
(1999) 09 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 17579 of 1999

Jose Mathew

APPELLANT

Vs

State Industrial Enterprises Ltd. and Others

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Citation : (1999) 2 KLJ 893

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

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

Judgement

C.S. Rajan

1. The petitioner was suspended by Ext.P1 order of the first respondent. Ext.P1 states that the petitioner who was holding full additional charge of the post of Managing Director of the second respondent was placed under suspension pending enquiry by the Vigilance Department on the basis of serious allegations against him. The petitioner along with others challenged the above order of suspension before this Court in O.P. No. 8928/97. The above Original Petition was dismissed by this Court as per Ext. R2(h). Thereafter the second respondent initiated Departmental enquiry against the petitioner by serving a memo of charges and appointing an Enquiry Officer. Now the petitioner challenges the legality of the departmental enquiry in this Original Petition. Sri K.P. Dandapani, learned counsel for the petitioner submitted two points for consideration of this Court: (1) The second respondent is incompetent to initiate disciplinary action and to conduct an enquiry against the petitioner because he was appointed by the first respondent. The first respondent is the Holding Company and the second respondent is the subsidiary Company. (2) There could not be any simultaneous enquiries by the Department and an investigation by the Vigilance Department.

2. In the counter affidavits filed by respondents 1 and 2 it has been contended

that the petitioner was appointed by the second respondent as per Ext. R2(a) and that the second respondent has ample jurisdiction to take disciplinary action against the petitioner. It was also contended that the petitioner acquiesced with the proceedings taken against him by way of participating in the enquiry. He was represented by a Lawyer. Two witnesses were examined and a number of documents were marked. When the enquiry was in the mid-way, the petitioner approached this Court by filing this Original Petition.

3. The learned counsel for the petitioner relied on a recent decision of the Supreme Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . In the above ruling the Supreme Court considered the question of simultaneous continuance of departmental proceedings and proceedings in criminal case. The learned counsel particularly relied on paragraphs 20, 22, 23 and 24 of the above ruling. The Supreme Court also considered certain earlier rulings of the Supreme Court on the same point. Suffice to refer to paragraph 22 of the above ruling wherein the conclusions arrived at by the Supreme Court were noted. Paragraph 22 reads:

22. 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 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.

4. The facts of the above case reveal that the petitioner therein approached the

High Court challenging the order of dismissal passed by the Company. Earlier, the petitioner was acquitted in the criminal case. Still, the Enquiry Officer continued the disciplinary proceedings and found that he was guilty of the charges levelled against him and proposed dismissal from service.

5. On the other hand, Sri T.P. Kelu Nambiar, learned Sr. counsel appearing for the respondents referred to the earlier rulings of the Supreme Court which were also referred to in Paul Anthony's case.

6. In *State of Rajasthan Vs. B.K. Meena and others*, , the Supreme Court considered the question whether the departmental enquiry would be stayed on the ground that the criminal trial was pending. In the above case the Supreme Court considered the distinction between the approach and objective of the two proceedings. The Supreme Court also noted that the main ground usually put forward by a delinquent in favour of the stay of the disciplinary proceedings is that his defence in the criminal case would be prejudiced. The Supreme Court further held that the "advisability", "desirability" or "propriety" of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. Stay of disciplinary proceedings should not be a matter of course. All the relevant factors for and against such a step should be weighed and a decision must be taken.

7. In the ruling reported in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, the Supreme Court considered this question again. In the above ruling also the Supreme Court kept in mind the object of the two proceedings. The criminal prosecution is launched for an offence for violation of a duty and the 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 was also expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. There would be no bar to proceed simultaneously with departmental enquiry and trial of the criminal case, unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

8. One more factor which has to be noticed is the nature of evidence to be adduced and relied on by the criminal court and by the Enquiry Officer. While in criminal case the guilt must be proved to the hilt and the accused is also entitled to the benefit of doubt, no such constraints are there in case of a departmental enquiry. As held by the Supreme Court, even here say evidence is admissible in a departmental enquiry. Thus the evidence which forms the basis of a finding in an enquiry may not be available for a criminal court to convict an accused. All these factors will go to show the distinction between the two proceedings.

9. As far as the contention of the petitioner that he is not an employee of the second respondent and therefore the second respondent has no jurisdiction to proceed with the departmental enquiry is concerned, Ext.R2(a) and R2(b) will go to show that he was an employee of the second respondent. The learned senior

counsel pointed out that on the very day on which the petitioner was placed under suspension by the first respondent, the Director Board of the second respondent was reconstituted. One more factor which the learned senior counsel wants to emphasise is that there was no contention in the earlier original petition, the judgment of which has been produced as Ext.R2(h) that the petitioner was not an employee of the second respondent. Therefore, according to the learned senior counsel, the petitioner is prevented from taking up such a contention in these proceedings. Therefore I do not think that the petitioner is justified in taking the plea that the second respondent has no jurisdiction to take disciplinary action against the petitioner. The rulings of the Supreme Court referred to above take the categorical stand that it is not an inviolable rule that in every case an enquiry must be stayed merely because the criminal case is pending. It all depends upon the facts and circumstances of each case to decide as to whether the delinquent is prejudiced by proceeding with departmental action while the criminal case is still pending. In this case, as noticed earlier, the petitioner had already participated in the enquiry and the witnesses were also examined and therefore the petitioner is not entitled to challenge the legality of the continuance of the disciplinary action taken against him. Under these circumstances, I do not find any illegality in the proceedings now taken against the petitioner.

The original petition is therefore dismissed.