

(2016) 05 JH CK 0135

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7453 of 2013 with W.P. (S) No. 7413 of 2013.

Surendra Prasad, S/o Late Pran Mohan Yadav, at present resident of Bajpayee Path, Shukla Colony, Hinoo, P.O.-Hinoo, P.S.-Doranda, District-Ranchi (Jharkhand) (in both cases) - Petitioner @HASH State of Jharkhand through the Chief Secretary, Govt. of Jhark

Date of Decision : 19-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 JCR 91

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Anjani Kumar Verma, Advocate, for the Petitioner; M/s Dhananjay Kumar Dubey, Sr. S.C.I, M/s. Ruchi Rampuria and Richa Sanchita, J.C. to S.C.I. and Ms. Neelam Tiwary, J.C. to Sr. S.C.I, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Pramath Patnaik, J. - Since the petitioner in both the writ applications are the same and the relief sought for are more or less similar, with the consent of the learned counsel for the respective parties, both the cases are heard together and disposed of by this common order.

2. In W.P. (S) No. 7453 of 2013, prayer has been made for quashing the memo dated 26.09.2013 (Annexure-5), issued by the The Deputy Secretary to the Government, Road Construction Department, Govt. of Jharkhand, Ranchi, Respondent No. 4 and in W.P. (S) No. 7413 of 2013, prayer has been made for quashing the memo dated 30.08.2013 (Annexure-5), issued by the The Deputy Secretary to the Government, Road Construction Department, Govt. of Jharkhand, Ranchi, Respondent No. 4 pertaining to initiation of departmental proceedings and for direction to the respondents not to proceed in the departmental proceedings.

3. Factual matrix, as delineated in the writ application, in a nutshell is that the petitioner is an Assistant Engineer of the Road Construction Department,

Jharkhand, now posted in the Ranchi Municipal Corporation, Ranchi. In pursuance to the direction issued vide order dated 30.06.2009, passed in W.P. (PIL) No. 803 of 2009, the CBI chose to enquire and investigate the roads having good conditions maintained by the R.E.O. (now RWD) Department instead of the roads maintained by National Highway or the Road Construction Department and that too the roads, such as, improvement of Bano P.W.D. Road to Pabura Nimtur Pangur Path Road in W.P. (S) No. 7453 of 2013 and maintenance and repair of Lachragarh Jaldega Road in W.P. (S) No. 7413 of 2013 regarding which, there is no public complaint and is in good condition even after lapse of more than 3 years of repairing and maintenance as evident from the relevant part of Joint report dated 08.09.2009 submitted to the CBI in course of preliminary enquiry, wherein, it has been reported that "there is no complain regarding anything in the road work and after completion of road, the riding surface is in good condition and used by the local people". After preliminary enquiry, the C.B.I., ACB, Ranchi on 16.09.2009 lodged a F.I.R. bearing RC Case No. 17 (A)/2009 (R) and the CBI after investigation, submitted the Charge Sheet on 04.12.2010 vide Charge Sheet dated 30.11.2010. In the column No. 11 (2) of the Charge Sheet in which the name of the petitioner has been mentioned, no specific charge has been mentioned against the petitioner by the C.B.I. which itself goes to show that the investigating agency has also not found any specific charge against the petitioner and the said case is pending for trial before the learned Special Judge, CBI, Ranchi. The respondent-authorities after a lapse of 7 years of the completion of the construction work vide Memo dated 30.08.2013, issued by the Deputy Secretary to the Government, Road Construction Department, Govt. of Jharkhand, Ranchi (Respondent No. 4) appointed respondent No. 5 as the Departmental Enquiry Officer and the respondent No. 6 as the Presenting Officer by issuing a charge sheet for identical and similar set of facts and the charges for non-verification of original bills produced by the concerned contractor regarding the purchasing of the bitumen from oil companies etc. for which the petitioner has been proceeded in a criminal case bearing RC 17(A) of 2009 lodged by the CBI in compliance to the aforesaid order, passed in W.P. (PIL) No. 803 of 2009. It has been averred in the writ application that vide letter dated 23.03.2010 (Annexure-8), the auditors have submitted their audit report related with the Jharkhand Government on the basis of which, a Government Resolution dated 08.09.2001 has been issued by the Road Construction Department, Government of Bihar. The memo dated 06.07.2004, issued by the Chief Engineer, R.E.O., Ranchi approving the concerned Contract work has been sent to the concerned Executive Engineer, mentioning therein, that only after verification of the Bitumen personally by the Executive Engineer, the contractor will utilise the Bitumen as is evident from memo dated 03.09.2005 (Annexure-10) issued by the named accused Sri Laxman Ram, the then Executive Engineer, REO, (now RWD), Simdega specifically directing the concerned Contractor to submit the original copy of Invoices related to procurement of Bitumen. In the charge-sheet, it has been alleged that the petitioner being Assistant Engineer has failed to ensure return of empty drums of bitumen. The criminal case has been instituted

