulge in the so-called

peaceful demonstration, learned Senior Advocate argued that to punish the employees for having participated in the peaceful demonstration, the Chairman of the Bank is victimizing them and the impugned act amounts to infringement of their fundamental rights guaranteed under Article 19 of the Constitution, and for the same no disciplinary action can be initiated.

8. In support of her contentions, learned Senior Advocate placed reliance on the following judgments of the Supreme Court and this Court to show that prohibition against peaceful demonstration is not permissible, a constitutional right is available to the employees to make demonstrations and protest against the illegal attitude of the Management and this fundamental right cannot be curtailed in the manner as is being done by the respondent Bank.

9. The judgments relied upon are;

(a) Kameshwar Prasad and Others Vs. The State of Bihar and Another, - to say that any Rule or Regulation which prohibits any form of demonstration is violative of Article 19(1)(a) and 19(1)(b) of the Constitution and, therefore, no departmental action can be taken for such an act.

(b) The second judgment relied upon is O.K. Ghosh and Another Vs. E.X. Joseph, , wherein also the proposition laid down in the case of Kameshwar Prasad (supra) has been reiterated.

(c) The third judgment relied upon is by a Division Bench of this Court in the case of Bank of India Officers Assn. and Others Vs. Bank of India and Another,), wherein relying upon the judgments rendered by the Supreme Court in the cases of Kameshwar Prasad (supra) and O.K. Ghosh (supra), a Division Bench of this Court has also held that an employee has a fundamental right of freedom of speech, assembly and association and the same cannot be restricted on the mere ground of efficiency and discipline.

Accordingly, contending that in the present case, departmental action is being initiated against the petitioners for having participated in a peaceful demonstration, which is the fundamental right of the petitioners, learned Senior Advocate prays for interference into the matter.

10. As far as Writ Petition 21358/2012, relating to petitioner Samir Banerji is concerned, it is stated that only to harass him and to victimize him even after his retirement, the provision of Rule 19 is invoked and he is continued in service for the purpose of conducting departmental inquiry. Emphasizing that the purpose of incorporating Rule 19 is not to conduct and continue with a departmental inquiry in cases like the present one and, therefore, this power is being misused by the Bank only to harass and punish the office bearers of the Association like the petitioner Samir Banerji for having participated in the demonstration, learned Senior Advocate argued that the departmental proceedings initiated and the inquiry proposed to be conducted into the charge-sheet be quashed, as the same is nothing but an act of victimization for a peaceful demonstration undertaken by

the office bearers of the Association.

11. Refuting the aforesaid contentions Shri R.N. Singh, learned Senior Advocate; and, Shri Rohit Arya, learned Senior Advocate, along with Shri Ashish Shrotri emphasized that for the present only a charge-sheet has been issued to the petitioners and the allegations levelled against them in the charge-sheet is to the effect that in the bank premises and in the compound of the Bank at around 2.00 PM, when bank business was in progress the petitioners instigated other officers of the Bank to participate in the demonstration, they indulged in shouting of unwanted slogans, behaved in a manner which was unbecoming of a bank officer, disturbed the peace in the bank's premises, caused hindrance and disturbance to the regular business activities of the bank, thereby causing inconvenience to the bank customers and disrupted their right to carry out the banking transaction. It was pointed out that the act of the petitioners falls in the category of misconduct and as the same amounts to act of misconduct contemplated under Rule 50, sub-rule (4), (5) and (6), it is emphasized that the departmental inquiry can be conducted and at this stage when only a charge-sheet is issued, interference should not be made. Emphasizing that the question as to whether the demonstration was peaceful or it adversely affected the working of the bank and the conduct of the petitioners in so acting is subject-matter of inquiry, therefore, at this stage, interference is not called for, learned Senior Advocates appearing for the Bank sought for dismissal of the writ petition and submitted that at the stage of issuance of a charge-sheet when a departmental inquiry is pending, the writ jurisdiction of this Court under Article 226 of the Constitution should not be invoked and this Court should not interfere into the matter at this stage.

