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Editorial

MAY DAY GREETINGS

As years roll by, certain eternal flames cannot be extinguished either by ether or water. The flames lit on the eventful day of 1st May 1886 in Chicago by the workers demanding eight hours of working and minimum civilized living conditions were brutally cajoled, prompting the International Workers Federation to give a call to observe 1st May as the international day for labour solidarity giving birth to celebration in all the corners of the globe ever since as MAYDAY.

Each year May Day emerges with new challenges, which are nothing but a continuation of the challenges ever since a production system based on maximising profits dominated the world economy. One hundred thirty-three years down the line, May Day has emerged when the extreme right-wing forces have consolidated their political hegemony over a broad spectrum of international socio-political systems accentuating their attacks on the rights and privileges of the working people. We are all aware that for the last two years, the entire working people have had to fight a virulent virus in the form of Covid-19. The official estimate of death predominantly of working people came to a staggering six million-plus ever since the pandemic outbreak.

These sordid statistics of death cannot hide the reality that millions of workers in the organized and unorganized sectors have had to accept severe compromises in their living standards caused by outright retrenchment, lay-off, pay cuts, and displacement from their place of work. Both unemployment and

under-employment have reached an all-time high, ensuring, in a classical sense, a depressed labour market with an overflowing labour supply, skilled and semi-skilled alike, with none to hire them even at a subsistence wage level. The pumping of liquidity in the market to prop up the demand and protect the fledgling industrial sector has fuelled inflation throughout the world, destabilizing the orderly functioning of the international economy and with more burden of adjustment on the so-called developing nations. Actions by politico-military establishments in committing aggression in different parts of the world have aggravated the crisis and ensured unwanted deaths of thousands of innocents.

May Day 2022 is being observed in this turbulent backdrop. The neighbouring island of Sri Lanka is reeling under its worst economic crisis caused by institutional corruption and reckless liberalization of the economy, and over-dependence on foreign capital inflow to boost the national economy. As usual, the burden of adjustment is on the working people. We all know that the Sri Lankan coast is at a kissing distance from Rameswaram. There is such a striking similarity in the economic management or mismanagement of the Indian economy both at the centre and at different state levels. The threat of privatization, roll out of the plan of the National Monetisation Pipeline, changes in Labour law, et al., point to the desperation of the present political dispensation to justify their misadventure with national economic development by subjugating the rights of the working class and the citizenry.

We had witnessed two days of a nationwide strike

A JUG FILLS DROP BY DROP

by more than 20 million workers paralyzing the major sectors of the economy, registering their protests and wrath against the ongoing onslaught on the hard-earned rights and privileges of the working class in both urban and rural areas. Such struggles need to be more broad-based and must break the glass ceiling of ritualistic annual call of a strike by discovering the languages and forms of agitation which could combat the offensive of the neo-liberal economy wrapped under the garb of the ultra-reactionary slogan of division based on religion, caste, languages et al. Celebration of May Day in today's context demand more determined struggle on a broad-based platform. Common Bond extends its

salutation to the martyrs of the working class and democratic movement, victims of the pandemic, war, and natural disasters. Common Bond is confident that together we will chart a new course to alter the agenda of the crony capitalists to ensure an inclusive India inhabited by a great race covering a multitude of religions, languages, and cultures. ■

March on Comrades,

#NationAgainstPrivatisation
 #StrikeHard
 #PowerofUnity
 #BankBachaoDeshBachao

ECONOMY

We are sharing an interesting news story that was published in a web portal (Newslick). The editorial board of Common Bond has not independently verified the factual correctness of the story. But our experience tells us that this is how the financial system in general and the banking arrangements, in particular, are being manipulated to subserve the interest of certain industrial groups even when they may be masquerading as a Godman.

At the time of its closing, the FPO offering was reported to have been subscribed 3.6 times, having garnered bids for 17.56 crore equity shares against the issue size of 4.89 crore equity shares that were on offer. The retail individual investor quota of 35% of the shares

was subscribed 0.88 times, i.e., it was under-subscribed by 12%. On the other hand, the qualified institutional buyer's portion (of 50% of the shares on offer) was subscribed 2.2 times and the non-institutional investors (describing individuals who invest more than ₹ 2 lakh, but are not registered as institutional investors) portion of 15% of the shares on offer was subscribed 11.75 times.

