
(1991) 07 AP CK 0006
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9488 of 1987

Ravuru Babu Rao

APPELLANT

Vs

General Manager, Oriental Insurance Company Limited

RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25(2)

Citation : (1991) 3 ALT 104

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : G. Vedantha Rao, for the Appellant; G.V.L. Narasimha Rao, for the Respondent

Final Decision : Dismissed

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner prays for a writ of prohibition restraining the respondent from proceeding further in pursuance of the order dated 31-3-1987 of the Manager, Oriental Insurance Company Ltd., Regional Office, Madras, and further directing the respondent to treat the period of suspension between 8-11-1979 and 8-3-1985 as regular and pay the salary for the period and grant such other benefits as the petitioner is entitled to.

2. The petitioner was appointed as Junior Inspector, Oriental Insurance Company on 5-8-1976. In 1979 he was promoted as Grade-1 Inspector with effect from 5-8-1978. On 10-5-1979 newspapers reported the progress of cyclonic- storm and about the possibility of heavy rainfall. On 11-5-1979 the press reported that a cyclonic storm was likely to cross coast at Nellore by Friday morning and tidal waves about 2 meters above normal were expected. While he was working as probationary Inspector Grade-I, he issued two cover notes for a total sum of Rs. 2,41,35,000/- on 11-5-1979. On the allegation that he acted in excess of his authority and in the manner prejudicial to the interests of the Insurance Company and also of negligence in the performance of his duty, disciplinary

proceedings were initiated against him on 8-11-1979 and he was suspended from service on the same day. While so, a criminal case was also launched against him in C.C.No. 13 of 1981 on the file of the Court of the Principal Special Judge for S.P.E. and A.C.B. cases, Hyderabad, for offences under Sections 120B read with Section 420 I.P.C. and 5(2) read with Section 5(d) of the Prevention of Corruption Act. That Criminal case ended in acquittal of the petitioner on 6-3-1984. The State preferred Criminal appeal No. 849 of 1984 which was dismissed by the High Court on 11-9-1986. It is stated that the High Court observed that there was no compelling reason to doubt the genuineness of the cover notes issued by the petitioner and further held that the evidence led by the prosecution was wholly misconceived besides not being fully established, and that the same constitutes a bundle of baseless threats and rags incapable of bringing peace together belying the entire case of the prosecution, as also defects and infirmities the benefit of which must necessarily accrue to the accused. After the judgment of the Criminal Court dated 6-3-1984 acquitting the petitioner, the order of suspension dated 8-11-1979 was revoked by the Insurance Company by order dated 8-3-1985. However, by proceedings dated 31-3-1987 the Manager of the Regional Office of the Company appointed an enquiry officer under Sub-rule (2) of Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 to enquire into the charges which were already levelled against the petitioner. In these circumstances the petitioner prays for the writ as indicated above.

3. The respondent filed a counter-affidavit and an additional counter-affidavit, stating that the service particulars of the petitioner are not disputed. It is stated that the head office at Delhi issues instructions from time to time to every Regional Office and the Regional Office issues instructions to its Divisional Office which are in turn passed on to the Branch Offices and its employees for implementation and control. The letter of appointment of the petitioner also states under Item-B that the employee should not accept or make any commitment for accepting, unless he is specifically authorised in writing to accept such business and will not exceed in any way the authority given to him. On 9-5-1979 the Radio authorities and mass media warned the public at large regarding impending cyclone from 9-5-1979. In view of those conditions, all the Insurance Companies including the respondent-company, instructed all its offices not to give extension to current policies or to renew any policies where there is no flood or cyclone cover during the previous year and not to accept any new commitment covering such perils of storm and flood. The offices in turn advised all the Inspectors to conform to such instructions. The petitioner extended the coverage for extraneous perils, viz., flood and cyclone, to two companies, Anjaneya Tobacco Company, Singarayakonda and Anjaneya Tobacco Company, Pvt. Ltd., Tangutur, to the tune of Rs. 2,41,25,000/- without obtaining permission of the controlling office by way of endorsement on the existing coverage. The petitioner in collusion with the above two companies, defrauded the respondent-company. Though he received the instructions on 11-5-1979 by telegraphic

message, he acted prejudicially knowing fully well that he was not competent to do so and that he acted negligently in performance of his duties and caused serious financial detriment to the respondent to the tune of Rs. 2,41,25,000/-. It is only on 17-5-1970 that he admitted having issued cover notes when he was called for by the Branch Manager. Till that time he did not inform. The respondent came to know about the fraud played by the petitioner only when the Guntur branch office received the cover notes. When the Regional Office at Madras was informed of this, disciplinary action was taken against him immediately and he was suspended on 8-11-79.