12. In support of the aforesaid contentions, learned Senior Advocate invited my attention to the law laid down by the Supreme Court in the following cases: State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, ; Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another, ; State of U.P. and another vs. Anil Kumar Ramesh Chandra Glass Works and another, (2005) 6 SCC 451 ; and, Union of India (UOI) and Another Vs. Kunisetty Satyanarayana,

13. In reply to the aforesaid contention, Smt. Shobha Menon, learned Senior Advocate, argued that as the very basis for issuance of charge-sheet is unlawful and unsustainable, therefore, interference can be made and she points out that the High Court of Karnataka at Bangalore, under similar circumstances, has stayed the departmental proceedings, It is emphasized by her that office bearers throughout the country have been proceeded against and in the case of an employee working in Gauhati, one Shri S. Mukherjee, after issuing similar charge-sheet, his explanation was considered and the proceedings against him dropped.

14. The same was replied to by Shri R.N. Singh, learned Senior Advocate, by contending that the proceedings have been dropped in the case at Gauhati on the Bank being satisfied with the explanation of the employee concerned and in the present case the petitioners without even submitting their explanation have

rushed to this Court for stalling the departmental proceedings.

15. I have heard learned counsel for the parties at length and perused the records.

16. The Rules of 1992 contemplate various provisions, which include a provision for conduct, discipline and appeal, which is contained in Chapter 11. The general observations of good conduct, discipline etc. to be maintained by an employee is provided under Rule 50 and Rules 50(4), 50(5) and 50(6), read as under;

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

50(5) Every officer shall maintain good conduct and 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.

Similarly, Rule 54 relied upon by learned Senior Advocate for the petitioners, sub-clauses (1) and (2) read as under:

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.

17. The question involved in this writ petition is two folded. The first question is as to whether the departmental proceedings initiated against the petitioners fall in the category of an act which amounts to prohibiting the petitioners from carrying out demonstrations and thereby infringing their fundamental rights available under Article 19(1)(a) and 19(1)(b) of the Constitution and, therefore, initiation of the departmental proceedings itself is unsustainable. The second question is as to whether interference in the matter by a Writ Court at this stage when only a charge-sheet is issued is called for in the facts and circumstances of the present case.

18. In the cases of Kameshwar Prasad (supra), O.K. Ghosh (supra) and Bank of India Officers' Association (supra) relied upon by Smt. Shobha Menon, learned Senior Advocate, it has been laid down that an employee has a fundamental right to freedom of speech, assembly and association and any statutory rule framed, which prohibits an employee from carrying out such a demonstration or forming an association is violative of Article 19 of the Constitution and unsustainable. In the cases of Kameshwar Prasad (supra) and O.K. Ghosh (supra), the constitutional validity of Rule 4-A of the Bihar Government Servants Conduct

Rules and the Central Civil Services Conduct Rules, 1955, which prohibited formation of association or demonstration, was struck down as illegal. In the cases of Kameshwar Prasad (supra) and O.K. Ghosh (supra), it has been held that even though resorting to strike is not a fundamental right and, therefore, the statutory rule which prohibits strike cannot be struck down, but a statutory rule which prohibits any form of demonstration is violative of the fundamental rights to speech and protest and, therefore, is illegal and invalid. However, a complete reading of all these judgments would show that the Supreme Court and the Division Bench of this Court has held that fundamental right of freedom of speech, assembly and association guaranteed under Article 19(1)(a), (b) and (c) of the Constitution cannot be completely prohibited, but reasonable restrictions which come within the purview of Clauses (2), (3) and (4) of Article 19 is permissible. It has been held that the restrictions imposed must be reasonable and must have proximity in connection with the matter of maintaining public order and discipline.

