
(2005) 11 DEL CK 0095
In the Delhi High Court
Case No : LPA 2530 of 2005

Sanjeev Verma

APPELLANT

Vs

Distt. and Session Judge and Another

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Citation : (2006) 86 DRJ 221

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Nagender Deswal, for the Appellant; Purnima Sethi, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ petition has been filed against the impugned judgment passed by the learned Single Judge dated 30.9.2005 by which he dismissed the writ petition.

2. Heard the counsel for the parties and perused the records. The appellant was working as a LDC (Ahlmad) in the Court of Special Metropolitan Magistrate, Parliament Street, New Delhi. On 15.3.2004 a raid was conducted in the Court by the Registrar (Vigilance) & Joint Registrar (Vigilance) of the Delhi High Court, and it was found that one outsider Sunil Verma was found there impersonating himself as Ahlmad of the Court. Accordingly, an FIR was lodged, copy of which is annexed as "P1" in the writ petition.

3. After registration of the FIR the District and Session Judge, Delhi initiated a departmental inquiry and issued a memorandum dated 22.3.2005 to the appellant and appointed Respondent No. 2 as inquiry officer.

4. The allegation against the appellant was that while he was Ahlmad in the Court of Special Metropolitan Magistrate, New Delhi he had engaged one Sunil Verma to do his work in the Court by paying him Rs. 100/- per day. Thus the inference was that he was exposing confidential Court records to an outsider and

illegally making money while asking an unauthorized person to do the work in the Court as Ahlmad.

5. The appellant moved an application dated 12.5.2005 and 18.5.2005 for stay of the departmental proceedings. However, these applications have been rejected by the District Judge vide order dated 30.5.2005. The petitioner filed the writ petition which was dismissed and hence this appeal is filed.

6. The short question of the case is whether the departmental inquiry has to be stayed pending the criminal case against the petitioner.

7. Learned counsel for the appellant has relied on the decision of the Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

8. We have carefully perused the said decision and we find that it has not been stated therein that the departmental proceedings have to be stayed if there is a criminal case on the same charges. All that has been said in para 22 (ii) of the said decision is that it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

9. Hence, it is clear that there is no absolute bar to the holding of the departmental proceedings, and it is in the discretion of the disciplinary authority to stay the proceedings or to continue with it. This Court cannot ordinarily interfere with discretionary orders, unless the discretion is exercised in a palpably arbitrary or mala fide manner.

10. Where the matter is left to the discretion of the concerned authority, it is well settled that the Court will not ordinarily interfere with the exercise or non-exercise of that discretion vide *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*,

11. The Court exercising judicial review over an administrative authority cannot sit over the decision of the authority simply because the Court thinks it to be unreasonable. The Court interference is limited to the decisions which are patently perverse, arbitrary or capricious vide *Rohtas Industries Vs. S.D. Agarwal and Others*, *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, , *Posts and Telegraphs Board and others Vs. C.S.N. Murthy*, etc.

12. The Court should not interfere with a discretionary order merely on the ground that if the Court were required to exercise the discretion it would have made a different order vide *Baldota Bros. v. Libra Mining Works* AIR 1961 SC 100, *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, etc.

13. Moreover the decision in *M.Paul's Anthony (supra)* has been considered by the subsequent Supreme Court decision in *Kendriya Vidyalaya Sangathan and*

Others Vs. T. Srinivas, In that decision the Supreme Court observed:

"On a reading of M. Paul Anthony case it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however, this Court noticed that certain exceptions have been carved out to the said basic principle.

In State of Rajasthan v. B.K. Meena this Court held: (SCC p. 417)

"The only ground suggested in the decisions of the Supreme Court 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. 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, of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. 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 Supreme Court's decisions." From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course."

14. We fully agree with the learned Single Judge who was held that in view of the gravity of the charge, the departmental proceedings should not be stayed. This is also the view taken by the Supreme Court in para 11 & 14 of its decision in the case of Kendriya Vidyalaya Sangathan v. T.Srinivas (supra).

15. For the reasons given above, there is no merit in this appeal and it is dismissed.