against the petitioner for similar set of charges. It has further been averred in the writ application that as per the decision of the Hon''ble Apex Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and anr. reported in (1999) 3 SCC 679, it is well settled that if the Departmental Proceeding as well as Criminal Proceeding has been initiated on the same set of facts and circumstances, the departmental proceeding should be stayed till conclusion of the Criminal proceeding.

4. Mr. Anjani Kumar Verma, learned counsel for the petitioner has submitted with vehemence that initiation of the departmental proceeding against the petitioner vide Memo dated 26.09.2013, issued by the Respondent No. 4, after a lapse of more than 4 years after lodging of the F.I.R. by the CBI and after about 7 years only of the completion of construction work, is an act of abuse and misuse of power by the concerned authorities, which has been initiated only with a view to save the skin of the higher departmental officials from any future action at the Government level or by any Court of Law and the petitioner has become an scapegoat. Learned counsel for the petitioner further submits that in the departmental proceeding, it was mandatory on the part of the Enquiry officer to direct the departmental authorities to produce witnesses and to adduce evidences and thereafter to cross-examine the said witnesses by the petitioner giving proper opportunity to defend and thereafter to submit the Enquiry Report, but in the instant case, the Enquiry Officer did not produce even a single witness to adduce evidences and to prove the charges and has submitted the Enquiry Report in a very casual and routine manner. Learned counsel for the petitioner further submits that as per the Government Memo No. 223, dated 24.11.2011 (Annexure-13 to the reply to the counter affidavit of Respondent Nos. 2 and 4), issued by the Joint Secretary to the Government, Personnel Administrative Reforms and Rajbhasha Department, Jharkhand, Ranchi, the entire proceeding is nothing but a mere formality and as the Enquiry Officer, namely Smt. Sheela Kisku Rapaz, who is a retired I.A.S. Officer, is not authorised by the Jharkhand State Government to conduct the departmental proceedings related with Technical Schemes/Matters and as the case of the petitioner, as per the charge memo is related with irregularities committed in Technical Matters i.e. construction of road etc. and, as such, the departmental proceeding initiated/ conducted by the Enquiry Officer is void ab-initio and illegal in the eye of law. By referring to I.A. No. 6744 of 2015 in W.P. (S) No. 7453 of 2013, it has further been submitted, that the disciplinary authority i.e. the Deputy Secretary to the Government, Road Construction Department, Govt. of Jharkhand, Ranchi (respondent No. 4) in hasty and illegal manner, vide Memo dated 28.10.2015 (Annexure-15 to the said I.A) has imposed major punishment, such as reduction of the pay of the petitioner to minimum pay scale of his post and the recovery of the loss of Government revenue. Learned counsel for the petitioner further submits that the major punishment has been inflicted upon the petitioner without examining any of the witnesses. During course of hearing, the learned counsel for the petitioner submits that though the departmental proceeding has been

initiated against the petitioner on 26.09.2013 (Annexure-5), but on perusal of (Annexure-2), it appears that there has been no complain regarding anything in the Road work and after completion of the road, the riding surface is in good condition and is used by the local people as per the report of the Executive Engineer dated 08.09.2009, therefore, there was absolutely no justification for initiation of the departmental proceeding against the petitioner.

Learned counsel for the petitioner during course of hearing has referred to the following decisions : -

(i) 2016 (1) PLJR 27 (SC), Brij Bihari Singh v. Bihar State Financial Corporation and ors. paragraphs 8 and 9, wherein, the Hon"ble Apex Court has been pleased to inter alia hold that if the enquiry report is based on merely ipse dixit and also conjectures and surmises, cannot be sustained in law.

(ii) 2011 (4) JLJR 97, Nathun Sahu v. State of Jharkhand and ors. paragraphs 3 and 4, wherein, the Hon"ble Court did not approve all the findings by the enquiry officer to be based on consideration of reply to show cause only. Rather, the Hon"ble Court is of the view that the nature of charges requires proper enquiry by adducing oral and documentary evidence and giving opportunity to the employee to cross-examine and leading evidence in his defence.

