

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION NO.35583 OF 2014

% Date: 27-03-2015

1. The State of Andhra Pradesh rep. by its Principal Secretary, Revenue (Vigilance.I) Department, Secretariat, Hyderabad & Anr.

.... Petitioners

Vs.

\$ G.L.Ganeswara Rao S/o.Markandeyulu, Inspector of Survey, O/o.The A.P.Survey Training Academy, Gachibowli, Hyderabad, R/o.Krishna Apartments, Troop Bazaar, Kothi, Hyderabad. & Anr.

.... Respondents

! Counsel for the petitioners: Government Pleader for Services (AP)

^ Counsel for respondent No.1: Sri M.V.Rajaram

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> HEAD NOTE:

? Citations:

- [1] (1997) 2 SCC 699
- ² (1996) 6 SCC 417
- ³ (1999) 3 SCC 679
- ⁴ (2005) 10 SCC 471
- ⁵ (2012) 1 SCC 442
- ⁶ [1960 (3) S.C.R. 227
- ⁷ 1969 (1) SCR 134 = AIR 1969 SC 30
- ⁸ AIR 1988 SC 2118 = (1988) 4 SCC 319
- ⁹ (2006) 5 SCC 446
- ¹⁰ (2013) 15 SCC 414 = (2014) 2 ALD 89 (SC)
- ¹¹ (1901) AC 495
- ¹² (2014) 3 SCC 636
- ¹³ AIR 2004 SC 4144
- ¹⁴ [1964 (7) S.C.R. 555

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is filed by the State of Andhra Pradesh and the Director of Survey and Settlements aggrieved by the order passed by the A.P. Administrative Tribunal (for short 'the Tribunal') in O.A.No.1152 of 2011 dated 23.07.2014. The 1st respondent herein, an Inspector of Survey, Settlement & Land Records, invoked the jurisdiction of the Tribunal to declare the proceedings dated 05.02.2011, issued by the Commissioner of Survey and Settlements, as arbitrary, illegal, malafide, in violation of Articles 14 and 21 of the Constitution of India, and ultravires Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (the "Appeal Rules" for short).

The 1st respondent was initially appointed as a Deputy Surveyor in the year 1982. He was subsequently promoted as a Surveyor, then as a Deputy Inspector and later as the Inspector of Survey in the years 1992, 2002 and 2003 respectively. The Anti- Corruption Bureau registered a criminal case against him, in Cr. No.28 of 2009 dated 26.12.2009, for possession of assets disproportionate to his known sources of income. The 1st respondent was placed under suspension on 05.02.2010. Aggrieved thereby, he filed O.A. No.2259 of 2010. The Tribunal, by its order dated 28.04.2010, directed that he should be reinstated into duty. Consequently he was reinstated, and is continuing in service ever since. On the ground that his case was not considered for promotion, to the next higher post, the petitioner filed O.A. No.3092 of 2010, and the Tribunal directed the petitioners herein to consider his case for promotion without reference to the criminal case. Alleging that the order of the Tribunal was not implemented, he filed C.A. No.822 of 2010. The Tribunal directed the Commissioner of Survey and Settlements to appear before it on 10.03.2011. In the meanwhile proceedings dated 05.02.2011 were issued proposing to hold an enquiry against the 1st respondent in accordance with the procedure laid down in Rule 20 of the Appeal Rules. Rule 20 of the Appeal Rules prescribes the procedure for imposing major penalties and, under sub-rule (1) thereof, no order imposing any of the penalties, specified in clauses (vi) to (x) of Rule 9, shall be made except after an inquiry is held, as far as may be, in the manner provided therein and Rule

21 or in the manner provided by the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 or the Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983, where such inquiry is held under the said Acts.

The charges levelled against the first respondent herein, in the proceedings dated 05.02.2011, are that:-

(1) He had failed to submit the Annual Property Statements for the year 2006, 2007, 2008 and 2010. Thus he had violated Sub-Rule 7 of Rule 9 of The Andhra Pradesh Civil Services (Conduct) Rules, 1964.

