

Subrato Sengupta Vs. State Bank of India Through Its Chief General Manager and Ors

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Court : Jharkhand

Decided On : Apr-20-2017

Appellant : Subrato Sengupta

Respondent : State Bank of India Through Its Chief General Manager and Ors

Judgement :

In the High Court of Jharkhand at Ranchi L.P.A No.265 of 2016 Subrato Sengupta son of Late Nirmal Sengupta, resident of flat no.4A, Vendant Apartment, Manoram Nagar,P.O. & P.S. Hirapur, Dist-Dhanbad, Jharkhand.....Appellant VERSUS1 State Bank of India through its Chief General Manager, Local Head Office, P.O & P.S. Gandhi Maidan, Dist-Patna, Bihar.

2. General Manager (NW-II) cum Disciplinary Authority, State Bank of India, Local Head Office, P.O & P.S. Gandhi Midan, Dist-Patna, Bihar.

3. Deputy General Manager & CCO, State Bank of India, Local Head Office, P.O & P.S. Gandhi Maidan, Dist-Patna, Bihar.

4. Sri D.N.Singh, Inquiry Authority cum Assistant General Manager (OSD), State Bank of India, Zonal Office,P.O. & P.S.Bank More, Dist-Dhanbad, Jharkhand 5. Sri Anchal Abhishek, Presenting Officer-cum-Chief Manager (Risk Rater), State Bank

of India, Local Head Office, P.O. & P.S. Gandhi Maidan, Dist - Patna, Bihari..... Respondents CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE ANANDA SEN For the Appellant: Ms. Shruti Shrestha, Advocate For the Respondents : M/s. Rajesh Kumar and Manindra Kumar Sinha, Advocate Reserved on 07.2.2017 Delivered on 20.4.2017 Ananda Sen, J.

This appeal under Clause 10 of the Letters Patent has been filed by the petitioner challenging the final order dated 20.5.2012 passed by the learned Single Judge in W.P.(S) No.2439 of 2016.

2. The appellant/petitioner joined in State Bank of India, as Clerk-cum- Cashier in the year 1987 and was posted as Medium Enterprise Relationship Manager (MERM) at Commercial Branch, Bokaro for the period of 12.6.2006 to 08.12.2009.

3. On 28.7.2014 complaint was lodged before the Superintendent of Police, Economic Offence Wing, CBI, Ranchi alleging criminal conspiracy, forgery, cheating in the matter of obtaining Cash Credit limit and term loans of various accounts on the basis of false and fabricated documents. Subsequently, five FIRs, being, R.C.8(S)/14, R.C.9(S)/14, R.C.10(S)/14, R.C.11(S)/14, R.C.12(S)/14 were registered by C.B.I for offences under Section 120B read with Sections 420, 468, 471 of the Indian Penal Code. The appellant/petitioner was not named in these FIRs.

4. Subsequently, investigation was undertaken by the EWO, CBI, Ranchi and finally charge sheet was submitted in all five cases for offences under Sections 120B, 419, 420, 467, 468 and 471 of the Indian Penal Code and Section 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Cognizance of the offence has been taken by the Special Court, CBI , Ranchi on 17.5.2016.

5. The respondent-Bank intended to proceed against the petitioner departmentally in a departmental proceeding for imposing major penalty in terms of Rule 68(1) of the State Bank of India Officers Service Rules. The petitioner was served with the departmental charge sheet dated 17.12.2015 issued by the Disciplinary Authority alleging that the petitioner while he was posted as MERM at the Commercial

Branch, Bokaro during the period from 12.6.2006 to 8.12.2009 he failed to discharge the duties with utmost integrity, honesty, devotion and diligence and acted in a manner prejudicial to the Banks interest in violation of Rule 50(4) of the State Bank of India Officers Service Rules.

6. The appellant-petitioner filed his reply to the charge sheet denying the allegation.

7. The petitioner thereafter filed a writ petition bearing W.P.(S) No.2439 of 2016 praying to quash the entire departmental proceeding initiated, vide charge sheet dated 17.12.2015 on the ground that alleged charges are analogous and similar to the charges levelled against him in the pending criminal case. A mandamus was prayed to direct the respondents-Bank to stay the departmental proceeding as both the departmental proceeding and the criminal case arises out of the same fact.

8. Learned Single Judge after hearing the parties and after considering all aspects dismissed the writ application, which resulted in filing the instant Letters Patent Appeal.

