
(1995) 07 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 26117 of 1995

Shivalingaiah

APPELLANT

Vs

Karnataka State Co-operative Marketing Federation Ltd.

RESPONDENT

Date of Decision : 10-07-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (1995) ILR (Kar) 2938

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Judgement

Tirath S. Thakur, J.—The petitioner was working as a Senior Assistant in the Respondent-Federation and was during the relevant period, posed as in-charge Branch Manager of its Gulbarga Branch. In terms of a charge-sheet Annexure-F to the Writ Petition, he was accused of having misappropriated an amount of Rs. 52,29,000 and odd. A Departmental Enquiry into the charge has been initiated and entrusted to the 3rd Respondent.

2. Aggrieved, the petitioner has filed the present Writ Petition for a writ of certiorari quashing the chargesheet as also the order of suspension. Annexure "K" to the Writ Petition primarily on the ground that since the Federation has reported the matter to the Police in terms of the First Information Report, Annexure "G" to the Writ Petition, holding of the enquiry in question will greatly prejudice him in his defence to the Criminal Case that may in due course be filed against him.

3. I have heard the learned Counsel for the petitioner who argued on the authority of a judgment of the Supreme Court in *Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd. and Others* 1988 II CLR 497 that the conduct of a domestic enquiry against the petitioner pending investigation of a Criminal Case was legally impermissible. This judgment however does not support the submission made by the learned Counsel. The same takes the view that there is no legal bar to simultaneous proceedings being taken against an employee

though there may be cases where it may be appropriate to defer the Disciplinary Proceedings awaiting disposal of the Criminal Case. The Court has held that it is neither possible nor advisable to evolve a hard and fast strait jacket formula valid for all cases and of general application without regard to the peculiarities of an individual situation. The Court did not lay-down any general guidelines and even declined to resolve the cleavage in the judicial opinion prevalent in this Country as to whether the pendency of a Criminal Case against an employee would by itself be sufficient to stay or prevent the Disciplinary Proceedings till such time the Criminal case was finally decided. The Court noted with approval the view taken by it in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , that it is only in cases where the charge against the employee is of a grave nature and involved complex questions of law and fact that the need to stay the Disciplinary Proceedings may arise. It also noticed its earlier judgment in *Jang Bahadur Singh Vs. Baij Nath Tiwari*, , where the legal position was summed up in the following words :-

"The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a Court. But the pendency of the Court proceedings does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The Civil or Criminal Court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the Court of Justice in the pending Court proceedings. The employee is free to move the Court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of Court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers."

To the same effect is the judgment of a Division Bench of this Court in *Rama P. C. v. Superintendent of Police, Kolar* AIR 1967 Mys 220 a Division Bench Judgment of the High Court of J & K in *Ali Mohd. v. Chairman T. A. & C. Udampur* (1981) 2 SLR 225, a Division Bench judgment of the High Court of Gauhati in *Moulindra Singh v. Deputy Commissioner* 1973 Labl. C. 1564 (Gau. H. C.) and a Judgment of the High Court of Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another, .

4. In *Moulindra Singh's* case (supra) a Division Bench of the Gauhati High Court after noticing judgments of the Supreme Court reported in *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* (Supra) and *Tata Oil Mills Co. Ltd. v. Workmen* (supra) observed thus :-

"The petitioner has not even submitted his explanation and the departmental proceedings have not progressed. It is difficult for the High Court at this stage to consider whether the facts are of such complexity that it would be better that the criminal case is disposed of first in this case. On the other hand, we are familiar with the spectacle that criminal cases of this nature take a long time to conclude.

Mr. Das has not shown to us how the petitioner will be prejudiced if he discloses his defence in this case. The defence will be one of innocence and the same defence can be put even in the Criminal Court. On the other hand, some of the charges relate to irregularities about which the Criminal Court may not have anything to do while embarking upon an enquiry for a criminal charge like Section 409 Indian Penal Code. We do not think that the Supreme Court has laid down as a law that such departmental proceedings, as we find in this case, must await as a matter of law until disposal of the criminal cases. We are, therefore, unable to accede to the submission of Mr. Das on that score. No other point has been raised before us."

5. The principle therefore appears to be that mere pendency of a Criminal Case against an employee is not a bar to the initiation of Disciplinary Proceedings against him and the answer to the question whether or not the Disciplinary Proceedings should remain stayed pending disposal of the Criminal Case would depend upon the facts of each case and in particular whether the case involves such complex question of law and fact as may make it look desirable to await the result of the Criminal Case pending against the employee.

6. In the instant case, it is not in dispute that the police has not so far completed the investigation and/or filed the chargesheet against the petitioner. What is going on is only an investigation by the Police into certain allegations of misappropriation levelled against the petitioner. There is therefore no duplication of the trial of the petitioner in the strict sense of the term. That apart there is nothing before me to suggest that the enquiry started against the petitioner would involved any complicated or complex questions of law or fact of the kind which may justify stay of the said proceedings pending the completion of the criminal investigation and the finalisation of the trial of the petitioner. Simply because an investigation is pending into charges similar to the one levelled against the petitioner in the domestic enquiry is in my opinion hardly enough to justify the stoppage of the enquiry. The argument advanced on behalf of the petitioner that the conduct of the enquiry will prejudice the petitioner in his defence in the criminal case also does not impress me for the nature of the prejudice has neither been spelt out nor is it indicated as to how in the context of the facts and the circumstances of the present case any such prejudice is really imminent. It is not a mere remote possibility of some prejudice which would entitle the employee to the suspension of a Disciplinary Proceedings initiated against him but a reasonable likelihood of such a prejudice that can justify such suspension.

7. I do not therefore see any reason in the instant case, why the Disciplinary Proceedings should remain stayed till such time, the Police investigation is completed or the Criminal Case eventually settled one way or the other. There is no merit in this petition which is hereby dismissed in limine.