(2) He had acquired movable and immovable properties, worth about Rs.40,75,500/- (Rupees Forty Lakhs, seventy five thousand, five hundred only) as shown below, without informing the Department. Thus he had violated Sub-Rule 7 of Rule 9 of The Andhra Pradesh Civil Services (Conduct) Rules, 1964 (hereinafter called the “Conduct Rules”).

The charge memo gives details of the property, which the 1st respondent had allegedly acquired, in a tabular form which is as under:

Sl. No.	Particulars of property	Held in the name of	Value
1.	Constructed House G+2 floors in Plot No.8 of Maruthi Nagar, Phool Bagh, Vizianagaram in the year 2004 (Plinth area 3,500 Sq.feet)	S m t . G. Saritha W/o A.O.	18,00,000.00
2.	Purchased 0.27 cements of Agricultural lands in Sy. NO.222/IB of Bheemavaram Mandal, W.G. Dist., vide Doc. No.7803/07 of SRO, Bheemavaram	S m t . G. Saritha W/o A.O.	42,000.00
3.	Purchased Ac.2.66 cts of Agriculture land in Sy. No.675/1 of Rayakuduru (V) Veerawasaram (M) W.G. Dist vide Doc. No.13355/07	S m t . G. Saritha W/o A.O.	4,65,500.00
4.	Purchased Ac.0.75 cts of Agriculture land in Syu. No.420/5 of Tanduru (V), Bheemavaram (M) of W.G. Dist vide Doc. No.3007/2008 of SRO, Narsapuram, W.G.	S m t . G. Saritha, W/o A.O.	1,31,500.00
5.	Purchase Ac.1.00 cts of Agriculture land in Sy. No.418/1 of Tanduru (V), Bheemavaram (M), W.G. Dist vide doc NO.3008/08 of SRO, Narsapuram, W.G.	S m t . G. Saritha, W/o A.O.	1,75,000.00
6.	Purchased Ac.3.09 cts of Agriculture land in Sy. No.76/1B, 76/2 & 77/1B of Aratlakatta (V), Palkol (M), W.G. Dist vide Doc. No.2683/07 of SRO, Veeravasaram, W.G.	S m t . G. Saritha, W/o A.O.	6,61,500.00

7.	Purchased Ac.1.71 cts of Agriculture land in Sy. No.674/1 of Rayakuduru (V) Veeravasaram (M), W.G. Dist vide Doc. No.1356/2007 of SRO, Veeravasaram, W.G.	S r i G. Vijaya SEkhar, S/o A.O.	3,00,000.00
8.	Purchased Maruthi Swift car bearing No.AP 5679	S m t . G. Saritha, W/o A.O.	4,00,000.00
9.	Purchased Yamatha Motor Cycle	Sri G.L. Ganeswara Rao (A.O)	45,000.00
10.	Purchased TVS Apache Motor Cycle	S r i G. Vijaya SEkhar, S/o A.O.	55,000.00
11.	P l o t No.6, Maruthi Nagar, Phoolbagh colony Road, Vijaya Nagar	G . Baa Ramadevi (Relative of the A.O	

Total: 40,75,500.00

It is this charge memo which was subjected to challenge, before the Tribunal, by the 1st respondent herein. By its order, in O.A. No.1152 of 2011 dated 23.07.2014, the Tribunal held that charge No.1 related to non-submission of annual property statements for the years 2006, 2007, 2008 and 2010; charge No.2 related to his acquiring assets disproportionate to the known source of income to a tune of Rs.40,75,500/-; the documents sought to be relied upon, to prove the disproportionate assets, and the witnesses were the same both in the enquiry and in the criminal case pending before the ACB Court; since the competent court was already seized of the matter on the same issue, the impugned proceedings should not have been issued till the disposal of the criminal case; if the enquiry was permitted to be proceeded with, the 1st respondent would be forced to disclose his defence in advance in the disciplinary enquiry; he would thereby suffer irreparable injury; on the other hand, the Government would not suffer any injury since they could take further action in the matter depending upon the result in the criminal case; if they wait till the disposal of the criminal case, they would have the advantage of the findings of the competent criminal court on the same issue; both the charges were, admittedly, interlinked; the so called disproportionate assets were acquired during the said years; the claim of the 1st respondent was that he was not the owner of those assets; if his claim was accepted by the Special Court for SPE & ACB cases, he may come out with clean hands; in that event further enquiry may also be not necessary; and the departmental enquiry

initiated against the petitioner should not be continued till the disposal of the criminal case filed by the ACB.