The company's Chief Executive Officer, Sanjeev Kumar Asthana, told the media that the company intends to use ₹ 3,300 crore of the amount raised to pay off 80-85% of the company's debt. Once the FPO is completed and the debt paid off, Ruchi Soya's promoter, Baba Ramdev's Patanjali Ayurved group of companies is expected to hold a stake of around 81% in the company with a market capitalisation of over ₹ 22000 crore. This comes three years after Patanjali acquired Ruchi Soya in 2019 at a price of ₹ 4350 crore, after the latter had entered insolvency proceedings under the Insolvency and Bankruptcy Code (IBC).

The process by which Ruchi Soya was acquired by



On March 28, Ruchi Soya Industries, one of the largest manufacturers of edible oils in India, completed a four-day Follow-on Public Offering (FPO) seeking to raise ₹ 4300 crore from the capital markets.

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

the Yoga guru Baba Ramdev's business group is an instructive example of nationalised banks, regulatory institutions and tribunals enabling massive wealth accumulation, in this case by Patanjali. Since Patanjali emerged as the highest bidder to acquire the company (after a higher rival bid by Adani Wilmar was withdrawn and bids by Godrej Agrovert and Emami Agrotech were below Patanjali's bid) in 2019, it has been the beneficiary of financially questionable decisions by a group of nationalised banks, and a light regulatory touch from tribunals, as this article will demonstrate.

HOW NATIONALISED BANKS FUNDED PATANJALI'S ACQUISITION

Let us consider the sequence of events that led up to Ruchi Soya's acquisition by Patanjali. When Ruchi Soya went into insolvency proceedings in mid 2017 its debt had risen to ₹ 12146 crore, of which ₹9385 crores was owed to banks and financial creditors, most of whom were nationalised banks.

When Patanjali's bid of ₹ 4350 crore was approved by the Committee of Creditors in 2019 however, some of the same nationalised banks provided loans to Patanjali to finance the bid. It is these loans that the company now says it intends to repay through Ruchi Soya's FPO.

Outlook Business reported that the State Bank of India (SBI) wrote off ₹ 933 crore of loans to Ruchi Soya that had been classified as non-performing assets, and made a fresh loan of ₹ 1300 crore to Patanjali to help it acquire Ruchi Soya. Punjab National Bank meanwhile wrote off ₹346 crore, and made a loan of ₹ 700 crore for the acquisition. Similarly, the Union Bank of India wrote off ₹ 149 crore and loaned ₹ 600 crore, Syndicate Bank wrote off ₹147 crore and made a loan of ₹ 400 crore, and Bank of Baroda wrote off ₹ 121 crore and made a loan of ₹ 300 crore.

Altogether, the nationalised banks lent around ₹ 3300 crore that financed Patanjali's ₹ 4,350 crore bid. The same lenders were taking a massive "haircut" on their earlier loans to Ruchi Soya. According to the resolution plan that was approved, banks and financial creditors would

receive ₹ 4053 crore against ₹ 9385 crore that Ruchi Soya owed the banks and financial creditors (the remaining part of Patanjali's bid consisted of ₹ 182 crore repayments to operational creditors and ₹ 115 crore of equity infusion into Ruchi Soya), which implied that the banks were taking a haircut of nearly 57%.

Amazingly, these loans of ₹ 3300 crore were given against a pledge of shares of the same Ruchi Soya that at the time of the acquisition could not be traded on the stock markets and had a consolidated value of ₹ 66 crore (when trading was halted). Surely Ruchi Soya's assets such as refineries and other facilities around the country, are worth far more than the shares, or for that matter the assets of Patanjali, the company that was seeking to acquire Ruchi Soya, could have been pledged instead? Another possibility could have been that banks could have sought to convert Ruchi Soya's debt into equity.

