

(2010) 01 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C.) No. 452 of 2010

ASI Ravinder Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0059

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Siddharth Luthra and Rajat Katyal, for the Appellant; Anuj Aggarwal and Mirza Aslam Beg, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners, officials of Delhi Police, challenge order dated 10th December, 2009 passed in Original Application No. 3519 of 2009 titled Inspector Rameshwar Khatri and Ors. v. Government of NCTD and Ors. declining their plea to stay the departmental proceedings against them during the pendency of criminal proceedings pending against them under Prevention of Corruption Act and to set aside the orders passed in departmental proceedings.

2. The petitioners are facing trial in FIR No. 33 of 2008 dated 14th February, 2008 u/s 384/385/389/342/120B of Indian Penal Code, Police Station ? Economic Offences Wing. Against the petitioners departmental proceedings have also been initiated on 17th August, 2009.

3. The allegations against the petitioners are that while posted in special staff cell, Central District, on receiving the information through Constable Naresh regarding illegal kidney transplant scam by Dr. Amit and Dr. Upender at Gurgaon, Haryana, they apprehended a resident of Meerut, Mr.Shahid, who led to them to apprehend Kamaljeet Singh and Hem Ram from Gurudwara near All India Institute of Medical Sciences who led the police party to the residence of Dr.Amit at Gurgaon from where Dr.Upender was apprehended. The petitioners on 7th

January, 2008 had proceeded without lodging their departure in daily diary. After apprehending the Doctors, the petitioners struck a deal with Doctors to secure their release and extorted an amount of Rs. 19.85 lakhs and let them off without taking any action and distributed the extorted money. In the circumstances, it has been alleged against them that their illegal act had prevent unearthing of illegal kidney transplant scam and has also defamed the image of the Delhi Police in the eyes of general public which amounts to gross misconduct and negligence and dereliction in discharge of their official duties and therefore the departmental proceedings under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 has been initiated against them.

4. The petitioners made representations in the departmental proceedings to keep the disciplinary proceedings in abeyance on the ground that the departmental inquiry would involve complicated questions of law and fact which would emerge as the criminal trial will proceed against them and therefore departmental proceedings should be stayed. For stay of departmental proceedings, it was also asserted that Mr.Shahid residence of Meerut is a witness in departmental proceedings who is also facing criminal trial and in one of the cases he has been convicted. Consequently, it is contended that it will not be appropriate to place reliance on the testimony of such a witness in the departmental proceedings. In not citing the Doctors as witness before the departmental proceedings it is also agitated as a ground to stay the proceedings, as according to petitioners in the absence of their testimony the respondents would not be able to prove their case against petitioners.

5. Stay of departmental proceedings has also claimed on the ground that presence of the petitioners in different areas can be established by the witnesses of the telecom companies who will establish the signals from the mobile numbers of the petitioners received by the towers situated in the relevant areas and interpretation of such testimonies would involve complicated questions of law and fact.

6. The Tribunal after hearing the parties and relying on Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, ; The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., and the principle culled therefrom held that advisability, desirability or propriety of staying the departmental inquiry has to be determined in each case taking into consider all the facts and circumstances and disciplinary proceedings should not be stayed as a matter of course. The reliance was placed by the Tribunal on the standing order (S.O.) on 2008 which appeared to have been issued on the basis of law laid down by the Apex court in Capt. M. Paul Anthoney (supra) and Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, .

7. The Tribunal has held that assumption by the petitioners that the department may not be able to prove charges against them on the basis of the witnesses and documents cited by them will not be a complicated question of fact and law.

Learned Counsel for the petitioners has raised similar propositions before us. What witnesses are to be examined and what documents are to be proved to bring the charges against the petitioners is to be decided by the respondents. On the basis of the assumptions of the petitioners that from the witnesses cited and documents produced, the department may not be able to establish the charges will not lead to complicated questions of fact and law. In any case, whether the testimonies of the witnesses which will be examined in the departmental proceedings have to be relied on or not and to what extent they are to be relied on can be considered only after the testimonies shall be led in the departmental proceedings. On the basis of the allegations, neither the testimonies of any witnesses can be rejected even before they are recorded nor it can be held that testimonies of any such witness shall be inconsequential as has been alleged by the petitioners.

8. Learned Counsel for the petitioners has admitted that even the charges have not been framed against the petitioners in the criminal trial pending against them. In the circumstances, the observation of the Central Administrative Tribunal, Principal Bench, that the Criminal trial is likely to take long time for variety of reasons cannot be faulted. The Tribunal has declined to stay the departmental proceedings also on the ground that since the criminal trial is likely to take considerable time, therefore, the charges of extortion of money or taking bribe by the public officers, Police personnel to the conclusive end as early as possible, as an early departmental proceeding will be beneficial for the police force as well as for the public.

9. After hearing the learned Counsel for the petitioner, we are also inclined to agree with the reason of the Tribunal that since the criminal proceedings are likely to take considerable time, the charges against the police officials of extortion of money in order to prevent unearthing of the kidney scam, should be adjudicated as early as possible during the departmental proceedings so that the guilt or innocence of the petitioner may be established at the earliest and should not be delayed on account of pendency of the criminal proceedings even if the substantial evidence in both cases, departmental and criminal proceedings, may be the same.

10. The question as to whether departmental proceedings and the criminal case proceedings based on similar set of facts should be allowed to continue simultaneously, is no longer *res integra*. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge. One of the test is whether departmental enquiry would seriously prejudice the delinquent in his defense in criminal trial. However, where there is a delay in disposal of the criminal case, departmental proceedings ought to continue to facilitate early conclusion of the proceedings.

11. In the case of *Noida Entrepreneurs Assn. Vs. Noida and Others*, , the clinching observations made by the Apex Court on the issues in hand are as under:

The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or 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 of 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. Offence generally implies infringement of public duty, 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 defined under the provisions of the Indian Evidence Act, 1872 (in short the "Evidence Act") converse is the case of departmental enquiry. The enquiry in a 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 of law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. 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.

12. In the light of the aforesaid, there can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. The departmental proceedings need not be stayed during the pendency of the criminal case, save and except for cogent reasons. To our mind, no complicated question of law would be involved in the criminal trial or in the departmental proceedings. Even the learned Counsel for the petitioners has not propounded complicated questions of law except the nature of evidence and the assumption that the evidence which is proposed to be led in departmental enquiry may not be sufficient to bring home the charges against the petitioners. In the case of "Noida Entrepreneurs Association" (Supra), Apex Court had held that the standard of proof required in departmental proceedings is not the same, as required to prove a criminal charge and even if there is an acquittal in the criminal case in the criminal proceedings, the same does not bar departmental proceedings. In this case, the Apex Court had directed the State - Government to continue with the departmental proceedings

13. The standing order issued by the respondents in 2000 also does not contemplate or mandate staying of departmental proceedings in the present

facts and circumstances. Nothing contrary has also been pointed out by the learned Counsel for the petitioners. If the departmental proceedings in the facts and circumstances are not liable to be stayed, a fortiori, the orders already passed in the departmental proceedings are not liable to be set aside.

14. Considering the totality of the facts and circumstances, in our opinion, there are no grounds to stay the departmental proceedings against the petitioners. The order of the Tribunal dated 10th December, 2009 also does not suffer from any such illegality or irregularity which would require any interference by this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

15. The writ petition is, therefore, without any merit and it is dismissed.