Sri E.N. Subramanyam was appointed as enquiry officer on 10-9-1981. But the departmental enquiry was kept in abeyance since the entire record was taken by the C.B.I. in connection with the criminal case. It is not disputed that the criminal case was dismissed on 6-3-1984 on the ground that the prosecution failed to prove the offence. It is also admitted that the appeal filed by the C.B.I. was dismissed by the High Court on 11-9-1986. It is stated that the respondent-company is competent to initiate departmental enquiry against the petitioner, if there is a case on the charges. It is further stated that the respondent-company released full pay and allowances to the petitioner for the period 12-11-1975 to the date of revocation of suspension on 7-4-1985 and accordingly the arrears of pay and allowances were paid on 1-10-1987. As the departmental enquiry was initiated on 8-11-1979, it can be resumed as the petitioner acted negligently and in violation of the instructions issued by the company from time to time. It is further stated that there is no legal or constitutional bar in conducting disciplinary proceedings, as the criminal case was for offences connected with fraud and forgery, whereas the disciplinary proceedings are based on charges of misconduct and discharging the duties negligently. It is also added that the judgment in the criminal case was on technical grounds. In the circumstances it is prayed that the writ petition may be dismissed.

4. Sri G. Vedantha Rao, the learned counsel for the petitioner, submits that (i) further departmental proceedings are barred as the petitioner has been acquitted by the criminal court in C.C. 13/1981 on almost the same charges and the same has been confirmed by the High Court in Criminal appeal No. 849 of 1984; (ii) there were civil proceedings between Anjaneya Tobacco Pvt. Ltd., and the Insurance Company, to which the petitioner was a party; the civil court has held that the petitioner had power to issue the cover notes and that the same are true, valid and binding on the Insurance Company; in view of that no disciplinary proceedings can be taken against the petitioner; and (iii) the delay in taking up the disciplinary proceedings vitiates further enquiry.

5. Sri G.V.L. Narasimha Rao, the learned counsel for the respondent-Insurance Company, on the other hand contends that the acquittal of the petitioner by the criminal Court was not on merits, but on technical grounds and that in any event that creates no legal bar on the Insurance Company to conduct disciplinary enquiry. He further submits that the delay in conducting the enquiry has been

explained and therefore it does not affect the action of the respondent in conducting the enquiry. In so far as the civil litigation is concerned, the learned counsel submits that appeals are pending against the decrees in the civil suits, therefore, the findings of the civil Court are not final.

6. At the outset I may observe that the contention that the findings in the civil suits preclude the Insurance Company from conducting the enquiry against the petitioner, was not taken in the writ petition, therefore, the petitioner cannot be allowed to raise this point for the first time at the time of hearing. Further, appeals are also pending against the said judgment and decree of the civil Court.

7. We are now left with two questions viz.,,

(1) Whether the acquittal of the petitioner in criminal cases on the same or substantially the same charges bars the departmental disciplinary proceedings; and

(2) Whether the delay in conducting the disciplinary proceedings vitiates the proceedings.

