

(2011) 08 MAD CK 0362

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 4098 of 2006 and W.P. M.P. (MD) No"s. 4308 and 4309 of 2006

K. Elangovan

APPELLANT

Vs

Divisional Security
Commissioner, Railway
Protection Force and The
Inspector, Railway Protection
Force

RESPONDENT

Date of Decision: Aug. 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Prevention of Corruption Act, 1988 - Section 13(1)(D), 13(2), 7

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: N. Mohaideen Badsha, for the Appellant; M. Subash Babu, for R-1 and No appearance for R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner has approached this Court, with a prayer for issuance of a Writ, in the nature of Prohibition, restraining the Respondents, to pursue the Departmental proceedings against the Petitioner, till the disposal of the criminal case, pending in the Court of learned Special Court, CBI, Madurai in C.C. No. 3 of 2005.

2. The Petitioner joined as Constable in Railway Protection Force during the year 1978, and rose to the rank of Sub Inspector in the year 2002. The Petitioner claims, that he has unblemished record of service, and on several occasions, was appreciated by the superiors.

3. The Petitioner while serving as Assistant Sub Inspector in the year 1995, had booked a criminal case against Thiru. Bose Nadar, for illegally dealing with the railway properties under the guise of selling old iron scrap.
4. The case of the Petitioner, is that due to this act, Thiru. Bose Nadar inimical towards him, therefore, foisted a criminal case against him, in which he was trapped on 23.11.2004, for receiving a sum of Rs. 10,000/- (Rupees Ten Thousand only). The Petitioner was arrested and released on bail on 25.01.2005.
5. The Petitioner was suspended on 24.11.2004, in view of his involvement in criminal case.
6. The case of the Petitioner, is that subsistence allowance due to him was not paid, which forced him to file W.P. No. 9004 of 2005, in which directions were issued to pay the subsistence allowance to the Petitioner, which according to the Petitioner, was not paid, in spite of the directions of this Court.
7. The Divisional Security Commissioner appointed the second Respondent as Enquiry Officer, to enquire into the charges framed against the Petitioner, vide Charge Memo dated 05.07.2005.
8. The Petitioner, submits that due to non payment of subsistence allowance, he was unable to appear before the Enquiry Officer. The criminal proceedings also stood initiated u/s 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act 1988, which is pending before the Special Court for CBI, Madurai. The charges in the Criminal Proceedings as well as the Departmental Proceedings are one and the same and on identical facts, which The Learned Counsel for the Petitioner, contends that the departmental proceedings deserves to be stayed, as the question in the criminal proceedings, and in the departmental proceedings is based on the same facts, and the evidence to be led is also the same. involves various complicated facts, hence, it was necessary to keep t he Departmental Proceedings in abeyance, till the disposal of the criminal proceedings.
10. In support of the contention, the Learned Counsel for the Petitioner placed reliance on the decision of the Hon"ble Supreme Court in [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), , wherein the Hon"ble Supreme Court was pleased to lay down, that the criminal case, and departmental proceedings can proceed simultaneously, but with the exception, to the cases, which are based on identical facts, and evidence is also common, without any variance.
11. The contention of the Learned Counsel for the Petitioner, was that in the case in hand, the reading of the charge framed by the Criminal Court and the Departmental proceedings show, that both the proceedings are based on identical facts, and four of the witnesses to be examined are also common. Therefore, the proceedings deserves to be stayed.

12. The Learned Counsel for the Petitioner also placed reliance on the judgment of the Hon"ble Supreme Court in the case of [State Bank of India and Others Vs. R.B. Sharma](#), wherein again the Hon"ble Supreme Court was pleased to lay down, that the criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings, and criminal case are based on the same set of facts, and the evidence in both the proceedings is common.

13. Reliance was, thereafter, placed on the judgment of this Court in the case of V. Kanagasabapathy. v. The Deputy Inspector General of Police (2006 W.L.R. 340), wherein this Court accepted the contention to quash the departmental proceedings on acquittal in a criminal case, on the ground that the allegations in both the departmental enquiry, and the criminal case were one and the same.

14. The writ petition is opposed by the State, on the ground, that in view of the subsequent judgment of the Hon"ble Supreme Court in the case of Indian Overseas Bank v. P. Ganesan and Ors. (2008 (1) M.L.J. 37 (SC)), there is no ground to stay or quash the departmental proceedings.

15. The Hon"ble Supreme Court in the case of INDIAN OVERSEAS BANK.. V.. P. GANESAN and Ors. (supra) was pleased to lay down as under:

17. 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.

18. In Delhi Cloth and General Mills Ltd. v. Kushal Bhan this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice, observed:

3. ...We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.

The same principle was reiterated in Tata Oil Mills Company Ltd. v. Workmen.

