

(2013) 10 DEL CK 0051

In the Delhi High Court

Case No : Writ Petition (C) No. 1494 of 2008

Sanjay Nagar

APPELLANT

Vs

Delhi Tourism and Transportation Development Corporation
Ltd. and Another

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2014) 140 FLR 1013 : (2014) LLR 132

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Raj Kumari Banjer, Advocate for Mr. P.C. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—No one once again appears for the petitioner. Adjournments on the ground of illness of counsel were taken firstly on 21.10.2013 and then on 22.10.2013. On 22.10.2013, it was made clear that no adjournment will be granted inasmuch as there is a stay of the departmental proceedings in terms of the interim order of this Court dated 25.2.2008. Today, even after the matter was passed over once, no one appears for the petitioner. Against the petitioner departmental proceedings were initiated because petitioner was found guilty of evasion of excise duties, receiving IMFL without permit and its sale without being entered in the record in terms of the following allegations:-

"Article of Imputation of Misconduct in Support of Article of Charge Framed Against Shri Bharat Kumar Soni, Asstt. Manager (Acctt.) and Shri Sanjay Nagar, Mkt. Asstt. II Incharge Wine Shop DTTDC Karol Bagh, New Delhi

The brief facts are that a source information was received that evasion of excise duty was being done by one attorney of a liquor bond at 56 Rama Road, Moti Nagar, New Delhi in connivance with the officials of excise deptt. GNCT of Delhi.

In order to verify the said information, the surveillance was done by teams of officials of AC Branch including punch witnesses and videographers on 26.3.2006 and the unloading of two trucks and loading of 8 tempos of liquor cartons was videographed at liquor bond 56 Rama Road, New Delhi and supply of liquor cartons by two tempos taken from 56 Rama Road, New Delhi to three shops at various places in Delhi was also videographed. On subsequent verifications it was found that one truck load of liquor unloaded at liquor bond 56 Rama Road, New Delhi was not entered in the stock register of the bond M/s. Glassgow distilleries Ltd. And there were no documents relating to its supply of liquor to the bond. Similarly, there were no document relating to supply of liquor at the shop M/s. Kamaljeet Singh, Main Road, Gandhi Nagar, Delhi by Tempo No. DL-1LC-9559 either at the shop or the bond. There were no documents at the bond relating to the supply of liquor at the shop of Delhi Tourism and Transportation Development Corporation, East Park Road, Delhi by Tempo No. DL-1LC-9559.

6 Cartons of IMFL was unloaded into DTTDC Wine Shop East Park Road, Karol Bagh, Delhi in the presence of punch witness, noticed during the surveillance on 26.3.2006. The unloading was videographed during the surveillance by A.C. Branch GNCT of Delhi.

Chief Manager IMFL DTTDC has reported that no receipt of IMFL on 26.3.2006 is there in record of DTTDC Wine Shop East Park Road, Karol Bagh, Delhi. In charge and IInd In charge, Shri Bharat Kumar Soni and Shri Sanjay Nagar in this case are responsible for receiving IMFL without permit and its sale in this shop without being entered in the record.

Dy. Manager (HQ) IMFL DTTDCV Ltd. Has stated that no order for IMFL to be supplied at DTTDC wine Shop East Park Road, Karol Bagh, Delhi from M/s. Glassgo Distilleries Ltd. was placed during the month of March 2006.

Statement of the Driver of Tempo No. DL-1LC-9559 has been recorded u/s. 164 Cr.P.C. and Punch Witness u/s. 161 Cr.PC who stated to have unloaded 6 cardons of IMFL at DTTDC wine Shop East Park Road, Karol Bagh, Delhi.

Both the above mentioned accused persons Sh. Bharat Kumar Soni and Sh. Sanjay Nagar have been arrested in case Fir No. 28/06 u/s. 13(1) d POC Act P.S.A.C. Branch, GNCT of Delhi and are on regular bail from the Hon"ble Court.

2. Besides initiating departmental proceedings in terms of the memorandum of charges dated 12.10.2007, criminal proceedings pursuant to an FIR had already been initiated. Petitioner in fact was arrested and was thereafter granted bail.

