(1988) 08 CAL CK 0025

Calcutta High Court

Case No: CO. No. 9043 (W) of 1987

Amarendra Nath Pan		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Aug. 23, 1988

Acts Referred:

- Constitution of India, 1950 - Article 20(3)
- Industrial Disputes Act, 1947 - Section 33(2)
- Penal Code, 1860 (IPC) - Section 409

Citation: (1989) 1 CALLT 80 : (1989) 1 CHN 299 : (1994) 3 LLJ 290

Hon'ble Judges: Paritosh Kumar Mukherjee, J

Bench: Single Bench

Advocate: Altamas Kabir, Miss Chhabi Mukherjee and Mr. Sadhidulla Munshi, for the Appellant;Hirak Mitra, S.N. Chowdhury, Pinaki Ghosh and Mr. Ajoy Bose, for the Respondent

Judgement

Paritosh Kumar Mnkherjee, J.
The continuance of the departmental proceedings simultaneously with the Criminal Trial initiated on the basis of the first information report, dated June 28,1987, against the writ petitioner, Amarendra Nath Pan has been challenged in the instant writ petition.

2. At the time of admission of the writ petition, it appears that A. K. Sengupta, J, issued Civil Order, together with interim Order in terms of prayer (d) of the writ petition, which is set out hereinbelow:

(d) Ad interim Order of injunction restraining the respondents from continuing with the domestic enquiries initiated against the petitioner in terms of the letters issued by the respondent No. 2 on 2nd July, 1987 and 12th October, 1987, and/or any other domestic Enquirer relating to the charges in the criminal proceedings, being C.B.I., S.P.E. Calcutta Case No. R.C. 40/87, till the disposal of the said criminal Proceedings

2A. Thereafter, on May 16, 1988, the writ petition was mentioned for ''Early hearing'' at the instance of both the parties and the writ petition was heard from time to time.

3 It is the case of the writ petitioner that he was appointed as ''Chief Cashier'' of United Commercial Bank, now UCO Bank at its Bagri Branch on March 6, 1971. From 1971 to 1987, the petitioner had been discharging the duties as ''Chief Cashier'' of the said branch, without any difficulty. In the course of discharging function, as ''Chief Cashier'', the petitioner was transferred to the Office of the Divisional Manager, West Bengal Division-III at 96, Deshpran Sasmal Road, Howrah. While he was working in the said office, the Divisional Manager, West Bengal Division-III (hereinafter referred to as the disciplinary authority) served the petitioner with a letter, dated July 2, 1987, informing that it was proposed to hold ''an enquiry'', against the petitioner, under Regulation 6 of the UCO Bank Officer Employees'' (Discipline & Appeal) Regulation, 1976 (hereinafter referred to as the ''said Regulation''). Statement of allegations and the charges framed on the basis of the said allegations was also enclosed along with the said letter and the petitioner was directed to submit written statement of his defence within 10 days from the receipt of the said letter. On receipt of the said letter and the enclosure, the petitioner wrote back to the Disciplinary Authority, generally, deying the four articles of charges enclosed to the letter, dated July 2, 1987. However, the petitioner in his reply submitted, that, inasmuch as, all the charges involved matters relating to accounts maintained more than 3 years ago, it was not possible for the petitioner to file written statement in defence merely from memory and he prayed for inspection of all relevant documents relating to the said four charges. The petitioner, thereafter, requested that he should be supplied with the certified copy of the UCO Bank Officers Employees'' (Discipline & Appeal) Regulation, 1976, for the said purpose and he should be allowed opportunity to inspect all relevant documents to be relied on, by the bank in support of the statement of allegations. The petitioner also prayed for appointment of ''a lawyer'' for his defence, before the Disciplinary Authority and submitted that unless such inspection is made available, the petitioner will not be in a position to defend his case. True copies of the said letters have been annexed as Annexures ''A'' and ''B'' to the present writ petition.

4. By the letter, dated July 10, 1987, the petitioner was informed by the Disciplinary Authority that it had been decided to hold a ''domestic enquiry'' in respect of the charges against the petitioner and that the petitioner would be given an opportunity to inspect the documents, on the basis of which the chargesheet had been framed, when the proceedings would be started by the appropriate Enquiring Officer.