The O.A. was allowed in part and the respondents were directed not to proceed with the departmental enquiry initiated against the 1st respondent, vide proceedings of the Commissioner dated 05.02.2011, till the disposal of the ACB cases pending on the file of the Special Judge for SPE & ACB cases, Vijayawada basing upon Cr. No.28 of 2009 dated 26.12.2009. The Tribunal observed that its order did not preclude the authorities from taking further action, after disposal of the criminal case, in accordance with law. Aggrieved thereby the present Writ Petition.

Learned Government Pleader for Services would submit that, while the charge sheet filed in Cr. No.28 of 2009 before the Special Judge for SPE & ACB cases, Vijayawada related to acquisition of assets beyond the known sources of income, and for offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, the charges levelled against the 1st respondent in the disciplinary enquiry was for his failure to submit the annual property statements for the years 2006, 2007, 2008 and 2010, and for acquiring movable and immovable properties without informing the department; these charges, which are the subject matter of the disciplinary enquiry, are distinct and different from the charge levelled against the 1st respondent in the criminal case; and the Tribunal had erred in directing the authorities not to conduct disciplinary enquiry till completion of the criminal case.

On the other hand Sri M.V. Rajaram, Learned Counsel for the 1st respondent, would submit that the case of the 1st respondent, as is evident from his explanation dated 14.03.2011, is that he had divorced his wife Smt.G. Sarita on 04.05.2007 (customary divorce), and thereafter by a Court divorce on 09.09.2008 in the Lok Adalat Vizianagaram; the properties mentioned in the charge sheet were purchased by his ex-wife after he had divorced her; he had intimated the Commissioner, of his divorce, on 22.10.2008; on dissolution of their marriage, she was no longer his wife; as these assets did not belong to the 1st respondent, but to his ex-wife, he could not be faulted for not intimating the authorities of the assets

purchased by her after their divorce; the entire foundation, of both the disciplinary enquiry and the criminal case, would depend on whether the assets purchased by the ex-wife of the 1st respondent was required to be declared by him, and to be treated as his assets; after divorce, his ex-wife cannot be treated as part of his family; conducting the disciplinary enquiry, before completion of the criminal case, would force the 1st respondent to disclose his defence; he would suffer irreparable injury thereby; and the Tribunal was, therefore, justified in directing the respondents to defer disciplinary proceedings till completion of the criminal case.

Before examining the question whether, and in what circumstances, disciplinary proceedings should be stayed pending finalisation of the criminal case, it is necessary to take note of the scope of both these proceedings. The purpose of a departmental enquiry and of prosecution are two different and distinct aspects. A crime is an act of commission in violation of the law or of an omission of public duty. The departmental enquiry is to maintain discipline in service, and the efficiency of public service. The word “offence”, generally, implies infringement of public rights punishable under criminal law. In the trial of a criminal offence strict rules of evidence, in terms of the provisions of the Evidence Act, is applicable. Converse is the case of a departmental enquiry. The enquiry, in departmental proceedings, relates to the conduct or the breach of duty by the delinquent officer, and he is liable to be punished for his misconduct under the relevant statutory rules or law. Strict standard of proof, or applicability of the Evidence Act, stands excluded in a departmental enquiry. The degree of proof required to establish a charge in a departmental enquiry is not as high as in the case of a criminal charge.

(Depot Manager, APSRTC v. Mohd. Yousuf Miya^[1]).

