(2013) 07 PAT CK 0002

In the Patna High Court

Case No : CWJC No. 12082 of 2013

Md. Yunus APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:
Prevention of Corruption Act, 1988 — Section 13(1), 13(1)(e), 13(1)(e)(ii), 13(2)

Citation : (2014) 1 PLJR 159

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Basant Kumar Choudhary and Pramod Kumar, for the Appellant; Pushkar Nr. Shahi and Mritunjay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Ravi Ranjan, J.—I have heard learned counsel for the petitioner and the State. The petitioner seeks quashing of the office order contained in memo no. 623 dated 22.2.2013 and memo No. 2194 dated 7.6.2013 issued under the signature of the State Transport Commissioner, Bihar, Patna by which the petitioner was placed under suspension and also a regular departmental proceeding has been initiated against him on the ground of a criminal case having been lodged against him bearing Economic Offence P.S. Case No. 5/2013 under Sections 13(1) and 13(2) of the Prevention of Corruption Act, 1988.

2. A short question has been raised on behalf of the petitioner that in view of the fact that both, the criminal case as well as the departmental proceeding, have been initiated on the basis of same set of charges, in view of the law laid down by the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,], the departmental proceeding should at least be stayed till the trial is concluded. Mr. Basant Kumar Choudhary, learned senior counsel appearing for the petitioner drew attention towards paragraph 22 of the aforesaid judgment. It is urged that the Apex Court, specially in sub-para (ii) of the aforesaid paragraph, after consideration of several earlier decisions, has held that if the

departmental proceedings and the criminal case are based on identical and similar set of facts and the charges are of grave nature which involves complicated question of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Thus, it is contended that the departmental proceedings should be stayed in view of the fact that grave criminal nature of charges have been levelled in the criminal case. It is urged that if the petitioner is compelled to disclose his defence in the departmental proceeding then that may prejudice the criminal trial. Learned counsel drew attention of this Court towards a decision dated 23.9.2010 of a Single Bench of this Court rendered in Kapil Muni Rai Vs. The State of Bihar and Others) to demonstrate that the Single Bench, in view of the law laid down by the Apex Court in Capt. M. Paul Anthony (supra), has ordered that the memo of charges and the consequential departmental proceeding shall remain stayed till the disposal of criminal trial. It is stated that the criminal trial in that case was also proceeding on the basis of charges framed u/s 13(1)(e)(ii) of the P.C. Act.

3. In above view of the matter it has been urged that the departmental proceeding requires to be stayed.

4. Per contra, Mr. Pushkar Narain Shahi, learned A.A.G. 14 has made two fold submissions. It is stated that though the criminal case as well as the departmental proceedings has been initiated on same set of facts, however, it would be apparent from Prapatra-K, which is memo of charge appended with the office order dated 7.6.2013 declaring initiation of proceeding against the petitioner contains two sets of charges. The second charge is regarding violation of Rule 19(6) of Bihar Government Servant''s Conduct Rules, 1976 which cannot be decided in a criminal trial. It is next contended that though the Supreme Court has laid down in Capt. M. Paul Anthony (supra) that, in the cases of grave nature of charges, the criminal trial and the departmental proceeding is not required to proceed simultaneously if both have been initiated under the same set of fact but that has subsequently been considered and explained by the Apex Court in Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, . In the aforesaid case the Supreme Court has held that in the cases u/s 13(1) of the Prevention of Corruption Act there would be no question of prejudice due to disclosure of defence in the departmental proceeding. In the criminal case accused has to prove the source of acquisition. He has to satisfactorily account for the same. The Apex Court has also noticed that the issues covered by charges 2 and 3 in that case cannot be subject matter of the adjudication in the criminal case. Learned counsel has drawn attention of this Court towards another decision of the Apex Court rendered by three Judges Bench in NOIDA Entrepreneurs Association vs. NOIDA and Others [(2007) 10 SCC 385]. It is submitted that in the aforesaid case the Supreme Court has laid down 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 proceedings the same does not bar the departmental proceedings. Thus, the order of the State authorities deciding not to continue the departmental

proceedings was found untenable and quashed. The departmental proceedings was ordered to continue.