9. We have heard Ms.Shruti Srestha, learned counsel appearing for the appellant and Mr.Rajesh Kumar, learned counsel appearing on behalf of the Bank and have gone through the record of the writ petition including the impugned order.

10. Ms.Shruti Srestha, learned counsel appearing for the appellant submits that admittedly departmental proceeding is fall out of the action which is also the subject matter of the criminal case. She submits that out of the same transaction, both criminal case and the departmental proceeding has been initiated, thus, in the interest of justice, departmental proceeding is liable to be kept in abeyance till conclusion of the criminal case. She submits that if the petitioner is forced to appear and participate in the departmental proceeding, he has to disclose his defence which will prejudice him in the criminal trial. She relies upon following decisions of the Honble Supreme Court in support of her case (i) State of Rajasthan vs. B.K.Meena and others (AIR 1997 SC13, (ii) Surja Ram vs. State of Rajasthan (AIR 1997 SC18,(iii) Depot Manager, A.P.State Road Transport

Corporation vs. Mohd. Yousuf Miya and others [(1997) 2 SCC699, (IV) State of Rajasthan vs. Tarachand and others [(1997) 2 SCC705, (V) Stanzen Toyotetsu India Private Limited vs. Girish V. and others [(2014) 3 SCC636,(VI) Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and others [(1999) 3 SCC679, (VII) Kusheshwar Dubey vs. M/s.Bharat Coking Coal Limited and others [(1988) 4 SCC319, (VIII) Hindustan Petroleum Corporation Limited and others vs. Sarvesh Berry (MANU/SC/1048/2004) = [(2005) 10 SCC471 and (IX) G.M.Tank vs. State of Gujarat and Another (MANU/SC/8156/2006)= (AIR 2006 SC2129.

11. Learned counsel for the Bank submits that in the facts of this case, learned Single Judge was absolutely correct in dismissing the writ application. He submits that though both the proceedings arise from the same transaction, but the departmental proceeding stands absolutely on different footing than that of the criminal case. He submits that in the criminal trial the court has to come to a conclusion beyond all reasonable doubt, whether the accused has committed any criminal offence under Section 120B read with Sections 420,468, 471 of the Indian Penal Code and under Section 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act or not. Whereas in the departmental proceeding misconduct of the petitioner is to be enquired into on the principle of preponderance of probability. He lastly submits that in the criminal case, summons have been issued against this appellant (which is admitted by the appellant) and thus, it will take long time for the criminal proceeding to conclude.

12. He relies upon a judgment delivered by the Honble Supreme Court in the case of Kendriya Vidyalaya Sangathan and others vs. T. Srinivas [(2004) 7 SCC442 .

13. After hearing learned counsel for the parties, we find that five FIRs have been lodged under the provisions of Indian Penal Code and the Prevention of Corruption Act.

14. The allegation against the petitioner in the criminal case is that he along with others entering into a criminal conspiracy, by forging and cheating in respect of loan and cash credit limit extended illegal benefits to different borrowers. The transaction may have a criminal angle which needs to be adjudicated by a criminal court. The criminal conspiracy of the entire transaction can only be adjudicated in

a criminal trial.

15. In a departmental proceeding, charge sheet has been issued to the petitioner. There are several instances of misconduct and lapses which are the basis of charge sheet. For better appreciation, it is necessary to quote few of them. (i) You did not conduct the Pre-sanction Survey with due diligence on the properties to be mortgaged at the time of sanction of Cash Credit Limit and Term loan in respect of the above loan. The properties were later on found to be fake. (ii) You did not ensure to take the Collateral security of proposed 20 kathas of land referred to Project Report and appraisal of the above unit. (iii) You submitted incomplete opinion reports without any supporting documents/affidavits. (iv) You failed to observe post sanction safeguards by not inspecting the Plant and Machinery after disbursement of loan to ensure the end use of Banks fund, thereby jeopardizing Banks interest. (v) You disbursed the Cash Credit limit without obtaining any project completion and no proper note / approval was prepared for the said disbursement. The 1st stock statement was submitted by the borrower almost after one year of the said disbursement as per record and till that date there was no proof of business transaction although drawing power was released and the limit was fully utilized by the unit. (vi) You did not conduct pre-sanction inspection of properties offered as collateral with due diligence, which were later found as Government Land after an investigation. (vii) You allowed the Borrower to maintain unit accounts with other Banks, thereby helped him to divert the loan amount proceeds whereas as per terms & conditions of loan the borrower Sri Vivek Pratap Singh was not authorized to open/operate parallel account in other banks on the same centre without permission from the Bank.