The approach and the object of criminal proceedings and disciplinary proceedings are altogether different. In disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service, or a lesser punishment as the case may be, whereas in criminal proceedings the question is

whether the offences which he is charged of, under the Prevention of Corruption Act, are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both cases differ. (**State of Rajasthan v. B.K. Meena**^[2]). Proceedings in a criminal case and the departmental proceedings operate in distinct jurisdictional areas. In departmental proceedings, where a charge relating to misconduct is investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or investigating the level of integrity of the charged officer etc. The standard of proof required in those proceedings is also different than that required in a criminal case. While, in the departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. (**M. Paul Anthony v. Bharat Gold Mines Ltd.**^[3]; **Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry**^[4]; **Divisional Controller, Karnataka State Road Transport Corporation v. M.G.Vittal Rao**^[5]).

On the question whether a departmental enquiry should be deferred pending completion of criminal proceedings, it must be borne in mind that, ordinarily, disciplinary proceedings need not await completion of the criminal case. 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. (**Delhi Cloth and General Mills Ltd. v. Kushal Bhan**^[6]; **B.K. Meena**²). The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or

interfere with the course of justice in the pending court proceeding. (**Jang Bahadur Singh v. Baij Nath Tiwari**^[7]). The departmental enquiry must be conducted expeditiously so as to ensure efficiency in public administration. (**Mohd. Yousuf Miya**¹).

While there is no legal bar for simultaneous proceedings being taken, it may be appropriate in certain cases to defer disciplinary proceedings. In such cases, it would open to the delinquent employee to seek an order of stay or injunction from the Court. Whether, in the facts and circumstances of a particular case, there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide, in the given circumstances of a particular case, as to whether disciplinary proceedings should be interdicted pending criminal trial. (**Jang Bahadur Singh**⁷; **Kusheshwar Dubey v. Bharat Coking Coal Ltd.**^[8]; **B.K. Meena**²).

As reliance is often placed, on **G.M.Tank v. State of Gujarat**^[9], by Courts and Tribunals in directing stay of disciplinary proceedings, pending disposal of the criminal case, it is necessary to note the factual matrix in which the observations were made therein by the Supreme Court, for every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides. It cannot be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas it must be acknowledged that the law is not always logical. (**Arasmeta Captive Power Company Limited v. Lafarge India Private Limited**^[10]; **Quinn v. Leathem**^[11]).

In **G.M. Tank**⁹, the appellant before the Supreme Court joined the service of the respondent in the year 1953. He was to superannuate in

February, 1986. After he had put in 26 years of service with the respondent i.e. from 1953 to 1979, he was placed under suspension on 8.2.1979, and was paid subsistence allowance at 50% of his salary. On the basis of the same charges and evidence, the department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him, nearly twenty years thereafter, on 30.1.2002. While holding that, until such acquittal, there was no reason or ground to hold the dismissal to be erroneous and, as the appellant had retired by then, the order of dismissal should be set aside without back wages and the appellant should be paid pension, the Supreme Court observed:-

“....In our opinion, such facts and evidence in the department as well as criminal proceedings being the same without there being any iota of difference; the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. **Though finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply.** We, therefore, hold that the appeal filed by the appellant deserves to be allowed.....”
(emphasis supplied)

The law declared by the Supreme Court in **G.M. Tank**⁹ is that, if the facts and evidence in the departmental and criminal proceedings are the same without there being an iota of difference, and the employee has been honourably acquitted in the criminal case, the appeal presented by him, against the order of punishment imposed on him by the disciplinary authority pursuant to the departmental enquiry, must be allowed, and the order of punishment set aside. The question whether disciplinary proceedings should be stayed pending disposal of the criminal case was not even in issue in **G.M. Tank**⁹.

While there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave, and continuance of the disciplinary proceedings is likely to prejudice their defense before the Criminal Court. (**B.K. Meena**²; **Delhi Cloth and General Mills Ltd.**⁶; **Stanzen Toyotestu India (P) Ltd. v. Girish V**^[12]; **Mohd. Yousuf Miya**¹). Both proceedings

can be held simultaneously, except where the departmental proceedings and the criminal case are based on the same set of facts, and the evidence in both the proceedings is common, (**State Bank of India v. R.B. Sharma**^[13]; **M.G.Vittal Rao**⁵; **Jang Bahadur Singh**⁷; **Kusheshwar Dubey**⁸, without there being a variance. (**M.Paul Anthony**³; **Sarvesh Berry**⁴).