Even the remaining portion of the acquisition, approximately ₹1700 crore, which was to be infused directly by Patanjali into Ruchi Soya was funded through loans by nationalised banks. An 11-bank consortium led by Punjab National Bank provided a ₹ 1700 crore loan as working capital to Patanjali. For this, Patanjali Chairman Acharya Balkrishna "pledged 50% of his shareholding... and the company also hypothecated its entire stock of raw materials, finished and semi-finished goods across its factory premises, godown, transit stores, and book debts that included receivables...and its honey and chawanprash plants...and its units at Sonipat, Newasa and Tezpur."

Contrast these decisions by nationalised banks in India to another of Ruchi Soya's creditors – the Singapore-based DBS Bank (formerly known as the Development Bank of Singapore). The DBS bank had objected to the resolution plan that was approved by Ruchi Soya's Committee of Creditors and approached the National Company Law Tribunal (NCLT). The NCLT however approved the resolution plan over DBS bank's objections, and subsequent appeals by the DBS bank before the National Company Law Appellate Tribunal (NCLAT), and then before the Supreme Court also failed.

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

DBS's objection was that as a secured creditor it would have been able to recoup 90% of its loan exposure to Ruchi Soya if instead of approving Patanjali's bid, Ruchi Soya's assets that were pledged to the bank against its loans were liquidated. However, the NCLAT, and after it, the Supreme Court, did not accept DBS Bank's arguments, and ignored the applicability of a section of the Insolvency and Bankruptcy Code that required financial creditors who vote against the resolution plan adopted by the Committee of Creditors to get at least the same amount of money that they would have gotten in the event of liquidation of the insolvent company. With its court cases failing, DBS bank was forced to toe the line of the Committee of Creditors led by the SBI, and ended up recovering only 49% of its exposure.

Consider also the creditworthiness of Patanjali at the time when it was given these loans to acquire Ruchi Soya. Outlook Business reported that while the loans were approved in December 2019, just months prior Patanjali's credit rating had been downgraded by multiple rating agencies. In October 2019, ICRA (formerly known as Investment Information and Credit Rating Agency of India) and CARE (Credit Analysis and Research Limited) downgraded Patanjali from A+ to BBB. ICRA cited ***"lack of adequate information regarding Patanjali Ayurved Limited's performance and hence the uncertainty around its credit risk,"*** and said that despite repeated requests Patanjali's management had ***"remained non-cooperative"*** in providing it with the relevant information. CARE meanwhile ***"was concerned that the sizable acquisition of Ruchi Soya constituted 151% of Patanjali's net worth as of March 31, 2019."*** Then in November 2019, Brickwork Ratings downgraded a Patanjali group company Patanjali Food and Herbal Park Nagpur to BBB+. The credit rating agency ***"felt that Patanjali's debt-funded capital expenditure, including the Ruchi Soya takeover, could adversely impact its gearing and debt-coverage indicators,"*** and that Patanjali showed a ***"concentrated shareholding pattern"*** and a ***"lack of a diversified board, which comprised the likes of Ram Bharat (Baba Ramdev's brother) and his wife Sneh Bharat."***

In fact, in October 2019, Union Finance Minister Nirmala Sitharaman remarked that banks need to stop being hesitant in giving loans to self-help groups and companies backed by spiritual leaders which was construed as a remark aimed at Patanjali's lenders.

Were the banks nudged by vested interests into handing a highly favourable deal to Patanjali at the cost of their investors and depositors that is the common public? These are questions that there are no clear answers to.

STOCK MOVEMENTS PRIOR TO RUCHI SOYA FPO

The other side of this story concerns how Ruchi Soya's stock has performed since it was re-listed on the Bombay Stock Exchange and the National Stock Exchange after Patanjali's acquisition.

Between mid-November 2019, when the trading of Ruchi Soya's stocks were halted on the stock exchanges, and January 2020 when the stock was re-listed, Patanjali diluted the existing shares of small investors in Ruchi Soya, raising the share of the company that Patanjali would acquire to 98.9%. In addition to this, in a bizarre maneuver, Patanjali managed to drastically increase the value of the company.