5. In the meantime, the petitioner was arrested on July 14, 1987, in connection with C.B.I, S.P.E Calcutta Case No. R.C. 40/87 initiated by the Delhi Special Police Establishment, Calcutta Branch, against the petitioner, on the basis of the first information report, u/s 409 of the Indian Penal Code read with Section 5(2) and Section 5(1) (c) of the Prevention of Corruption Act, 1947.

6. Subsequently, the petitioner was "released on bail" and on September 21, 19S7, while the petitioner was attending the Office of Central Bureau of Investigation, Special Police Establishment Calcutta Branch, he was served with a copy of a letter, dated July 24, 1987, written by the Disciplinary Authority, being the respondent No. 2, informing the petitioner that, inasmuch as, the aforesaid criminal proceedings had been initiated against the petitioner, and in connection with which, the petitioner had been remanded in police/jail custody with elect from July 14, 1987, it had been decided by the Disciplinary Authority to place the petitioner "under suspension" with "retrospective effect" from July 15, 1987, under Regulation 12(1) (b) and 12(2) (a) of the UCO Bank Officers Employees" (Discipline & Appeal) Regulations, 1976.

7. In paragraph 10 of the writ petition, the petitioner has categorically stated that by simultaneous holding of the domestic enquiry during the pendency of the Criminal Trial, the petitioner would be compelled to disclose his defence, which he intends to use in the Criminal Trial, since the charges on which the domestic enquiry is based, are the same as those in the criminal proceedings. Accordingly, the petitioner has expressed his apprehension that the petitioner would be seriously prejudiced, if the criminal proceedings which is pending at the stage of investigation and no charge sheet has been issued at the time of moving of the writ petition (subsequently charge sheet has been issued during hearing of the writ petition) would give an unfair advantage to the prosecution, which is not intended in a criminal trial.

8. In short, the petitioner tried to make out a case of double jeopardy within the meaning of Article 20(3) of the Constitution of India, which runs as follows:

Art. 20(3): No person accused of any offence shall be compelled to be a witness against himself.

9. Mr. Altamas Kabir, appearing in support of the writ petition has placed "strong reliance" on the decision of the Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan reported in. A.I.R, 1900 S.C. 806. It appears that the said decision arises out of, a proceeding, under the Industrial Disputes Act, 1947 and the same arose in the matter of not granting approval u/s 33(2) of the Industrial Disputes Act, 1947. In the said case, analysing the facts available before Their Lordship the Supreme Court, observed, as follows:

We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would he advisable for the employer to await the decision of the Trial Court, so that the defence of the employee in the criminal case may not be prejudiced.

10. The said view has been followed by the Supreme Court in the case of Tata Oil Mills Co. Ltd. vs. Their Workmen AIR 1963 S.C.155. In paragraph 9 of the said judgment, Their Lordships observed as follows:

There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, it is desirable that if the incident giving rise to a charge frowned against a workman in a domestic enquiry is being tried in a Criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case.

11. Mr. Hirak Mitra appearing for the Bank, has strongly placed reliance on a judgment of Karnataka High Court in the case of Rama Bahador and Another v. Tungabhadra Suqar Works (P) Ltd. and another, reported in 1979 AIS LJ 489. The learned Single Judge of that Court in dealing with a revision petition under the CPC and propriety of grant of injunction, in terms of Order 39, Rules 1 and 2 of the Code, had considered as to whether parallel proceedings during the enquiry of the Criminal Trial, on the same charges are competent. It appears from the said decision that the decision in the case of Delhi Cloth n"d General Mills (supra) and another decision of the Supreme Court in. the case of Jang Bahadur Singh v. Baij Nath Tiwari reported in A.I.R, 1909 S.C. 30 has been taken into consideration. In that case, the plaintiff having filed a Suit attempted to restrain the defendant by means of a permanent injunction from proceeding with the departmental enquiry until the termination of the criminal proceedings, being C.C. No. 1 of 1978 on the file of the Court of the Chief Judicial Magistrate; Shimoga. The case of the plaintiff was that if during the pendency of the Criminal Trial, the plaintiff is put to the necessity of facing a parallel departmental enquiry, the defence, in the Criminal Trial would be disclosed in the departmental enquiry and development of such a situation would jeopardise his defence in the Criminal Trial. The learned Judge appears not to have accepted the said contention in the facts at that case.

