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HIGH COURT OF DELHI : NEW DELHI

W.P (C) No. 4298/2010 & CM Nos.8519-20/2010

Sunil Kumar & Ors. Petitioners
Through: Mr. Vinod Kumar, Adv.

Versus

National Insurance Co. Ltd Respondent
Through: Mr. Sudhir Chandra, Sr. Adv. with
Mr. Rajinder Dhawan, Adv. and
Ms. Shafaali Dhawan, Adv.

% Judgment reserved on: 26.08.2010
Judgment pronounced on: 31.08.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for stay of the departmental proceedings instituted against the petitioner till the trial in case FIR No. 106/09 under Section 323/341/34 IPC is pending or till the time cross-examination of the witnesses (PWs) in the criminal trial is over.

2. The facts of the case are that the petitioners are employees of the respondent company. All the three petitioners belong to the

Scheduled Caste Community. According to the petitioners they have been associated with various employees associations formed by the employees of the respondent company and have been espousing the cause of fellow employees.

3. As per the petitioners in the year 2006 Mr. Tobdan joined the respondent company as Dy. General Manager and he started harassing the employees of the respondent company.

4. On 28.04.2009 an FIR bearing No. 106/09 was lodged against the petitioners by Mr. Tobdan under Sections 323/341 and 34 IPC. As per the petitioners since they had been espousing the cause of fellow employees being office bearers of the SC/ST association, Mr. Tobdan harboured ill-will against them and got a false FIR lodge against.

5. In the FIR bearing No. 106/09 it is stated that on 28.04.2009 the petitioners being representatives of an SC/ST Association and some other persons went to meet Mr. Tobdan to discuss some union matters, during the discussion one of the petitioners started shouting and the matter could not be discussed. Later on around 5.15 PM Mr. Tobdan was assaulted by the petitioners and some other unknown persons who were present at the meeting also.

6. As per the petitioners, on the evening of 28.04.2009 Mr. Tobdan while driving his car in the parking lot had hit the petitioners and to wriggle out of his liabilities he got the false FIR registered against the petitioners. On 29.04.2009 the petitioners were suspended and subsequently on the same set of allegations a chargesheet was

issued to the petitioners by the respondent company and departmental enquiry was started. According to the petitioners there has been total denial of principles of natural justice to the petitioners in the said departmental enquiry therefore to challenge the departmental proceedings, the petitioners have preferred the present writ petition on the limited ground that the departmental proceedings against the petitioners are being continued on the same set of allegations on which the FIR bearing No. 106/09 was registered and the criminal trial is pending.

7. The case of the respondent is that the chargesheet was issued vide Memorandum dated 23.6.2009 and a mere perusal of the chargesheet would show that besides the charge of assault on Sh. N. Tobdan, there are other incidents mentioned in the said chargesheet in respect whereof petitioners have been chargesheeted. The respondent has not denied the fact that five witnesses are also common in both the proceedings.

8. Further contention of the respondent is that the departmental proceedings had started in October 2009. The proceedings were held from November, 2009 to April, 2010 but no material progress could be made as the same were adjourned from time to time attributable to the petitioners. Thereafter, the proceedings were adjourned to 28.6.2010 for recording the evidence of the management witnesses, but in the meanwhile the petitioners filed the present writ petition. When the matter was listed first time before the Court on 28.6.2010, the following order was passed:

“The respondent submits that two or three witnesses may be produce by the respondents in the departmental enquiry today. Let the examination-in-chief of the witnesses who will appear today be recorded but cross-examination may not be recorded today. The respondent will not insist for cross-examination. It is also stated that the date for today was fixed on 14.05.2010.”

9. It is also stated that the perusal of the chargesheet would show that the allegations other than assault levelled against the petitioners are serious and disclose commission of major misconduct against them.

10. I have heard learned counsel for the parties. In order to verify as to whether two proceedings pending against the petitioners are based on the basis of same allegations, it would be appropriate to refer to the relevant portion of the FIR registered against the petitioners under Section 323/341/34 IPC on 28.4.2009. The same reads as under:

