

CASE NO.:
Appeal (civil) 5369 of 2007

PETITIONER:
Indian Overseas Bank, Anna Salai and Anr.

RESPONDENT:
P. Ganesan and others

DATE OF JUDGMENT: 23/11/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) NO. 8683 OF 2006)

S.B. SINHA, J.

1. Leave granted.

2. Whether pendency of a criminal case by itself would be a sufficient ground for stay of the departmental proceedings is the principal question which arises for our consideration in this case.

3. The basic fact of the matter is not in dispute.

4. Respondents 1 to 4 herein are the office bearers of the All India Indian Overseas Bank SC/ST Employees' Welfare Association. Indisputably another association was also operating in the establishment of the appellant known as All India Indian Overseas Bank Employees' Union of which respondent No.5 is the President. Registration of similar names gave rise to a dispute between the parties.

5. Indisputably a first information report was lodged on 27th January, 2005 with the Thousand Lights Police Station, Chennai alleging that L. Balasubramanian, Respondent No.5, herein was assaulted on 27th January, 2005 at about 12.35 p.m. within the bank premises by Respondents Nos. 1 to 4 as well as by Mr. P. Rajalingam, the Deputy Chief Officer working in the Regional Office of the appellant-bank. All the respondents are indisputably employees of the bank. Their designations are as under :-

(a) Respondent No.1 (P. Ganesan) is employed as Assistant Manager, Thiruvottiyur Market Branch.. He is also the General Secretary of All India Indian Overseas Bank SC/ST Employees' Welfare Association.

(b) Respondent No.2 (S.Vijayakumar) is employed as a clerk in the Central Clearing Office at Chennai. He is also the Vice President of the All India Indian Overseas Bank SC/ST Employees' Welfare Association.

(c) Respondent No.3 (R Amalraj) is employed as a Messenger in the Inspection Department, Central Office at Chennai. He is also the Organizing Secretary of the All India Indian Overseas Bank SC/ST Employees' Welfare Association.

(d) Respondent No. 4 (A. Dakshinamoorthy) is employed as an Assistant Manager in the Walltax Road

Branch, Chennai. He is also the Deputy General Secretary of the All India Indian Overseas Bank SC/ST Employees\022 Welfare Association.

(e) Respondent No.5 (L. Balasubramanian) is employed as \023Special Assistant\024 in Foreign Exchange Department, Central Office at Chennai. He is also the President of All India Indian Overseas Bank Employees\022 Union (AIOBEU) as well as the President of the National Confederation of Bank Employees (NCBE)\024.

6. An enquiry was conducted leading to discovery of certain additional facts. It may not be necessary for us to take note of the same at this stage. Respondent No.5 was admitted in the National Hospital for medical treatment. He remained confined therein for a period of twelve days. A charge-sheet was filed by the Investigating Officer in the criminal case against Respondents Nos. 1 to 4 under Sections 341, 323, 324, 427, 307 and 506 (ii) of the Indian Penal Code. Respondent Nos. 1 and 3 were arrested. They were, however, released on bail on 15th February, 2005. Respondents Nos. 2 and 4, however, absconded. On or about 15th February, 2005 they obtained anticipatory bail. Another first information was lodged by Respondent Nos. 1 to 4 against respondent No.5 in the said Thousand Lights Police Station, Chennai.

7. Respondent Nos. 1 to 4 were placed under suspension by the appellant-bank by an order dated 28th January, 2005. Charge-sheets dated 21st February, 2005 were also served upon them. They were asked to show cause as to why disciplinary action be not taken against them for their acts of indiscipline, insubordination, unruly and disorderly behaviour, use of filthy language and most shameful abuses as well as murderous assault on respondent No.5 within the office premises of the bank as also causing damage to valuable properties and serious impairment to the bank\022s prestige and reputation in the estimation of public at large. Requests were made by the said respondents to revoke the order of suspension by an application dated 9th March, 2005 assuring the authority that they would fully cooperate with the authorities of the bank in the disciplinary proceedings initiated against them. They, furthermore, requested the bank to grant them one month\022s time to submit their reply to the show cause. Orders of suspension were revoked on 16th April, 2005. No reply to the show cause notice, however, was filed by them despite opportunities granted. Departmental enquiry was held against them on 18th May, 2005 ; 3rd June, 2005, 17th June, 2005, 28th June, 2005, 8th July, 2005, 19th July, 2005, 29th July, 2005 and 4th August, 2005, the details whereof, as stated by the appellants in their affidavit before the High Court, are as under :-

\023(a) \005..The Enquiry was fixed for 18.5.2005 in respect of which the Respondents had been duly intimated fairly in advance. However, the said Enquiry was adjourned to 3.6.2005 acceding to the written request dated 16.5.2005 of the respondents.

