

(2016) 01 KAR CK 0120

In the Karnataka High Court

Case No : Writ Petition No. 35482 of 2015 (S-RES)

A.N. Jayaraj

APPELLANT

Vs

Karnataka Power Transmission Corporation Limited and
Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Prevention of Corruption Act, 1988 — Section 13(1)(d), Section 13(2), Section 7

Citation : (2016) 01 KAR CK 0120

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : M.S. Bhagwat, Advocate, for the Appellant; N.G. Vijay Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—1. With the consent of the learned counsel for the parties, this petition is decided at this juncture itself.

2. Mr. A.N. Jayaraj, the petitioner, is aggrieved by the suspension order dated 17-8-2015 passed by the respondent No. 2, the Director (A & HR), Karnataka Power Transmission Corporation Limited.

3. The brief facts of the case are that initially the petitioner was appointed as Assistant Engineer. Subsequently, in July 2000, he was promoted as Assistant Executive Engineer. Thereafter, in January 2008, he was further promoted as Executive Engineer. In 2002, he was deputed from the Karnataka Power Transmission Corporation Limited to the Bangalore Electricity Supply Company. Ever since then, he is working with Bangalore Electricity Supply Company. However, in February 2011, he has been transferred by respondent No. 3 to the H.S.R. Division of the Bangalore Electricity Supply Company.

4. One Mr. C.V. Mallikarjun, an Electrical Contractor, lodged a complaint before

the Lokayuktha Police alleging therein that the petitioner had demanded a sum of Rs. 2,50,000/- for providing a new electric connection to an apartment located at H.S.R. Layout. On the basis of the said complaint, the Lokayuktha Police have registered a F.I.R., bearing Crime No. 59/2015, for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act against the petitioner. The Police commenced their investigation. Subsequently, the Additional Director General of Police, Lokayuktha, recommended that the petitioner should be suspended. Therefore, on the recommendation of the Additional Director General of Police, Lokayuktha, by order dated 17-8-2015, the petitioner has been suspended. Hence, the present petition before this Court.

5. Relying on the case of MR. AJAY KUMAR CHOUDHARY V. UNION OF INDIA AND ANOTHER [, (2015) 7 SCC 291], Mr. M.S. Bhagwat, the learned counsel for the petitioner, has pleaded that the suspension order cannot be continued for an indefinite time. According to the learned counsel, the suspension order, in fact, should not extend beyond a period of three months especially when no charge-sheet has been served on the delinquent officer/employee within the said period. Despite the fact that the suspension order was passed in August 2015, and inspite of lapse of five months, so far the charge-sheet has not been served upon the petitioner. Thus, the suspension order deserves to be set aside by this Court.

6. Mr. N.G. Vijay Kumar, the learned counsel for respondents No. 1 and 2, has frankly conceded, and in the opinion of this Court rightly so, that in the light of the judgment of the Apex Court in the case of Mr. Ajay Kumar Choudhary (supra), the suspension order can no longer continue. He has also conceded that no charge-sheet has been served upon the petitioner in order to commence the Departmental Enquiry.

7. Heard the learned counsel for the parties and perused the impugned order.

8. In the case Mr. Ajay Kumar Choudhary (supra), the Hon"ble Supreme Court of India has opined under:

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20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh v. State of Bihar and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) of the Cr.P.C., 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be

released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) of the Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

9. Keeping in mind the concession made by the respondent, and keeping in mind the principle laid down by the Apex Court in the case of Mr. Ajay Kumar Choudhary (*supra*), obviously, the suspension order dated 17-8-2015 cannot be permitted to continue after the lapse of three months from the date of the passing of the said order. Therefore, this Court quashes the suspension order dated 17-8-2015. The petition is hereby allowed.

No order as to costs.