8. The following are uncontroverted facts:- The petitioner was working as Grade-I Inspector of the respondent-Insurance Company on the material date i.e. 11-5-1979. From 9-5-1979 there have been reports by All India Radio and the press warning the public of the impending cyclone. On 10-5-1979 the newspapers reported the progress of cyclonic storm and on 1-5-1979 it was reported that the cyclonic storm was likely to cross coast of Nellore and the tidal waves were likely to go upto two meters above normal. On 11 -5-1979 the petitioner extended coverage for extraneous perils viz., flood and cyclone, to a tune of Rs. 2,41,25,000/- to (i) M/s. Anjaneya Tobacco Company, Singarayakonda and (ii) M/s. Anjaneya Tobacco Company (Pvt.) Limited, Tangutur. The said companies claimed the amount from the respondent-Company by filing civil suits. " The civil suits were decreed and the appeals are pending. On charges of misconduct, including negligence of duty, disciplinary proceedings were initiated against the petitioner by placing him under suspension on 8-11-1979. The petitioner was also prosecuted in Calendar Case No. 13/81 on the file of the Principal Special Judge for SPE & ACB Cases, Hyderabad for offences u/s 120B read with 420 of the Indian Penal Code and u/s 5(2) read with Section 5(d) of the Prevention of Corruption Act among other offences on those facts. The petitioner was acquitted by the criminal Court on 6-3-1984. The State preferred Criminal Appeal No. 849/84 in the High Court, which was also dismissed on 11-9-1986. A perusal of the judgment of the criminal Court as well as the judgment of the High Court shows that the acquittal of the petitioner was on merits and not on technical grounds. It is seen that the same set of facts is the foundation of the charges in the disciplinary proceedings as well as the criminal case. It is on these facts, the above questions have to be determined.

9. Question (1): Whether the acquittal of the petitioner in criminal cases on the same or substantially the same charges bars the departmental disciplinary

proceedings:- In support of his contention Sri Vedantha Rao relied on the following cases:

A.P. Naidu v. General Manager 1983 (1) SLR 527 , Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, , R.P. Kapur Vs. Union of India (UOI) and Another, and Mohammed Shabeer Ali v. APSRTC 1989 (2) ALT 560. But I do not propose to discuss these cases as a Division Bench of this Court in a recent judgment in Writ Appeal No. 1018 of 1987, dated 28-12-1990 (General Manager now redesignated as Managing Director, APSRTC v. K.Seshagiri Rao 1991 (1) APLJ 27 (SN) exhaustively discussed all those cases relevant on the point and held:

The view that the departmental proceedings could continue unfettered in spite of the acquittal by criminal court was accepted by the Gujarat, Mysore, Kerala and Allahabad High Courts in Motising Chhagasing Vaghela Vs. S.D. Mehta, ; T.V. Gowda Vs. State of Mysore and Others, , DIG of Police v Sankran 1982 II LLJ 309 and Divisional Manager and Others Vs. Shri Sharif Ahmad Nagrami, . After the pronouncement of the Supreme Court in Corporation of Nagpur v. Ramachandra Modak (2) (supra) Allahabad and Madras Courts in R.H. Tirupathi v. Central Bank of India 1985 LabIC 991, R. Gnanavelan and Another Vs. State of Tamil Nadu and Others, , the Madhya Pradesh High Court in Prabhu Dayal v. State of Madhya Pradesh 1988 (6) SLR 165 and the Punjab and Haryana High Court in Mohinderpal v. State of Punjab 1987 (1) SLR 266, also have taken the same view.

10. Our learned brother Ramaswamy J., in Mohd. Shabeer Ali v. APSRTC (4 supra) however held that :-

" When the charged officer was acquitted on merits, though ultimately giving benefit, he is entitled to place reliance on the finding recorded in the judicial proceedings by the learned Magistrate."

"When the acquittal is on merits pursuant to the disciplinary proceedings or removing on the same charge is illegal and is in excess of power."

11. Counsel for the respondent informs us that the above judgment was set aside in Writ Appeal No. 458/89.

12. In A.P. Naidu v. General Manager, S.C. Railway (1 supra) Choudary J., had taken almost the same view, relying on the observations in R.P. Kapoor v. Union of India (3 supra), S.K. Kasim v. Superintendent of Post Offices AIR 165 Mad. 502 and Kundanlal v. Delhi Administration 1976 (1) SLR 133. In view of the decision of the Supreme Court in Corporation of Nagpur (2 supra), we have to hold that the observations in A.P. Naidu (1 supra) are confined to the facts of that case and that the above decision does not lay down the correct law in respect of initiation or continuation of disciplinary proceedings after acquittal of the employee in criminal proceedings. For the same reasons, we hold that the learned single Judge erred in allowing the writ petition on the basis of the above three decisions. The learned single Judge also erred in assuming that the

decision in Corporation of Nagpur (2 supra) had laid down that an employee who was acquitted in a criminal proceedings cannot be subjected to disciplinary proceedings in respect of the same allegations.