16. Though there were many charges, we are only mentioning few to show that these charges levelled against the petitioner cannot be the subject matter of a criminal case. Thus, some omission or commission done by the petitioner, which if proved, will attract punishment under the Service Rules. In such case, the option before the employer is only to initiate a departmental proceeding for these charges levelled against the petitioner, which cannot be a charge in the criminal trial. Particular act of misconduct may have a criminal angle also which has to be independently looked into by a competent criminal court. Similarly, particular

omission by an employee may not have any criminality but can be a serious misconduct to proceed against him departmentally. In some transaction both may be there. In those matters, criminal aspect has to be dealt with separately by the criminal court in a criminal trial and the departmental proceeding must proceed separately.

17. The Honble Supreme Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Another [(1999) 3 SCC679 , specially in paragraph 22, has held as under:

22. The conclusions which are deducible from various decisions of this Court referred to above are: (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.

18. Further in Stanzen Toyotetsu India (P) Ltd. vs. Girish V. & Ors. [(2014) 3 SCC636 wherein after considering various judgments, Honble Supreme Court has

held that there is no legal bar for both the proceedings to go on simultaneously. The only valid ground for claiming stay of the departmental proceeding is to ensure, that the defence of the employee in the criminal case may not be prejudiced, but even such grounds would be available only in cases involving complex question of facts and law. The Honble Supreme Court in the case of Stanzen Toyotetsu India (P) Ltd. v. Girish V. & Ors. (supra), specially at paragraph no.16, has held as under:

16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceeding is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.

19. Further in the case of Hindustan Petroleum Corporation Ltd. & Ors. Vs. Sarvesh Berry [(2005) 10 SCC471, in paragraph no.8, has held that the purpose of departmental enquiry and the criminal case are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. Ultimately, the Honble Court has held that what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in criminal case. The Honble Supreme Court held that it is always a question of fact to be considered in each case depending on its own facts and circumstances. For better appreciation it is necessary to quote paragraph 8 of the said judgment, which reads as under:

8. The purposes of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So, crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short the Evidence Act). Converse is the case of fundamental enquiry. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules of law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

20. From the aforesaid judgment and also from the judgment referred to by the petitioner, we find that there is no hard and fast rule to stay departmental proceedings during the pendency of criminal case.

21. Further we find that in the case of *Stanzen Toyotetsu India (P) Ltd. v. Girish V. & Ors.* (supra) the Honble Supreme Court has not completely stayed the departmental proceedings till pendency of criminal trial. The Honble Supreme

Court has directed the criminal court to conclude the trial at the earliest preferable within a period of one year. However, ordered that if the trial is not concluded within one year, departmental proceedings should resume.

22. In the instant case, it is admitted that only summons have been issued in the criminal case. Thus, it will take much time, beyond one year, to conclude the criminal case.

23. Further the Honble Supreme Court in the case of Kendriya Vidyalaya Sangathan & Ors. Vs. T. Srinivas [(2004) 7 SCC442 has held as under:

10. 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.

11. In the instant case, from the order of the Tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, a reading of the two impugned orders indicates that both the Tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the Tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan has further observed that the approach and the objective of the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question of whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The Court, in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and

trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case, held that the Tribunal fell in error in staying the disciplinary proceedings. 24. In the instant case, there is no complex question of law and fact is involved. Some of the charges mentioned above, squarely suggests that they can only be the subject matter of departmental proceedings and not of a criminal case. Those charges are independent of the charges levelled against the petitioner in the criminal trial, though may be from the same transaction. These acts and omissions of the petitioner mentioned in the departmental charge sheet, if proved, can attract penal provision prescribed under the relevant Service Code. Further in the departmental proceedings the charges have to be proved on the basis of preponderance of probability not beyond all reasonable doubt. Thus, the nature of evidence to prove the guilt is also different.

25. Thus, from the discussion made above, this Court finds that the learned Single Judge has rightly come to a conclusion that both the proceedings are not similar. This Court also finds no reason to disagree with the findings arrived at by the learned Single judge. Thus, this letters patent appeal is dismissed. (Ananda Sen, J.) Pradip Kumar Mohanty, C.J.

I agree. (Pradip Kumar Mohanty, C.J.) ND/

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