If the case is of a grave nature and involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. (**Delhi Cloth & General Mills Ltd.**⁶; **Tata Oil Mills Company Limited v. Workmen**^[14]). The seriousness of the charge alone is not the test. What is also required to be demonstrated is that the case involves complicated questions of law and fact. (**Stanzen Toyotestu India (P) Ltd.**¹²). The question, whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case, is always a question of fact to be considered in the facts and circumstances of each case. (**Mohd. Yousuf Miya**¹). The Court examining the question must keep in mind that criminal trials get prolonged indefinitely. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings is, itself, in the interest of the employees. (**Stanzen Toyotestu India (P) Ltd.**¹²). Staying of disciplinary proceedings, pending completion of criminal proceedings, should not be resorted to as a matter of course but should be a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed. (**B.K. Meena**²). To say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry, inspite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated

and the conclusion reached in such an enquiry is either bad in law or malafide. (**Tata Oil Mills Company Ltd.**¹⁴; **Delhi Cloth and General Mills Ltd.**⁶).

The principles, applicable in this regard, are: (i) departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately; (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; (iii) whether the nature of a charge in a criminal case is grave, and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence, 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 charge sheet; (iv) the factors, mentioned at (ii) and (iii) above, cannot be considered in isolation to stay the departmental proceedings, but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed; (v) if the criminal case does not proceed, or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that, if the employee is found not guilty, his honour may be vindicated and, in case he is found guilty, the administration may get rid of him at the earliest. (**Mohd. Yousuf Miya**²; **M.Paul Anthony**³; **Sarvesh Berry**⁴).

It is neither possible nor advisable to evolve a hard and fast strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. (**Kusheshwar Dubey**⁸; **Jang Bahadur Singh**⁷; **B.K. Meena**²). The 'advisability', 'desirability' or 'propriety' of staying the departmental proceedings enter the scales, while judging whether the disciplinary proceedings should be stayed, merely as

one of the factors which cannot be considered in isolation de hors the other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated questions of fact and law. One of the contending considerations would be that the disciplinary enquiry cannot - and should not - be delayed unduly. It is well-known that criminal cases drag on endlessly, get bogged down on one or the other ground, and hardly ever reach a prompt conclusion. The interests of administration and good governance demand that these proceedings are concluded expeditiously, undesirable elements are thrown out, and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and, if he is guilty, he should be dealt with promptly according to the law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, these are some of the important considerations to be borne in mind as very often disciplinary proceedings are stayed for long periods pending criminal proceedings. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the aforesaid principles. (**B.K. Meena**²; **M.Paul Anthony**³).

It is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in a criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. (**Mohd. Yousuf Miya**¹). There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted on the one hand to prolong the criminal case, and at

the same time to contend that the departmental proceedings should be stayed on the ground that the criminal case is pending. (**Sarvesh Berry⁴**).

Bearing these principles in mind, let us now examine the facts of the present case. A copy of the charge sheet, filed before the Court of the SPE & ACB, in Cr. No.28 of 2009, has been placed before us for our perusal. The charge, levelled against the first respondent for offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, is as under:

“The total assets of Accused officer during the check period is of Rs.83,86,332.00/-. The total income of Accused Officer during check period is of Rs.15,10,032.80/-. The total expenditure of Accused officer during the check period is Rs.47,68,553.93/-. The over expenditure of A.O. is Rs.32,58,521.13/-.

Therefore, the A.O. was found in possession of disproportionate assets worth Rs.1,16,44,853/- (total assets of Rs.83,86,332.00/- + Over expenditure Rs.32,58,521.13/-) which is disproportionate to his known sources of income for which the A.O. could not account for.

The Government of Andhra Pradesh, being the competent authority has accorded sanction vide G.O.Ms. No.160 Revenue (Vigilance-IV) Department dated 13.03.2012 to prosecute the A.O. in the competent Court of Law.

