
(2001) 03 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No. 6415 of 2000

Subhash Amrutrao Dhone

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Prevention of Corruption Act, 1988 — Section 7

Citation : (2001) 3 BomCR 785

Hon'ble Judges : P.S. Patankar, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : P.R. Arjunwadkar, for the Appellant; Birendra Saraf, instructed by y Crawford Baylay and Co., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard both sides.

2. The petitioner was working as a Senior Officer incharge of Pakni Depot of SPCL, Solapur. A Transport Contractor made a complaint on 30th May, 2000 that the petitioner was demanding illegal gratification of Rs. 15,000/-. A trap was arranged by CBI Anti-Corruption on 31-5-2000 and he was trapped red handed while accepting part payment of Rs. 5,000/-. The petitioner came to be suspended on 1st June, 2000. A criminal case is filed against the petitioner under the Prevention of Corruption Act, 1988 and departmental proceedings are also initiated against him by issuing a charge-sheet dated 10th July, 2000.

3. The petitioner is now praying that the said departmental enquiry be stayed. The grounds on which the said prayer made are first that the charge-sheet in the departmental enquiry is of grave and serious nature and complicated questions of law and facts are involved therein. Second that the departmental enquiry and the criminal case are based on identical and similar set of facts and evidence in the charge in the criminal case and in departmental enquiry is the same. The material and the witnesses in the criminal case and the departmental enquiry are

more or less same.

4. By filing a reply, it has been pointed that the charge-sheet in the departmental proceedings is for the misconduct and it is worded in the following manner :-

"A. MISCONDUCT

(2) Taking or giving bribe or any illegal gratification.

(4) Making out of one's position in the Corporation to influence business associates or others connected with the Corporation's business for personal gains.

(6) Acting in a manner prejudicial to the interests of the Corporation.

(17) Commission of any act which amounts to a criminal offence involving moral turpitude.

(22) Commissioning of any act subversive of discipline or good behaviour.

(31) Violation of conduct rules made by the Corporation."

As against that, the criminal charge is in respect of abuse of official position by demanding illegal gratification of Rs. 15,000/- from Mr. R.B. Sanas and accepting illegal gratification of Rs. 5,000/- as part. The petitioner has thus committed an offence under sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. It is, therefore, not possible to accept that the charges in the departmental proceedings and also in the Criminal Court are the same. They are essentially different, though may overlap to certain extent which is inevitable. But that cannot prejudice the petitioner in his defence in criminal proceedings.

4. By filing a reply, it has been denied that complicated questions of fact and law are involved either in the departmental enquiry or in the criminal case. Prima facie, we agree with this.

5. The learned Counsel for the petitioner tried to point out that the departmental charge-sheet mentions about the documents which are to be relied upon and the witnesses to be examined. We find that it is only, inter alia, mentioned that on what documents the department wants to rely in the departmental proceedings. They include Complaint, F.I.R. The department also wants to examine Territory Manager, Investigating Officer and two Panchas. However, those are the documents to be relied upon and the witnesses to be examined in the departmental proceedings. The learned Counsel for respondent No. 1 has relied upon a judgment of the Apex Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., . A Bench of three Judges of the Apex Court has, inter alia, observed as follows :-

".....The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The 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 grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, 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 Evidence Act. Converse is the of departmental enquiry. The enquiry in a 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. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touch-stone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. 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."

6. The learned Counsel for the petitioner relied upon another judgment of the Apex Court of two Judges in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, reported in 1999 L.L.R. 499. We find that the said case mainly turns on the facts of the case. On the contrary, the ratio laid down in the case of Depot Manager v. Mohd. Yousuf (supra) and cited supra is accepted. We find that it can safely be relied upon here. Hence, we find that there is no reason to stay the departmental proceedings. The prayer in this regard is, therefore, rejected.

7. The learned Counsel for the petitioner then pointed that three witnesses are already examined by the department. However, the petitioner was not present and hence he did not cross-examine those witnesses. The learned Counsel for

respondent No. 1 pointed out that the petitioner deliberately remained absent and hence he could not cross-examine those witnesses. However, he fairly stated that they shall be made available for cross-examination on the next date of hearing. It is made clear that the petitioner shall be free to cross-examine them on the next date of hearing. The learned Counsel for the petitioner states that the petitioner shall co-operate with the departmental proceedings and cross-examine them on the next date.

8. Subject to above, petition rejected.