

(2011) 05 AHC CK 0264

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 26557 of 2010

Constable Babban Rai and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 223, 224
Police Act, 1861 — Section 7
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 14(1), 4, 8(4)
Uttar Pradesh Police Regulations, 1948 — Regulation 492, 493
Uttar Pradesh Rajya Sahkari Bhoomi Vikas Bank Employees Service Rules, 1976 — Rule 104

Citation : (2011) 05 AHC CK 0264

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Petitioners have approached this Court for following relief:

(i) To call for the records of the case and to issue a writ, order or direction in the nature of mandamus commanding the Respondents not to proceed with departmental proceedings against the Petitioners and it may be kept in abeyance till the conclusion of criminal proceeding against the Petitioners.

(ii) To issue any other writ order or direction in the nature of mandamus commanding the Respondents to consider the representation of the Petitioners for suspending/staying the departmental proceedings initiated against the Petitioners in pursuance of the charge sheet dated 22.2.2010 vide Annexure-2

(iii) To issue any other suitable writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) To award cost of this petition.

2. Brief background of the case is that Petitioners have been performing and discharging their duties as constable in civil police. First information report has been lodged against the Petitioners under Sections 13(1)(d) and Section 13(2) of Prevention of Corruption Act, Police station Alinagar, District Chandauli, being Case Crime No. 270 of 2009. In the said criminal case, charge sheet in question has been filed and the matter earlier had been pending before the Chief Judicial Magistrate, Chandauli. Petitioner has stated that the matter has been committed to the Court of Session thereafter wherein on 22.2.2010 charges have been framed. Petitioners have stated that departmental charge sheet has also been issued on 22.2.2010 in order to initiate proceeding under Rule 14(1) of U.P. Police Officers of the Subordinate Rank (Punishment and Appeals) Rules, 1991 and as criminal trial is on going, departmental proceeding be stayed. At this juncture present writ petition has been filed with the prayer mentioned above.

3. Sri Manish Chandra Tiwari, Advocate, learned Counsel for the Petitioners the contended with vehemence that in the present case, criminal case and departmental proceeding are based on same set of fact and same evidence, as such continuance of departmental inquiry, is not at all justifiable and consequentially directive be issued for withholding departmental proceeding till criminal trial is not over. For this preposition he has also placed reliance on Regulation 492 and 493 of U.P. Police Regulations as well as judgment of Hon''ble Apex Court in the case Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and State Bank of India and Others Vs. R.B. Sharma, and the judgment of this Court in the case of Prafulkumar Kumar v. S.T. Mukhwar, Civil Misc. Writ Petition No. 36479 of 2005 decided on 1.4.2011.

4. Learned Standing counsel on the other hand contended that there is no bar in simultaneous proceeding i.e. criminal proceeding and departmental proceeding can go on simultaneously as area of both departmental proceeding and criminal prosecution are altogether different and as such there is no occasion for staying departmental proceedings such writ petition be dismissed.

5. After the respective arguments have been advanced, the judgment of Hon''ble Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, is being looked into. In the aforementioned judgment the Hon''ble Apex Court after taking into account various earlier judgments has held that departmental proceedings and proceedings in criminal case can proceed simultaneously, as there is no bar in their being conducted simultaneously, though separately. It has been further held that if the departmental proceedings and criminal case are based on similar set of facts and charges in criminal case against delinquent employees is of grave nature which involves complicated questions of fact and law, it would be desirable to stay the departmental proceedings till conclusion of criminal case. Whether complicated questions of fact and law are involved or not will depend upon the nature of the offence, and the case lodged against the employee on the basis of evidence and material collected during the investigation or as reflected in the charge sheet, and these

facts are not to be considered in isolation but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed. Thus, if complicated questions of fact and law are involved, and departmental proceedings and criminal case are based on identical and similar set of facts, only then it is desirable to stay the departmental proceedings, but the said facts are not to be considered in isolation. Paragraph 22 of the judgment being relevant is being quoted below:

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

(i) Departmental proceedings and proceedings in 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 charge in criminal case against delinquent employees 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 criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and complicated questions of fact and law are involved in that case will depend upon the nature of the offence, the nature of case launched against the employee on the basis of evidence and material collected against him during the 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 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 pendency of 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, administration may get rid of him at the earliest.

6. The judgment in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, has been followed in the case of State Bank of India and Others Vs. R.B. Sharma, are being quoted below:

7. It is a fairly well settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of fact and the evidence in both the proceedings is common.

8. The purpose of departmental enquiry and of prosecution 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 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 question of fact and law. Offense 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 inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or 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 question of fact to be considered in each case depending on its own facts and circumstances.

11. There can be no strait jacket 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 criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

7. Same benefit has been reiterated again in the case of Hindustan Petroleum Corporation v. Sarvesh Berry AIR 2005 SC 1406.

8. Principles laid down above are clear and categorical that there is no bar in simultaneous separate proceeding of criminal case as well as departmental proceeding. Further if departmental proceedings and criminal case are based on similar set of facts and charges in criminal case against delinquent employee is of grave nature which involves complicated question of fact and law, it would be desirable to stay the departmental proceedings till conclusion of criminal case. Whether complicated question of fact and law are involved or not will depend upon the nature of the offence, and the case lodged against the employee on the basis of evidence and material collected during the investigation or as reflected in the charge sheet. Thus it is clear that departmental proceeding can proceed, as there is no bar and only when nature of charge in criminal case are grave and complicated question of fact and law are involved, then departmental

proceedings can be stayed and further also in contingency when departmental enquiry would seriously prejudice delinquent in his defence at the trial, and even these facts cannot be considered in isolation to stay departmental proceeding but due regard will have to be given to the fact that departmental proceedings cannot be unduly delayed.

