

(2007) 09 DEL CK 0319

Delhi High Court

Case No: LPA No. 917 of 2004

N.K. Sethi

APPELLANT

Vs

India Trade Promotion
Organisation

RESPONDENT

Date of Decision: Sept. 3, 2007

Citation: (2007) ILR Delhi 121 Supp

Hon'ble Judges: Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Jayant Bhushan, V. Hari Pillai and N.N. Sarvaria, for the Appellant; Raju Ramachandran V.K. Rao and Saket Sikri, for the Respondent

Judgement

Mukundakam Sharma, C.J.

This appeal is directed against the judgment and order dated 20th September, 2004 passed by the learned Single Judge dismissing the writ petition filed by the appellant praying for staying the departmental proceeding, which is initiated against the appellant. It is the case of the appellant that he will be prejudiced in his defense if he is required to contest the departmental proceeding as a criminal case on the same charges is pending before the criminal court.

2. There is no dispute that a criminal case under the provisions of the Indian Penal Code read with the provisions of Prevention of Corruption Act is pending against the appellant for alleged commission and omission in discharging his official duties. During the pendency of the aforesaid criminal case, a departmental proceeding was also initiated against the appellant with specific charges. There is also no dispute that some of the charges contained in the memorandum of charges sent to the appellant while initiating the departmental proceeding are common with that of the criminal charges alleged against the appellant. A comparative analysis of the allegations in the criminal case pending against the appellant and the charges contained in the memorandum of charges issued pursuant to the departmental proceeding initiated indicate and prove that charge No. 1, charge No. 4, charge No.

7 and charge No. 8 of the departmental proceedings are similar to allegations made against the appellant in the criminal case pending against the appellant. Our attention was also drawn during the course of arguments that some of the witnesses cited in the departmental proceedings are also witnesses who would be examined in the criminal case pending against the appellant. Some of the documents which are also cited in the departmental proceedings are also common. In the light of the aforesaid position, the stand taken by the appellant was that he would be prejudiced in his criminal trial if he is required to disclose his defense in the departmental proceedings. In support of the aforesaid submission, the counsel relied upon the decision of the Supreme Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. reported in (1993) 3 SCC 679.

3. The learned Single Judge considered the facts of the criminal case as also of the departmental proceedings pending against the appellant and after appreciation of the records and submissions made has held that there are no complicated questions of fact and law involved which require deferment of the departmental proceedings. Having held thus and in the light of the decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (supra), it was held that since the case does not involve complex questions of fact or law, Therefore, exception carved out in the aforesaid case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (supra) would apply and consequently there was no question of staying the further proceeding of the departmental proceedings. Resultantly, the writ petition was dismissed.

4. Learned Counsel appearing for the respondent sought to justify the order passed by the learned Single Judge on the same analogy that there is no question of any complex question of law and fact involved and, Therefore, departmental proceedings should be allowed to continue.

5. We have analysed the contentions very minutely. There is no dispute to the fact that the charges 1,4,7 and 8 in the departmental proceedings are somewhat similar to the allegations made in the criminal proceedings.

6. Admittedly, charges 2,3 and 5 and charge No. 6 have no connection with the criminal proceedings and departmental proceedings in respect of the said charges can continue.

7. The question, however, relates to charges 1,4,7 and 8 and whether proceedings in respect of the said charges should be stayed. It is well settled that departmental proceedings and criminal proceedings are separate and distinct and can go on simultaneously. Departmental proceedings are decided on the basis of preponderance of possibility and strict standard of proof and Evidence Act, 1872 is not applicable. The standard of proof in criminal trial is as per the provisions of the Indian Evidence Act, 1872, which requires proof beyond all reasonable doubts. The object and purpose of departmental proceedings is to determine whether the

delinquent officer is guilty of misconduct. Disciplinary proceedings are for the purpose of maintaining discipline and efficiency in public service. Criminal prosecution is launched for an offence for breach of law which implies infringement of public duty punishable under criminal law as distinguished from mere private rights in disciplinary proceedings.

8. Sometimes departmental proceedings and criminal cases are based on same set of facts and evidence may be also common. In such cases what is required to be seen is whether the departmental proceedings if allowed to continue would seriously prejudice the delinquent employee in his defense at the trial of the criminal case. No straitjacket formula can be applied and the facts of each case have to be considered. This aspect has been examined by the Supreme Court in [Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.,](#) ; [State of Rajasthan Vs. B.K. Meena and others,](#) and other cases. In State of Rajasthan v. B.K. Meena (supra), after referring to several judgments, the following conclusions were promulgated:

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(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.

9. In the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. reported in (1993) 3 SCC 679, it was held that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, unless there are certain special circumstances, which attract factors mentioned in Clauses (ii) and (iii) as propounded in B.K. Meena's case (supra). Even factors mentioned in Clauses (ii) and (iii) 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 and they should be concluded within a reasonable time.

10. Keeping the aforesaid parameters in mind, we have to examine the facts of the present case. The relevant allegations with which we are concerned against the appellant are that while working as General Manager (Marketing Division) in ITPO in the year 2003 he demanded illegal gratification through one of his relatives Ms. Mona Chopra from M/s Siddharatha Logistics Co. Pvt. Ltd. for their empanelment. M/s Siddharatha Logistics Co. Pvt. Ltd. made a complaint to CBI and a trap was laid. Ms. Mona Chopra came all the way from Pune to Mumbai to the residence of Mr. Siddharatha Sen, Managing Director of M/s Siddharatha Logistics Co. Pvt. Ltd. and accepted bribe amount of Rs. 1.5 lacs as part payment on behalf of the appellant, Mr. N.K. Sethi. CBI officials, who were present and hiding at the residence of Mr. Siddharatha Sen immediately swung into action and caught her red handed. The currency notes paid as bribe had already been identified. It is further stated that as per CFSL report presence of phenolphthalein and Sodium Carbonate was found to be positive. Ms. Mona Chopra confessed that she had accepted bribe amount of Rs. 1.5 lacs as part payment on behalf of Mr. N.K. Sethi and thereafter spoke to Mr. N.K. Sethi on telephone admitting that she had received the said amount on his behalf. Mr. Siddharatha Sen also spoke to Mr. N.K. Sethi. The conversation was taped. It may be stated here that in the reply to the chargesheet, the appellant did not specifically deal with articles 1,4,7 and 8 and answered the charges in denial. However, we find that the appellant has dealt with the said charges in the appeal in great depth and has clearly revealed and elucidated his defense in the synopsis and list of dates. Paragraphs (i) to (vi) spell out his entire defense to the criminal case.

11. In these circumstances, we do not think that the present case can be regarded as one where grave prejudice will be caused to the appellant and he would be made to reveal his defense if departmental proceedings are continued. We also feel that complicated questions of fact and law are not involved in the present case. The allegations made against the appellant are clear and straight forward. Moreover, we are informed that FIR against the appellant was registered on 30th September, 2003 and the chargesheet was filed on 3rd September, 2004 but till date only charge has been framed and evidence is still to be recorded. It is apparent that examination of witnesses in the criminal trial is likely to take years before it is concluded. Departmental proceedings cannot be indefinitely stayed to await the decision in the criminal trial. These proceedings cannot be unduly delayed as evidence and material

is likely to dissipate and may not be available at later point of time.

12. Keeping in mind the above factors, we feel that departmental proceedings can continue in respect of all charges including charges No. 1,4,7 and 8. There is no merit in the appeal and the same is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.