

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE SHRI JUSTICE R.SUBHASH REDDY
WRIT PETITION No. 15578 of 2005

Dated 30th November, 2006

Between

K.Sundaram

... Petitioner

And

The oriental Insurance Company Limited,
represented by its General Manager & Disciplinary
Authority, Oriental House, P.B.No. 7037, A-25/27,
Asaf Ali Road, New Delhi.

...Respondent

ORAL ORDER:

This writ petition has been filed seeking a writ of mandamus to declare the charge sheet issued in Proceedings No. HO/pers/CDA/758, dated 3.3.2005 by the respondent in exercise of powers under Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 and all further proceedings pursuant to the said proceedings, as illegal, arbitrary and unconstitutional.

The petitioner was initially appointed as Assistant Administrative Officer on 1.3.1988 in the respondent-company and later on promoted to the post of Administrative Officer on 30.12.1992 and further promoted to the post of Assistant Manager. While working as Administrative Officer, he was posted as Administrative Officer-cum-Vigilance Officer at the Regional Office, Hyderabad. The petitioner was advised vide Memo dated 21.3.1999 by the Head Office to investigate into the alleged irregular payment of agency commission to the agent, Shri A.Ramakrishna, from the premium of Gr.JPA Policy. In the discharge of the said function, it is alleged by the respondent-company that the petitioner conspired with the commission agent and did not conduct fair investigation in the matter. Pursuant to the complaint lodged by the company, a criminal case was also registered against the petitioner for the alleged offences under Sections 120-B and 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Based on the complaint, the matter was entrusted to the Central Bureau of Investigation, which has filed final report and

the same is pending in C.C.No. 5 of 2005 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam.

Further on the allegation that the petitioner instead of conducting a thorough investigation into the alleged irregular payment of agency commission to the agent Shri A.Ramakrishna from the premium of Gr. JPA Policy, collected false statements from some of the secretaries of Primary Agricultural Cooperative Societies of Krishna District and, thereby caused wrongful loss to the loanees of various Primary Agricultural Societies and corresponding wrongful gain to the agent Shri A.Ramarkshna, and the said acts constitute misconduct and he failed to maintain integrity, devotion to duty and acted in a manner unbecoming that of an employee of The Oriental Insurance Company, separate disciplinary proceedings were initiated in exercise of powers under the General Insurance (Conduct, Discipline & Appeal), Rules, 1975.

The Articles of charge framed against the petitioner so far as departmental proceedings are concerned, read as follows:

“Shri K.Sundaram, Vigilance Officer, The oriental Insurance Company Limited, RO Hyderabad had been advised vide Memo dated 21.03.99 from Head Office to investigate alleged irregular payment of agency commission to the agent Shri A.Ramakrishna from the premium of Gr.JPA Policy. Instead of conducting a thorough investigation, he collected false statements from some of the secretaries of PACS (Primary Agricultural Cooperative Societies) of Krishna District in support of payment of agency commission.

Thereby Shri K.Sundaram had caused wrongful loss to the loanees of various PACSs in the state/The Oriental Insurance Co. Vijayawada and corresponding wrongful gain to Shri A.Ramakrishna, the agent by way of agency commission to the tune of Rs.25,57, 754/-.

Therefore, the above said acts of Shri Sundaram constitute misconduct and he failed to maintain integrity, devotion to duty and acted in a manner unbecoming that of an employee of The Oriental Insurance Company and violated Rule No.3 (1)(i)(ii), 4(5)(16) & (20) of General Insurance (Conduct, Discipline & Appeal) Rules, 1975.”

Whereas in the criminal proceedings, as per the final report filed under Section 173 of the Criminal Procedure Code, it is alleged that the petitioner entered into criminal conspiracy with

other accused, particularly, A.Ramakrishna who is accused No.3 with reference to wrongful claim of an amount of Rs.25,57,754/- as agency commission from the company.

This writ petition is filed, mainly, on the ground that inasmuch as criminal case is pending trial before the competent criminal court on the same set of facts, departmental proceedings cannot go on and the same have to be kept in abeyance, as disclosure of the petitioner's defence in the disciplinary proceedings will seriously prejudice his case in criminal proceedings.

Counter affidavit has been filed on behalf of the respondent-company by Shri Y.Ramulu, Manager of respondent-company, stating that the departmental proceedings were initiated as the petitioner failed to maintain integrity, devotion to duty and acted in a manner unbecoming of an employee of the company, which constitute misconduct. It is stated that the petitioner while working as Vigilance Officer was asked to investigate into the alleged irregular payment of agency commission amounting to Rs.25,57,754, but, instead of conducting thorough and fair investigation, he collected false statements of some of the secretaries of the Primary Agricultural Cooperative Societies of Krishna District in respect of payment of agency commission causing wrongful loss to the loanees of PACS and for wrongful gain to the agent. While admitting initiation of proceedings both on criminal side and departmental side on same set of facts, it is stated that the charges in criminal proceedings are different than that of the charges in the departmental proceedings, and, therefore, the relief sought for by the petitioner does not deserve to be extended.