13. A Division Bench of the Allahabad High Court in R.H. Tripathi v. Central Bank of India (10 supra) held that the mere fact that a person has been acquitted honourably and exonerated completely of the charge will not divest the jurisdiction of the authority concerned, either to initiate or continue the departmental enquiry on the very same charges or grounds or evidence.

14. The Court observed that:-

" The only thing which has to be seen is whether in a given case it would be expedient and fair to continue with the departmental proceedings on charges which are identical to those which were levelled against a delinquent in a criminal case before a regular court and that court had given him a clean acquittal."

15. In Madras Rubber Company Ltd., v. Purchasing Officer 1986 LabIC 1281 a Division Bench of the Madras High Court on a review of most of the decisions held that the previous Madras decisions taking the contrary view were no longer good law, in view of the decision in Corporation of Nagpur (2 supra). The Court also held that a domestic enquiry can proceed against an employee who was acquitted in a criminal trial held in respect of the same act. A Full Bench of the Orissa High Court in Jayaram Panda Vs. D.V. Raiyani and Others, held that its earlier decision in State of Orissa Vs. Sailabehari Chatterji, was per incurium.

16. The conclusion deducible from the precedents is that even if the charges were the same in a criminal proceedings and in a disciplinary proceedings and the former ends in acquittal by the Criminal Court it is open to the disciplinary authority to continue departmental proceedings if the authority is satisfied that there are sufficient evidence and good grounds" to proceed with the inquiry. The authorities are however to be governed by the Rule of caution in that they shall advert to and take into account the fact of acquittal; but they are not precluded from initiating or continuing the disciplinary proceedings if that course is warranted by the circumstances of the case."

17. In that case, the writ petitioner was a Security Inspector of the APSRTC. On the allegation that he left the Headquarters without prior permission and committed theft with the connivance of a Kalasi, Security A.S.I., two Security Guards and an Assistant Depot Clerk, disciplinary enquiry was initiated for committing misconduct under relevant Regulations by issuing charge-memo. After conducting enquiry, he was dismissed from service. However, on those facts a criminal complaint of theft was given to the police. The petitioner therein was tried for the offence u/s 411 IPC in C.C.No. 87/80 on the file of the IV Addl Judicial Magistrate of the First Class, Vijayawada and was acquitted. In departmental appeal, he relied on acquittal by the criminal court and claimed that in view of the complete and honourable acquittal by the criminal court, his appeal had to be allowed and order of dismissal had to be set aside. The

appellate authority rejected the appeal which was questioned in the writ petition.

18. Therefore, it follows that on the ground that the petitioner was acquitted on the same or substantially the same or similar charges and on the same facts by the criminal court which was confirmed by the High Court, the respondent is not precluded from proceeding with the departmental enquiry.

19. Sri Vedantha Rao, however, submits that on similar facts in W.P.No. 5629 of 1985 dated 31-3-1989 a learned single Judge of this court held that the impending departmental enquiry against the petitioner therein was illegal and improper, and it was confirmed by a Division Bench of this Court in Writ Appeal No. 913 of 1989 in its judgment dated 6-9-1989, therefore, in this case also the disciplinary proceedings may be declared as illegal. In that case, the Division Bench held:

"In the instant case the gravamen of the charge in the criminal cases more or less is the same as those framed in the departmental enquiry. It is alleged that the writ petitioner entered into conspiracy and acted in a manner prejudicial to the interests of the company and there is dereliction of duty. The criminal cases against the petitioner ended in acquittal. Naturally, it will not be expedient to proceed with the departmental enquiry."

