(2010) 06 DEL CK 0013

In the Delhi High Court

Case No : Writ Petition (C) 2761 of 2002

Shri Raj Kumar Sharma APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2010) 6 ILR Delhi 451

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : G.D. Gupta and Vivya Nagpal, for the Appellant; Sanjoy Ghose and Anuj Aggarwal for R-2, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition seeks quashing of the chargesheet dated 28th February, 2002 served on him and of the departmental inquiry instituted against him for the reason of it being based on the same facts on which he is being prosecuted for offence under the Prevention of Corruption Act, 1988. The senior counsel for the petitioner contends that the list of documents and list of witnesses appended to the chargsheet is identical to the list of witnesses and list of documents in the criminal prosecution. It is further contended that if the departmental proceedings are permitted to proceed, the petitioner would be compelled to disclose his defence in the criminal prosecution and which would prejudice the petitioner in the criminal prosecution. It is further contended that the offence with which the petitioner has been charged is grave and complicated questions of facts and law are involved. It is further contended that the chargesheet in the departmental proceedings is verbatim as the charge in the criminal prosecution. On enquiry it is informed that 15 witnesses of the prosecution have already been examined in the criminal prosecution. Though certain arguments on the merits were also raised but the same are not relevant at this stage since the quashing of the chargesheet/departmental proceeding is sought only on the ground aforesaid.

2. The writ petition was dismissed in limine on 2nd May, 2002. The petitioner preferred Writ Appeal 443/2002. Vide interim order dated 24th May, 2002 in the said writ appeal, the cross examination by the petitioner of the witnesses in the departmental inquiry (and which cross examination would have disclosed the defence in the criminal prosecution of the petitioner) was stayed. Though neither party placed the order allowing the Writ Appeal on record, but the file of the Writ Appeal was sent for. The Writ Appeal was allowed on 14th January, 2004 only for the reason that the writ petition was dismissed in limine on the premise that as a general principle of law both criminal prosecution and departmental proceedings could go on simultaneously, without examining whether in the facts of the present case the said course was justified or not. The writ petition was thus remanded for decision on merits. The Division Bench while so remanding the writ petition further ordered that the departmental proceedings shall remain stayed till the matter is taken up by the writ court. This Court vide order dated 23rd February, 2004 which continues to be in force, stayed the departmental proceedings. Resultantly, the departmental proceedings which commenced in the year 2002 have not been proceeded with in the last eight years.

3. The petitioner is under suspension. Finding from the order sheet an attempt by the petitioner to delay, this Court on 19th May, 2010 enquired from the counsels whether the petitioner was being paid subsistence allowance. The counsel for the respondent No. 2 National Textile Corporation Limited (NTC) on 24th May, 2010 informed that the petitioner is being paid subsistence allowance during the period of suspension and from 2002 till April, 2010 a sum of Rs. 17,48,864/- has been paid to the petitioner towards subsistence allowance. It is further informed that a sum of approximately Rs. 22,000/- per month is now being paid to the petitioner towards subsistence allowance. This Court in the circumstances called upon the senior counsel for the petitioner to also address on as to why, even if the writ petition were to be allowed and the petitioner found entitled to stay of departmental proceedings during the pendency of criminal proceedings, should not be held disentitled from any further subsistence allowance.

4. The senior counsel for the petitioner relies on:

1. Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, staying the disciplinary proceedings because the criminal action and disciplinary proceedings were found to be grounded upon the same set of facts.

2. Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, laying down that 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. It was further held that it will depend upon the nature of the offence and 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 chargesheet.

5. The senior counsel for the petitioner contends that in the present case the petitioner is alleged to have disproportionate assets in the form of FDRs in the joint names of his wife, mother-in-law and father-in-law. It is contended that under the income tax laws the FDRs are deemed to be of the first name holder. It is urged that the petitioner in the departmental proceedings would be unnecessarily required to disclose the source of funds of the said FDRs which belong to his father-in-law/ mother-in-law and which would cause prejudice to him in the criminal prosecution. Reference is also made to D.S.P., Chennai Vs. K. Inbasgaran, where the Supreme Court held the accused in a prevention of corruption case to have satisfactorily established that the monies and assets recovered belonged to his wife and which she has amassed from the business run by her separately. It is contended that in the present case also, the wife of the petitioner is working and his father-in-law and mother-in-law have independent sources of income.

