

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st November, 2011.

+ **LPA 957/2011**

% **UNION OF INDIA & ORS.**

....Petitioners

Through: Mr. A.S. Chandhiok, ASG with Mr.
Dr. Ashwani Bhardwaj, Mr. Sandeep
Bajaj, Mr. Gurpreet & Mr. Parwanda,
Adv.

Versus

PUJA DUBEY & ORS.

..... Respondents

Through: Ms. Rekha Palli & Ms. Punam Singh,
Adv. for R-1.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The Ministry of Defence/Army Hqrs./Addl. Director General (Discipline & Vigilance), Adjutant General's Branch appeal against the judgment dated 3rd May, 2011 of the learned Single Judge in W.P.(C) No.8837/2009 preferred by the respondent no.1. The respondent no.1 is the wife of Lt. Col. Ajay Kumar Dubey and was the mother of Ansh Kumar Dubey, aged 12 years, who died on 8th June, 2007 during the Parasailing Camp organized by the Army Wives Welfare Association and conducted by the Jat Regimental Centre (JRC), Bareilly. The writ petition was filed

impugning the Report dated 2nd July, 2007 of the Court of Inquiry (COI) constituted by the Station Headquarters Cell to investigate the cause of the incident leading to the demise of the minor son of the respondent no.1 and to determine/fix responsibility/negligence if any. The COI concluded that there was no willful negligence of any specific nature and that the fatal accident was owing to the safety pins getting accidentally released hooked off in the Parasail. The respondent no.1 in the writ petition also sought a direction for a fresh COI.

2. The learned Single Judge has found, that the parents and sister of the deceased who were eye witnesses of the incident were not associated in the COI; that there was no plausible explanation therefor; that finding of the COI that there were no eye witnesses of the incident is contrary to record in as much as several persons who had attended the Camp had given their statements and whose statements had not been appreciated/discussed/considered in the Report; that the other witnesses did not receive any attention at the hands of the COI; that obvious conclusions from the evidence on record had not been drawn and the sequence of incidents leading to the fatal accident had not been properly reconstructed. The learned Single Judge also found, attention to have not been given to several other aspects.

3. We may also record that a criminal case has been initiated against some officers of the Army involved in the said Camp. The said criminal proceedings are subject matter of Crl. MA 33936 of 2008 before the

Allahabad High Court. The learned Single Judge found that there was no satisfactory reply by the respondents as to why a Disciplinary & Vigilance (DV) ban had not been imposed on the said officers in accordance with the Notification dated 11th May, 2005. It was held that the explanation that “the action does not qualify for imposition of disciplinary and vigilance ban as per provision on the subject” was bereft of any reason and the very fact that a charge sheet had been filed against the said officials was relevant for the purpose of examining whether a DV ban requires to be imposed against the said officers.

4. The learned Single Judge accordingly vide impugned judgment directed the appellants to constitute a fresh COI to, on the basis of evidence already recorded by the earlier COI and the other evidence available, look into the matter afresh after recording the statements of others including the parents and sister of the deceased whose statements had not been recorded. It was also suggested that the members of the fresh COI be drawn from outside the JRC, Bareilly. The appellants have also been directed to take a decision on whether a DV ban in terms of Notification dated 11th May, 2005 ought to be imposed on the officers against whom the said charge sheet had been filed.

5. The learned Single Judge had directed the fresh COI to be reconvened within 30 days and to complete proceedings within three months from the date of the judgment i.e. 3rd May, 2011. Similarly, the decision with respect to the DV ban was also directed to be taken within one month from 3rd May,

2011.

6. This appeal has been preferred much after the expiry of the period prescribed for implementation of the judgment impugned. The appellants had indeed in July, 2011 filed an application before the learned Single Judge seeking four months extension for compliance of the order dated 3rd May, 2011. The appellants now appear to have had a change of heart. However no cogent reasons therefor have been stated. The appellants while seeking extension of time had pleaded that since comments of a large number of persons were to be obtained to comply with the judgment dated 3rd May, 2011 and some of whom had retired or moved away, further time was required. It is thus not as if extension of time was sought mechanically without application of mind. The appellants to justify a change of heart ought to have stated reasons which prevailed therefor. No such reasons have been stated.

7. We are of the view that a party to a lis if has represented to the Court that it intends to comply with the judgment and on such representation seeks extension of time prescribed for such compliance, and thereby acquiesces to the judgment, ought not to be permitted to subsequently challenge the said judgment without setting out as to why instead of complying, a decision for challenging the judgment has been taken. This is more so when such party to the litigation is the Government. It was so held by the Division Bench of this Court in *Secretary, Govt. of India v. Sanjay Kumar* MANU/DE/7428/2007 as also by the Division Bench of the Calcutta High Court in *UOI v. R.*

Velumurugan (2009) 3 CHN 170. An attempt to brush the dust under the carpet cannot be ruled out.

9. The learned ASG has contended that the judgment of the learned Single Judge would interfere with the proceedings pending before the Allahabad High Court. We fail to see, how. While the Allahabad High Court is concerned with the criminality of the incident, the reliefs claimed in the writ petition were concerned with the DV action and which is distinct from the matter before the Allahabad High Court. It is the settled proposition of law that the disciplinary proceedings proceed independently of the criminal action even if arising from the same transaction. The legal position in this regard is discussed in detail in ***Talluri Srinivas v. The Institute of Chartered Accounts of India*** 174 (2010) DLT 537 & in judgment dated 4th May, 2010 in W.P.(C) No.4420/2002 titled ***Daya Swaroop Saxena v. The Presiding Officer, Labour Court*** and hence need is not felt to reiterate the law here. The learned ASG has been unable to convince us as to why an exception should be made in the present case.

9. The learned Single Judge has in the impugned judgment given detailed reasons for finding fault with the report of the earlier COI. We find no reason for holding otherwise. Undoubtedly the COI earlier constituted has not bestowed the attention to the available material as was expected of it. Even otherwise the nature of the incident, in which the respondent no.1 and her husband who is a serving official of the Army have lost their minor child, is such in which we feel that no interference with the judgment of the

learned Single Judge is called for. The said judgment is but a small step for assuaging the deep hurt injury and anguish which has been caused to the respondent no.1. The respondent no.1 cannot be deprived of her right to have at least a proper inquiry into the incident and to have the responsibility fixed if any negligence is found. This Court in exercising its appellate power would not come in the way of such an exercise especially when it has been ordered for cogent reasons.

10. We therefore do not find any merit in the appeal and dismiss the same.

11. At this stage, the learned ASG seeks further extension of time for compliance with the judgment and also seeks a clarification that the statements recorded under Section 164 of the Cr.PC can be considered by the fresh COI. We extend the time for compliance till 31st January, 2012 and clarify that the statements aforesaid shall also be considered by the fresh COI.

RAJIV SAHAI ENDLAW,J

ACTING CHIEF JUSTICE

NOVEMBER 21, 2011

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