
(2000) 03 KL CK 0058
In the High Court Of Kerala
Case No : W.A. No. 36 of 2000

Jose Mathew

APPELLANT

Vs

Kerala State Industrial Enterprises

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Citation : (2000) 84 FLR 87 : (2000) 2 ILR (Ker) 581 : (2000) 2 LLJ 1059

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.P. Dandapani, for the Appellant; T.P. Kelu Nambiar, S.R. Ramachandra Menon and C.T. Ravikumar, for the Respondent

Final Decision : Dismissed

Judgement

Pasayat, C.J.—Heard.

2. Appellant's prayer for keeping in abeyance the departmental proceedings during the pendency of criminal proceedings having been rejected by learned single Judge, this appeal has been filed.

3. Factual position, as stated by the parties, is essentially as follows: Appellant who was functioning as Executive Director (Finance) of the Kerala State Drugs & Pharmaceuticals Ltd. (hereinafter referred to as "the Company") was placed under suspension by the Chairman and Managing Director of the Company by order dated May 22, 1977, Ext.PI annexed to the Original Petition. Said action was necessitated as enquiries were to be done by the Vigilance Department as serious allegations were levelled against him. Said order of suspension was challenged by appellant along with others in O.P. No. 8928 of 1997. Same was dismissed by judgment dated July 29, 1997. Subsequently, the Managing Director initiated departmental enquiry by serving a memo of charges and appointing an enquiry officer.

4. Two points were placed for consideration of learned single Judge in support of the Original Petition. Firstly, it was submitted that the Managing Director was

incompetent to initiate disciplinary action and to conduct an enquiry. Secondly it was submitted that simultaneous continuance of departmental and criminal proceedings would be prejudicial to appellant.

5. In the counter-affidavits filed by contesting respondents it was inter alia stated that appellant was appointed by the company represented by its Managing Director and therefore he has ample jurisdiction to take disciplinary action. Further, appellant had participated in the departmental proceedings, he was represented by a lawyer, several witnesses were examined and large number of documents were also marked. Further the nature of enquiry in the two proceedings were contextually different. Even otherwise, there is no bar on simultaneous continuance of departmental proceedings and proceedings in criminal case.

6. Learned single Judge observed that the Managing Director had jurisdiction to take disciplinary action and there was no fetter on the continuance of departmental proceedings during the continuance of criminal case. Accordingly the Original Petition was dismissed.

7. Stands taken before learned single Judge were reiterated in this Writ Appeal. However, the challenge relating to jurisdiction of Managing Director was not seriously pressed in view of certain documents brought on record. It was however submitted by learned counsel for appellant that all through the respondents were taking a stand that vigilance enquiry would be over shortly. But probably being aware of the result of enquiry, they have thought of an innovative idea of taking departmental action. It is also submitted that several other persons against whom similar proceedings were taken have been reinstated and appellant is the sole exemption.

8. Learned counsel for respondents 1 and 2 submitted that enquiry has been completed and enquiry report has been submitted for consideration of the Board of Directors. In fact it was placed for its consideration on February 7, 2000; but on account of paucity of time could not be taken up.

9. Only point that needs to be adjudicated at the present juncture is whether respondents 1 and 2 should be permitted to consider the enquiry report or that should be kept in abeyance till the proceedings in the criminal case attain finality.

10. The law relating to simultaneous continuance of departmental proceedings and criminal case is fairly well settled. First important decision on the point is The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, wherein it was held that principles of natural justice do not require that the employer should keep in abeyance disciplinary action and wait for adjudication by the Criminal Court. It was however observed that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the Trial Court so that the defence of the employee in the criminal case may not be prejudiced. Almost similar to that effect was the decision of the Apex Court in Tata Oil Mills Co. Ltd. Vs. Its Workmen, . It was

observed in the said case that to say domestic enquiries may be stayed pending criminal trial is different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide.

11. In *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, it was observed that it is neither possible nor advisable to evolve a hard and fast strait-jacket formula applicable to all cases and of general application without regard to the particularities of the individual situation. Whether on the facts and circumstances of a particular case there should or should not be such simultaneous continuance of the departmental proceedings pending criminal trial has to be adjudicated taking into account the circumstances of that case.

12. In *State of Rajasthan Vs. B.K. Meena and others*, it was observed that in almost each of the cases decided by the Apex Court, starting point was the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously; but in certain circumstances it was felt not to be desirable, advisable or appropriate to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. Observations of the Apex Court in *Meena's* case (*supra*) to the effect that there must be expeditious conclusion of the disciplinary proceedings are of great significance. It was observed as follows *State of Rajasthan Vs. B.K. Meena and others*, at 751):-

"15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him".

13. Decision of the Apex Court in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, as relied upon by both learned counsel for appellant and respondents to substantiate their respective stands. Conclusions which were arrived at, after taking note of various decisions of the Apex Court, are summarised in para. 22 of the judgment which read as follows at p 1100 of LLJ:-

"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 preceded 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."

14. As indicated above, the question of desirability of staying the disciplinary proceedings would depend upon the nature of the case, the stage of criminal case and the further important question as to whether it involves complicated questions of fact and/or law, in addition to the question, whether charges in both proceedings are same. Issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. Initiation and continuance of disciplinary proceedings cannot be a calculated move to obstruct or interfere with the course of justice in the criminal case. It is to be kept in view that approach in the criminal proceedings and the disciplinary proceedings is distinct and different, and so is the objective. In the disciplinary proceedings, the question is whether the employee is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered are established and if established what sentence would be imposed upon him. The standard of proof, the mode of enquiry and the rule governing the enquiry and trial in both the cases are distinct and different. As observed by the Apex Court in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, , the criminal proceedings is launched for an offence for violation of a duty which the offender owes to the society or for breach of which law has provided that 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.

15. It is submitted by learned counsel for respondents 1 and 2 that the allegations which form part of the charge in the disciplinary proceedings are contextually different from those involved in the investigation by vigilance

authorities. We do not think it necessary to go into that question, as it has been brought to our notice by learned counsel for respondents 1 and 2 that the enquiry officer has submitted his report and acceptability or otherwise thereof is a matter pending consideration of the Board of Directors. That being the position, the question of granting any stay in the departmental proceedings does not arise in the present case.