On December 19, 2019, when the resolution plan came into effect, 98.9% of Ruchi Soya's value was extinguished. This meant that the company, which was valued at ₹ 66 crores before the halting of trading of shares on November 14, 2019, was valued at ₹ 66 lakh on December 20, 2019.

Now came a bizarre twist. A month later, on January 17, 2020, when the company's new promoters – Patanjali – decided to allocate 18.67 million preferential shares of Ruchi Soya, its share price was decided at ₹ 7 (face value of ₹ 2 and ₹ 5 premium). They reached that figure by taking the 26-week average traded price of Ruchi Soya; it was done despite the halt in trading and the discontinuity in the stock price over that period. This meant that the company that was valued only at ₹ 66 lakh on December 20, 2019, was now valued at a whopping ₹1300 crore.

With Patanjali holding 98.9% of Ruchi Soya's shares and only 1.1% publicly floated at the time, it was re-listed on the stock markets. Ruchi Soya's share price has soared in the time since on the back of the very thin public float. From ₹16.10 per share on January 27 after re-listing, in the past year, it hit a 52-week high of ₹1377 on June 9, 2021.

The day before the FPO started, Ruchi Soya's stock price closed at ₹ 897.45, and at close of business on March 28, when the FPO closed, it stood at ₹ 815.05. This means, that since June 9, 2021, the stock has fallen 40.8%.

How justified is this price? According to the company's filings for the last quarter that ended on December 31, 2021, its book value per share is ₹ 148.82. This indicates that the shares were highly overpriced and much higher than the industry and peer-group average. Was this on account of low supply of the shares due to the highly illiquid stock, with a very limited public float?

However, it is on the strength of these stock prices that Ruchi Soya was able to set the price band for its FPO at the level which it did, that is, ₹ 615-650. Only once the FPO allocations are completed and the approximately 19% of shares that are being floated arrive in the market will the share's true value emerge through market mechanisms.

By then, however, on the back of the capital raised, Ruchi Soya will be able to repay the loans Patanjali took to acquire it. In a short period of about two and a half years, the Ramdev-backed Patanjali will have in its hands a company with market capitalisation of over ₹ 25,000 crore, on the back of practically no investment of its own, with support from nationalised banks who took on massive losses to facilitate the process. Is this a case of crony capitalism? We leave that to the readers to judge.

A SEBI ORDER AND A TWIST IN THE TALE: THE FPO REBOUNDS

At the time of writing this article, there was another twist in the tale. The subscription of the

Ruchi Soya FPO started to fall dramatically after having initially been oversubscribed. This is owing to an order issued by the Securities and Exchange Board of India on Monday, March 28, the last day of the FPO.

The SEBI order says that *“unsolicited SMSs advertising the issue, prima-facie the contents of which appear to be misleading/fraudulent”* have been circulated regarding the FPO. For this reason, the SEBI order stipulates that a three-day window must be opened, running from March 28 to March 30, during which the bids for share allocations can be withdrawn. The SEBI also instructed that advertisements be placed in newspapers on March 29 and 30 cautioning investors on the circulation of unsolicited SMSs and specifying the procedure for withdrawing bids and that direct SMSs be sent to all the applicants of the received bids informing them of the additional window of withdrawal made available to them.

A report by Moneycontrol notes that “this is not the first time the company has run into trouble with the regulator. In October 2021, the yoga guru and the company were warned by SEBI against dubious investment promises. In a viral video, Baba Ramdev was seen asking his followers to buy shares of Ruchi Soya Industries if they wanted to become crorepatis.”

Although Ruchi Soya issued a statement that the SMSs had not been issued by the company or any of its promoters or directors, this order has resulted in the FPO rebounding. According to Moneycontrol, by 11:15 am on March 29, bids for the retail individual investors quota had reduced to 0.4 times the shares on offer with 1.23 crore bids withdrawn, down from 0.88 on March 28. The qualified institutional investors subscription had reduced to 1.6 times, down from 2.2 times. Overall, the subscription rate for the FPO had fallen to 2.58 times the number of available shares on offer, down from 3.6 times on March 28.

