
(1991) 2 LLJ 247

Madras High Court

Case No: Writ Petition No's. 8711 and 8850 of 1989

P.J. Sunder Rajan

APPELLANT

Vs

Unit Trust of India and
Another
V.
Dasaseelan Vs Unit
Trust of India and
Another

RESPONDENT

Date of Decision: April 19, 1990

Acts Referred:

Penal Code, 1860 (IPC) & Section 109, 120B, 381, 467, 469

Citation: (1991) 2 LLJ 247

Hon'ble Judges: Swamidurai, J; S. Nainar Sundaram, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Nainar Sundaram, J.

In these two writ petitions, the employees of Unit Trust of India, Madras Regional Office, are the petitioners. They

have filed these writ petitions seeking for writs of mandamus directing the respondents to forbear from proceeding with the enquiry into the charges

in disciplinary action. The ground on which they want this Court to issue the writs of mandamus is that the facts which go to form the background

and basis for the charges in the disciplinary action are one and the same in the case of criminal proceedings already initiated against them by the

respondents.

2. Mr. K. T. Palpandian, learned Counsel for the petitioners, would place reliance on the pronouncement of the Supreme Court in *Kusheshwar*

Dubey v. M/s. Bharat Coking Coal Ltd. 1988-II-LLJ-470 to say that when the facts and circumstances forming the background for both the

disciplinary proceedings and the criminal proceedings are one and the same, there ought to be stay of the disciplinary proceedings by this Court.

As against this, Mr. M. R. Narayanaswamy, learned Counsel for the respondents, would say that the pronouncement of the Supreme Court relied

on by the learned Counsel for the petitioners has refrained from settling the law in a straight-jacket formula, and the learned Judges of the Supreme

Court expressly opined that they do not propose to hazard such a step as that would create greater hardship and individual situations may not be

available to be met and thereby injustice is likely to ensue; and hence that pronouncement should be taken only as having been rendered on the

facts of that case; and in the present cases the facts and circumstances do not warrant the indulgence of interdicting the disciplinary proceedings by

this Court.

3. Before we express our opinion on the question raised, after assessing the submissions made by the learned Counsel for the petitioners and the

counter submissions made by the learned counsel for the respondents, we feel obliged to extract the charge-sheet filed against the petitioners in the

criminal proceedings and the charge memoranda issued to the petitioners in the disciplinary proceedings by way of Annexure to this order of ours.

A copy of the charge-sheet, which is common to both the petitioners, in the criminal proceedings shall stand annexed as Annexure ""A"" to this

order. The charge memoranda issued to the petitioners are similar and it would suffice the purpose if a copy of one charge memorandum relating to

the petitioner in W.P. No. 8711 of 1989 stands annexed to this order as Annexure ""B"".

4. It may be stated that the laying of the charge-sheet in the criminal proceedings stemmed out of the very same facts and circumstances on the

basis of which disciplinary proceedings are being prosecuted against the petitioners. But it must be remembered that in the criminal proceedings the

charges are for offences punishable u/s 120B, I.P.C., for criminal conspiracy; u/s 381 I.P.C., for theft by Clerk or servant of property in

possession of master; u/s 467 I.P.C., for forgery of valuable security and u/s 109 I.P.C., for abetment. The said charges will have to be tested

from a different angle with reference to the provisions of the Indian Penal Code for which the petitioners stand charge-sheeted, and certainly the

degree of proof in the criminal proceedings will be on a higher level than the degree of proof in the disciplinary proceedings. In contrast, the acts of

gross misconduct alleged against the petitioners in the charge memoranda in the disciplinary proceedings may have to be tested and adjudicated

upon; keeping in mind the enforcement of discipline and integrity amongst the staff in the administration. It must be noted that there is a complaint in

the charge memoranda of violation of Staff Rule 27 relating to liability to abide by the rules and orders and Staff Rule 29, relating to the obligation

of the employee to promote the interests of the Unit Trust. Different considerations will weigh with regard to assessment of the charges in the

disciplinary proceedings.