20. It may be noted that the question whether the acquittal of an employee by a criminal court on substantially the same charges on which the departmental proceedings are proposed to be taken, bars the departmental enquiry, is different from the question whether on those facts viz., whether after honourable and complete acquittal by the criminal court it would be expedient to proceed with the departmental enquiry. Whereas in the first situation the employer is precluded from proceeding further with the departmental enquiry but in the latter situation the employer will be at liberty to proceed with the enquiry keeping in view the complete acquittal of the accused on the criminal charge and decide whether it would be worthwhile to continue the departmental enquiry. On the first question, following the decision in Managing Director, APSRTC v. K. Seshagiri Rao (5 supra) it has been held above that the respondent is not precluded from proceeding further with the departmental enquiry.

21. In regard to the expediency to proceed with the departmental enquiry, in Corporation of Nagpur v. Ramchandra G. Modak (2 supra), the Supreme Court held:

"The question whether or not the departmental enquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal cases is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court."

It was also observed:

"Normally where the accused is acquitted honourably and completely exonerated of the charges it is not expedient to continue a departmental enquiry on the very

same charges or grounds or evidence. However, merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor its discretion in any way fettered."

22. The Division Bench of our High Court in *Managing Director, APSRTC v. K. Seshagiri Rao* (5 supra) has also observed that the authorities are, however to be governed by the Rule of caution that they should advert to and take into account the fact of acquittal. In view of the observations of the Supreme Court, referred to above, and the judgment of the Division Bench of this Court in *Seshagiri Rao's* case (5 supra), it is not possible to understand the judgment of the Division Bench in W.A.No. 913 of 1989, dt.6-9-1989 (supra) as laying down the law to the contrary and hold that where it is not expedient to proceed with the departmental enquiry, the power of the departmental authority to proceed with the enquiry is taken away. Thus it follows that the question whether it would be expedient to proceed with the departmental enquiry or not, has to be decided by the respondent-company keeping in view the acquittal of the petitioner in criminal case by the trial court as well as by the High Court and if the respondent-Company comes to the conclusion that there are good grounds and sufficient evidence to proceed notwithstanding the acquittal, it cannot be prevented from doing so by issuing a writ of Mandamus.

23. Now I shall deal with the second question, viz., whether the delay in conducting the disciplinary proceedings vitiates the proceedings. Delay in conducting departmental enquiry may arise due to various reasons; it may be due to steps taken by the employee (obtaining stay of proceedings from the Court) or his conduct in not co-operating in the enquiry, or due to reasons attributable to the employer in which case it will be the duty of the employer to explain the reasons for delay. The reasons may be justifiable or erroneous. Therefore, it may not be appropriate to say that delay in conducting disciplinary proceedings vitiates the proceedings. If the employee complains of delay in initiating or conducting departmental proceedings and avers that he has not contributed for the delay, it is incumbent on the employer to explain the delay. Where the employer fails to explain the delay or where the reasons furnished by the employer are erroneous and it causes or has caused prejudice to the delinquent employee amounting to denial of reasonable opportunity, the Court will certainly grant appropriate relief redressing the wrong done to the employee.

24. In this case, the charge-memo was issued to the petitioner on 8-11-1979 and on the same date he was suspended from service. However, after the acquittal of the petitioner by the criminal court he was reinstated. The criminal appeal filed by the State was dismissed on 11 -9-1986. The impugned proceedings appointing the enquiry officer were issued on 31-3-1987. The reason given by the respondent for not taking up the enquiry after the issue of charge-memo in November, 1979 and before issuing the impugned proceedings in March, 1987, is that the records of the Respondent-Company were taken by the C.B.I. in connection with the criminal case and after receipt of the record, the

impugned proceedings were issued to resume the enquiry. As the criminal appeal filed by the state, was dismissed on 11-9-1986, the records might have been returned to the respondent only after September, 1986 and having regard to this fact, in my view, there is no inordinate delay in resuming the enquiry. As admittedly the criminal proceedings were pending till the criminal appeal was dismissed on 11-9-1986, issuing of charge-memo cannot be taken as starting point for counting the delay. It has to be only after the final termination of the criminal proceedings i.e., after the dismissal of the criminal appeal by the High Court on 11-9-1986.