Therefore, the A.O. is liable for punishment under Section 13(1)(e) read with 13(2) of P.C. Act, 1988 for possessing Disproportionate assets in his name, in the names of his family members and in benami names. Hence the charge.”

Section 13 of the Prevention of Corruption Act relates to criminal misconduct by a public servant and, under sub-rule (1)(e) thereof, a public servant is said to commit the offence of criminal misconduct if he, or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Section 13(2) thereof stipulates that any public servant, who commits criminal misconduct, shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. 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 his known sources of income. The Explanation to Section 13(1) of the

Prevention of Corruption Act provides that, for the purposes of the Section, "known sources of income" means income received 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 knowledge of the accused. There is no question, therefore, of any disclosure of the defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition, and has to satisfactorily account for the same. (**Sarvesh Berry⁴**).

While the charge levelled against the 1st respondent, in the criminal case, is for possessing assets disproportionate to his known sources of income, and thereby having committed offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, the charge levelled against him in the disciplinary enquiry is for his failure to submit his annual property statements for the years 2006, 2007, 2008 and 2010; and for acquiring movable and immovable properties without informing the department. Both the charges, in the disciplinary enquiry, are for contravention of Rule 9(7) of the Conduct Rules.

Rule 9(1) the Conduct Rules stipulates that no Government employee shall, except after previous intimation to the Government, acquire or dispose of or permit any member of his family to acquire or dispose of any immovable property by exchange, purchase, sale, gift or otherwise either by himself or through others. Rule 9(7) of the Conduct Rules stipulates that every Government employee, other than a member of the Andhra Pradesh Last Grade Service and a Record Assistant in the Andhra Pradesh General Sub-ordinate Service, shall, on his first appointment to the Government Service, submit to the Government a statement of all immovable property/ properties irrespective of its value and movable property/ properties whose value exceeds Rs.1,00,000/- owned, acquired or inherited by him or held by him on lease or mortgage either in his own name or in the name of any member of his family, in the forms prescribed in Annexure-I and II separately. The said employee is also

required to submit to the Government, before 15th January of each year, through the proper channel, a declaration in the forms given in Annexure-I and II of all immovable/movable property/properties owned, acquired or inherited by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family. The declaration shall contain such further information as Government may, by a general or special order, require. If, in any year, a Government employee has not acquired or disposed of any immovable or movable property or any interest therein, he shall submit a declaration to that effect.

The issue whether or not the assets acquired by the 1st respondent are disproportionate to his known sources of income is not the subject matter of the disciplinary enquiry. The first charge levelled against him in the disciplinary enquiry is that he did not submit his annual property statements for certain years. Rule 9(7) of the Conduct Rules requires a Government servant to declare his assets annually, and submit an annual property statement to the competent authority. The 2nd charge, levelled against the first respondent in the disciplinary proceedings initiated against him, is regarding his having acquired movable and immovable property without informing the department. Rule 9(1) of the Conduct Rules requires a Government servant to inform the Government of his intention, to acquire movable and immovable property, before its acquisition. Even if the assets acquired by a Government servant is not disproportionate to his known sources of income, he is, nonetheless, required to submit his annual property statements, and inform the Government of his intention to acquire movable and immovable property, before its acquisition. It is evident, therefore, that the charges levelled against the 1st respondent in the disciplinary enquiry is distinct and different from the charge levelled against him in the criminal case.

In the order, under challenge in this Writ Petition, the Tribunal held that if the enquiry was permitted to be proceeded with, the 1st respondent would be forced to disclose his defence in advance. The ground, "***that the defence of the employee in the criminal case may not be prejudiced***", is hedged by the condition that disciplinary proceedings may be stayed in

cases of grave nature involving questions of fact and law. This means that not only the charges must be grave, but the case must involve complicated questions of law and fact. This ground is not also an invariable rule. It is only a factor which will weigh while judging the advisability or desirability of staying disciplinary proceedings. (**B.K. Meena**²).

