

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2013

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THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.Nos.33731 and 33732 of 2012  
and  
M.P.Nos.1,1 and 2 of 2012

D.Thomas Franco Rajendra Dev ... Petitioner in  
W.P.No.33731 of 2012

D.Suresh Kumar ... Petitioner in  
W.P.No.33732 of 2012

Vs.

1.The Disciplinary Authority and  
Circle Development Officer,  
State Bank of India,  
Circletop House,  
Aparna Complex,  
16,College Lane,  
Chennai-600 006.

2.State Bank of India,  
rep by its Chairman,  
having corporate office at  
Madam Cama Road,  
Mumbai-400 021.

... Respondents in  
both writ petitions

Prayer in Wp.no.33721 & 33732/2012 Both writ petitions are preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the proceedings of the first respondent in DIS/CON/102 and DIS/CON/101 respectively, dated 27.09.2012 and quash the same.

For Petitioners : Mr.K.M.Vijayan, SC  
for M/s.K.M.Vijayan Asso.

For Respondents : Mr.A.L.Somayaji, SC  
for Mr.P.D.Audikesavalu

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COMMON ORDER

The two petitioners have filed these two writ petitions

challenging the order of the first respondent, who is the disciplinary authority and Circle Development Officer, State Bank of India, Chennai, dated 27.09.2012 and seeks to set aside the same.

2.By the impugned notice, dated 27.09.2012, the two petitioners were informed that in terms of Rule 68(1)(i) of State Bank of India Officers' Service Rules, it was decided by the appropriate authority to institute disciplinary proceedings against them. Accordingly, they were forwarded three annexures containing Articles of charge as Annexure-I, statement of imputation of misconduct in support of the articles of charge as Annexure-II and the list of documents and witnesses in support of articles of charge as Annexure-III. The petitioners were directed to give their statement of defence if any within 15 days. In the imputation of misconduct in Annexure-II, it was stated that the petitioners on 28.08.2012 had instigated officers of the Bank to hold demonstrations within the bank's premises/ compound at the local head office, Chennai. They also shouted slogans. The petitioners themselves have participated in these demonstrations and shouted slogans. This behaviour on their part had disturbed the peace within the bank's premises and there was hindrance to bank's working and disturbance in the regular business activity of the bank. It was further stated that instead of protecting the bank's interest and guiding the other officers of the Bank, they wrongfully instigated the other officers of the bank to misbehave by shouting slogans and demonstrating with an intention to disturb peace, disrupt bank's operations and discouraged bank's officers from performing their lawful duties with ulterior motive to lower the image of the bank in the eyes of the customer and the public at large. They had also organized and designed the demonstration with deliberate intention to tarnish the image of the bank which they were required to protect and enhance as officers of the bank.

3.The petitioner in W.P.No.33731 of 2012 is holding the post of the Deputy Manager at RBU and he is also the General Secretary of the State Bank of India Officers' Association (for short SBIOA), Chennai Circle. The petitioner in W.P.No.33732 of 2012 is holding the post of the Chief Manager at RBU, LHO and he is the President of the SBIOA, Chennai Circle.

4.These two writ petitions when they came up for admission on 14.12.2012, it was represented by the counsel for the bank that the enquiry which was fixed on 17.12.2012 will be postponed by three more days and the matter was adjourned to 18.12.2012. Subsequently, on 19.12.2012, Mr.K.M.vijayan, learned Senior Counsel informed this court that in the light of the order passed by the Bombay High Court, the disciplinary proceedings initiated by the bank can be postponed. The learned Senior counsel appearing for the Bank informed that if any request is made, then the same will be