(b) The Enquiry was further adjourned to 17.6.2005 in response to the Respondents\022 request for adjournment.

(c) The Enquiry was then fixed for 8.7.2005 in view of the Respondents\022 written request dated 25.6.2005. However, the Respondents remained absent on 8.7.2005, and therefore they were set ex-parte, while adjourning the Enquiry to 19.7.2005.

(d) Meanwhile, the list of Management Witnesses was

mailed to the Respondent Nos. 1 to 4 who admitted to have received the same.

(e) On 19.7.2005, only Respondent Nos.2 and 4 attended the Enquiry Proceedings, and categorically admitted to have received the List of Management Witnesses, whereas Respondents Nos.1 and 3 remained absent.

(f) The Enquiry was then adjourned to 29.7.2005 and again adjourned to 4.8.2005 when except Respondent No.3 (R. Amalraj), the other Respondent Nos.1, 2 and 4 attended the proceedings, and requested for further postponement, while representing that on the next date of the proceedings, they would either bring their Defence Representative or they would themselves conduct their defence without seeking any further postponement thereof. Accordingly, the Enquiry was finally adjourned to 19.8.2005 to be held on day-to-day basis until conclusion.

8. While on the one hand the respondents were seeking adjournments and taking time from the Enquiry Officer in the said disciplinary proceedings, they, on the other hand, moved the High Court of Madras by filing writ petitions under Article 226 of the Constitution of India. The said writ petitions were marked as W.P. Nos. 26176, 26177, 26178 and 26179 of 2005. Interlocutory applications were also filed therein praying for stay of proceedings in the departmental enquiry pursuant to the said charge-sheet dated 21st February, 2005 on the premise that on identical facts criminal cases had been filed against them. An ad interim order of stay was granted by the High Court by an order of 16th August, 2005 stating :-

Though this Court generally did not entertain Writ Petitions relating to Charge-memos on the ground that Criminal proceedings are pending, the question as to whether the Departmental Proceedings and the Criminal case are based on identical and similar set of facts and whether the Charge in the Criminal case is of the grave nature which involves complicated questions of law and facts are the factors to be examined in the Writ Petitions.

The said interim order of stay was produced before the Enquiry Officer. As the interim order of stay was granted only for a period of four weeks and the same having not been extended the enquiry proceedings continued. One witness being MW1 was examined on 21st October, 2005. The said departmental enquiry also proceeded on 22nd October, 2005 but the respondents did not participate therein on which date MW2 was examined. Yet again on 24th October, 2005, MW3 and MW4 were examined and the matter was adjourned to 25th October, 2005 when MW5 and MW6 were examined. On 26th October, 2005, MW7 and MW8 were examined-in-chief and the enquiry was adjourned to 27th October, 2005. Yet again on 28th October, 2005, MW9 and MW10 were examined and the enquiry was adjourned to 29th October, 2005 on which date MW11 was examined. It is stated that the respondents attended the enquiry on 29th October, 2005 and nominated their Defence Representative to defend them. A prayer for adjournment made on their behalf, however, was declined by the Enquiry Officer. MW11 was examined-in-chief on that date. The enquiry was adjourned to 31st October, 2005 on which date MW12 and MW13 were examined-in-chief. It was adjourned to 9th December, 2005 for cross-examination of the Management Witnesses.

9. The application for vacating the stay filed by the appellants on 6th September, 2005 was dismissed by a learned Single Judge of the High Court by an order dated 7th December, 2005 stating :-

\023 Once the Learned Single Judge has indicated the reasons which weighed with him in exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India against the impugned Charge-Memo, except to expedite the writ them petitions, it may not be proper for this Court to vacate the Interim Stay at this stage. Accordingly, the vacate stay petitions, viz. WPMPs Nos. 2047 to 2050 of 2005 are dismissed. The Interim stay granted by this Court on 16.8.2005 is made absolute.

Expedite the Writ Petitions and post the same for final hearing in the second week of February, 2006.\024

10. Writ appeals preferred by the appellants against that order were disposed of by a Division Bench of the Court by reason of the impugned judgment opining :-

\02314. In the instant case, there is no dispute that the criminal action and the disciplinary proceedings are founded upon the same set of facts. In fact, the disciplinary proceedings are solely based upon the criminal complaint lodged by the president of a rival union, who is also facing prosecution with regard to the same incident. It has been conceded before us that the bank had not conducted any independent enquiry before initiating the impugned departmental proceedings.

