

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 41 OF 2016**

Maxi Kujur son of late Ignase Kujur aged about 48 years
 R/o Plot No.10-11 Street No.9 Ashish Nagar (E) Risali
 Bhilai District Durg (C.G.)

---Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Water Resources Department Mahanadi Bhawan New Raipur District Raipur (CG)
2. Under Secretary Water Resources Department Mahanadi Bhawan New Raipur District Raipur (CG)

---Respondents

For Petitioner : Mr. T.K. Tiwari, Advocate
 For State/Respondents : Mr. Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****11/01/2016**

1. Heard learned counsel appearing for the parties.
2. The petitioner has been placed under suspension from his service w.e.f. 30.12.2014 on account of his arrest

for the offence punishable under Sections 7, 13(i)(d) & 13(2) of the Prevention of Corruption Act, 1988 and order of suspension is continuing.

3. Shri T.K. Tiwari, learned counsel appearing for the petitioner would submit that in case of **Ajay Kumar Choudhary V. Union of India and Another**¹, Their Lordships of the Supreme Court has held that the suspension cannot be continued for indefinite period and observed as under:-

“**20.** It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorize detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the

¹ (2015) 7 Supreme Court Cases 291

Division Bench in *Raghubir Singh v. State of Bihar* and more so of the Constitution Bench in *Antulay*, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) of CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a suspension order should not extend beyond three months, if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the

Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice, Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

4. Be that as it may, the petitioner make a fresh representation before the respondent No.1 along with a copy of the judgment rendered by the Supreme Court in

case of **Ajay Kumar Choudhary (supra)** within a period of two weeks from today. If such representation is made by the petitioner before the said authority, the concerned authority shall take a decision of the petitioner's representation keeping in view of decision of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** within a period of 45 days from the date of receipt of representation of the petitioner. It is made clear that this Court has not expressed any opinion on merits of the case.

5. With the aforesaid observation, the petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE