

(2020) 05 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 34975 Of 2018 (GM-KLA)

Chandrashekar S Golsangi

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:

Karnataka Lokayukta Act, 1984 — Section 12(3)
Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Constitution Of India, 1950 — Article 21, 311

Citation : (2020) 05 KAR CK 0022

Hon'ble Judges : Aravind Kumar, J;E.S. Indires, J

Bench : Division Bench

Advocate : Venkatesh C. Sharma, B.V. Krishna, Venkatesh S. Arabatti

Final Decision : Dismissed

Judgement

E.S. Indires, J

1. Petitioner has assailed the order dated 26th June, 2018 passed by the Karnataka Administrative Tribunal (for short hereinafter referred to as "the

KAT") in Application No.4318 of 2018 vide Annexure-J and has also sought for quashing of the report forwarded to Government of Karnataka

under Section 12(3) of Karnataka Lokayukta Act, 1984 vide Annexure-B, and such other reliefs.

2. The brief facts of the case are that one Mr. Nagaraj, Electrical Contactor, lodged a complaint with the Lokayukta Police, Bangalore City Division

stating that he had made an application for issuance of No-objection Certificate in respect of installation of 100 KVA Transformer at Bharat

Petroleum Petrol Bunk in HRBR at Bangalore with the petitioner. The complainant alleged that petitioner had demanded illegal gratification of

Rs.10,000/- for issuance of No-objection certificate. Since the complainant was not willing to pay the demanded amount, he had approached the

Lokayukta Police, and on the basis of complaint so lodged, second respondent registered a case in Crime No.34 of 2006 for the offences punishable

under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3. Petitioner was trapped on 19th September 2006 in the presence of complainant, panchas and staff, and the Investigation Officer seized the tainted

notes of Rs.10,000/-from the petitioner under mahazar and after following post-trap formalities and had also recorded the statements of the petitioner,

complainant and panchas, charge sheet/final report came to be submitted before the competent court. In the meanwhile, the first respondent herein

has initiated disciplinary proceedings against the petitioner by entrusting the disciplinary enquiry to the second respondent, in pursuance of the

recommendation made by the Upa Lokayukta under Section 12(3) of the Karnataka Lokayukta Act, and thereafter, second respondent has issued

Articles of Charge to the petitioner on 01st October, 2012 vide Annexure-D, to which petitioner has submitted his statement of defence.

4. Insofar as the criminal proceedings are concerned, the special Judge, Prevention of Corruption Act, Bangalore Urban District, Bangalore by its

order dated 31st May, 2013 passed in Special CC No.83 of 2007 (Annexure-A4) has convicted the petitioner for the offences punishable under

Section 7 and 13(i)(d) and under Section 13(2) of the Prevention of Corruption Act. Being aggrieved by the same, the petitioner has filed Criminal

Appeal in No.642 of 2013 before this Court, and this Court, after hearing the parties, by its order dated 07th December, 2017, has acquitted the

petitioner by setting aside the judgment of Conviction and order of Sentence dated 31st May, 2013 passed by the trial court. Said judgment and order

dated 07th December, 2017 in Criminal Appeal No.642 of 2013 was challenged before the Honâ??ble Supreme Court in Special Leave Petition

(Criminal) No.19976 of 2018, which came to be dismissed on 12th July, 2018, and thereby, judgment and order dated 07th December, 2017 passed by

this Court in Criminal Appeal No.642 of 2013, whereunder petitioner has been acquitted, has attained finality.

5. Petitioner has approached Karnataka Administrative Tribunal (for short hereinafter referred to as KAT) in Application No.4318 of 2018

challenging Articles of Charge dated 01st October, 2012 issued by second respondent and has sought for quashing of the enquiry proceedings initiated against him by the first respondent herein which prayer had been sought before KAT came to be rejected by order dated 26th June, 2018 on the ground that standard of proof required in departmental proceedings is not the same as required to be proved in a criminal proceedings and both proceedings would be different and distinct. The said Order dated 26th June, 2018 passed by the KAT, inter alia, report dated 17th August, 2011 made by the second respondent, Government Order dated 14th October, 2011 (Annexure-C) and Articles of Charge (Annexure-D) are impugned in this writ petition.

6. We have heard Shri Venkatesh C. Sharma, learned counsel appearing for petitioner; Shri B.V. Krishna, learned Additional Government Advocate appearing for respondent No.1; and Shri Venkatesh S. Arabatti, learned Special Public Prosecutor appearing for respondent No.2.

7. Learned counsel appearing for the petitioner submits that entrusting of Departmental Enquiry by the first respondent to the second respondent is illegal and arbitrary, as second respondent is a party to the proceedings instituted against the petitioner right from the inception of the criminal case in Crime No.34 of 2006 resulting in acquittal by order dated 07th December, 2017 passed by this Court in Criminal Appeal No.642 of 2013, and affirmed by the Apex Court, and as such, in view of the same, continuing with the departmental enquiry for same set of charges before the second respondent-authority is hit by Article 21 and 311 of the Constitution of India. He would also contend that the Articles of Charge issued to petitioner in the departmental proceedings are identical to the charges framed in the criminal case, and therefore, the vindictive nature of respondents in continuing with the departmental enquiry even after acquittal is contrary to the law established by this Court as well as the Honâ??ble Supreme Court. Hence, he has prayed for quashing the impugned orders.

8. Per contra, learned Counsel for the second respondent vehemently submits that though petitioner herein is acquitted in the Criminal Appeal before this Court, said acquittal is not an honorary acquittal and basis for acquittal is on the ground of failure on the part of the Prosecution to prove the guilt of the petitioner beyond reasonable doubt. Hence, learned counsel appearing for

the second respondent has sought to defend the impugned orders.