5. So far as this Court is concerned, the settled view is that even though there could have been an acquittal in the criminal proceedings, still

prosecution of disciplinary proceedings would not be barred. In *M. M. Rubber Co. Ltd. v. S. Natarajan and Presiding Officer* 1985-II-LLJ-364 a

Bench of this Court opined that departmental proceedings can be taken even after the criminals case was initiated in respect of identical charges

which might have ended in acquittal. This principle to a very great extent indicates that departmental proceedings have got an independent angle of

testing the charges levelled therein and they have got to be viewed from independent standard and the decision in favour of the employee in the

criminal proceedings need not necessarily stand in the way of prosecution of the disciplinary proceedings against him. It would be a different matter

if the service rules or regulations lay down a contrary position. In such a case, the service rules or regulations will certainly govern. There could also

be a service rule or a regulation, interdicting the prosecution at parallel level the disciplinary proceedings. In such a contingency also, such a service

rule or regulation has to govern. This is not the position in the present cases.

6. In *Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd.* (supra) the relevant passage that should be taken note of is found in paragraph 6

thereof and it runs as follows (pp. 472-473) :

The view expressed in the three cases of this court seem to support the position that while there could be no legal bar for simultaneous

proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal

case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether

in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial

consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be

interdicted, pending criminal trial. As we have already stated, it is neither possible nor advisable to evolve a hard and fast straight-jacket formula

valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we

do not intend to lay down any general guideline.

7. On a careful perusal of the above passage, the ultimate guidance which this Court could get is that as to whether in the facts and circumstances

of a particular case there should or should not be such simultaneity of the proceedings should receive judicial consideration and the Court will

decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted pending criminal trial. We

already pointed out certain features, which in our view, are relevant and which dissuades us from interdicting the disciplinary proceedings taking

note of the pendency of the criminal proceedings. At the risk of repetition, we may point out, that the charges levelled against the petitioners in the

disciplinary proceedings will have to be tested from different angles and in particular keeping in mind the enforcement of discipline and the level of

integrity amongst the staff in the administration of the respondents. That need not necessarily be a factor to be taken note of in the criminal

proceedings. We could not subscribe our support to the straight-jacket formula advanced by the learned Counsel for the petitioners that wherever

disciplinary proceedings and criminal proceedings are grounded on the same set of facts, there should be an interdiction of the disciplinary

proceedings, awaiting the decision in the criminal proceedings. The relevant passage in the pronouncement of the Supreme Court in *Kusheshwar v.*

M/s. Bharat Coking Coal Ltd. (supra) does not support any such broad proposition. Ultimately, as stated by the Supreme Court, the facts and

circumstances of a particular case are the deciding factors after they receive the judicial consideration. Mr. K. T. Palpandian, learned Counsel for

the petitioners, would draw our attention to Staff Rule 54(3), which speaks about dismissal of an employee on his conviction of an offence. That is

a contingency on the happening of which, the Staff Rule contemplates the dismissal of an employee. But from that Rule, there could not be a

deriving of any support for the proposition that disciplinary proceedings should await decision in criminal proceedings. Our consideration of the

facts and circumstances of the cases do not justify the grant of prayers in the writ petitions. Accordingly we dismiss these writ petitions. We make

no order to costs.

Annexure ""A"" to the Order Dated 19-4-1990 in W.P. Nos. 8711 and 8850 of 1989.

Charge Sheet

C.B.C.I.D. Crime No. 3/89

Dated 11th May, 1989

Crime Branch CID, Madras

In first Information No. 3/89.

Date 26-2-89

Name and address and occupation of complainant or informant.

Mr. K. Narayana, Deputy General Manager, Unit Trust of India, 45, Second Line Beach, Madras-1.

On bail or recognizance

1. P. J. Sunder Rajan, Age 40/89

S/o. Paul Ajaya Singh

No. 5 1469, IV West Cross St., Mahakavi

Bharathi Nagar, Vyasarpadi, Madras-39

2. V. Dasaseelan, Age 35/89

S/o. Varadharajulu

No. 34/2, Ballard St., Jawahar Nagar,

Madras-82

Property including weapons found with particulars of where, when and by whom found and whether forwarded to Magistrate.

Vide Form 95

Name and address of witnesses.

List of witnesses enclosed.