25. Now I will refer to the cases relied on by the learned counsel.

26. In *C.N. Ramaswamy v. Chief Engineer*, 1981 (2) SLR 469 a learned single Judge of the Madras High Court held that the factor of delay in initiating the enquiry has to be taken note of while testing the tenability or otherwise of the order passed by the punishing authority. In that case, the employee was charged on the allegations of corruption and bribery. The Enquiry Officer found him guilty and punishment of removal was imposed. That finding was challenged in writ proceedings in the High Court.

27. In *A.P. Augustine v. Superintendent, Post Office, Alwaye*, 1984 (2) SLR 163, an employee of the Posts & telegraphs Department was "put-off duty" in May, 1981 pending enquiry into certain allegations against him. As neither any enquiry was conducted nor any subsistence allowance was paid to him during the period of suspension, he challenged the validity of the order in the writ petition. A learned single Judge of the Kerala High Court observed that while it might be still open to the respondents to conduct an enquiry against the petitioner in respect of the alleged misconduct, the belated enquiry was unlikely to be fair, for at that distance of time, it would be almost impossible for the employee to defend himself effectively by adducing evidence in regard to matters alleged to have occurred over 2 1/2 years ago and in respect of which he had not been informed of the charges and the nature of evidence relied on against him. It may be noticed that in that case, neither conducting of the enquiry at a belated state was questioned nor the learned Judge had refrained the authority from conducting the enquiry on the ground of delay.

28. *Sri Vedantha Rao*, relied on the observations of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, . The Supreme Court observed that State actions, including actions of the instrumentalities and agencies of the State, must not only be in conformity with the fundamental rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy contained in Part IV of the Constitution. An adequate means of livelihood, the Supreme Court further observed, cannot be secured to the citizens by taking away without any reason the means of livelihood and that mode of making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment. These observations were made in

the context of the validity of the rule which entitled the employer to terminate the services of the employee without any reason by giving three months' notice. These observations cannot be applied to a case where disciplinary enquiry is initiated on certain allegations of misconduct, for, that does not amount to throwing the employee out of employment without any reason, first because the stage of throwing him out of employment has not come, which depends upon the result of the enquiry and secondly because conducting of enquiry into charges of misconduct does not amount to taking action without any reason.

29. The contention of Sri Vedantha Rao, based on the observations of the Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , is that the right to livelihood is a fundamental right which flows from Article 21 of the Constitution of India and the same cannot be deprived otherwise than by due procedure; conducting disciplinary enquiry, submits the learned counsel, after enormous delay of 8 years is an unfair procedure and, therefore, vitiates the enquiry. In that case, the employee filed a representation requesting the Enquiry Officer to permit him to have the services of a lawyer, which was denied, but at the same time, the enquiry officer permitted the employer to present its case by two Law Officers of the Trust Board. This was held to be unfair.

30. From the above discussion, it follows that a disciplinary enquiry should be conducted in a fair manner in accordance with the principles of natural justice, wherein the employee should be afforded a reasonable opportunity to defend himself. Delay in initiating or conducting the departmental enquiry, after years of the incident, without proper justification, would, in some cases, have the effect of depriving the employee of a fair and reasonable opportunity to defend, as some times after long lapse of time the delinquent officer will be handicapped in effectively defending his case due to non availability of relevant evidence or otherwise causing prejudice to him. But this is a question of fact and it has to be decided on the facts of each case.

31. In the instant case, it has already been noticed above that delay in resuming the enquiry has been properly explained and that having regard to the date of judgment of the High Court in the criminal appeal, i.e., 11-9-1986, there is no inordinate delay in resuming the enquiry on 31-3-1987. On the facts of this case, it cannot be said at this stage that the delay vitiates the impugned order resuming the disciplinary enquiry. However, if the petitioner suffers any prejudice due to resumption of the enquiry by the respondent pursuant to the impugned order, this finding will not preclude him from taking up the plea of delay in any proceedings against the final order of the respondent, should such an occasion arise.

32. For the above reasons, the writ petition fails and it is accordingly dismissed, but having regard to the circumstances of the case, without costs.