6. Per contra the counsel for the respondent No. 2 NTC contends that the matter is now no longer res integra in view of the judgment in Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry 2005 LAB. I.C. 1624 (SC) laying down that in cases involving Section 13(1)(e) of the Prevention of Corruption Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income and hence the question of disclosure of any defence in the departmental proceedings does not arise; it was held that even in the criminal case, the accused has to prove the source of acquisition and satisfactorily account for the same. The counsel for the respondent No. 2 NTC thus urges that the sole ground on which the petitioner seeks stay/quashing of the departmental proceedings has been negated by the Supreme Court in the said judgment. Reliance is also placed on -

i. G. Chandrasekhar Vs. Chairman, Madras Port Trust, which is not found relevant.

ii. Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., laying down that there is no bar to proceeding simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

iii. Capt. M. Paul Anthony (supra)

iv. The Division Bench judgment in G. Chandrasekharan Vs. The Chairman, Madras Port Trust and another, laying down that the gravamen of the charges in the disciplinary proceedings pertain to violation of the Conduct Rules which are not charges in so far as the criminal case is concerned.

It is further contended that as per the Conduct Rules of the respondent No. 2 NTC the assets of the wife of the employee are also to be disclosed. It is further argued that the petitioner has already taken a stand with respect to the charges against him and the question of his suffering any prejudice if the departmental proceedings are to continue does not arise. It is the contention of the respondent No. 2 NTC that all the relevant information is in the knowledge of the petitioner and it is for the petitioner to explain the assets with respect whereto he has been charged.

7. The senior counsel for the petitioner in rejoinder contended that the petitioner is willing for the departmental proceedings to continue provided that the final order is stayed. The senior counsel for the petitioner after the conclusion of hearing also mentioned the matter to point out that the order of suspension in the present case is only for the reason of the petitioner having remained imprisoned for over 48 hours and not pending the departmental proceedings. The counsel for the respondent No. 2 NTC however contended that since the same does not form part of the pleas of the petitioner, he is unable to respond thereto and it is quite possible that subsequently the order of suspension was continued pending the departmental proceedings. The senior counsel for the petitioner also offered that the petitioner be taken back into work but which was not acceptable to the respondent No. 2 NTC considering the charge against the petitioner.

8. The Supreme Court in Lalit Popli Vs. Canara Bank and Others, 3 held that in departmental proceedings, the technical rules of evidence and doctrine of "proof beyond doubt" has no application and mere preponderance of probabilities and some material on record are sufficient to arrive at the conclusion whether or not the delinquent has committed misconduct. Similarly, in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, it was held that strict rules of the Evidence Act and the standard of proof envisaged in a criminal prosecution do not apply to departmental proceedings or a domestic tribunal. Recently in Southern Railway Officers Assn. and Another Vs. Union of India (UOI) and Others, it was held that order of dismissal can be passed even if the delinquent official has been acquitted of the criminal charge. It was further held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. Way back in State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, the practice of viewing the departmental inquiry as akin to a criminal prosecution was deprecated.

9. The Supreme Court in State of Rajasthan Vs. B.K. Meena and others, reiterated that the principles of natural justice do not require that the employer should wait for the decision of the criminal court before taking disciplinary action against the employee and held that it is not in the interest of administration (in that case of the State) that persons accused of serious misdemeanor should be continued in office indefinitely and for long periods awaiting the result of criminal proceedings. Such a situation was held to be serving the interest of the guilty and the dishonest only. To the same effect is Noida Entrepreneurs Assn. Vs. Noida and Others, . It was held that the purpose of criminal prosecution and departmental inquiry are different. Disciplinary proceedings were held to be with the purpose of maintaining discipline and efficiency in service and it was further

held that it is expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

10. In view of the aforesaid law it was put to the senior counsel for the petitioner, as to why the post which the petitioner was occupying should be kept vacant by the respondent No. 2 NTC, as it would necessarily be required to do awaiting the disciplinary proceedings. The senior counsel states that the respondent No. 2 NTC is free to fill up the said post on an ad hoc basis. However, this Court is not satisfied with the aforesaid answer. Ad hoc filling up of the post is not a satisfactory answer and is liable to lead to further disputes.