Charge under Sections 120B, 381, 467, 469 and 109 I.P.C.

Charge Sheet in C.B.C.I.D. CRI. No. 3/89 U/s 120B, 381, 467, 469 and 109 I.P.C.

Accused :

1. P. J. Sunder Rajan

2. V. Dasaseelan.

Accused 1 P. J. Sunder Rajan and 2, V. Dasaseelan are office assistants in Unit Trust of India, 45, Second Line Beach, Madras. Approver A.

Kalaimani is peon in the same office. A1 P. J. Sunder Rajan, A2 Dasaseelan and approver Kalaimani are respectively, Secretary, Vice President

and Assistant Secretary of Madras Branch of Unit Trust of India Employees Association, comprising Class III and Class IV employees, Shri K.

G. Vasal is the Chief General Manager of U.T.I Head Office at Bombay.

During October, 1987, the members of the Unit Trust Employees Association were agitating for payment of overtime allowance to Class III and

Class IV employees as they wanted to remain in office after working hours since the higher officers were also remaining in office after working

hours and attending to official work. Some of the office bearers of the U.T.E.A. resorted to physically preventing the officers from discharging their

duties after office hours as a result of which the Management placed under suspension on 28th October, 1987 the agitating Association leaders

including A1 P. J. Sunder Rajan, A2 V. Dasaseelan and approver A. Kalaimani and initiated departmental action. A1, A2 and approver along with

3 others tendered unconditional apology to the Management, undertaking not to repeat such things/acts in future and therefore the Management

reinstated them in service. Hence A1, A2 and the approver harboured a grudge against Shri K. G. Vasal who was instrumental for breaking the

agitation of the U.T.E. Association.

A bunch of spoilt and skipped blank cheque form received by the Claims Section during the month of December, 1988 and February, 1989 were

kept in a cloth lined cover in the table drawer of Staff Officer Padmavathi for safe custody. On 7th February, 1989, A1, A2 and the approver met

at the office of U.T.I. Madras at about 19:50 hrs after attending the felicitation function organised for Tr. W. R. Varadharajan, M.L.A., and were

preparing the charter of demands for the All India Unit Trust Employees Association conference at Bombay. Then the approver A. Kalaimani took

out from the table drawer of a Staff Officer, Claims Section, a cloth lined cover containing the spoilt and skipped blank cheque and showed them

to A1 and A2.

Between 7th February, 1989, 20:30 hrs and 8th February, 1989 at the office of U.T.I. Madras, A1 and A2 along with approver A. Kalaimani

were parties to a criminal conspiracy, having agreed to do or cause to be done illegal acts to wit, to commit theft of the cover containing the spoilt

and skipped blank cheques by inserting names and addresses of V.I.Ps, and others with imaginary amounts and to despatch them to the said

addresses intending to harm the reputation of the individuals concerned as well as the Unit Trust of India and the said acts which are offences were

committed by A1 and A2 along with the approver and thereby A1 and A2 committed an offence punishable u/s 120B r/w 381, 467 and 469

I.P.C. In pursuance of the said agreement and conspiracy and in the course of the same transaction on 7th February, 1989 at the office of the UTI

Madras, A1 and A2 along with the approver committed theft of the cloth lined cover containing a bunch of spoilt and skipped blank cheque forms

from Claims Section and other records from ULIP Section by dishonestly removing them from the safe custody of the concerned officers of the

Unit Trust of India and thereby A1 and A2 committed an offence punishable u/s 381 I.P.C.

In pursuance of the said agreement and conspiracy and in the course of the same transaction on 7th February, 1989 at about 2:15 hrs at the office

of U.T.I. Madras, A2 V. Dasaseelan forged four blank cheques contained in the cloth lined cover, typing thereon the names of Shri V. P. Singh,

Parliament of India, New Delhi, Shri S. B. Chavan, Chief Minister of Maharashtra, Bombay, Shri B. Varahamoorthy, Kakrapad Atomic Power

Project, Surat District-3 and Major B. S. Prasanna, No. 57, VII Cross, Wilson Garden, Bangalore 560027 with amounts of Rs. 99,900/-, Rs.