3. The case of the petitioner is that departmental proceedings and criminal proceedings cannot go on simultaneously and accordingly the interim order which was sought by the petitioner was passed, and this order dated 25.2.2008 reads as under:-

Issue notice to the respondents to show cause why rule nisi be not issued. Mr. Pallav Kumar, advocate enters appearance for the respondents and accepts

notice. He seeks some time to file his response. Let reply on behalf of the respondents to the show cause notice be filed within four weeks with an advance copy to counsel for the petitioner who may file his rejoinder, if any, thereto within two weeks thereafter.

Renotify on 8th September, 2008.

CM No. 2928/2008

It is stated by the petitioner that the scope of the departmental proceedings as also the criminal proceedings pending against the petitioner is identical. Counsel appearing for the respondents states that in some other case, the Court has declined to interfere in a similar matter which, according to him, pertained to dilution of alcohol. He however does not have any further instructions so far. In the case in hand, there is no allegation of dilution of alcohol.

Parties to maintain status quo till the next date of hearing. Notice for the next date. Let reply be filed to this application within four weeks with an advance copy to counsel for the petitioner who may file his rejoinder, if any, thereto within two weeks thereafter.

CM No. 2929/2008

Counsel for the petitioner undertakes to file requisite certified copies as soon as the same are made available.

In view of the undertaking of the counsel for the petitioner, this application is disposed of.

4. With respect to the same respondent/employer I have passed the following judgment in the case of Vishnu Pal Singh vs. Delhi Tourism and Transportation Development Corporation & Anr. in W.P. (C) No. 5331/2012 decided on 29.8.2013 declining stay of departmental proceedings during pendency of a criminal case, and which reads as under:-

1. On the first call, adjournment was requested which was declined and the matter was passed over. On the second call again request for adjournment is made. On 4.4.2013, the following order was passed:-

W.P. (C) 5331/2012 and CM No. 18027 (under Order 39 Rule 4 CPC)

In spite of last opportunity, rejoinder has not been filed. I note that in this writ petition, interim orders were passed on 14.9.2012 staying the departmental proceedings. It is not possible to continue interim orders with respect to continuation of departmental proceedings inasmuch as departmental proceedings can only be stayed if there is a fundamental issue such as issue of lack of jurisdiction to the departmental proceedings. Accordingly, though the petition is adjourned at the request made on behalf of the petitioner, however, the respondent is at liberty to continue and conclude the disciplinary proceedings, however, the order which would be passed, will not be implemented without the

permission of this Court.

List on 29th August, 2013.

2. That order was challenged and that challenge in LPA bearing No. 471/2013 was dismissed by the Division Bench by the judgment dated 24.7.2013. The Division Bench has inter alia made the following observations for dismissing the appeal:-

9. In the case of M. Paul Anthony (supra), the Supreme Court was considering the case of a security officer employed with Bharat Gold Mines Ltd. The residence of the security officer was raided by the police and a mining sponge gold ball weighing 4.5 grams and 1276 grams of "gold bearing sand" were recovered. The security officer was placed under suspension and disciplinary proceedings were commenced. The officer was found guilty of misconduct and consequently dismissed from service. Subsequently, the criminal Court acquitted the security officer and on basis of the acquittal he asked for reinstatement in service which was rejected. The security officer (appellant therein) challenged the denial of reinstatement before the High Court, where he was unsuccessful. He, therefore, approached the Supreme Court. The Supreme Court held that it would be "unjust", "unfair" and "rather oppressive to allow findings recorded in the departmental proceedings to stand as there was no difference in the facts and evidence in the departmental and the criminal proceedings. The Supreme Court also took note of various earlier decisions passed by the Supreme Court and summarized the law 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 honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

10. Before considering the facts of the present case we may also refer to the decision of the Supreme Court in the case of Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, . In this case the respondent was charged as being in possession of assets disproportionate to his known sources of income. A criminal case was registered by CBI and while, the same was pending, the employer (appellant therein) initiated disciplinary proceedings against the respondent employee. A Division Bench of the Andhra Pradesh High Court stayed the departmental proceedings till completion of the criminal case. On appeal, the Supreme Court set aside the decision of the High Court and held as under:-

8. The purposes of departmental enquiry and of prosecution are 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 departmental enquiry would seriously prejudice the delinquent in his defence 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.