11. The Division Bench had set aside the order of dismissal of the writ petition in limine only for the reason of the grounds urged having not been considered on merits. The grounds urged are only two i.e. of the petitioner being required to disclose his defence and of the matter involving complicated questions of law and fact. As far as the first of the aforesaid grounds is concerned, the same is now no longer available in view of the judgment in Sarvesh Berry (supra). Since the onus in the criminal prosecution also is on the petitioner, the question of the petitioner suffering any prejudice by disclosure of defence in the disciplinary proceedings does not arise. As far as the second reason aforesaid is concerned, in view of the legal position aforesaid of the standard of proof and evidence in the two proceedings being different, this Court is of the considered opinion that no case for keeping the departmental proceedings stayed is made out. Merely averring that complicated questions of law and fact are involved is not sufficient. Every criminal prosecution and every departmental proceeding entails questions of law and facts. The petitioner is required to show the complication in proving the same before two fora. Capt. M. Paul Anthony was not a case where simultaneous proceedings of domestic inquiry and criminal prosecution were in question; the ex parte order of dismissal in that case had already been passed before the decision of the criminal case resulting in acquittal. The Supreme Court also noticed the general principle that the two proceedings can go on simultaneously. Exception is only when facts are "not simple" or the court feels it "appropriate" to stay the departmental proceedings. The petitioner in the present case is unable to satisfy as to what complexity is involved in the facts and as to why it is appropriate to stay the departmental proceedings further. While weighing the equities, it is found that if the departmental proceedings are deferred any further, the witnesses required to be examined by respondent No. 2 NTC therein may also disappear or may not be then available.

12. The subject matter of criminal prosecution and departmental proceeding is also not found to be same. While the charge in criminal prosecution is of acquisition of assets in own name and in the name of family members, disproportionate to known sources of income and obtaining premature payment of FDRs while originals thereof were in custody of CBI, the charge in departmental proceedings is of acquisition of immovable property, car, FDRs without prior knowledge of / intimation to Competent Authority, as required

under the Rules and thereby failing to maintain absolute integrity, devotion and manner becoming of a public servant, amounting to violation of Rules. The enquiry in the two proceedings would be different.

13. The contention of the senior counsel that the suspension was because of imprisonment and not because of the pending departmental proceedings is not correct. The respondent No. 2 NTC in its counter affidavit has stated that though initially the petitioner was suspended for the reason of having been imprisoned for more than 48 hours but subsequently it was decided to continue the suspension; obviously for the reason of initiation of the departmental proceedings.

14. This Court therefore does not find any merit in this petition. The conduct of the petitioner, as would also be borne out from the order sheet of 31st March, 2009, to keep this petition pending is found to be intended to avail benefits of the substantial subsistence/suspension allowance being received by him without working for the respondent No. 2 NTC. The petitioner has availed of substantial benefits of over 17 lacs in this way under interim order in this writ petition. The Supreme Court in Abhimanyoo Ram Vs. State of U.P. and Another, and also recently in Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., had held that the courts at the time of final disposal should balance equities arising from the interim orders granted in the petition. But for the interim orders obtained by the petitioner, the departmental proceedings may have concluded by now and if resulted in a finding against the petitioner, would have meant no further obligation on the respondent No. 2 NTC to pay subsistence allowance to the petitioner. In the circumstances while dismissing the writ petition, it is directed that notwithstanding anything to the contrary contained in the rules the respondent No. 2 NTC shall not be liable to pay subsistence allowance to the petitioner during the pendency of the departmental proceedings provided the same are concluded within one year from today unless the delay is again attributable to the petitioner. Though the petition is found to be misconceived, however no order as to costs.