

(2002) 07 AP CK 0027

Andhra Pradesh High Court

Case No: W.A. No. 1164 of 2002

Venugopal Reddy K.

APPELLANT

Vs

Managing Director, Nizam
Sugars Ltd.

RESPONDENT

Date of Decision: July 25, 2002

Citation: (2002) 5 ALT 155 : (2002) 95 FLR 970 : (2003) 1 LLJ 278

Hon'ble Judges: Ar. Lakshmanan, C.J; Ghulam Mohammed, J

Bench: Division Bench

Advocate: J. Sudheer, for the Appellant; N. Vasudeva Reddy, for the Respondent

Judgement

Ar. Lakshmanan, C.J.

1. Heard Mr. J. Sudheer, learned counsel for the writ petitioner-appellant and Mr. N. Vasudeva Reddy, learned counsel appearing on behalf of the respondent-Nizam Sugars Limited.

2. The writ appeal is directed against the order dated June 27, 2002 passed by a learned single Judge of this Court in W.P. No. 6610 of 2002 dismissing the writ petition holding that the suspension of the appellant pending enquiry is not a punishment and the same is resorted only to facilitate the smooth conduct of enquiry and hence the writ petition is not maintainable.

3. Mr. J. Sudheer, learned counsel for the appellant has invited our attention to the counter-affidavit filed by the respondent in the writ petition. It is stated at Para 12 as follows:

"With regard to the averments made in Para 7, I submit that the allegations are incorrect and misleading. In fact the State Government vide D.O. Letter No.911/ P.E. 1/2001-1, dated March 27, 2001 while communicating that the allegations levelled against 1. Sri K. Venugopal Reddy, Sr. Manager (Cane Development), 2. Sri K. Dayakara Reddy, Dy. Manager (Cane Development) and Sri Sangameshwar, Jr.

Manager (Accounts), directed M.D., NSL to place the above individuals under suspension with immediate effect, since the allegations are very serious in nature. Considering the preliminary report of the Anti Corruption Bureau and serious nature of the allegations, the management has placed the services of Sri K. Venugopal Reddy, Sr. Manager (Cane Development) under suspension w.e.f March 29, 2001."

4. Pointing out the above averments in the counter-affidavit learned counsel for the appellant submitted that the respondent-Managing Director of the Nizam Sugars Limited has not applied his mind independently before passing the order of suspension and merely carried out the direction given in D.O. Letter dated March 27, 2001 issued by the Principal Secretary to the Government, Public Enterprises Department. According to the learned counsel, the Managing Director of the respondent ought to have applied his mind independently and should not have passed the suspension order dated March 29, 2001 acting, upon the direction made by the Principal Secretary. In support of the above contention, the learned counsel strongly placed reliance upon the decision reported in D. Ramesh Sinha v. Cadre Authority 2002 (1) SLR 93 . wherein a Division Bench of this Court held that the power to initiate disciplinary proceedings against an employee or place him under suspension emanates from the Statute and while exercising such power, the authority has to apply its mind independently and that if a" statutory authority acts at the behest of some other authority, however high he may be who has no statutory role to play in the matter, then such action or any order passed, by him would be non est in law.

5. It is true that the order of suspension was passed by the respondent on the request made by the Principal Secretary to Government, Public Enterprises Department, addressed to the Managing Director, Nizam Sugars Limited, Hyderabad in D.O. Letter No.911/P.E. 1/2001-1, dated March 27, 2001. The appellant in this case was suspended on March 29, 2001. A perusal of the impugned" order dated March 29, 2001 would show that the appellant was placed under suspension on the allegations that he has committed misappropriation of the Income Tax Refund Amount pertaining to the cane transport contractors of the Nizam Sugars Limited, Madlinagar Unit by misusing his official position. It has been further alleged in the impugned order that Sri K. Venugopal Reddy, the appellant herein has been found to be threatening the Transport Contractors and forcibly collecting affidavits from them by making payments in cash to subside and suppress the issue of the Income Tax Refund amount. Moreover he is alleged to have committed serious irregularities in making payment to the Ryots and Contractors. Since the allegations are very serious in nature and since continuance of the appellant Sri K. Venugopal Reddy in office is likely to affect the process of a fair enquiry, he was placed under suspension with immediate effect by order dated March 29, 2001. The suspension order was made pending the completion of enquiry by the Anti Corruption Bureau and receipt of the report from them.