9. Learned counsel appearing for the first respondent-State has adopted the arguments advanced by learned counsel appearing for the second respondent.

10. Based on the submissions and arguments advanced by the learned counsel for the parties, the question that would arise for our consideration is:

Whether acquittal in a criminal case amounting to a clear exoneration of the petitioner does ipso facto absolve the petitioner from the liability under the Departmental Enquiry?

11. We have gone through the entire case papers and have considered the submissions of the learned counsel appearing for the parties and have gone

through the findings recorded in Criminal Appeal No.642 of 2013 dated 07th December, 2017. Petitioner herein was acquitted by the appellate Court

on the ground of failure on the part of the prosecution to prove the case against petitioner beyond reasonable grounds and the said acquittal is not an

honorary acquittal. It is settled principle of law that enquiry in a departmental proceedings and prosecution of the delinquent in a criminal case are two

different and distinct aspects. 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, and therefore, crime is an act of commission in violation of law or of

omission of a public duty. However, the departmental enquiry is to maintain discipline in the service and maintaining efficiency in public service. It

would, therefore, be always expedient that disciplinary proceedings are conducted and completed as expeditiously as possible. Though it appears that

the charges framed in the criminal case and departmental enquiry are identical in nature, however, it is always a question of fact to be considered in

each case depending upon the facts and circumstances of the case. The Honâ??ble Supreme Court, in the case of CORPORATION OF CITY OF

NAGPUR, CORPORATION OF THE CITY OF NAGPUR CIVIL LINES, NAGPUR & ANOTHER v. RAMCHANDRA G. MODAK &

OTHERS reported in AIR 1981 SC 2135 has held as under:

â??The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending

against the respondents would have to continue. This is a matter which is to be

decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will taken into consideration this factor in coming to the conclusion if it is really worth while to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so.â??

12. In the case of G.M. TANK v. STATE OF GUJARAT AND ANOTHER reported in AIR 2006 SC 2129 at paragraph 32, it is observed thus:

â??In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.â??

13. In the case of NOIDA ENTREPRENEURS ASSOCIATION V. NOIDA AND OTHERS reported in AIR 2007 SC 1161 at paragraph 17 of the judgment, the Apex Court, has held thus:

â??17. 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 proceedings the same does not bar departmental proceedings. That being so the order of the State Government deciding not to continue the departmental proceedings is clearly

untenable and is quashed. The departmental proceedings shall continue.â??

14. In the case of T.N.C.S. CORPORATION LTD. AND OTHERS v. K MEERABAI reported in (2006)2 SCC 255 at paragraph 32 has observed

thus:

â??32. The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other.â??

15. The Hon'ble Supreme Court in the case of KRISHNAKALI TEA ESTATE v. AKHIL BHARATIYA CHAH MAZDOOR SANGH reported in

(2004)8 SCC 200 was concerned with the validity of the termination of services of workmen after acquittal by the criminal court, and while dealing

with the situation, similar to the one in the said case, where the acquittal was due to lack of evidence before the criminal court and sufficient evidence

was available before the Lokayukta, the Hon'ble Supreme Court held that the object of departmental enquiry is to find out whether delinquent is guilty

of misconduct under the Conduct Rules for the purpose of determining whether he should be continued in service or not.

16. In the recent case of KARNATAKA POWER TRANSMISSION CORPORATION LIMITED v. C. NAGARJU AND ANOTHER reported in

(2019)10 SCC 367, the Hon'ble Supreme Court while dealing with an identical issue has held that acquittal by criminal court does not preclude

departmental enquiry against delinquent since both the proceedings are entirely different, operate in different fields and have different objectives.

Disciplinary authority is not bound by the judgment of a criminal court where evidence produced in departmental enquiry is different from that

produced in a criminal trial. The object of departmental enquiry was to find out whether the delinquent was guilty of misconduct under Conduct Rules,

whereas, in a criminal proceedings the question is whether the accused was guilty of offences charged under Prevention of Corruption Act. Besides,

standard of proof in departmental enquiry, is not strictly based on rules of evidence and this mode of enquiry is significantly distinct.

17. Having considered the law declared by the Hon'ble Supreme Court with regard to the fact that in the disciplinary proceedings, the preliminary

question is whether the petitioner is guilty of such misconduct as would merit

action against him? And, whereas in a criminal proceedings the question is whether the offences registered against accused are established by prosecution, beyond reasonable doubt, and if established, what sentence should be imposed upon him? The standard of proof, the modes of enquiry and the Rules governing the enquiry and trial are conceptually different. In case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of proof beyond doubt has no application, insofar as the departmental enquiry is concerned and the entire proceedings before the Departmental Enquiry stands on the footing of preponderance of probabilities and some material on record are necessary to arrive at a conclusion. Suffice to say, that the object of conducting departmental enquiry is to maintain discipline in service and standard of proof required in departmental proceedings is not the same as required in a criminal trial to prove the criminal charge. Even if there is an acquittal in the criminal proceedings, same does not bar departmental proceedings. In that view of the matter, we do not find any error in the conclusion arrived at by the Karnataka Administrative Tribunal in its order dated 26th June, 2018 passed in Application No.4318 of 2018 whereunder it is held that continuation of departmental enquiry by the respondents is just and proper in the facts of the case.

18. Hence, for the aforestated reasons, we are of the view that submissions made by the learned counsel appearing for the petitioner has no basis and the same are liable to be brushed aside as it stands rejected. The question formulated is answered in the negative, i.e. against petitioner. Resultantly, writ petition stands dismissed.