
(2010) 12 GUJ CK 0285

In the Gujarat High Court

Case No : Special Civil Application No. 15960 of 2010

P.V. Sharma

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)(B), 85(1)(3)
Constitution of India, 1950 — Article 226

Citation : (2011) 130 FLR 37 : (2011) 1 GLH 326

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : A.S. Supehia, for I.S. Supehia, for the Appellant; Anand L. Sharma and A.G.P. for the Respondents No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Anand L. Sharma, learned Assistant Government Pleader waives service of notice of Rule on behalf of Respondents. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

This petition has been preferred under Article 226 of the Constitution of India, with a prayer to restrain the Respondents from proceeding with the Departmental Inquiry initiated against the Petitioner, as a criminal case has also been filed against him for the same incident that has given rise to the departmental inquiry.

2. Briefly stated, the facts of the case are that, the Petitioner is serving as a Subedar Company Commander in the Border Wing Home Guards, in the office of the Battalion Commander. At present, the Petitioner has been placed under suspension, with effect from 15.12.2008, in connection with a case involving prohibition offences u/s 66(1)(b) and Section 85(1)(3) of the Bombay Prohibition Act, 1949. An F.I.R. dated 23.9.2008 has been registered against the Petitioner at City Police Station, Vadodara. The allegation against the Petitioner is that, he

was found under the influence of alcohol near Hathikhana area, in Vadodara city. A charge-sheet in connection with the aforesaid F.I.R. came to be filed before the Competent Court on 18.11.2008 and a criminal case against the Petitioner is pending. It is stated that the actual hearing of the case has not yet begun. In connection with the same incident, a charge-sheet dated 8.6.2010, has been issued to the Petitioner by Respondent No. 1, for initiating a departmental inquiry on the allegation that on 23.9.2008, at 14:20 hours, the Petitioner was found in a drunken condition in Hathikhana area, of Vadodara city. Respondent No. 1 has appointed the Special Officer for Departmental Inquiries (Respondent No. 2) as the Inquiry Officer, by memorandum dated 4.11.2010. Respondent No. 2 has kept the departmental inquiry for examination of witnesses, on 22.12.2010, as per Note of proceedings dated 7.12.2010.

3. The case of the Petitioner is that he is being prosecuted in a Court of law and is also being proceeded against in departmental inquiry proceedings, in respect of the same offences, based on the same set of facts. In this background, the Petitioner has approached this Court by filing the present petition.

4. Mr. A.S. Supehia learned Counsel for the Petitioner has submitted that the action of the Respondents in holding a departmental inquiry when a criminal case has been simultaneously filed against the Petitioner is unreasonable and arbitrary, as the departmental inquiry and criminal prosecution are based on the same set of facts, and are arising from the same incident. That, though the hearing of the criminal case has not yet started so far, the departmental inquiry is going to start on 22.12.2010, and it would be in the interest of justice if the Petitioner is protected from facing two proceedings simultaneously.

5. It is further submitted by the learned Counsel for the Petitioner, that as the witnesses in both proceedings would be the same, the defense of the Petitioner would be disclosed in the departmental proceedings, resulting in prejudice being caused to him, therefore, the prayers made in the petition may be granted.

6. In support of the above submissions, reliance has been placed upon a judgment of the Supreme Court in *Indian Overseas Bank Anna Salai and Anr. v. P. Ganeshan and Ors.* 2008 (116) FLR 494 (SC)

7. Per contra, Mr. Anand L. Sharma, learned Assistant Government Pleader has submitted that it is settled law that departmental proceedings and criminal proceedings can go on side-by-side and in the present case, there is nothing on the record to suggest that the Petitioner will be prejudiced if both proceedings are carried on simultaneously, therefore, the prayers made in the petition may not be granted.

8. I have heard learned Counsel for the Petitioner, perused the averments made in the petition and other documents annexed thereto. Admittedly, the Petitioner has been placed under suspension for the alleged incident which took place on 23.9.2008 at 14:20 hours, in the Hathikhana area, in Vadodara city, on being found in a drunken condition. The Petitioner, who is serving as Subedar Company

Commander in the Border Wing Home Guards, which is a disciplined force, was placed under suspension, pending the departmental inquiry initiated against him. The Inquiry Officer has been appointed on 4.11.2010 and witnesses are to be examined in the departmental proceedings, on 22.12.2010. As far as the criminal case against the Petitioner is concerned, the charge-sheet has been filed in the competent criminal Court on 8.6.2010, but No. further progress appears to have been made as, it is stated in the petition, that the actual hearing of the case has not yet begun. The said criminal case relates to offences under the Bombay Prohibition Act, though arising from the same incident.