19. In State of Rajasthan v. B.K. Meena this Court held: "14. ...The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard-and-fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in

cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, "advisability", "desirability" or "propriety", as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.

20. Capt. M. Paul Anthony v. Bharat Gold Mines Ltd also deserves to be noticed. this Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarised its findings as under:

22.(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, the administration may get rid of him at the earliest.

21. The issue came up for consideration yet again in T. Srinivas where this Court while analysing B.K. Meena and Capt. M. Paul Anthony held that:

10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.

22. The High Court, unfortunately, although it noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analysing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the in disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stay of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.

23. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject-matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

24. Furthermore Respondents 1 to 4 have now moved the High Court for quashing of the order taking cognizance of offence against them in the criminal proceedings. The criminal proceedings have been stayed. Thus, even applying the principle laid down in Capt. M. Paul Anthony the impugned judgment cannot be sustained. Before the High Court no contention was raised that because Respondents 1 to 4 are office-bearers of a trade union, the authorities were biased against them. Nothing has been shown that any complicated question of law arose for determination in the criminal case.

25. Reliance placed by Mr Prakash on Hindustan Petroleum Corpn. Ltd. is not apposite. There were certain special features which were noticed by this Court. In that case itself it was held:

11. There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

(Emphasis supplied)

26. Therein the departmental proceedings were allowed to continue despite the fact that the delinquent officer therein had been charged for commission of an offence u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

27. In G.M. Tank this Court was dealing with a case where the delinquent officer was acquitted. The said decision has no application in the instant case.

28. Sathi Vijay Kumar pertains to a case involving election dispute. The question which arose therein was as to whether despite the fact that there was no provision in the Representation of the People Act, 1961 for striking out the pleadings, the Tribunal had the power to do so. We are not concerned with such a question in this matter.

29. Furthermore, the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. The Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the enquiry officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however, filing show-cause, they moved the High Court. Furthermore, before the enquiry officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the management. A large number of witnesses had already been examined on behalf of the Appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.

30. For the reasons above mentioned the impugned judgment cannot be sustained which is hereby set aside. The appeal is accordingly allowed.

16. The Learned Counsel for the Petitioner contended, that the Hon"ble Supreme Court while deciding the case INDIAN OVERSEAS BANK.. V.. P. GANESAN and Ors. (supra), did not take note of the judgment in the case of STATE BANK of INDIA and OTHERS.. V.. R.B. SHARMA (supra). Therefore, it cannot be said to be a binding precedent.

17. The contention of the Learned Counsel for the Petitioner cannot be accepted, in view of the settled law, that in the case of two judgment of the Hon"ble Supreme Court of co-ordinate Bench the later in time, is binding as precedent, whereas, if the earlier judgment is of Larger Bench, then that is to be followed.

18. On consideration, I find no force in the contentions raised by the Learned Counsel for the Petitioner. The Hon"ble Supreme Court in the case of INDIAN OVERSEAS BANK.. V.. P. GANESAN and Ors. (supra), while deciding the question as to whether departmental proceedings purely internal proceeding can be stayed, has held that the High Court is required to take into consideration the question, as to whether the charges levelled against the delinquent officer both in the criminal case as also disciplinary proceedings were same, and in addition, it is obligatory on the part of the High Court to arrive at a finding that the non staying of the disciplinary proceedings shall not only prejudice the delinquent officer but also that the matter

involved a complicated question of law. The Hon"ble Supreme Court also took note of the judgment in the case of CAPT.M. PAUL ANTHONY.. V.. BHARAT GOLD MINES LTD., and Anr. (supra).

19. If the facts of the case are tested in the light of the Judgments of the Hon"ble Supreme Court, it is noticed, that the criminal case has been unduly delayed. Therefore, there is hardly any reason to stay the departmental proceedings. Further more, it cannot be said that the continuation of departmental proceedings will prejudice the Petitioner, nor the matter involves a complicated question of law.

20. The Hon"ble Supreme Court in the case of [The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao](#), has laid down that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and / or where the departmental proceedings had already been initiated, to continue therewith. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from.

21. The charges against the Petitioner are that of corruption. The decision does not involve any complicated question of law, which can entitle the Petitioner to see the stay of the criminal proceedings.

22. The prayer, on the face of it, is not competent, in view of the settled law, that both departmental and criminal proceedings can go side by side.

23. As already observed above, no ground is made out to stay the departmental proceedings, merely because the facts in the criminal case and the departmental enquiry are identical, which are required to be proved by same evidence.

24. For the reasons stated hereinabove, finding no merit, this writ petition is dismissed.

25. No costs. Consequently, the connected W.P.M.P.(MD)Nos. 4308 and 4309 of 2006 are closed.