considered by the bank. But, however, the Senior counsel for the petitioner stated that since a request has been made before this court, there need not be any further request. It was thereafter, the learned Judge who heard the matter directed postponement of the enquiry till 10.01.2013 and the matter was directed to be listed on 09.01.2013. The respondent bank was directed to file a counter. However, when the matter was finally listed on 21.01.2013, Mr.K.M.Vijayan, learned Senior counsel informed that a Mediator has been appointed, who is looking into the issue in Mumbai and the matter was likely to come up on 25.01.2013 and therefore, the matter can be adjourned. But, the learned senior counsel for the respondents bank submitted that the disciplinary action initiated has nothing to do with the mediation. He had also produced a copy of the minutes, dated 05.01.2013. But, however, to avoid any further controversy, the matter was directed to be listed on 28.01.2013. Subsequently, on request it was adjourned to 01.02.2013 and thereafter to 05.02.2013. Arguments of both sides were heard finally on 05.02.2013. In the meanwhile, the respondent bank has filed a counter affidavit in both writ petitions, dated 04.01.2013 (wrongly typed as 2012) together with supporting documents in the form of typed set.

5.The contentions of the petitioners were as follows :

The Chairman of the respondent bank on 25.08.2012 gave a press statement stating that the Bank was contemplating to keep open the bank on Sundays in all its 14000 odd branches and it will be 7 days banking. This agitated the minds of the officers of the bank as right from the year 2007 the officers were demanding implementation of 5 day week banking in line with the international banking practice. This issue was raised several times including in the central negotiation council meeting. The management representatives had assured that they are looking into the matter and will resolve the issue. Though assurances were given in the year 2006, no effective steps were taken by the management to resolve the issue till 2011. Therefore, the federation of bank officers gave a strike notice to be scheduled on 8<sup>th</sup> and 9<sup>th</sup> November, 2011. On the basis of the assurance given at that time by the management, the strike was withdrawn by the federation. It was their legitimate expectation that the management will come for negotiation to settle the issue. Even before the strike, the Chairman of the Bank had issued a press statement addressing the public informing that the issue raised by the federation has to be decided by the Indian Bank Association and not by the SBI management. However, on 25.08.2012, the Chairman of the bank unilaterally had issued a statement proposing 7 days banking in all its branches. The said issue was discussed in the federation meeting. It was decided to hold lunch hour demonstration on 28.08.2012 in front of the local head office and all administrative offices of the Bank.

6.As per the decision of the federation, the petitioners, as

General Secretary and President respectively, had participated in the demonstration on 28.08.2012. The demonstration was held in the local head office at Chennai on 28.8.2012 from 2.00 p.m. to 2.10 p.m. At least, 250 members had participated in the demonstration and it was peaceful and no customer or officers were prevented from going into and coming out of the bank. No officers were coerced in participating in the demonstration. The Local Circle Development Officer had also sent a report about the peaceful nature of demonstration during lunch hour. However, the respondents on 30.08.2012 had issued an advisory holding that the conduct of demonstration will amount to indiscipline and they were directed not to repeat the same in future. The association, to which the petitioners belong, on 6.9.2012 had explained the nature of demonstration and the situation leading to demonstration. However, by a letter dated 22.09.2012, the respondents had decided to take action for violation of Section 36 AD of the Banking Regulation Act, 1949 against the office bearers of 14 circle associations. Section 36 AD of the Banking Regulation Act, 1949 prohibits certain activities in relation to banking companies, if any person is obstructed from lawfully entering or leaving the office or place of business or if any person is holding within the office or place of business of a banking company any demonstration which is violent or which prevents or is calculated to prevent the transactions of normal business and if it is calculated to undermine the confidence of depositors in the banking company, then the person can be punishable with imprisonment for a term which may extend to six months with or without fine.

