

Kusheshwar Dubey

Vs

M/s Bharat Coking Coal Ltd. and Others

Civil Appeal No. 3129 of 1988

(Ranganath Misra, M. N. Venkatachaliah JJ)

06.09.1988

ORDER

1. Special leave granted.

2. The appellant is an employee in the Balihari Colliery of respondent 1 and in 1986 was working as an electrical helper. On the allegation that he physically assaulted a supervising officer by name S. K. Mandal, he was subjected to disciplinary proceedings as also a criminal prosecution. Since the disciplinary proceeding as also the criminal trial were taken simultaneously, the appellant filed a civil action in the court of Munsif at Dhanbad asking for injunction against the disciplinary action pending criminal trial. On December 6, 1986, the Munsif made an order staying further proceedings in the disciplinary action till disposal of the criminal case. The appeal of respondent 1 against the order of learned Munsif was dismissed on March 31, 1987, by the appellate court. Thereupon respondent 1 moved the High Court in its revisional jurisdiction. The High Court by its order dated July 7, 1987 held :

First information report was lodged against the opposite party (appellate) and the same was pending before the competent court. Meanwhile the petitioners (respondents) started departmental proceeding against the opposite party. The opposite party filed a suit before the trial court for declaration that appointment of the Enquiry Officer was illegal and for restraining the petitioners permanently from continuing with the department proceeding during the pendency of the criminal case. That was allowed by the trial court and confirmed by the lower court. There is no are for an employer to proceed with the departmental proceeding with regard to the same allegation for which a criminal case is pending.

I am, therefore, of the opinion that the courts below were wrong in granting injunction in favour of the opposite party.

In the result, this application is allowed and the order impugned is set aside.

3. According to Mr. Jain for the appellant, the legal position settled by this Court supported the stand that the disciplinary action had to be stayed till the criminal case was over. He relied upon the decisions in Delhi Court and General Mills Ltd. v. Kushal Bhan and Tata Oil Mills Co. Ltd. v. Workmen. He also referred in the course of his submission to the decisions of different High Courts in support of his propositions. Two cases out of the several ones of the High Courts he relied upon are Kushi Ram v. Union of India and Project Manager, ONGC v. Lalchand Vazirchand Chandna. Pathak, C. J., as he then was, in the Himachal case indicated that fair play required the postponing

of the criminal trial and Thakkar, J. as our learned Brother then was in the Gujarat case had also take a similar view.

4. We would like to point out that there are also authorities in support of the position that there is nothing wrong in parallel proceedings being taken - one by way of the disciplinary proceeding and the other in the criminal court. Reference may be made to decision of this Court in Jang Bahadur Singh v. Baij Nath Tiwari, and some decisions of High Courts such as Rama P. C. v. Superintendent of Police, Kolar, Ali Mohd. v. Chairman, T. A. & C. Udampur, Moulindra Singh v. Deputy Commissioner and Shaik Kasim v. Superintendent of Post Office, Chingletut.

5. Mr. Jain contended that we should settle the law in a strait-jacket formula as judicial opinion appeared to be conflicting. We do not purpose 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.

6. In the Delhi Cloth & General Mills case, it was pointed out by this Court : (SCR p. 230)

It is true that very often employers stay inquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Bimal Kanta Mukherjee v. M/s Newsman's Printing Works, this was the view taken by the Labour Appellate Tribunal. 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 await the decision of the trial court, so that the defence of the employer in the criminal case may not be prejudiced.

In Tata Oil Mills case, Gajendragadkar, C. J., spoke for a three Judge Bench thus : (SCR p. 562)

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 Delhi Cloth and General Mills Ltd. v. Kushal Bhan, it is desirable that if the incident giving rise to a charge framed 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.

In Jang Bahadur case this Court said : (SCR p. 137)

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 proceeding 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 course of justice in the pending court proceeding. 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 willful 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.

7. 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 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 particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

8. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.

9. The appeal is allowed and the order of the High Court is vacated and that of the trial court as affirmed in appeal is restored. The appellant shall be entitled to costs. Hearing fee is assessed at Rs. 2000.

10. We would like to point out that for the first time in this Court, the enquiry report in the disciplinary proceedings was produced. We express no view about it.

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