9. Before proceeding to examine the legality and validity of the contentions raised by the learned Counsel for the Petitioner, it would be fruitful to advert to the settled legal position in this regard. In *State of Rajasthan Appellants v. B.K. Meena and Ors.* 1996 (74) FLR 2550 (SC) Respondents the Apex Court has laid down the following principles of law:

14. It would be evident from the above decisions that each of them zesters with the indisputable proposition that there is No. legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and that No. hard and fast rules can enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defense of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion/it means that not only the charges must be grave but that the case must involve complicated questions of law, and fact. Moreover, "advisability", "desirability" or "propriety", as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Tata Oil Mills*, 1964 (9) FLR 142 (SC) is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration

demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honor should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

10. Further, in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.* 1999 (82) FLR 627 (SC) the Supreme Court, after noticing various judgments on the issue whether departmental proceedings and criminal proceedings can be carried on side-by-side, has summarized its findings as under:

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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

11. In *Indian Overseas Bank Anna Salai and Anr. v. P. Ganeshan and Ors.* (supra), relied upon by the learned Counsel for the Petitioner, the Supreme Court has referred to the above mentioned two judgments while coming to a conclusion on the facts of that particular case, as below:

20. The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges leveled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stayed of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also the matter involves a complicated question of law.

12. Considered in the light of the principles of law enunciated in the above mentioned judgments, the case of the Petitioner, is not of a grave or serious nature, and nor are any complicated questions of fact or law involved in it, so as to warrant a stay of the departmental proceedings, till the conclusion of the criminal proceedings. The same incident has put into motion both the departmental and the criminal proceedings. The nature of the offences in the criminal case arising from the Bombay Prohibition Act does not involve any complicated issues. There is No. material on record to indicate what prejudice could be caused to the Petitioner if the departmental inquiry is allowed to continue pending the trial. In this regard, it would be pertinent to refer to the observations of the Supreme Court in *Hindustan Petroleum Limited v. Sarvesh Berry* 2005 (104) FLR 305 (SC) : 2005 (27) AIC 315 (SC) wherein it has been held that:

8. The purpose of departmental enquiry and of prosecution is 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 a grave nature involving complicated questions of fact and law. Offence 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 enquiry in departmental proceedings 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 department enquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

13. The initiation of departmental proceedings flows from the alleged misconduct committed by the Petitioner, who is a member of an armed and disciplined force, whereas the criminal case has arisen from alleged commission of offences under the Bombay Prohibition Act. The nature of both proceedings is different. In the departmental inquiry, the action of the Petitioner qua his duties and the required norms and standards of discipline to be maintained by him would be inquired into, but in the criminal case, the Court would decide whether the Petitioner is guilty of criminal offences or not. The criminal case would require a much higher standard of proof, that is, proof beyond any reasonable doubt, whereas in departmental proceedings the standard of proof would be based upon a preponderance of probabilities. At this stage, it cannot be said with any certainty whether the same set of witnesses will be summoned for the criminal trial, and for the departmental proceedings. However, the fact remains that the departmental proceedings have already been initiated, whereas criminal proceedings may take a long time to conclude. The purpose of a departmental inquiry is to maintain discipline whereas in criminal proceedings, the alleged offender, if found guilty after due trial, would be inflicted with appropriate punishment, as prescribed by law.

The Petitioner has not been able to successfully show how prejudice would be caused to him if both proceedings go on simultaneously. Considering the nature of the case which is not of a grave or serious nature, and as there are No. complicated questions of law or fact involved in the case, and in view of the principles of law laid down in the judgments of the Supreme Court referred to hereinabove, in my considered view, discretion under Article 226 of the

Constitution of India need not be exercised in favor of the Petitioner, on the facts and in the circumstances of the present case.

14. For the foretasted reasons, the prayers made in the petition cannot be accepted. The petition fails, and stands rejected. Rule is discharged. There shall be no orders as to costs.