

(2014) 01 CAL CK 0014
In the Calcutta High Court

Case No : G.A. Nos. 979,1656 of 2013 and W.P. No. 1065 of 2012

Soumya Datta and Another		APPELLANT
	Vs	
State Bank of India and Others		RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 36AD
Constitution of India, 1950 — Article 19

Citation : (2014) 1 CALLT 504 : (2014) 2 CHN 442 : (2014) 3 WBLR 933

Hon'ble Judges : S. Banerjee, J

Bench : Single Bench

Advocate : S. Majumder, Advocate for the Appellant; L.K. Gupta, Sr. Adv., Mr. A.K. Routh and Mr. S. Pal Chowdhuri, Advocate for the Respondent

Judgement

S. Banerjee, J.—The first petitioner, an office-bearer of the second petitioner officers' association of the State Bank of India, challenges a notice dated September 27, 2012, the accompanying articles of charge levelled against such employee and the statement of imputation of misconduct appended to the letter on the ground that the action initiated is mala fide and the material does not make out any case of misconduct within the meaning of the applicable rules. The State Bank of India apparently proposes to open its bank counters to its constituents on Sundays. The petitioner association caused a letter to be issued on August 28, 2012 to the local head office that a demonstration would be held at 2 pm on that day at such office to protest the move of the bank to keep its branches open on Sundays. Though the bank claims that the letter was received subsequent to the demonstration being held, nothing turns on such aspect of the matter. Demonstrations are said to have been simultaneously held at various local head offices and other branches of the bank all over the country. The petitioners say that similar notices were issued to at least 14 office-bearers of the officers' associations in different regions and most of them have subsequently been withdrawn. One of the notices was withdrawn on the ground that the noticee had been nominated as the officers' representative on the board

of the bank. Another similar notice has been set aside in proceedings instituted before the Madras High Court challenging the same. The Division Bench judgment of the Madras High Court has been placed by the petitioners.

2. The petitioners refer to a written warning of August 31, 2012 issued by the bank requiring the petitioners to refrain from indulging in the kind of activities conducted on August 28, 2012. The petitioners draw attention to a subsequent notice of September 22, 2012 complaining of the demonstration on August 28, 2012 being in violation of section 36AD of the Banking Regulations Act, 1949. The petitioners claim that the object of the exercise, culminating in the issuance of the impugned notice of September 27, 2012 to the petitioner No. 1, is to send a stern message to the officers that any kind of protest by the officers against any management decision would not be tolerated and would be dealt with heavily. The petitioners say that an example has been sought to be made out of the petitioner No. 1 to coerce the officers of the bank to toe the management line. The petitioners place excerpts from a speech contemporaneously delivered by the then chairman of the bank to the effect that the rank and file of the officers would not be dealt with oppressively and vindictively by the bank as a consequence of the protest but that some action would follow. The petitioners interpret the statement to imply that the bank would oppress and be vindictive against such office bearers of the association who are regarded as the masterminds of the lightning protest of August 28, 2012.

3. The articles of charge appended to the letter of September 27, 2012 allege that the petitioner No. 1 "failed to discharge his duties with utmost devotion and diligence, failed to take all possible steps to protect the interest of the Bank and acted in a manner unbecoming of a Bank official... (and that he) instigated other officers to commit misconduct by not maintaining good conduct and discipline." The articles refer to the violation of Rules 50(4), 50(5) and 50(6) of the State Bank of India Officers' Service Rules. The statement of imputation of misconduct against the petitioner No. 1 makes out three cases of perceived improper behaviour. The petitioner No. 1 is accused of having "instigated officers of the bank to hold demonstrations within the Bank's premises/compound... participated in these demonstrations and also shouted slogans... (which) disturbed the peace... and there was hindrance in Bank's working and disturbance in the regular business activity...." The second count of charge on perceived misconduct accuses the petitioner No. 1 of misbehaving "by shouting slogans and demonstrating with intention to disturb peace, disrupt... and discouraged Bank's officers from performing their lawful duties...."

4. According to the petitioners, since several of the similar letters issued to like office-bearers in other regions have been withdrawn and a Division Bench of the Madras High Court has found a comparable charge-sheet to be without basis, the disciplinary proceedings should not be permitted to be continued. However, as it appears, by virtue of an order subsisting on this petition, the disciplinary proceedings have continued but the bank remains restrained from giving any

effect to the decision taken. The bank has applied by way of GA No. 979 of 2013 for leave to communicate the decision to the petitioner No. 1. The petitioners have applied by way of GA No. 1656 of 2013 to amend the petition and incorporate the events subsequent to the institution of the petition, particularly, the enquiry proceedings.