19. It is, therefore, clear that what is prohibited by the judgments relied upon by Smt. Shobha Menon, is a restriction on carrying out any other form of demonstration. Even though the petitioners have a fundamental right to demonstrate against the high-handedness or illegality against the Bank, but the Bank at the same time has got a right to impose reasonable restriction for the purpose of maintaining public order and discipline in the banking premises. That being so, as a thumb rule it cannot be said that merely because petitioners have participated in a demonstration and, therefore, the act of the Bank in taking disciplinary action amounts to infringement of their fundamental rights and the action is unsustainable.

20. The question would be as to whether the demonstration undertaken by the petitioners and alleged in the memorandum of charge-sheet, amounts to breach of discipline or comes in the category of a conduct which can be termed as one which is unbecoming of an officer of the Bank and further the act has resulted in disturbing the peace and public order in the Bank premises, created harassment to the customers, who have a right to carry out their banking transactions and the act has also adversely affected the image of the Bank's establishment at large, as banking is a commercial establishment.

21. If Rules 50(4), 50(5) and 50(6), as reproduced hereinabove, are taken note of, it would be seen that the restrictions imposed, with regard to various activities of an employee are such that they fall in the category of reasonable restriction. Even otherwise, the said question is not before this Court. Accordingly, I am of the considered view that merely because the petitioners are alleged to have participated in a demonstration, it cannot be said that no disciplinary action can be initiated against them. If the allegations levelled against the petitioners in the charge-sheet are taken note of, it would be seen that the allegations are to the effect that on the day in question i.e. 28-8-2012, at about 2.00 PM, in the Bank's premises they instigated other officers of the

Bank to hold demonstration, shouted slogans, behaved in a manner which disturbed the peace with the Bank's premises, caused harassment to the working of the bank and disturbed the regular business activity of the Bank. Allegations of misbehaviour, shouting slogans and disrupting bank's operation are alleged against the petitioners and it stated that this act lowers the image of the Bank amongst the customers and public at large and, therefore, the business of the bank was adversely affected and is also a misconduct under the Service Rules. The question, therefore, in the backdrop of these allegations is as to whether the demonstration undertaken by the petitioners can be said to be so peaceful that they were exercising their fundamental right of freedom of demonstration or their act went beyond this freedom and fell in the category of misbehaviour or misconduct by interfering with the normal activities of the Bank. This is a question of disputed facts and can only be resolved if an inquiry is conducted. It is not a case where on the face of it, it can be said that the petitioners have demonstrated peacefully and were only exercising their fundamental right and, therefore, no departmental action can be taken against them. On the contrary, the allegations levelled against them as indicated hereinabove does show that certain acts of the petitioners may have caused some disturbance of peace in the premises of the Bank and may have adversely affected the right of some customers and working of the Bank. If that be so, the act of the petitioners may fall in the category of misconduct and can be termed as an act unbecoming of an officer of the Bank, for which under the service rules departmental action can be taken.

22. It is, therefore, a case where a writ Court exercising limited jurisdiction in a petition under Article 226 of the Constitution cannot enter into the allegations levelled against the petitioners on merits and exonerate them by holding that the petitioners were only exercising their right to freedom available to them under Article 19 of the Constitution and the initiation of departmental proceedings is illegal. On the contrary, it is a case where the allegation levelled against the petitioners does warrant an inquiry and if it is found that the petitioners have only exercised their right to freedom in a peaceful manner and have not committed any act, which amounts to exceeding their right to freedom so as to be termed as a misconduct, they are to be exonerated. But this is a question of fact, which is in dispute between the parties and, therefore, an inquiry is necessary.

23. The judgments relied upon by Smt. Shobha Menon, learned Senior Counsel for the petitioners, can be made applicable only if based on the material available on record, this Court can record a categorical and specific finding that the petitioners have exercised their right to freedom in a proper manner and, therefore, the action cannot be taken. If this Court comes to the conclusion that even for recording such a finding an inquiry is needed then exercise of jurisdiction under Article 226 of the Constitution is prohibited.