15. In our opinion, in the peculiar facts and circumstances of the case on hand, fair play requires that postponing of the departmental proceedings till the criminal cases are decided. We are, therefore, of the view that the prayer made by the petitioners for deferring the departmental proceedings till the conclusion of the criminal trial has to be accepted and it is ordered accordingly.\024

11. The appellants are thus before us.

12. Mr. Altaf Ahmed, learned senior counsel appearing on behalf of the appellants in support of the appeal would, inter alia, submit that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that as the enquiry proceedings proceeded to a great extent the same should not have been stayed. Reliance in this behalf has been placed on *Kendriya Vidyalaya Sangathan and others vs. T. Srinivas* : (2004) 7 SCC 442.

13. Mr. G. Prakash, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the High Court having exercised its discretionary jurisdiction upon application of law operating in this behalf, this Court should not exercise its jurisdiction under Article 136 of the Constitution of India. Learned counsel urged that in a matter of this nature where rival parties had clashed with each other and case and counter case have been instituted \026 one investigated by the Assistant Commissioner of Police and another by an Inspector of Police, the respondents would be highly prejudiced if the departmental proceedings are allowed to continue; particularly when the officers of the appellant-bank have been proceeding with a

bias. It was contended that the question as to whether there exists any complicated question of law must be judged from the employees' point of view, they being belonging to the weaker section. Learned counsel would, in support of his contention, strongly relied upon G.M. Tank vs. State of Gujarat and others : (2006) 5 SCC 446 ; Hindustan Petroleum Corporation Ltd. and others vs. Sarvesh Berry : (2005) 10 SCC 471 and Sathi Vijay Kumar vs. Tota Singh and others : 2006 (14) Scale 199.

14. Before embarking upon the rival contentions of the parties we may notice that Respondent Nos. 1 to 4 have filed an application for quashing the order taking cognizance against them before the High Court under Section 482 of the Code of Criminal Procedure which was marked as CrI. O.P. No. 18163 of 2006 and by an order dated 17th July, 2006 further proceedings in the criminal case have been stayed.

15. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

16. In Delhi Cloth and General Mills Ltd. vs. Kushal Bhan : AIR 1960 SC 806 this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice, observed :-

"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 be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

The same principle was reiterated in Tata Oil Mills Co. Ltd. vs. The Workmen : AIR 1965 SC 155.

17. In State of Rajasthan vs. B.K. Meena and others : (1996) 6 SCC 417 this Court held :-

"The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case."

18. Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another : (1999) 3 SCC 679 also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarized its findings as under :-
(i) Departmental proceedings and proceedings in a

criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.\024

19. The issue came up for consideration yet again in T. Srinivas (supra) where this Court while analyzing B.K. Meena (supra) and Capt. M. Paul Anthony (supra) held that :-

\023 From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.\024

20. The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stayed of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.

21. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

22. Furthermore Respondent Nos. 1 to 4 have now moved the High Court for quashing of the order taking cognizance of offence against them in the criminal proceedings. The criminal proceedings have been stayed. Thus, even applying the principle laid down in Capt. M. Paul Anthony (supra) the impugned judgment cannot be sustained. Before the High Court no contention was raised that because Respondent Nos. 1 to 4 are office bearers of a trade union, the authorities were biased against them. Nothing has been shown that any complicated question of law arose for determination in the criminal case.

23. Reliance placed by Mr. Prakash on Hindustan Petroleum Corporation Ltd. (supra) is not apposite. There were certain special features which were noticed by this Court. In that case itself it was held :-

\023 There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case get prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.\024

(emphasis supplied)

Therein the departmental proceeding were allowed to continue despite the fact that the delinquent officer therein had been charged for commission of an offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

24. In G.M. Tank (supra) this Court was dealing with a case where the delinquent officer was acquitted. The said decision has no application in the instant case.

25. Sathi Vijay Kumar (supra) pertains to a case involving election dispute. The question which arose therein was as to whether despite the fact that there was no provision in the Representation of the People Act, 1961 for striking out the pleadings, the Tribunal had the power to do so. We are not concerned with such a question in this matter.

26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.

27. For the reasons abovementioned the impugned judgment cannot be sustained which is hereby set aside. The appeal is accordingly allowed.

28. We would, however, like to observe that in the event any prayer

is made by the respondents to cross-examine the witnesses examined on behalf of the appellants, the Enquiry Officer may consider the same in accordance with law. Keeping in view the conduct of the respondents they are directed to bear the costs of the appellants both before the High Court as also before us. Counsel's fee assessed at Rs.25,000/-.

JUDIS