5. The petitioners have placed a judgment reported at AIR 1962 SC 1162 (Kameswar Prasad v. State of Bihar) and the celebrated full bench judgment of this Court reported at Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others, . Before the Supreme Court, the issue was as to whether a rule completely prohibiting all forms of demonstrations fell foul of sub-clauses (a) and (b) of clause (1) of Article 19 of the Constitution of India. The reference to the impugned rule is at paragraph 13 of the report and the opinion expressed is at paragraph 17 thereof. The Court made a distinction between what can be loosely described as violent protests or demonstrations and other peaceful forms of protest. The Court repelled the argument made by the employer on the ground that the relevant rule did not differentiate between a violent form of protest and a peaceful demonstration. In the Jay Engineering case, the Court recognised that it would be lawful to indulge in peaceful trade union activities even within the precincts of an office provided no other unlawful activity was connected therewith. The petitioner No. 1 relies on the Jay Engineering case, particularly, for the proposition that lawful trade union activities can even be held within any office compound.

6. According to the petitioners, the impugned letter and the documents appended thereto do not accuse the petitioner No. 1 of indulging in any unlawful activity other than organising the protest, shouting slogans and instigating the other officers to shout slogans. The petitioners suggest that if slogan-shouting is recognised to be a permissible form of protest, and if such protest is regarded to be lawful even if it is held within the office premises, the impugned letter and the documents appended thereto do not make out a case for protracted proceedings to be initiated against the petitioner No. 1.

7. The petitioners accept that the grounds for assailing a notice of the kind challenged in the present proceedings are limited. Such grounds are ordinarily restricted to assessing the authority exercised in issuing the notice, as to whether the ingredients of any misconduct are made out in the notice and as to whether the notice is mala fide. By referring to the previous letters of August 31, 2012 and September 22, 2012 and the speech of the erstwhile chairman of the bank, particularly, the parts appearing at pages 40 and 41 of the petition, the petitioners insist that the bank has embarked on a course to make an example out of the petitioner No. 1 so as to quell any further chance of protest against any management decision. This, according to the petitioners, would be the mala fide design in the issuance of the notice.

8. Since there has been no argument on the authority of the officer issuing the notice, the matter rests on the two other possible limbs of challenge. There is a

rather feeble insinuation of mala fides that has been made out. Though it is possible that such charge of mala fides is ultimately justified, but it is now not weighty enough to quash the disciplinary proceedings at the threshold. The bare-boned charge of mala fides may subsequently be fleshed out with facts; but it does not appear either from the notice itself or from the surrounding circumstances as relied upon by the petitioners to be an abject abuse of power that would prompt the Court to interdict the proposed action at the outset.

9. The matter hinges on the nature and extent of unbecoming conduct attributed to the petitioner No. 1 in the first and second counts detailed in the statement of imputation of misconduct. It is impossible to affirmatively establish, solely on the basis of such statement, that the petitioner No. 1 participated in a peaceful demonstration which could never have lowered the bank's image or otherwise tarnished its reputation. There are demonstrations and demonstrations; and, in the bank alleging that the petitioner No. 1 misbehaved in shouting slogans and misconducted himself during the entire exercise, the Court would have to presume heavily in favour of the petitioner No. 1 to come to a finding that there was nothing untoward or unruly that may have happened during the demonstration or protest. As long as the charge makes out a possible case of unlawful conduct, the Court will refrain from short-circuiting the process at the initial stage and allow it to run the full course by leaving both the employer and the perceived delinquent to place the facts and go over the events and deduce therefrom as to whether there was any unbecoming conduct which was worthy of any censure or other measure being taken against the employee.

10. On a mere reading of the statement of imputation of misconduct, it cannot be said that there could not have been any possibility of any misbehaviour, misdemeanor or other conduct covered by Rules 50(4), 50(5) or 50(6) of the relevant rules at the time of the demonstration of August 28, 2012 which had admittedly been instigated by the petitioner No. 1 and whereat the petitioner No. 1 undoubtedly participated.

11. In the circumstances, the writ petition fails. W.P. No. 1065 of 2012 is dismissed. G.A. No. 1656 of 2013 fails as a consequence. G.A. No. 979 of 2013 is disposed of by leaving the respondent bank free to take whatever steps it may be entitled to in accordance with law.

12. The observations herein should be restricted to the immediate context of the present petition and should not prejudice the petitioner No. 1 in any further or other proceedings. The petitioner No. 1 will pay costs assessed at 200 GM to any philanthropic organisation connected with the respondent bank.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.