It is submitted by Shri V.Srinivas, learned counsel appearing for the respondents that inasmuch as the charges in the criminal proceedings and the departmental proceedings are different and

distinct, allowing the departmental proceedings to go ahead will not prejudice the case of the petitioner. In support of his contention, he placed reliance on the judgments of the Apex Court in **Kendriya Vidyalaya Sangathan v. T.Srinivas**^[1] and **Hindustan Petroleum Corpn. Ltd. V. Sarvesh Berry**^[2].

Before considering the respective pleas of the parties, it is appropriate to refer to the charges framed in the disciplinary proceedings and the contents of report filed under Section 173 of the Criminal Procedure Code so far as the petitioner is concerned.

In the disciplinary proceedings, the charge against the petitioner is collection of false statements from the Secretaries of Primary Agricultural Cooperative Societies and causing wrongful loss to the loanees of the societies while allowing wrongful gain to the agent, Shri A.Ramakrishna, by way of agency commission to the tune of Rs. 25,57,754/-.

With reference to the above charge, it is the case of the Insurance-company that it constitutes misconduct as he failed to maintain integrity, devotion to duty and acted in a manner unbecoming that of an employee of the company.

Whereas as per the report filed by the Central Bureau of Investigation, Visakhapatnam in Rc.No.05(A)/2002, dated 18.2.2002 the alleged offence is that he conspired with the Commission Agent by name A.Ramakrishna and as such he is liable for the alleged criminal conspiracy by the petitioner with the said commission agent for cheating the company.

Though the initiation of both the proceedings are on same set of fact, but a close scrutiny of the charges in both the proceedings, indicates that they are not the same and are on different aspects. While the disciplinary proceedings are initiated for not maintaining the integrity and devotion to duty, which an employee of the

Company is expected of to maintain while working as such, and which constituted misconduct under the provisions of the General Insurance (Conduct, Discipline & Appeal) Rules, 1975, the criminal trial in respect of the alleged criminal conspiracy with other accused to defraud the company attracting Sections 120-B and 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. It is well settled by a catena of judgments of the Supreme Court that there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case and it is not automatic to stay the disciplinary proceedings till the trial in criminal case is concluded in all the cases where both the departmental proceedings and criminal proceedings are initiated, and, each case has to be considered on its own facts and circumstances. As held in **Hindustan Petroleum Corpn. Ltd. V. Sarvesh Berry (2 supra)**, the purpose of departmental enquiry is to maintain discipline in the service and efficiency of public service, and, therefore, the same has to be completed as expeditiously as possible, whereas the criminal prosecution is launched for an offence of violation of a duty the offender owes to the society. It is only in cases where 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.

In the present case, so far as misconduct alleged in disciplinary proceedings is concerned, the same relates to devotion to duty and maintaining integrity, which an employee of the respondent-company is expected to maintain according to the rules of the company, whereas the main charge in criminal proceedings is the alleged conspiracy under Section 120-B of the

Indian Penal Code. The charge in the criminal case is required to be proved beyond any reasonable doubt of an agreement between two or more persons agreeing to do or cause to be done an illegal act, or an act which is not illegal, by illegal means. It is a well settled proposition of law that the degree of proof in both the criminal and departmental proceedings is different and the same proof as required in criminal proceedings is not applicable to the departmental proceedings, which are based purely on preponderance of probabilities. Having regard to the charges framed in both the proceedings, in the instant case, it cannot be said that they are the same so as to seek relief of keeping the departmental proceedings in abeyance.

Moreover, petitioner was holding the responsible position in the company and was entrusted with the task of investigation by reposing trust and confidence in him, which is alleged to have been breached, and, as such, it is not desirable to stay the departmental proceedings, at this stage. Therefore, it is expedient that the departmental proceedings are allowed to be completed as expeditiously as possible. That apart, as the charges are not similar in both the proceedings, I am of the view that allowing of disciplinary proceedings to go on will not cause any serious prejudice to the petitioner in criminal proceedings. The disciplinary proceedings are questioned only on the ground of pendency of criminal proceedings and no other ground is raised for staying the departmental proceedings.

In view of the above, I do not find any merit in the writ petition to interdict the departmental proceedings, at this stage, pursuant to the charges framed in charge-memo dated 3.3.2005. The writ petition is devoid of any merit and the same is accordingly dismissed. No order as to costs.

30--11--2006

VR

R.SUBHASH REDDY, J.

[\[1\]](#) (2004) 7 SCC 442

[\[2\]](#) AIR 2005 SC 1406