It remains to be seen whether more bids are withdrawn over the three-day withdrawal window, and at what level subscription to the FPO will finally settle.

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

ORGANISATION

We are reproducing the full text of the AIBOC Circular No. 2022/12 dated 15.04.2022 on the communiqué

**Circular No. 2022/12
To All Affiliates**

Dated: 15.04.2022

Dear Comrade,

DISCUSSION WITH IBA ON 13.04.2022 FOR EARLY RESOLUTION OF RESIDUAL ISSUES

We reproduce hereunder the text of UFBU Circular No.2022/03 dated 15.04.2022 on the captioned

from UFBU demanding early resolution of the pending issues.

subject for your information.

#BankBachaoDeshBachao

With revolutionary greetings.

**Yours Comradely,
Sd/-
(Soumya Datta)
General Secretary**

Text of UFBU Letter No. 2022/03 dated 15.04.2022

TO ALL CONSTITUENT UNIONS

Dear Comrades,

OUR DEMAND FOR EARLY RESOLUTION OF PENDING AND RESIDUAL ISSUES DISCUSSIONS WITH IBA ON 13-04-2002

All our Unions are aware that we have been pursuing with the IBA for resolution of the various pending and residual issues. Last month, at the call of UFBU, we had also organised demonstrations demanding early resolution of these issues. In this background, the IBA invited our Workman Unions and Officers Associations for a discussion on 13-04-2022.

Accordingly, the discussions were held on 13-04-2022 at IBA Office in Mumbai. Chairman of the IBA Mr. A.K. Goel (MD & CEO of PNB) participated in the discussions along with Mr. M.V. Rao, Chairman of HR Committee of IBA (MD & CEO of Central Bank of India), Mr. Sunil Mehta, Chief Executive of IBA and Mr. Gopal Murali Bhagat, Dy. CE, IBA.

Representatives of AIBEA, NCBE, NOBW, INBEF from Workman Unions and AIBOC, AIBOA, INBEF, NOBO from Officers Associations participated in

the discussions held respectively with Workman Unions and with Officers Associations. After welcoming Mr. A K Goel who had recently taken over as the Chairman of IBA, we explained all the pending and residual issues and urged upon him to work out a time-bound programme of discussions to amicably resolve the issues through mutual discussions because all these issues remaining pending for a long time.

He listened to all our viewpoints and issues patiently and assured to take steps to address the same. We reiterated our point that discussions should be held on regular basis so that the issues can be resolved without further delay.

We furnish herein the letter addressed by us to the Chairman of IBA in this regard and we expect and hope that IBA would fix further rounds of discussions at the earliest. Further developments will be informed to units in due course.

With greetings,

Yours comradely,

**Sd/-
SANJEEV K. BANDLISH
CONVENOR**

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

Text of Letter No. UFBU/2022/02 dated 15.04.2022

The Chairman,
Indian Banks' Association,
Mumbai

Dear Sir,

**RESIDUAL AND PENDING ISSUES – OUR
MEETING WITH YOU ON 13-4-2022**

We thank you for inviting our Unions for discussions on the residual and pending issues. In the respective meetings with the Officers Associations (AIBOC, AIBOA, INBOC, NOBO) and Workman Unions (AIBEA, NCBE, NOBW, INBEF), we have brought to your attention the following important issues.

1. Five Day Banking
2. Updation of pension, improvement in pension scheme and other pension related issues.
3. Clarifications/FAQs to be given to the Banks on various important issues like stagnation increment, fixation for Ex-servicemen employees.
4. Issuing FAQ on issues referred by Banks regarding implementation of Bipartite Settlement/Joint Note dated 11-11-2020.

5. Residual issues as listed in the minutes of discussions signed with Workman Unions on 10-12-2020 and with Officers Associations on 4-1-2021.
6. Renewal of Group Medical Insurance Policy after discussions with the Unions on improvements. Discussion to be held on ways and means to reduce the premium payable by retirees.