24. In the cases relied upon by Shri R.N. Singh, learned Senior Advocate, the

Supreme Court has clearly laid down that a writ petition against a charge-sheet or a show-cause notice is not maintainable, because it is not only premature, but if disputed questions of fact are involved interference by a Writ Court under Article 226 of the Constitution is not called for. The judgments relied upon by Shri R.N. Singh, learned Senior Advocate, lays down the proposition that issuance of a charge-sheet does not give rise to any cause of action, it does not amount to any adverse order and it is quite possible that after considering the reply and the explanation, the proceedings may be dropped. It is held that issuance of a charge-sheet does not amount to infringement of the right of an employee.

25. On the contrary, it has been held that only in very rare and exceptional cases the High Court should quash a charge-sheet or a show-cause notice, when it is found to be wholly without jurisdiction or otherwise illegal under service jurisprudence. The case in hand and the allegations levelled in the charge-sheet does not fall in the category of a charge-sheet issued without jurisdiction and is wholly unsustainable. On the contrary there are allegations against the petitioners which do prima facie indicate that an inquiry into the matter is required to be undertaken and as only a departmental inquiry is to be conducted, I see no reason to interfere into the matter. It is for the departmental authorities before whom the inquiry is pending to take note of the explanation of the petitioners, examine the material available and then record a finding as to whether the demonstration in question and the agitation undertaken by the petitioners was peaceful and that it did not amount to any act of misconduct.

26. The proposition put forth by Smt. Shobha Menon, learned Senior Advocate, to the effect that the petitioners have an unfettered right to undertake demonstration and the fundamental right available to them cannot be curtailed by holding a departmental inquiry cannot be accepted. The right of demonstration available to the petitioner is restricted by the provisions of law, itself and as indicated hereinabove if it is found that the demonstration undertaken by the petitioners has resulted in breach of discipline, public order, the respondent Bank can take action in the matter. After relying upon the judgments rendered in the cases of Kameshwar Prasad (supra) and O.K. Ghosh (supra), the Division Bench of this Court in the case of Bank of India Officers' Association (supra), in paragraph 16 has laid down the following proposition:

16. ... However, insofar as political activities may be covered by the fundamental rights of freedom of speech, assembly and association guaranteed under Articles 19(1)(a), (b) and (c), restrictions on such activities can be saved only if they are within the scope of Clauses (2), (3) and (4) of Article 19. As earlier pointed out by us, the cases of Kameshwar Prasad (supra) and O.K. Ghosh (supra) are direct authorities for the proposition that fundamental rights of an employee of freedom of speech, assembly and association cannot be restricted on the mere ground of efficiency and discipline. To be valid, the restriction imposed must be reasonable and must have a proximate connection with public order or with other matters

referred to in Clauses (2), (3) and (4) of Article 19. If Rangaswamy's case intended to decide anything contrary to this, it cannot be accepted as an authority. Further though it may be reasonable to ban in general political speeches and activities by Government servants, different considerations may prevail in respect of employees in commercial undertakings of the Government when in private undertakings of similar nature there can be no such general restrictions.

27. The aforesaid proposition by the Division Bench does show that a valid restriction reasonable in nature, which has a proximate connection with maintenance of public order and discipline can be imposed and if that be the position, I am of the considered view that holding of the departmental inquiry on the face of it, cannot be said to be wholly illegal warranting interference into the matter by this Court.

28. On the contrary, it is a case where the allegations levelled against the petitioner are with regard to exceeding the rights available to them, which has resulted in acts of misconduct and for the same if a departmental inquiry is being conducted, it is not proper for this Court to interfere into the matter at this stage.

29. Accordingly, I find no merit in the writ petitions. However, it is made clear that the observations made and the expression of opinion in this order is only a prima facie assessment of the material to consider as to whether the jurisdiction under Article 226 of the Constitution should be exercised or not. This Court has not at all gone into the merits of the allegations levelled against the petitioners and it is for the authorities concerned before whom the proceedings are pending to deal with them in accordance with law and take a decision without being influenced by this Court. With the aforesaid observations, finding no case for interference both these petitions are dismissed.