9. Under Sub-rule (4)(a) of Rule 8 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, the punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape is dismissal unless the punishing authority for reasons to be recorded in writing awards a lesser punishment. Thus major penalty of dismissal as provided for under Rule 4 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 in the matter of intentionally or negligently allowing a person in police custody or judicial custody to escape is a rule,¹ and punishing authority, for reasons to be recorded can award lesser punishment. Section 223 of I.P.C. deals with duties of public servant legally bound to keep in confinement any person charged with or convicted of any offence, negligently suffers such person to escape from confinement is to be awarded punishment with imprisonment of two years. Section 224 deals with resistance or obstruction by person to his lawful possession. Here both in departmental proceeding and in criminal trial being negligent is the essence of action taken against Petitioner, but parameters of both the proceedings are entirely different, as criminal prosecution is launched for an offence for violation of duty the offender owes to the society, whereas departmental enquiry is to maintain discipline in the service. It is true that criminal case and departmental proceedings are based on similar set of facts same incident but the charge in question cannot be said to be of such grave nature, involving complicated question of fact and law, warranting stay of the proceeding till conclusion of criminal case. Nothing has been brought from the side of Petitioner to substantiate that departmental enquiry would seriously prejudice the delinquent in his defence at the trial in Criminal Case.

10. Much reliance has been placed on Regulations 492 and 493 of U.P. Police Regulations. The two Regulations mentioned are set out below:

492 . Whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary.

493. It will not be permissible for the Superintendent of Police in the course of a departmental proceeding against a Police Officer who has been tried judicially to reexamine the truth of any facts in issue at his judicial trial, and the finding of the Court on these facts must be taken as final.

Thus. (a) if the accused has been convicted and sentenced to rigorous imprisonment,¹ no departmental trial will be necessary, as the fact that he has been found deserving of rigorous imprisonment must be taken as conclusively providing his unfitness for the discharge of his duty within the meaning of

Section 7 of the Police Act. In such cases the Superintendent of Police will without further proceedings ordinarily pass an order of dismissal, obtaining the formal order of the Deputy Inspector General when necessary under paragraph 479 (a). Should he wish to do otherwise he must refer the matter to the Deputy Inspector General of the range for orders.

(b) If the accused has been convicted but sentenced to a punishment less than of rigorous imprisonment a departmental trial will be necessary, if further action is though desirable, but the question in issue at this trial will be merely (1) whether the offence of which the accused has been convicted amounts to an offence u/s 7 of the Police Act (2) if so, what punishment should be imposed. In such cases the Superintendent of Police will (i) call upon the accused to show cause why any particular penalty should not be inflicted on him (ii) record anything the accused Officers has to urge against such penalty without allowing him to dispute the findings of the Court. and (iii) write a finding and order in the ordinary way dealing with any plea raised by the accused officers which is relevant to (1) and (2) above.

(c) If the accused has been judicially acquitted or discharged, and the period for filing an appeal has elapsed and/or no appeal has been filed the Superintendent of Police must at once reinstate him if he has been suspended; but should the findings of the Court not be inconsistent with the view that the accused has been guilty of negligence in, or unfitness for, the discharge of his duty within the meaning of Section 7 of the Police Act, the Superintendent of Police may refer the matter to the Deputy Inspector General and ask for permission to try the accused departmentally for such negligence or unfitness:

Bare perusal of Regulations 492 and 493 would go to show that whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary. Regulation 493 mentions that it will not be permissible for the Superintendent of Police in the course of a departmental proceeding against a Police Officer who has been tried judicially to re-examine the truth of any facts in issue at his judicial trial and the finding of the Court on these facts must be taken as final. Division Bench of this Court in the Case of Kedar Nath Yadav v. State of U.P. 2005 (3) E&C 1955, while considering these very Regulations, has taken the view, that even after enforcement of 1991 Rules, these two Regulations continue to hold the field. Both these Regulations occupy different field i.e. wherein Police Officer has been judicially tried and after judicial trial is over, and consequently will not come to the rescue of Petitioner.

11. Reliance has been placed on the judgment of this Court in the case of Virendra Kumar Sharma v. State of U.P. 2002 (3) UPLBEC, for the proposition that, when charges are engaging attention of criminal trial or police investigation, departmental enquiry cannot proceed on same charges. Said decision has been rendered, in context of the mandate provided for in Rule 104 of U.P. Rajya Sahkari Bhoomi Vikas Bank Employees, Service Rules, 1976, which specifically

prohibits departmental inquiry against a charge which is sub-judice in judicial enquiry or trial. The facts of case in the case of Prafulla Kumar (Supra) were peculiar, for the reason that Petitioner therein was charged with conniving with Ram Kumar, who was in charge of draft section and was responsible for safe custody of security forms, and the charge has to be proved by the oral evidence collected by CBI. Department had not concluded any preliminary enquiry, and the charge sheet issued was after two and half years was entirely based upon the evidence collected by CBI and further view was taken that defence of delinquent would be seriously prejudiced at the trial.

12. In the present case Petitioner is being tried for criminal activities in criminal trial, whereas in the departmental proceedings one is tried for misconduct. Area of operation is all together different. For stopping of departmental proceeding, it is for the departmental authority to take decision as to whether in the fact of the case it would be appropriate to stay the departmental proceeding or not or both can be simultaneously proceeded. Whether disciplinary inquiry is to continue at all or not, and whether result of criminal trial is to be awaited, is to be decided, by the authority-in-charge of disciplinary matter, keeping in view over all fact and situation as prevailing on the spot, and said issues will have to be answered on the parameter provided for. Request of Petitioner be considered within next eight weeks from the date of receipt of certified copy of the order.

13. With these observations, writ petition is disposed of.