

Kusheshwar Dubey vs Bharat Coking Coal Ltd. & Ors on 6 September, 1988

Equivalent citations: 1988 AIR 2118, 1988 SCR SUPL. (2) 821, AIR 1988 SUPREME COURT 2118, 1988 SCC 950, (1988) 57 FACLR 562, (1988) 2 SCJ 271, (1989) 74 FJR 86, (1989) 1 GUJ LH 26, (1989) BLJ 1, (1988) 2 APLJ 82.1, 1988 (4) SCC 319, (1988) 2 LAB LN 912, (1988) 2 KER LT 58, 1988 BLJR 755, (1988) 2 CURLR 497, (1988) 3 JT 576 (SC), (1988) 2 LABLJ 470, 1988 SCC (L&S) 950, (1989) PAT LJR 1

Author: Misra Rangnath

Bench: Misra Rangnath

PETITIONER:
KUSHESHWAR DUBEY

Vs.

RESPONDENT:
BHARAT COKING COAL LTD. & ORS.

DATE OF JUDGMENT 06/09/1988

BENCH:
MISRA RANGNATH
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VENKATACHALLIAH, M.N. (J)

CITATION:
1988 AIR 2118 1988 SCR Supl. (2) 821
1988 SCC (4) 319 JT 1988 (3) 576
1988 SCALE (2) 641

ACT:
Disciplinary and criminal proceedings--Holding of--
Simultaneously--Whether legal bar--Not advisable to evolve a
hard and fast rule valid for all cases.

HEADNOTE:
The appellant, an employee of Respondent No. 1, was
subjected to disciplinary proceedings as also a criminal
prosecution simultaneously on the allegation that he
physically assaulted a supervising officer. He filed a civil

action in the trial court asking for injunction against the disciplinary action pending criminal trial. The trial court stayed further proceedings in the disciplinary action till disposal of the criminal case. In appeal, the appellate court affirmed the aforesaid order. However, the High Court allowed the Revision Application of the Respondent and set aside the impugned order on the ground that there is no bar for an employer to proceed with the departmental proceeding with regard to the same allegation for which a criminal case is pending.

Allowing the appeal to this Court,

HELD: 1. The order of the High Court is vacated and that of the trial court as affirmed in appeal is restored. The criminal action and the disciplinary proceedings were grounded upon the same set of facts. 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. [826A-B]

2(i) 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. [825E-F]

2(ii) 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

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disciplinary proceedings should be interdicted, pending criminal trial. [825F-G]

The Delhi Cloth and General Mills Ltd. v. Kushal Bhan, [1960] 3 SCR 227; Tata Oil Mills Co. Ltd. v. Its Workmen, [1964] 7 SCR 555 and Jung Bahadur Singh v. Baij Nath Tiwari, [1969] 1 SCR 134, relied upon.

Rama P. C. v. Superintendent of Police, Kolar & Anr., AIR 1967 54 Mysore 220; Ali Mohd. & Ors. v. Chairman T.A. & C. Udampur, [1981] 2 SLR 225; Moulindra Singh v. The Deputy Commissioner & Ors., [1973] LIC 6 1564; Shaikh Kasim v. Superintendent of Post Office, Chingletut, AIR 1965 Mad. 502; Khusi Ram v. Union of India, [1974] LIC 553 and Project Manager, ONGC v. Lal Chand Wazir Chand Chandna, [1982] 1 SLR 654, referred to.

3. 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.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3129 of From the Judgment and Order dated 7.7.1987 of the Patna High Court in Civil Revision No. 128 of 1987 (R). R.K. Jain, Rakesh K. Khanna and R.P. Singh for the Appellant.

R.N. Sachthey and Anip Sachthey for the Respondents. The following Order of the Court was delivered:

ORDER Special leave granted.

The appellant is an employee in the Balihari Colliery of the Respondent No. 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 PG NO 823 pending criminal trial. On 6.12.1986, the Munsif made an order staying further proceedings in the disciplinary action till disposal of the criminal case. The appeal of the Respondent No. 1 against the order of learned Munsif was dismissed on 31st March, 1987, by the appellate court. Thereupon the Respondent No. 1 moved the High Court in its revisional jurisdiction. The High Court by its order dated 7.7.1987 held:

"First information report was lodged against the opposite party (appellant) 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 departmental proceeding during the pendency of the criminal case. That was allowed by the trial court and confirmed by the lower court. There is no bar 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."

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 *The Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, [1960] 3 SCR 227 and *Tata Oil Mills Co. Ltd. v. Its Workmen*, [1964] 7 SCR 555. 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 *Khusi Ram v. Union of India*, [1974] LIC 553 and *Project Manager, ONGC v. Lal Chand Wazir Chand Chandna*, [1982] 1 SLR 654. Pathak CJ., 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 taken a similar view.

PG NO 824 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, [1969] I SCR 134 and some decisions of High Courts such as Rama P.C. v. Superintendent of Police, Kolar & Anr., AIR 1967 54 Mysore 220; Ali Mohd. & Ors. v. Chairman T.A. & C. Udhampur, [1981] 2 SLR 225; Moulindra Singh v. The Deputy Commissioner & Ors., [1973] LIC 6 1564 and Shaikh Kasim v. Superintendent of Police Office, Chingletut, AIR 1965 Mad. 502.

Mr. Jain contended that we should settle the law in a straight jacket formula as judicial opinion appeared to be conflicting. We 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.

In the Delhi Cloth & General Mills' case (supra), it was pointed out by this Court:

"It is true that very often employers stay enquiries 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 Shri Bimal Kanta Mukherjee v. M/s. News man`s Printing Works, [1956] LAC 188, 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 employee in the criminal case may not be prejudiced " .

In Tata Oil Mills' case (supra), Gajendragadkar, CJ, spoke for a three Judge Bench thus:

"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 PG NO 825 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's case (supra) this Court said:

"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 wilful 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.

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, 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 think it necessary to say, anything more, particularly when we do not intend to lay down any general guideline.

PG NO 826 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.

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.2,000.

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.

M.L.A.

Appeal allowed.