“I am working as Deputy General Manager of National Insurance Company – Delhi Regional Office-2, New Delhi. Today around 2 PM I received a call from one Mr. Sunil Kumar, Representative of an SC/ST Association to give time for discussion of some union matters. I told him that it may not be possible today. However, he insisted and I told him at 4 PM they can come and discuss the matter as I had to take my wife for a doctor’s appointment at 5 PM. At around 4.30 PM they came and handed over to me an agenda which on office record for discussion. I was accompanied by Mr. K. Singh for the discussion. The association representative were 1) Mr. Pratap, 2) Mr. Sunil Kumar, 3) Mr. Hira Lal, and 4) 2-3 unknown persons supposed to be from United Insurance Company. That the first issue of the agenda was being discussed which is transfer of one officer Mr. Chaman Lal from DO XI to DO Gurgaon. When the matter was being discussed Mr. Pratap Singh started shouting and I told him this was no way to discuss and the matter would not be discussed if the shouting continues, on hearing this they went. In the meanwhile, I received a call from one Mr. Punnu Swamyh who spoke to me for a while and told me to discuss the matter with them either today or the next working day or to

authorize some senior officer to discuss the matter. Around 5.15 PM I came out of my office to receive my wife at the Metro Station. I took my car and while just a few steps away from the gate of the office these men namely: (1) Pratap, (2) Mr. Sunil Kumar (3) Mr. Hira Lal (4) Another 2-3 unknown persons (present earlier in the meeting) stopped my car and assaulted me for reasons unknown, in the presence of people on street. I was rescued by one Sikh gentleman who runs a lathe workshop in the vicinity of the office. I have received internal concussion for which the medical report is attached. I request you to take suitable action against these men aforementioned.”

11. The articles of charge framed against the petitioners as per details mentioned in the petition read as under:

“01. Shri Bodhakar unauthorisedly visited DRO-II at 4.00 PM on 28.04.2009. He did not seek verbal or written permission from his reporting officer/officer-in-charge of his office to visit DRO-II.

02. Shri Bodhakar under the banner of Dalit Bima Karmachari Union (an unrecognized association) compellingly sought meeting time from Shri N. Tobdan, DCM, DRO-II through his associate Shri Sunil Kumar Jayenth over telephone on 28th April 2009.

03. Shri Bodhakar, along with his other associates, visited Shri N. Tobdan, DGM, DRO-II and Mrs. K. Singh, RM, DRO-II at around 4.40 PM on 28th April 2009 in the chamber of Shri Tobdan for discussions and behaved in a disrespectful, contemptuous and rowdy manner. He along with his associates left the meeting inconclusive at around 4.50 PM, threatening action.

04. Shri Bodhakar and his associates with criminal intent waited near the office gate alongside the way for arrival of Shri Tobdan at 5.10 PM and assaulted him physically with severe blows and kicks, inflicting grievous injuries; thus terrorizing Shri Tobdan’s mind and putting him in a state of fear, shock and apprehension of future danger.”

12. There are various decisions on this aspect which indicate that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employee in a

domestic inquiry is being tried in a criminal court.

13. In the case of *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.*; AIR 1999 SC 1416, the principles were laid down by the Apex Court in para 22 which read 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, administration may get rid of him at the earliest.”

14. The learned counsel for the respondent has strongly placed the reliance on the judgment of *Indian Overseas Bank, Annasalai and*

Anr. Vs. P. Ganesan and Others; (2008) 1 SCC 650 in support of his submission wherein the Apex Court has dealt with the matter in the similar situation. The relevant para 18 reads as under:

“18. 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.”

15. The judgment referred to by the respondent is distinguishable in view of the fact that in para 6 of the judgment it was mentioned that the inquiry proceedings in the said matter was conducted leading to discovery of additional facts.

16. After having gone through the FIR as well as the details of the charge framed against the petitioners, it appears that both the proceedings are initiated on the major part of same set of facts of incident which took place on 28.4.2009. The decision on the departmental enquiry is hence likely to prejudice the defence of the petitioners in the criminal trial pending before the ACMM. Further evidence to some extent is also common as it is clear from the names of witnesses.

17. In view thereof, I am of the opinion that the continuation of parallel proceedings would prejudice the rights and interest of the petitioners and is also against the principles of natural justice. Thus, in the interest of justice, equity and fair play, the departmental proceedings of inquiry be postponed till the conclusion of the criminal case.

18. Therefore, the present writ petition as well as applications are disposed of with the following directions:

(a) The inquiry proceedings be postponed till the disposal of the case under Section 323/341/34 IPC pending in the Court of Sh. Sunil Chaudhary, ACMM.

(b) The concerned court shall decide the criminal proceedings preferably within the period of six months and parties should not be granted an adjournment on unnecessary grounds.

MANMOHANSINGH, J.

AUGUST 31, 2010

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