11. In view of the above settled law, the only question that is necessary to be

examined in the present case is whether the charges in the present case are of a grave nature and which involve complicated questions of fact and law. It is further, to be considered whether conduct of the departmental inquiry would prejudice the appellant in the criminal proceedings initiated against him.

12. While, it is alleged in the writ petition that participation of the appellant in the departmental proceedings would cause serious prejudice to him in the criminal trial, no further particulars have been provided as to how the appellant would be prejudiced. Similarly, a bald statement is made that the charges are grave and involve complicated questions of fact and law but the appellant has failed to indicate the questions of law which he considers to be complicated. Similarly, there is no averment as to the facts which are contended to present complications. Although, it is not expected that the appellant should disclose his defence, however, in order for the Court to appreciate and assess whether the case presents complicated questions of fact and law, it would be necessary for the appellant to briefly indicate why he claims that the question of facts and law are complicated. The writ petition filed by the appellant is silent in this respect.

13. The appellant has, further, claimed that the facts, on the basis of which, the charge-sheet has been filed both in the departmental proceedings as well as in the criminal proceedings are essentially based on the same allegations and, the witnesses are also common. The respondent in the affidavit filed in response to the writ petition, has pointed out that there are only six witnesses which are to depose in the disciplinary proceedings while, in the criminal case twenty witnesses have been named and only three witnesses are common with the witnesses named in the departmental proceedings. The respondent has, further, contested the claim of the appellant that the matter involves complicated questions of law and fact.

14. The allegations against the appellant are essentially that the appellant had been selling illegal liquor from the vend in his charge. The evidence against the appellant also essentially revolves around the excess stock and cash alleged to have been found during the search conducted at the vend on 30.07.2011. In our view, the facts relating to the allegations cannot be stated to be complicated. We also are unable to foresee any complicated questions of law arising in the matter.

15. Although, the allegation on the basis of which both the departmental proceedings as well as the criminal proceedings have been initiated may be the same. However, the purpose of the two proceedings as well as the standards of proof required are entirely different. While, criminal proceedings are intended to take punitive measures in relation to offences committed by a person against the society, the disciplinary proceedings are intended to ensure that employees act honestly, maintain discipline and conform to the rules of conduct specified by the employer. We do not think that facts of the present case warrant any interference in the conduct of the disciplinary proceedings by the respondent. We also note the assertion made by the appellant that the criminal proceedings are likely to take some time. In our view, it would not be apposite to delay domestic

proceedings to await progress in the criminal proceedings.

16. We, accordingly, dismiss the present appeal. The parties are left to bear their own costs.

3. Therefore, it is clear that there are no complicated questions of facts and law which require the departmental proceedings to be stayed on account of pendency of criminal case. I am of the opinion that request for adjournment is not justified and the petitioner is deliberately and unnecessarily dragging on the litigation.

4. In view of the fact that the only relief which the petitioner claims is for stay of the departmental proceedings till the conclusion of evidence in the criminal case registered vide FIR No. 156/2011, and as per the settled law there being no averments or existence of complicated questions of facts and law, no relief can be granted in this writ petition.

5. Writ petition is therefore dismissed, leaving the parties to bear their own costs.

5. Accordingly, adopting the ratio in the case of Vishnu Pal Singh (supra) the writ petition in the present case is also dismissed inasmuch as civil proceedings and criminal proceedings have to be decided as per separate principle of laws and in the departmental proceedings charges have only to be established on principle of preponderance of probabilities like in a civil court. There are no complicated questions of facts or law which require departmental proceedings to be stayed during the pendency of the criminal case. In view of the above, the writ petition is dismissed. Interim orders are vacated. Parties are left to bear their own costs.