(iii) 2011 (2) Supreme 606, Union of India and others v. S.K. Kapoor, para 7, wherein, the Hon"ble Supreme Court has been pleased to hold that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same.

(iv) 2015 (1) Supreme 712, Professor Ramesh Chandra v. University of Delhi and ors., paragraph 20, wherein the Hon"ble Apex Court has been pleased to hold that in absence of list of witnesses or documentary evidence supplied to appellant or Inquiry Officer, and the documents requested by appellant not supplied thereby the enquiry gets vitiated.

(v) (2015) 8 SCC 461, Bilaspur Raipur Kshetriya Gramin Bank and another v. Madanlal Tandon paragraphs 8 to 10,

(vi) (1999) 3 SCC 679, Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and anr. wherein, in para 22, the Hon"ble Supreme Court has been pleased to hold that :

"(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."

5. Ms. Richa Sanchita, learned JC to S.C.I, Mr. Dhananjay Kumar Dubey, learned Sr. S.C.I and Ms. Ruchi Rampuria learned J.C. to S.C.I, appearing for the respondent-State have reiterated the submissions made in the counter affidavit.

During course of hearing, learned counsel for the respondent-State has submitted that on perusal of Annexure-2 to the writ application, it is quite evident that all the invoices showing procurement of Bitumen are same but of the different dates and the petitioner has been shown as a charge-sheeted accused by the CBI Court. It has further been submitted that as per the charge in the CBI case, the petitioner while working in the capacity of Assistant Engineer and looking after the work of improvement/up-gradation of Bano P.W.D. Road to Pabura Nimtur Pangur Path (in W.P. (S) No. 7453 of 2013) counter signed on the 12 fake bitumen invoices, all bearing same Assignment number issued from I.O.C.L., and thereby committed criminal misconduct. The petitioner with deliberate intent did not verify the genuineness of the fake bitumen invoices and ensured pecuniary advantage to the contractor at the cost of the Government Exchequer by facilitating payment of bills of the contractor on the basis of fake bitumen invoices. In order to conceal less utilisation of bitumen in connivance with the contractor, he did not ensure return of bitumen drums, therefore, the petitioner in criminal conspiracy with others and in strict abuse of his official position allowed the use of documents as genuine in order to cheat the department. Learned counsel for the Respondent-State by referring to the counter affidavit filed by the Respondent nos. 2 to 4 has submitted that in compliance to the order dated 30.06.2009 passed in W.P. (PIL) No. 803 of 2009, the C.B.I. has conducted an enquiry and investigated the matter of procurement of bitumen for roads works in Jharkhand on the basis of fake/forged invoices of the oil companies of the Government of India Undertaking. Thereafter, the C.B.I. has lodged altogether 22 FIRs pertaining to 22 different works of Road Construction Department, Rural Works department and National Highway Division. The F.I.R. bearing RC 17 (A) of 2009 (R) has been lodged for the conspiracy of fake bitumen invoices utilised for the improvement work of Bano P.W.D. Road to Pabura Nimtur Pangur Road (in W.P. (S) No. 7453 of 2013) executed by the Rural Works Department's Work Division, Simdega under the agreement No. 13F2/2004-2005 and the petitioner has been made a named accused in the above criminal case and sanction of prosecution has also been accorded against him by the State Government. Therefore, on the basis of the enquiry-cum-investigation report to the C.B.I., the Government has decided to initiate a departmental proceeding against the petitioner for enquiring his involvement in the irregularities committed by the petitioner in the CBI report. It has been further submitted that basing on the enquiry report, the disciplinary authority has decided to impose major punishment on the basis of proved charges levelled against the petitioner and the 2nd show-cause has been asked from the petitioner along with the copy of enquiry report. The petitioner submitted his reply and after considering and reviewing the reply of the 2nd show cause notice, it has been found that no new fact has been presented to refute the proven charges reported against the petitioner, so the reply to the 2nd show cause notice has not been found acceptable, therefore, the disciplinary authority has decided to impose punishment on the basis of proved charges against the petitioner vide Notification contained in memo dated 28.10.2015

(Annexure-15 to reply to I.A. No. 6744 of 2015) .

In this respect, the learned counsel for the Respondent-State has referred to the decision of this Court in the case of Krishna Mohan Prasad v. Central Coalfields Limited and ors. reported in 2005 (1) JLJR 155.