1,35,000/-, Rs. 13,800/- and Rs. 10,000/- respectively, intending that the said documents which purported to be valuable securities shall harm the

reputation of the addressees as well as the Management of the U.T.I. and thereby A2 committed offences punishable u/s 467 and 469 I.P.C.

In pursuance of the said agreement and conspiracy and in the course of the same transaction at the time and place mentioned above, A1 P. J.

Sunder Rajan abetted the commission of the offence punishable u/s 467 and 469 I.P.C., by A2 by A1 instigating A2 to type out on the blank

cheque forms the four names and the amounts mentioned above for the purpose of harming the reputation of the said addressees as well as the

Management of the U.T.I. and thereby A1 committed offences punishable u/s 467 and 469 r/w 109 I.P.C.

The above mentioned four forged cheques were put in the U.T.I. office window covers by approver as directed by A1 on the same night and were

included along with other official envelopes despatched from U.T.I. office on 8th February, 1989.

Hence the charge,

(Sd.) 11-5

(R Sankaramoorthy)

Deputy Superintendent of Police,

Hqrs. Crime Branch, C.I.D.,

Madras-4.

19-4-1990.

ANNEXURE ""B"" TO THE ORDER DATED 19-4-1990

in W.P. Nos. 8711 and 8850 of 1989.

UNIT TRUST OF INDIA

(A Public Sector Financial Institution)

No. 45, Second Line Beach,

Madras 600 001.

Gram : UNITSHARE

Phone : 587433

Telex : 418348

Ref : No. UT(M) 456/4C/Spl/88-89 25th May, 1989.

Shri P. J. Sunder Rajan

Assistant (Under Suspension)

Unit Trust of India,

Madras.

Dear Sir,

Staff - Discipline - Charge sheet

In continuation of our letter No. UT(M) 360/4C(Spl)/88-89 dated 5th April, 1989, placing you under suspension with immediate effect, we have

to inform you that further and more circumstances appearing against you are as under :

(1) On 7th February, 1989 after office hours, you alone with Shri V. Dasaseelan, Assistant and Shri. A. Kalaimani, Peon, were sitting late in the

office for doing Association work in connection with the Conference of All India Unit Trust Employees" Association to be held at Bombay from

13th February, 1989. What transpired on the 7th February, 1989 and the days following thereafter, by and between the three of you in collusion,

both by way of action and words is as under and to the following effect.

(2) Shri Kalaimani, Peon, unauthorisedly removed a file-size cover containing spoilt/cancelled/unused cheques/warrants from the open drawer of

the Staff Officer (Repurchase Claims Section) and handed it over to you saying, "see what work the Staff Officer (Claims) has done and left,

report this to the Manager". You took out the contents from the cover and said "Kalaimani, if we give these to the Manager, he will fire only the

concerned Staff Officer, but I am going to get firing for the Manager himself. By typing these we should take revenge on Chief General Manager

Vasal who took revenge on our President and us. This is the correct time". To the suggestion of Shri Dasaseelan that one cheque could be given to

Shri Vassal and another to Chairman, you said "If sent to these people they will fire only the Madras Office. If sent to Shri V. P. Singh he will

shake everyone". You then asked Shri Kalaimani to bring the typing machine. You asked Shri Dasaseelan to type the cheques. You thus not only

conspired to commit theft of the said cheques but also to commit forgery along with Shri Dasaseelan by typing the name of Shri V. P. Singh on one

of the unused cheques. In a similar manner, you asked Shri Dasaseelan to type a cheque in the name of Shri S. B. Chavan giving his address as

Chief Minister of Maharashtra, Bombay, explaining to Shri Dasaseelan's query that "Mumbai" is a North Indian word, you told Shri Dasaseelan

that the remaining two cheques should be sent to Unit Trust of India's agents known to him. You then asked Shri Kalaimani to bring the CGGF or

ULIP register. Thereafter you took unit certificates for Shri Dasaseelan to type them one by one. You asked Shri Kalaimani to post the covers

containing the said fraudulent cheques along with MIS covers through office franking the next day, viz., 8th February, 1989. The remaining

cancelled/uncancelled cheques, unit certificates and letters pilfered by you under the said conspiracy were then taken by you along with Shri

Dasaseelan and Shri Kalaimani out of office premises and were burnt by you below Basin Bridge on E.H. Road on the same night, i.e. 7th

February, 1989. You along with Shri Dasaseelan told Kalaimani, "Don't tell anyone including President, Kalaimani, there is no connection

between this and you. Don't worry about anything. We will take care of everything." You used threatening language to Shri Kalaimani to prevent

him from telling the trust to the authorities.