7. Even earlier when such issues came up, the Finance Minister of the Government of India had assured the House that Section 36AD will not be used against the trade union if they carry legitimate trade union activities. The attempt to invoke Section 36AD was only to victimize the office bearers of the association. Consequent on the decision to initiate departmental action, the impugned charge memo was issued to two petitioners on 27.09.2012 in their personal capacity. By such issuance of charge memo, the right to peacefully assemble and conduct demonstration was clearly affected. In fact, the Chairman of the State Bank of India had web cast a speech to the employees of the bank on 08.10.2012, wherein he had admitted that he was responsible for the action against the selective office bearers and stated that the agitation was due to the handiwork of a few leaders of the federation and it did not reflect general population of officers. The Chairman of the SBI thereby tried to drive a wedge between the staff trade union and the officer trade union. He had also stated that they decided to charge sheet 28 office bearers, i.e., Secretary and President of 14 circles. But one charge sheet was withdrawn, which was issued on the Vice President of the federation because he was subsequently nominated to the Central Board of Directors of the Bank and they did not want to hamper the



smooth functioning of the bank. The said person was Mr. Sameer Kumar Mukerjee, who was the Vice President of the federation and General Secretary of North-East circle. He had also participated in the demonstration and received the charge sheet. He was subsequently nominated by the Government as the Director of the Central Board, State Bank of India. Therefore, by giving concession to one such person, the bank was highly discriminating and selectively targeting the office bearers.

8. In Ahmedabad circle, though such notice was issued, realizing that no demonstration had taken place on the day mentioned, the disciplinary authority had withdrawn the charge memos. Similarly several charges were issued without any application of mind. The impugned charge memo is a stereotype order issued to all office bearers of the federation throughout the Country. The enquiry date was fixed as 17.12.2012 only to prevent the office bearers from participating in the Dharna scheduled to take place on 17<sup>th</sup> and 18<sup>th</sup> December, 2012 at New Delhi. The right to demonstration is guaranteed as a part of fundamental right and it has been upheld by the Supreme Court in Kameshwar Prasad Vs. State of Bihar reported in AIR 1962 SC 1166. It was further stated that holding of peaceful demonstration in the premises of the institution is a part of the trade union activity and the constitutional right under Article 19 of the Constitution. In the light of the same, Mr. K.M. Vijayan, learned senior counsel contended that it is unnecessary for them to participate in the enquiry proceedings as the charge memo itself is without jurisdiction and unconstitutional.

9. In the counter affidavit filed by the respondents, it was stated that the petitioners being the members of the association cannot claim any immunity from being proceeded under the State Bank of India Officers Services Rules, 1992. They will be given ample opportunity to defend themselves in the disciplinary proceedings. It is only when the punishment is inflicted, it can be said that they had suffered a legal injury. The charge memo cannot be quashed even before enquiry and disciplinary proceedings are concluded. Further the Madhya Pradesh High Court in its Principal bench at Jabalpur in W.P.Nos.21358 and 21359 of 2012 had dismissed similar writ petitions at the stage of admission itself. In fact, the officers' association of which the petitioners claiming to be the office bearers had already entered into an understanding pertaining 7 days week in settlement, dated 23.07.2003. The SBI has got more than 14000 branches caters to the credit, investment and banking needs of several millions of people. 5-1/2 days week working pattern is in vogue since the last many decades. Over a period of time, the working conditions of the branches increased and improved substantially. All branches are airconditioned and computerized. The accounts are migrated to core banking system. Discharging of duties in the bank have become less cumbersome and there is no need for

grappling with huge ledgers. While agreeing for computerization of accounts, additional allowances are also paid to officers. The bank will have to address modern problems in the matter of banking and 7 days working proposal does not mean that all employees are working in all 7 days. The petitioners unnecessarily got provoked by the statement issued by the Chairman on 25.08.2012 about 7 days banking without getting any clarification about the statement and without finding out whether any order has been passed. SBIOA had decided to conduct demonstration in various premises. It is contrary to the settlement dated 23.7.2003. The conduct of the petitioners in holding demonstration within the banking premises on 28.08.2012 by collecting and organizing 250 officers working in different branches in the city is contrary to the SBI Officers Service Rules. The petitioners having violated the service rules cannot claim any immunity claiming that they are the office bearers of the union. Since the reply given by the petitioners were not satisfactory, the bank had appointed an enquiry officer to enquire into the charges. Though the enquiry was scheduled to commence on 17.12.2012, they had moved the writ petitions and are attempting to forestall the same.