In his explanation dated 14.03.2011, filed during the disciplinary proceedings, the 1st respondent contended that it is his ex-wife who had acquired the assets after their divorce, and he could not be faulted for non-disclosure of the assets, purchased by her, to the Government as she was no longer a member of his family. As the charged officer has already disclosed his defense in his letter of explanation dated 14.03.2011, submitted in the course of departmental proceedings, (**Stanzen Toyotestu India (P) Ltd.**¹²), he cannot seek deferment of disciplinary proceedings on this ground. It is difficult, therefore, to accept his submission that the disciplinary proceedings being held against him would result in his having to reveal his defence in the criminal case. Even otherwise, a perusal of the charge memo shows that the assets allegedly purchased by the 1st respondent were shown to be held not only in the name of Smt.G. Sarita (his wife whom he claims to have divorced), but also in the name of his son Sri G.Vijaya Sekhar, and G. Ramadevi his relative. The petitioners herein have, merely, initiated disciplinary proceedings, and it is for them to establish the charge, levelled against the 1st respondent, therein. It is also open to the 1st respondent, during the course of the disciplinary enquiry, to produce evidence in his defence to show that he is not guilty of the charges levelled against him.

With regards the contention that disciplinary proceedings were instituted against the petitioner for extraneous reasons, it is no doubt true that not all disciplinary proceedings are based upon true charges. Some of them may be unfounded and, in some cases, the charges may have been levelled with oblique motives. These possibilities, however, do not detract from the desirability of early conclusion of disciplinary proceedings.

Indeed, in such cases, it is all the more in the interest of the charged

officer that the proceedings are expeditiously concluded. Delay in such cases really works against him. It is in the interest of the charged officer, and in the interest of good administration, that the truth or falsity of the charges against him is determined promptly. If he is not guilty of the charges, his honour should be vindicated early and, if he is guilty, he should be dealt with appropriately without avoidable delay. The criminal court may decide - whenever it does - whether he is guilty of the offences charged and, if so, what sentence should be imposed upon him. The interest of administration, however, cannot brook any delay in conclusion of disciplinary proceedings. (**B.K. Meena**²).

What was put in issue by the 1st respondent, before the Tribunal, was the very initiation of disciplinary proceedings against him. While a subsequent charge memo was issued to the petitioner, vide proceedings dated 12.04.2012, the said charge sheet was not the subject matter of challenge before the Tribunal and, as the Tribunal is the Court of first instance, it would be wholly inappropriate for this Court to examine its validity for the first time in proceedings under Article 226 of the Constitution of India. As the very premise on which the Tribunal passed the impugned order, that both the charges in the disciplinary enquiry and in the criminal case are the same, is unfounded, the order of the Tribunal must be and is, accordingly, set aside.

We should not be understood to have cast any reflection on the merits of the case. What we have said is confined to the question of the desirability or advisability of staying the disciplinary proceedings against the charged officer pending the criminal proceeding/case against him. (**B.K. Meena**²). The disciplinary proceedings shall be continued in accordance with law uninfluenced by any observations made, on the merits of the case, either in the order of the Tribunal or this Court.

The Writ Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:27.03.2015

Note: L.R. copy to be marked.

B/o

MRKR/CS

[\[1\]](#) (1997) 2 SCC 699

[\[2\]](#) (1996) 6 SCC 417

[\[3\]](#) (1999) 3 SCC 679

[\[4\]](#) (2005) 10 SCC 471

[\[5\]](#) (2012) 1 SCC 442

[\[6\]](#) [1960 (3) S.C.R. 227

[\[7\]](#) 1969 (1) SCR 134 = AIR 1969 SC 30

[\[8\]](#) AIR 1988 SC 2118 = (1988) 4 SCC 319

[\[9\]](#) (2006) 5 SCC 446

[\[10\]](#) (2013) 15 SCC 414 = (2014) 2 ALD 89 (SC)

[\[11\]](#) (1901) AC 495

[\[12\]](#) (2014) 3 SCC 636

[\[13\]](#) AIR 2004 SC 4144

[\[14\]](#) [1964 (7) S.C.R. 555