We thank you for your patient hearing on the issues raised by us and your assurance that IBA would address all these issues. As pointed out by us during the discussion, these are important issues and have been pending for quite a long time. Hence these issues need to be discussed and amicably resolved expeditiously. Hence, we request you to arrange for further discussions on these issues so that the issues are resolved at the earliest in a time-bound manner.

Thanking you,

Yours sincerely,

Sd/-

**SANJEEV K. BANDLISH
CONVENOR**

CIRCULARS

- 11 dated 25th March, 2022 :** Nationwide strikes on 28th 29th 30th & 31st of March 2022 announced by the United Forum of CSB Bank Unions - A struggle against colonial oppression
- 12 dated 15th April, 2022 :** Text of UFBU Letter No. 2022/03 dated 15.04.2022 on discussion with IBA on 13.04.2022 for early resolution of residual issues

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

JUDICIAL VERDICT

2022 LLR 171
JHARKHAND HIGH COURT
Hon'ble Dr. Ravi Ranjan, C.J.
Hon'ble Mr. Sujit Narayan Prasad. J.
L.P.A. No. 279/2020, Dt/-9-7-2021
Prabir Kumar Roy
Vs.
M/s. Bharat Coking Coal Ltd.

DEPARTMENTAL PROCEEDINGS – Criminal proceeding simultaneously – Charge of accepting bribe – Departmental proceeding initiated – Writ petition filed by petitioner was dismissed – Hence, criminal appeal – Held, the enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in a criminal offence – Nature of evidence in criminal trial is entirely different from the departmental proceedings – There is no bar in simultaneous continuation of departmental proceedings – There is no bar in simultaneous continuation of departmental proceeding with criminal proceeding as each and every case has to be adjudged on the related facts of the case – Both the proceedings had been initiated on different issue, as such there was no question of being prejudiced – Appeal failed and dismissed.

For Appellant: Mr. Shekhar Prasad Sinha, Advocate
For Respondents: Mr. Amit Kumar Das, Advocate

applicable Certificate Standing Order of BCCL.

IMPORTANT POINTS

The object of 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 hence it is not 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 grave nature involving complicated questions of fact and law hence such offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law.

When in the criminal proceedings, the charge was of demand of gratification while the departmental proceeding was initiated on the ground of failing to maintain integrity and devotion to duty under the

JUDGEMENT

Narayan Prasad. J – 1. With consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding audio and visual quality.

2. The instant intra-Court appeal is preferred against the order/judgment dated 24.7.2020 passed by learned Single Judge in W.P. (S) No. 92 Of 2020, whereby and whereunder the learned Single Judge while dismissing the writ petition has refused to interfere with order dated 6.8.2019, by which departmental proceeding was initiated against the petitioner and further refused to stay departmental proceeding which was initiated against the petitioner vide order dated 6.8.2019.

3. The brief facts of the case, which are required to be enumerated herein for proper adjudication of the lis, are as under:

The writ petitioner was appointed as Accounts Trainee in regular establishment of M/s. Bharat Coking Coal Limited (in short B.C.C.L.) vide order dated 18.11.1987. Pursuant thereto, the writ petitioner joined the said post on 19.11.1987 and from time to

time he was promoted and vide order dated 19.5.2014, he was promoted from the post of Senior Cashier to Chief Cashier.

While working as such, a written report was lodged against the petitioner before the Central Bureau of Investigation (in short C.B.I.) stating therein that the petitioner demanded and accepted bribe of ₹ 10,000/- (Ten Thousand) from the complainant for processing pending claim of yearly/quarterly bonus, leave encashment, pay arrear, etc. as due to him, based upon which, the C.B.I. registered a case being R.C. Case No. 4(A)/2019(D) for the alleged commission of offence under section 7 of the Prevention of Corruption Act. After investigation, the investigating agency – C.B.I. submitted charge-sheet against the writ petitioner-appellant for the alleged offence under section 7 of the Prevention of Corruption Act.