10. With reference to the actual happenings on 28.8.2012, in paragraph 27 of the counter it was stated as follows :

"27....The gathering / mustering of support had been done collectively and with the intention to oppose the move of the Bank to have 7 day banking is proved by the said conduct of the Petitioner, as he is the General Secretary of the Officer's Association. The 250 Officers had come from various branches and therefore, it would be clear that they had left their work unattended in order to attend the demonstration on the basis of the call given by the General Secretary, the Petitioner herein. Though the demonstration was for a short period, the fact that more than 250 officers had attended it from various offices of the Bank would prove that they had left their work abruptly, thereby disrupting the regular banking services and also affecting the business of the bank including the Personal Banking Branch and SBI Capital Market situated in the ground floor of the building in the Local Head Office premises. It cannot be gainsaid by the Petitioner that he performed the role of a Union Secretary forgetting the fact that his prime duty is to serve the bank as an Officer and only thereafter, the additional role of espousing the cause of his employee colleagues may arise. The statement that the demonstration did not affect / disturb anyone and the functions of the bank is incorrect and untenable...."

11. Though an advisory was issued on 30.8.2012, it was never stated that the bank will not take any action for the indiscipline committed by the officers concerned. The charge sheet having been issued by the competent authority in accordance with the service rules, the petitioners cannot be said to be aggrieved even before the commencement of the enquiry. As the petitioners submitted a reply on 01.12.2012 and after considering the same, the enquiry has been scheduled, they cannot allege malice against the management. The bank will take an action only on the outcome of the enquiry to be conducted. Hence they prayed for dismissal of the writ petitions.

12. Mr. A. L. Somayaji, learned senior counsel for the SBI referred to a judgment of the Madhya Pradesh High Court in W.P. Nos. 21358 and 21359 of 2012, dated 19.12.2012, wherein the Madhya Pradesh High Court held in paragraphs 29 and 30 as follows :

"29. On the contrary, it is a case where the allegations levelled against the petitioner are with regard to exceeding the rights available to them, which has resulted in acts of misconduct and for the same if a departmental inquiry is being conducted, it is not proper for this Court to interfere into the matter at this stage.

30. Accordingly, I find no merit in the writ petitions. However, it is made clear that the observations made and the expression of opinion in this order is only a prima facie assessment of the material to consider as to whether the jurisdiction under Article 226 of the Constitution should be exercised or not. This Court has not at all gone into the merits of the allegations levelled against the petitioners and it is for the authorities concerned before whom the proceedings are pending to deal with them in accordance with law and take a decision without being influenced by this Court."

Mr. K. M. Vijayan, learned senior counsel for the petitioner stated that the said order is the subject matter of the writ appeal before the same High Court.

13. Mr. K. M. Vijayan, learned senior counsel elaborately argued that there has been discrimination in the matter of picking and choosing of only the office bearers and being charge sheeted and that as a trade union, they are entitled to demonstrate which is protected by the Constitution and that their demonstration was peaceful and that they themselves have given the advisory not to repeat such conduct in future, they cannot turn back and issue the charge sheet and proceed to victimize them.

14. On the other hand, the management contended that there is

no fundamental right to demonstrate inside the office premises and even doing so, if any of the service rules are infringed, there is always power vested on them to take disciplinary action. The leaders of the association stands on different footing then the other persons who participated in the demonstration. The law provides for a distinction between the office bearers and the mere members who follow the dictates of the association. It is unnecessary to pronounce on the merits of the charge as it may prejudice either of parties. Hence this court refrains from pronouncing on the same.

15.The only question that arises for consideration is at the stage of charge memo, whether this court can interfere on the basis of the defence pleaded by the petitioners.

16.The charge memo can be set aside only on the ground of want of jurisdiction or there is malafide in the action of the employer. In respect of the other defence, which are matters of evidence and it is for the petitioners to lead appropriate evidence.

17.The Supreme Court in its decision in State of U.P. v. Brahm Datt Sharma reported in (1987) 2 SCC 179 dealt with the power of the Court in dealing with a charge memo at the show cause stage and the following passage found in paragraph 9 will make the position clear:

"9.The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice."

