
(1997) 11 DEL CK 0034
In the Delhi High Court
Case No : C.W. 4744 of 1995

Naseem Ishaque

APPELLANT

Vs

India Trade Promotion Organisation (ITPO)

RESPONDENT

Date of Decision : 01-11-1997

Acts Referred:

Citation : (1997) 11 DEL CK 0034

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Mukul Rohtagi and Ms. Maninder Acharya, for the Appellant; Mr. A.K. Sikri and Mr. Shailesh Kapoor Advocate, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner has prayed for the quashing of the order dated 19.7.1995 in and by which the petitioner is kept under suspension. The petitioner does not challenge the validity of the proceedings taken against her but her case is that when criminal proceedings are pending against her she cannot be kept under suspension and according to the learned Senior Counsel for the petitioner till the conclusion of the criminal proceedings the petitioner should not only be suspended from service but no departmental proceedings could be initiated against her till the conclusion of the criminal proceedings.

2. The charge sheet against the petitioner was filed in the Court of Shri G.P. Mittal, Metropolitan Magistrate, New Delhi on 8.2.1995 u/Sec. 420, I.P.C. and Sections 12(1)(b) and 12 (c) of the Passport Act,1967. When the charge was filed in the Criminal Court the first respondent did not pass any order of suspension. According to her, the crux of the charge in the criminal case is "she submitted two applications for obtaining private passport in two different names."

3. On 14.2.1995 a memorandum of articles of charges against the petitioner were issued. The charges are as under:

"(i) The petitioner obtained leave making false grounds indicating purposes other than visiting abroad.

(ii) She visited Saudi Arabia and U.A.E., on 4 occasions during 10.5.1982 to 7.4.1994 without obtaining prior permission of the Competent Authority.

(iii) She also got issued 2 private passports without the requisite No Objection Certificate."

The petitioner filed C.W.974/95 in this Court challenging the issue of charge memo on 14.2.1995. This Court passed the following order on 18.7.1995:

"We have seen the articles of charge served on the petitioner with regard to the disciplinary proceedings and the charge sheet filed against the petitioner. We find that both are not based on same facts, whereas the disciplinary proceedings are being initiated against the petitioner on account of her obtaining leave on false pretext and visiting foreign country without any permission but the criminal charge is based on petitioner obtaining a number of passports in different names giving false information. Both the matters are not based on same facts and thus, the disciplinary proceedings cannot be stayed till the disposal of the criminal case. Petition is dismissed with no order as to costs. Interim order is vacated."

In the petition it is stated that the simultaneous facing of the departmental enquiry and the criminal trial are prejudicial to the interest of the petitioner. It is stated that the Service Rules provide for dismissal in case of conviction by a Criminal Court and, Therefore, it pre-supposes that the departmental enquiry should be stayed till the conclusion of the criminal trial.

4. The learned Senior Counsel for the petitioner Mr. Mukul Rohtagi submitted that the facts and circumstances before the Criminal Court and the departmental enquiry being the same, when the Department had chosen to prosecute the petitioner, the Department cannot take departmental action against the petitioner. I Therefore, the departmental enquiry should be stayed till the criminal case is over. The learned Senior Counsel also submitted that on 19.7.1995 the order of suspension was passed which was the next day after the dismissal of the Writ Petition No.974/95 on 18.7.1995 and, Therefore, it was a mala fide exercise of power.

5. The learned Senior Counsel relied upon the judgment of the Supreme Court in O.P. Gupta Vs. Union of India (UOI) and Others, and the case reported in Allahabad Bank and Another Vs. Deepak Kumar Bhola, .

6. Mr. A.K. Sikri, learned Senior Counsel for the respondents submitted that it is open to the first respondent to initiate departmental proceedings against the petitioner and pendency of the criminal case is no bar to the initiation of the departmental proceedings. About the passing of the order of suspension on 19.7.1995 the learned Senior Counsel submitted that it was sheer co-incidence that dismissal of the writ petition was on 18.7.1995 and the suspension order was passed on 19.7.1995 but the Department had considered the matter carefully and the order came to be passed on 19.7.1995. The case of the petitioner that immediately after the dismissal of the writ petition the first

respondent passed the order of suspension was not at all correct.

7. The Supreme Court in State of Rajasthan Vs. B.K. Meena and others, , and Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , which was decided on 20.11.1996 had laid down that the approach and objective in the criminal proceedings and the departmental proceedings is altogether distinct and different, and the question of staying departmental enquiry has to be considered on the materials produced.

8. On a consideration of the entire facts before us, we are of the view that the dictum laid down by the Supreme Court would apply to this case and the facts and circumstances do not warrant any consideration for the stay of the departmental proceedings. We have considered this point in C.W. 96/94 Sh. H.C. Changra Vs. National Institute of Public Corpn. & Child Development and Another in which the judgment is delivered today and in the light of the legal position, we are of the view that the departmental enquiry should not be stayed and the petitioner has not made out any case for setting aside the order of suspension dated 19.7.1995. The writ petition, accordingly, stands dismissed. There shall be no order as to costs.