In the meantime, the management of the respondents – BCCL had also proposed to hold an inquiry against the writ petitioner, as such written statement of defence was called for from him vide order dated 5.7.2019, to which, he replied vide letter dated 16.7.2019 but the respondents – Management being dissatisfied with the reply so furnished by the writ petitioner decided to conduct departmental enquiry against the writ petitioner vide order dated 6.8.2019. Being aggrieved thereof, the writ petitioner moved before the Court by filling W.P. (S) No. 92 of 2020 by invoking power conferred under Article 226 of the Constitution of India for quashing order dated 6.8.2019 by which departmental proceeding was initiated against the petitioner and further during pendency of the departmental proceeding, which was initiated against the petitioner vide order dated 6.8.2019, on the ground that on the similar set of changes one criminal case, being R.C. Case No. 4(A)/2019(D) is pending.

According to writ petitioner, the documents as well as the witnesses are more or less same in the both the proceedings. It was further contended that the two proceeding of similar nature cannot run simultaneously.

The respondents-BCCL, appeared before the writ Court and referring to the Om Prakash Prasad v. Central Coalfields Limited and another, 2016 SCC Online Jhar 2178, submitted that the case of the petitioner is fit to be rejected.

The writ Court, after appreciating the arguments advanced on behalf of the parties and putting reliance, upon certain judgments rendered by Hon'ble Apex Court dismissed the writ petition vide order dated 24.07.2020, which is the subject matter of instant intra-Court appeal.

4. We have heard Mr. Shekhar Prasad Sinha, learned Counsel for the writ petitioner-appellant and Mr. Amit Kumar Das, learned Counsel for the respondents – B.C.C.L. and perused the documents available on record.

5. Learned Counsel for the appellant-writ petitioner by relying upon the law laid down by Hon'ble Apex Court has submitted that in a case where criminal case is going on simultaneous to the departmental proceeding and if the nature of the offence is grave, the departmental proceeding is required to be kept in abeyance but the learned Single Judge has failed to appreciate that aspect of the matter.

According to him, since the offence alleged against the writ petitioner is of the commission of offence under section 7 of the Prevention of Corruption Act, which is grave in nature, the proposition of law laid down in the case of Shesh Nath Choubey v. Jharkhand State Electricity Board, through its Chairman, Ranchi and others, (2014) 2 JCR 62, is applicable in the facts is right prospective, the writ petition was dismissed.

6. Per contra, Mr. Amit Kumar Das, learned Counsel appearing for the respondents – B.C.C.L. has submitted that merely because the offence is grave in nature there cannot be any restriction in simultaneous continuation of departmental proceeding at the time of pendency of criminal case on the same set of offence rather according to him the proposition as has been laid down by Hon'ble Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. And another, (1999) 82 FLR 627 (SC), is applicable in the facts of the present case wherein the Hon'ble Apex Court has held that if the offence is found to be grave and involved complicated question of fact and law then only during pendency of the criminal proceeding the departmental proceeding can be kept in abeyance but in the case in hand there is no issue of involvement of complicated questions of fact and law rather the simple case is that writ petitioner was found to be

involved in gratification for which case under section 7 of the P. C. Act was instituted while the departmental proceeding is on the issue of moral turpitude and integrity, therefore, it cannot be said that both on fact and law, any complicated issue is involved.

It has further been submitted that the departmental proceeding has been initiated on the issue of moral turpitude while the criminal proceeding is for acceptance of gratification and, therefore, the charges leveled against the writ petitioner in both the proceedings are quite different to each other and therefore, the learned Single Judge after taking into consideration the fact as also the principle of law, as has been enunciated by Hon'ble Apex Court in *State of Bihar and others v. Phulpari Kumari*, (2020) 167 FLR 22 (SC), is correct in dismissing in writ petition.

7. This Court having heard learned Counsel for the parties and after perusing the documents available on record first deem it fit and proper to refer legal position of law on the facts of the case in hand.