12 Mr. Mitra next submitted that Criminal Trial might take years to conclude the hearing as Central Bureau of Investigation might take much time in presenting the case and the case may be delayed for want of Presiding Officer, in Special Court, as such, it is desirable that this Court should not interfere with the departmental proceedings, which also involves some other materials, apart from the charge sheet submitted in the criminal trial.

13. At the hearing, copy of the charge sheet which has been submitted by the Central Bureau of Investigation, has been submitted in Court and which forms a part of the writ petition.

14. Mr. Mitra tried to analyse that there are some other materials, other than the four charges, in the departmental proceedings, which did not form part of the charge sheet and as such, the departmental authorities should be given green signal to proceed with the departmental enquiry and this Court may not interfere with the same.

15. Mr. Mitra referred to the affidavit-in-opposition filed by the bank and submitted that the charges are simple and, as such, the respondents should not wail till the final conclusion of the criminal trial.

16. On being enquired into by the Court, Mr. Mitra appearing for the bank authorities, of course, could nest satisfied the Court as to why, the departmental proceedings should not wait till finalisation of the Criminal Trial, as in view of the accepted principles of law, in the event the writ petitioner, is convicted in the Special Court, in that event, the writ petitioner would be automatically dismissed and/or removed from service, without taking recourse to formalities in the departmental proceedings and, in the alternative, if the criminal case fails for want of evidence, by Order of discharge and not acquittal, in that event also, the Departmental Authorities would be entitled to proceed with the departmental enquiry, even after passing of such order at discharge by the Criminal Court, as according to this Court none of the decisions of the Supreme Court cited from the Bar had the occasion to decide the matter from the said angle, but proceeded only with the view that it would be desirable to stay the departmental enquiry, as the defence of the delinquent might be exposed.

16A. In reply, Mr. Kabir has referred to a decision of the Central Administrative Tribunal, Calcutta, in the case of Abdullais Khan vs. State of West Bengal and others, reported in Services Law Reporter 1986 (3) 16, wherein the members of the Tribunal in paragraphs 33 and 34 of the judgment, after following the case of Khushi Ram vs. Union of India reported in 1974 LIC 558, quoted the law, which is set out hereinbelow:

Their Lordships, in the interest of fair play observed that it is expedient to stay the departmental enquiry pending criminal proceeding.

17. It appears, that in the case before the Tribunal, the learned Government Pleader was called upon to submit any authority expressing contrary view, but no authority was cited. As such, the learned Members of the Tribunal were inclined to follow the said authority in Khushi Ram''s case (supra).

18. After having heard the parties at length and having considered the cases cited from the Bar, in my opinion, the respondents bank authorities will be getting opportunity to start the departmental proceedings in the event the criminal proceedings, ends with an Order of discharge.

19. As such, in my view, it would not be expedient for both the parties to proceed with the departmental enquiry and thereby squandering money of the public sector bank, as the investigation and trial has already commenced at the instance of Central Bureau of Investigation and charge sheet has been submitted which has been disclosed, during the hearing of this case, before me..

20. Accordingly, in my opinion, it would be just and proper to direct the Inspector, Central Bureau of Investigation to expedite the criminal case, as soon as possible, without taking

any adjournment and it is also desired that the writ petitioner will co-operate in the matter, without taking any unnecessary adjournments, so that the trial may be concluded at an early date.

21. However, during the pendency of the criminal trial, the respondents Bank Authorities will be restrained from proceeding further with the departmental enquiry, against the petitioner, in terms of the charge sheet, referred to, in the writ petition.

22. The writ petition is thus disposed of. There will be no Order as to costs.

23. As prayed for operation of this judgment shall remain stayed for a period of four weeks in order to enable the respondent Bank Authorities to have the proposition tested in the Court of Appeal, subject, to the continuance of the interim Order granted by Ajit Kumari Sengupta, J, at the time of admission of the writ petition.