18.The Supreme Court vide judgment in Special Director v. Mohd. Ghulam Ghouse reported in (2004) 3 SCC 440 in paragraph 5 had



observed as follows:

"5.This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

19.Further, the Supreme Court in the judgment relating to Union of India v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 in paragraphs 13 to 16 held as follows:

"13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh (1996) 1 SCC 327, Special Director v. Mohd. Ghulam Ghouse (2004) 3 SCC 440, Ulagappa v. Divisional Commr., Mysore (2001) 10 SCC 639, State of U.P. v. Brahm Datt Sharma(1987) 2 SCC 179, etc.

14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that

at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

In the light of the above, the writ petitions are liable to be rejected.

20. Lastly, Mr. K.M. Vijayan, learned senior counsel also contended that disciplinary authority is acting with malice and is biased and they may not get justice at the hands of the disciplinary authority. Therefore, a direction may be issued to the bank to constitute an adhoc disciplinary authority. But, however, no such prayer has been raised in the writ petitions and the present contention is that the charge sheet itself is to be quashed. If the petitioners participate in the enquiry and make an appropriate application before the competent authority, certainly the competent authority will consider the request in accordance with law. This court cannot give any direction at this stage as there are no pleadings to the said effect in the writ petitions. Hence this court is unable to give any direction as sought for by the learned senior counsel for the

petitioners. Accordingly, both writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

-s/d-  
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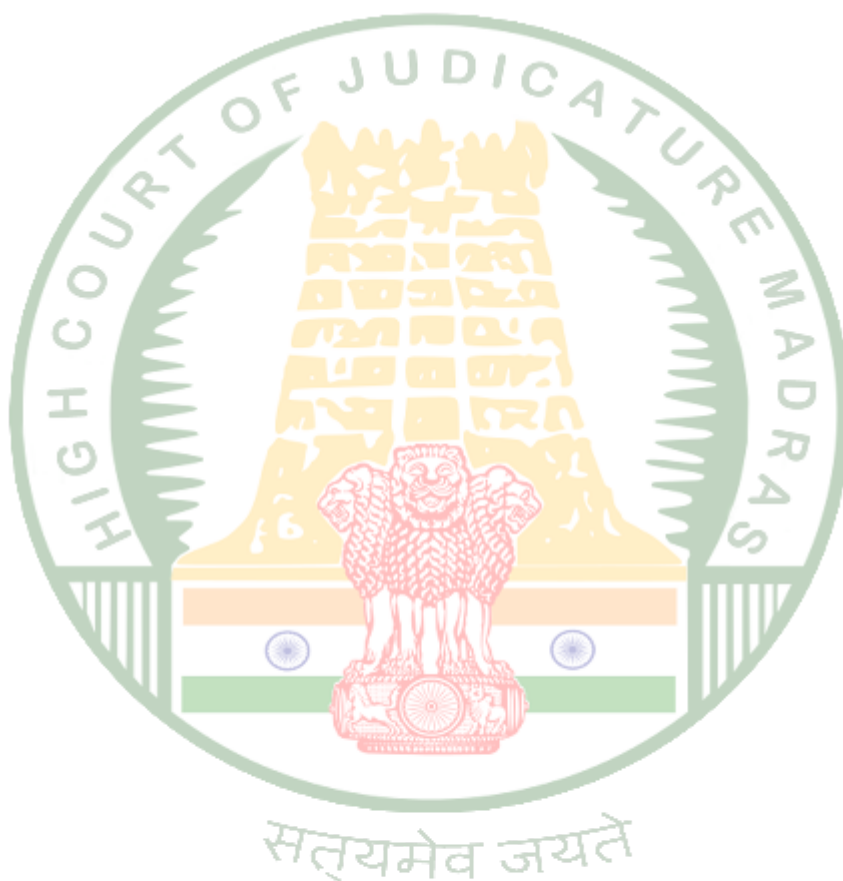
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