On the issue of continuation of departmental proceeding simultaneously with the judicial proceeding the Hon'ble Apex Court in *Depot Manager, A.P. State Road Transport Corporation v. Md. Yousuf Miya and others*, (1997) 77 FLR 9 (SC), has been pleased to make difference between the purpose of departmental enquiry and criminal trial holding that purpose of departmental enquiry and criminal that holding that purpose of departmental enquiry and the prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence in violation of duty the offender owes to the society of 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 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 grave nature involving complicated questions of fact and law. Such offence generally implies infringement of public, 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 led and defined under the provisions of the Evidence Act. Converse is the case of departmental 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 or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.

The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings.

In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. 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.

In other judgment rendered by Hon'ble Apex Court in *State of Rajasthan v. B. K. Meena and others*, (1996) 74 FLR 2550 (SC), the same view has been reiterated by the Hon'ble Apex Court.

In the case of judgment rendered in Capt. M. Paul

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

Anthony v. Bharat Gold Mines Ltd., and another, (1999) 82 FLR 627 (SC), the Hon'ble Apex Court while dealing with the situation of simultaneous continuation of departmental proceeding vis-à-vis criminal proceeding, has arrived at following conclusions:

- (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 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 (i) and (ii) 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.

In Stanzan Toytetsu India (P.) Ltd v. Girish v. and others, (2014) 3 SCC 636: (2014) 141 FLR 1 (SC) their lordships of Hon'ble Apex Court, while dealing with the situation of continuation of simultaneous proceeding both in departmental as well as criminal

proceeding, has been pleased to hold by taking note of all the earlier judgments rendered at paragraph 16 which reads 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, stays of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings 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.”

It is thus evident from the judgments referred herein above that there is no bar in simultaneous continuation of departmental proceeding with criminal proceeding as each and every case has to be adjudged on the related facts of the case.

8. In the given facts, wherein on the basis of complaint made by one pensioner of demanding ₹ 10,000/- for extending the pensionary benefit upon which a case was registered by the C.B.I., in which charge-sheet was also submitted.

The management – BCCL has also initiated a departmental proceeding vide order dated 06.08.2019 by framing charge that the writ petitioner has failed to maintain absolute integrity and devotion to duty and committed misconduct under clause 26.1.13 of the Certified Standing Orders applicable for workmen of establishments under BCCL.

Thus, in the criminal proceeding the charge was of

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demand of gratification while the departmental proceeding was initiated on the ground of failing to maintain integrity and devotion to duty under the applicable Certified Standing Orders of BCCL.

Hence, according to our considered view the charges in both the proceedings, criminal and departmental, are quite different and distinct to each other.

9. Learned Counsel for the petitioner has put much emphasis by arguing out the case that if the departmental proceeding would not be stayed, the case of the writ petitioner will be prejudiced in the criminal case, but, as would be evident from the laws laid down in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. And another (supra) and Stanzen Toyotetsu India Private Ltd. V. Girish V. and others (supra), that there is not bar in simultaneous continuation of criminal proceeding as each and every case has to be adjudged on the related facts of the case.

10. In the present case, since the departmental proceeding is initiated on quite different charge and the criminal case is instituted on different issue, as such according to our considered view there is no question of being prejudiced.

Further, there cannot be said to be involvement of grave and complicated questions of law and fact rather the departmental proceeding is for violation of the provisions of Certified Standard Orders applicable for workmen of establishments under respondents – BCCL (employer) while the criminal case is for demand of gratification.

11. We have also perused the judgment rendered by learned Single Judge and found therefrom that the learned Single Judge has considered these aspects of the matter, as discussed hereinabove and placing reliance on the judgment rendered by Hon'ble Apex Court in the case of State of Bihar and others v. Phulpari Kumari (supra), as also judgment rendered in Om Prakash Prasad v. Central Coalfields Limited and others (supra), has declined to interfere with the impugned decision dated 6.8.2019, by which departmental proceeding was initiated against the petitioner and also refused to stay departmental proceeding which was initiated against the petitioner vide order dated 6.8.2019, which according to us cannot be faulted with.

12. Accordingly, the present intra-Court appeal fails and, is dismissed.

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