6. After hearing the learned counsel for the respective parties and having bestowed my anxious consideration to the materials on record, I am of the considered view that the prayer of the petitioners in the aforesaid writ applications cannot be acceded to in view of the following facts and reasons : -

(i) In the instant cases, on the basis of the enquiry-cum-investigation report submitted by the CBI, the Government of Jharkhand has decided to initiate a departmental proceeding against the petitioner to enquire into the involvement of the petitioner in the irregularities reported in the CBI's report. The disciplinary authority has decided to impose major punishment on the basis of the proved charges levelled against the petitioner and, therefore, a 2nd show cause has been asked from the petitioner along with the copy of the enquiry report. The petitioner submitted his reply. It has been found that no new fact has been presented to refute the proven charges reported against the petitioner, therefore, the reply of the 2nd show cause has not been found acceptable therefore, on the basis of the proved charges reported in the departmental proceeding against the petitioner punishment has been inflicted upon him vide notification contained in memo dated 28.10.2015, relating to the reduction of pay to minimum pay scale and for proportionate recovery of the loss of Government revenue.

Considering the gravity of the charges and the proved misconduct, the impugned order of proposed punishment do not appear to be harsh or disproportionate so as to prick the conscience of this Court, therefore, on that score, the proposed punishment does not warrant any interference by this Court.

(ii) In this context, the judgment of the Hon"ble Patna High Court in the case of Md. Yunus v. The State of Bihar and ors. reported in 2014 (1) PLJR 159 appears to be relevant, wherein, in paragraphs 8, 9 and 10 of the judgment, it has been held as under:-

"8. No doubt the Apex Court in Capt. M. Paul Anthony (supra) has laid down that in a situation where the departmental proceedings on identical and similar set of facts and the charges in criminal case are of grave nature then the departmental proceeding can wait till the conclusion of the criminal case. However, in the subsequent decision rendered in Hindustan Petroleum Corporation Ltd. (supra), the Supreme Court, after considering the decision of Capt. M. Paul Anthony (supra), has explained the situation when a criminal case is pending under Section 13(1) of the Prevention of Corruption Act. The relevant passage from the aforesaid decision is reproduced as under :-

"13. It is to be noted that in cases involving Section 13(1)(e) of the PC Act, the onus is on the accused to prove that the assets found were not disproportionate

to the known sources of income. The expression "known source of income" is related to the source known to the authorities and not the accused. The Explanation to Section 13(1) of the PC Act provides that for the purposes of the Section, "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public Servant. How the assets were acquired and from what source of income is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally, issues covered by Charges 2 and 3 cannot be the subject-matter of adjudication in the criminal case."

9. Both decisions rendered by two Judges Bench of the Supreme Court came to be considered by a three Judges Bench of the Apex Court in NOIDA Entrepreneurs Association & ors. (supra). Their Lordships have noticed and recorded the conceptual difference between a departmental proceedings and the criminal proceedings as highlighted by the Supreme Court in several cases including Hindustan Petroleum Corporation Ltd. (supra). Thereafter, the law laid down by the Apex Court in Capt. M. Paul Anthony(supra) has also been discussed in paragraph 14. Almost in all the decisions the view of the Supreme Court is that there is no straight jacket formula as to in which case the departmental proceedings are to be stayed. However, in that particular case, i.e., NOIDA Entrepreneurs Association & ors. (supra), what ultimately has been held is quoted as under:-

"16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

10. In my opinion also there cannot be a straight jacket formula to deal with such situation. However, the views expressed by the Apex Court in Hindustan Petroleum Corporation Ltd. (supra) would be relevant for present purpose as specific issue involving Section 13(1) of Prevention of Corruption Act has been considered by the Apex Court and it has been held that disclosure of defence in a departmental proceeding in such cases would not be of much significance as in the criminal case also the accused has to disclose the source of acquisition. Additionally, the issues covered under charge 2, i.e., violation of Rule 3 (1) (ii) (iii) as well as Rule 19(6) of the Bihar Government Service Conduct Rule, 1976 cannot be a subject matter of adjudication in a criminal case. Therefore, in my considered opinion, there would be no requirement of staying the departmental proceeding in the present case."

7. Viewed thus, the prayer in the writ petitions, sans merit, is hereby dismissed.

8. Consequently, I.A. No. 6744 of 2015 in W.P. (S) No. 7453 of 2013 and I.A. No. 6743 of 2015 in W.P. (S) No. 7413 of 2013 also stands disposed of accordingly.