3. Thereafter on 21st March, 1989, you along with Shri Dasaseelan went to Shri Kalaimani's house knowing that Shri Kalaimani was on leave that

day i.e. 21st March, 1989. When Shri Kalaimani told you that he had confessed to the police, you asked "Does not matter if you have told the

police the facts. Rest we will take care. If you do as we say, it is for your good. Otherwise, it will not be for your good and only your family will

suffer. You have three daughters. So listen to what we say". Then that very night, you along with Shri Dasaseelan compelled Shri Kalaimani to

accompany you to your Advocate"s house and thereafter forcibly confined him in Arun Lodge near Central for that night. On the next day i.e. 22

March, 1989 you along with Shri Dasaseelan forced Shri Kalaimani to write a false leave application stating that he had been severely beaten by

the Police. You had also vide your leave application dated 22nd March, 1989 applied for casual leave stating falsely that it was for admitting

Kalaimani to hospital.

4. In the aforesaid circumstances, you along with Shri Dasaseelan and forcibly involving Shri Kalaimani hatched a conspiracy to commit theft and

forgery with the sole purpose, intention and motive of tarnishing the image of the Trust in the eyes of the public at large and in the process also to

cause financial loss to the Trust. Thereafter, you along with Shri Dasaseelan by forcing, pressurizing and threatening, prevented Shri Kalaimani from

giving out the truth to the Management. You applied for casual leave on 22nd March, 1989 giving a totally false reason that police had severely

beaten Shri Kalaimani when in fact he did not even have any bruises on his body and it was a concocted story to conceal his wrongful confinement

by Shri Dasaseelan and yourself on the 21st and 22nd March, 1989. The following charges reflecting acts of gross misconduct are therefore

levelled against you :

(1) Knowingly committing criminal act/acts of gross misconduct detrimental to the interest of Unit Trust of India in breach of Staff Rules 27 and 29

of Unit Trust of India (Staff) Rules, 1978 and/or;

(2) Committing the following acts unbecoming of an employee with the sole purpose of tarnishing the image of the Trust in the eyes of the public at

large and the Government of India;

(a) Committing a fraud on the Trust by theft and criminal and fraudulent use of office cheques and other documents exposing the Trust to the risk of

heavy financial loss and/or;

(b) Resorting to unauthorised destruction of pilfered office records and valuables and in the process destroying evidence of the said theft and fraud

by forgery in breach of Rules 27 and/or 29 of Unit Trust of India (Staff) Rules, 1978 and/or;

(c) Threatening and forcing Shri Kalaimani to get involved in your said criminal acts of theft and forgery and preventing him from disclosing the

facts by holding out threats of violence to his person and his family members and/or;

(d) Committing acts involving gross moral turpitude having a bearing on the affairs of the Unit Trust of India.

5. If all or any of the charges set out above are proved, you will be liable to penalties as per Rule 55 of Unit Trust of India (Staff) Rules 1978

including the penalty of dismissal from the service without notice.

6. It has, therefore, been decided to hold a domestic enquiry into the above charges. Shri M. Parameswaran, Manager, Unit Trust of India, Cochin

has been appointed as Enquiry Officer. He will advise you the date, time and venue of the enquiry. You will be allowed to defend yourself and

examine your witnesses and cross-examine the Management's witnesses. At the enquiry, you will be permitted to be represented/defended by a

member of the Registered Trade Union of the Unit Trust of India Employees of which you are a member.

7. In case you do not appear for the enquiry, the Enquiry Officer will be free to conduct and conclude the same ex parte. You will be permitted to

lay before the Enquiry Officer oral/documentary evidence in your support. Pending conclusion of the enquiry and the findings thereof and until

otherwise advised, you will continue to remain under suspension effective vide our letter dated 5th April, 1989.