6. Our attention was also drawn to the letter dated March 1, 2001 addressed by the Director General of Anti Corruption Bureau to the Principal Secretary to Government, Agriculture and Co-operation Department, Andhra Pradesh, Hyderabad wherein it has been alleged that the appellant and two other officers have been found threatening the transport contractors and forcibly collecting affidavits from them by making payments in cash to subside and suppress the issue of misappropriation of the Income Tax refund amount and if they continue at Nizam Sugar Factory, Zaheerabad, they will certainly indulge in suppression of the evidence and there is every possibility of further tampering with the documents/records. It was therefore, requested in the said letter that the Managing Director, Nizam Sugars Limited, Hyderabad may be directed to take action to transfer them. It is true that in pursuance of the same the appellant has been transferred to a far-off place. That by itself does not absolve the appellant from facing the enquiry. Admittedly, the appellant is now getting three-fourths of the salary towards subsistence allowance as per Clause 7.4 of the Disciplinary and Appeal Rules of the respondent-Company. It is now stated that some other officers have also been transferred from Nizam Sugar Factory, Zaheerabad, Medak District to far-off places along with the appellant herein with a view to conducting smooth and fair enquiry in the matter.

7. The appellant has not impleaded the Anti Corruption Bureau which is investigating in the matter as party-respondent in the writ petition. The learned counsel for the appellant submits that since the Government of Andhra Pradesh has taken a policy decision to privatise all the Units of Nizam Sugars Limited and the implementation Secretariat in P.E. Department is taking up the process, the appellant may be permitted to submit application for his voluntary retirement. We are not agreeable for this proposition for the reason that the Preliminary Enquiry Report of the ACB is to the effect that the appellant is alleged to have committed misappropriation of the Income Tax Refund amount pertaining to the cane transport contractors of the Nizam Sugars Limited, Madhunagar Unit by misusing his official position and that he has been found to be threatening the Transport Contractors and forcibly collecting affidavits from them by making payments in cash to subside and suppress the issue of the Income Tax Refund amount. The Report also states that he is alleged to have committed serious irregularities in making payment to the Ryots and Contractors. Having regard to the facts and circumstances of this case, we are of the opinion that when a person is facing the departmental enquiry and also facing criminal charges, the said person shall not be allowed to retire voluntarily. Therefore, the appellant has to await the outcome of the Departmental Enquiry and the Criminal Investigation. It is also well settled law that a Government Employee cannot be kept under suspension for an indefinite period. And it is also settled position in law that if the enquiry could not be completed for any reason, the employee cannot be kept under suspension ad infinitum.

8. We, therefore, direct the respondent to complete the enquiry within three months from today, failing which we make it very clear that the order of suspension dated March 29, 2001 shall stand automatically revoked and the Appellant will be reinstated into service pending Departmental Enquiry and the Criminal Investigation. The counsel for the appellant states that the appellant will co-operate with the Enquiry Officer so that the enquiry is completed within the time stipulated above. We further direct the respondent to appoint an Enquiry Officer and frame charges and proceed with the enquiry and conclude the same as directed above.

9. It is stated that all the relevant records have been seized and taken away by the Anti Corruption Bureau. The respondent shall approach the Anti Corruption Bureau and take back the records for the purpose of proceeding with the enquiry and if such a request is made, the Anti Corruption Bureau shall hand over records to the respondent.

10. The writ appeal is disposed of accordingly. There shall be no order as to costs.