5. I find force in the submissions raised on behalf of the State. This is admitted position that both the departmental proceeding as well as criminal case are continuing on the basis of similar set of facts. The petitioner is an Enforcement Sub-Inspector in the Transport Department. On 22.2.2013, the Economic Offences Unit of the Government of Bihar raided his residential and other premises situated Chandanpatti (Muzaffarpur), Kaimur and Patna and found huge property and assets to the tune of approximately Rs. 5 crores 12 lacs which according to the respondents were disproportionate to the known source of income. On that basis an Economic Offence Case. No. 5/2013 was lodged and registered on 19.2.2013 u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. Thereafter, the petitioner was suspended under Rule 9(1)(ga) of the Bihar Government Servant''s Conduct Rules, 1976. From the memo of charges that has been appended as Annexure-A to the counter affidavit it appears that the departmental proceeding has been initiated on following set of charges:--

6. From the charges it would be apparent that it is based upon properties and assets to the tune of Rs. 5 crores 12 lacs found at the time of raid by the Economic Offences Unit of Government of Bihar. Charge No. 1 has been framed in view of the first information report having been registered against the petitioner. So far charge no. 2 is concerned, it is for the violation of Rule 3(1)(ii)(iii) as well as Rule 19(6) of the Bihar Government Servant''s Conduct Rule, 1976.

7. The Rule 19(6) of the Bihar Government Servant''s Conduct Rules, is reproduced as under for better appreciation:--

8. No doubt the Apex Court in Capt. M. Paul Anthony (supra) has laid down that in a situation where the departmental proceedings on identical and similar set of facts and the charges in criminal case are of grave nature then the departmental proceeding can wait till the conclusion of the criminal case. However, in the subsequent decision rendered in Hindustan Petroleum Corporation Ltd. (supra), the Supreme Court, after considering the decision of Capt. M. Paul Anthony (supra), has explained the situation when a criminal case is pending u/s 13(1) of the Prevention of Corruption Act. The relevant passage from the aforesaid decision is reproduced as under:--

13. It is to be noted that in cases involving Section 13(1)(e) of the PC Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression "known source of income" is related to the source known to the authorities and not the accused. The Explanation to Section 13(1) of the PC Act provides that for the purposes of the Section, "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How

the assets were acquired and from what source of income is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally, issues covered by Charges 2 and 3 cannot be the subject-matter of adjudication in the criminal case.

9. Both decisions rendered by two Judges Bench of the Supreme Court came to be considered by a three Judges Bench of the Apex Court in NOIDA Entrepreneurs Association & Ors. (supra). Their Lordships have noticed and recorded the conceptual difference between a departmental proceedings and the criminal proceedings as highlighted by the Supreme Court in several cases including Hindustan Petroleum Corporation Ltd. (supra). Thereafter, the law laid down by the Apex Court in Capt. M. Paul Anthony (supra) has also been discussed in paragraph 14. Almost in all the decisions the view of the Supreme Court is that there is no straightjacket formula as to in which case the departmental proceedings are to be stayed. However, in that particular case, i.e., NOIDA Entrepreneurs Association & Ors. (supra), what ultimately has been held is quoted as under:--

16. 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.

10. In my opinion also there cannot be a straightjacket formula to deal with such situation. However, the views expressed by the Apex Court in Hindustan Petroleum Corporation Ltd. (supra) would be relevant for present purpose as specific issue involving Section 13(1) of Prevention of Corruption Act has been considered by the Apex Court and it has been held that disclosure of defence in a departmental proceeding in such cases would not be of much significance as in the criminal case also the accused has to disclose the source of acquisition. Additionally, the issues covered under charge 2, i.e., violation of Rule 3(1)(ii)(iii) as well as Rule 19(6) of the Bihar Government Servant''s Conduct Rules, 1976 cannot be a subject matter of adjudication in a criminal case. Therefore, in my considered opinion, there would be no requirement of staying the departmental proceeding in the present case.

11. By way of last effort learned counsel for the petitioner has submitted that the petitioner is going to retire at the age of superannuation, i.e., on 31st July, 2013 itself, thus, the authorities may try to conclude the departmental proceeding in a hush-hush manner and may take a decision of imposing penalty upon the petitioner. It is contended that the petitioner is required to file written statement today itself during the inquiry.

12. However, it cannot be presumed by this Court that the State authority would proceed and conclude the proceeding without granting reasonable opportunity to the petitioner in accordance with law. In case such situation arises the petitioner would always have an option to assail such decision before a competent forum in a manner permissible in law. Accordingly, this writ application is dismissed.