

* HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

+ Writ Appeal No.260 of 2016

% 18-4-2016

M.Veeranna

... Appellant/Writ Petitioner

Vs.

\$ TSRTC, Rep. by its MD., Bus Bhavan,
Musheerabad, Hyderabad; and another

... Respondents

! Counsel for the appellant: Sri V.Narasimha Goud

Counsel for respondents: Sri B.Mayur Reddy,
Standing Counsel.

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> Head Note:

? Case referred:

1. 2009 (6) ALD 111
2. 2014 (1) ALD 751 (DB)
3. AIR 2007 SC 1161
4. (2013) 1 SCC 598
5. W.P.No.43044 of 2015, dated 20-01-2016.
6. AIR 2004 SC 4127
7. AIR 2004 SC 4144

8. AIR 1999 SC 1416
9. (2005) 10 SCC 471
10. (2005) 7 SCC 764
11. AIR 2006 SC 2129

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Appeal No.260 of 2016

Between

M.Veeranna

... Appellant/Writ Petitioner

and

TSRTC, Rep. by its MD., Bus Bhavan,
Musheerabad, Hyderabad; and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 18-4-2016

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

Writ Appeal No.260 of 2016

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Judgment: (per Dr. B.Siva Sankara Rao, J.)

The appellant is the unsuccessful petitioner in
W.P.No.3283 of 2016 maintained against the respondents

1 and 2. The impugned order of the learned single Judge in W.P.No.3283 of 2016, dated 08-3-2016, reads from the conclusion para that:

“13. In the instant case also since criminal complaint lodged by the respondent corporation is at the stage of investigation, it cannot be said that prejudice would be caused to the petitioner if he participates in the domestic enquiry. Therefore, it is not a case where the domestic enquiry should be stalled. The prayer sought for petitioner cannot be granted. However, if the investigation in Crime No.299 of 2015 results in filing of charge sheet and domestic enquiry is not completed before the charge sheet is filed, it is open to the petitioner to apply to the disciplinary authority to stay the domestic enquiry till the criminal case is disposed of. It is also made clear that any statement made by the petitioner during the course of the domestic enquiry cannot be used against the petitioner in the criminal proceedings and cannot be treated as disclosure of material evidence by the petitioner.

14. Subject to above observation, the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.”

2. Present appeal filed against the impugned order is with the contentions from the grounds of appeal as well as the oral submissions by the learned counsel for the appellant that the learned single Judge erred in not appreciating the facts that in similar set of facts in **P.Venka Reddy v. Senior Divisional Security Commissioner**^[1] a single Judge of this Court was pleased to hold that, when the material allegations in the criminal case and departmental charge are one and the same and material witnesses are also one and the same, allowing the departmental enquiry would cause prejudice

to him as accused in the criminal case. It is also the contention of the learned counsel for the appellant referring to another judgment of a Division Bench of this Court in **C.G. Manager, Telecom District (BSNL) v. R.B.**

Ravi Shankar^[2], particularly from para 11 that if the acts and omissions of the employee, which gave rise to prosecution, would also constitute acts of misconduct, the charges must be framed by the disciplinary authority almost simultaneously with the prosecution. It is a different matter that in case the subject-matter of the criminal case and departmental proceedings is similar or identical, further steps in the departmental proceedings cannot be taken till the conclusion of the criminal case, lest the employee is compelled to disclose his probable defence in the criminal case. Therefrom, the learned counsel contended that the Security Head Guard Satyanarayana, who in collusion with the other, allowed the scrap vehicle in the absence of appellant and theft of items so alleged in the complaint, but no action was taken against him nor any preliminary enquiry was conducted before the appellant being charge sheeted and suspended from service to find out the persons responsible. It is the submission therefrom that the impugned order passed by the learned single Judge is unsustainable and sought for setting aside the same. It is also prayed for interim stay of the departmental enquiry pending disposal of the writ appeal.

3. Whereas, it is the contention of the learned Standing Counsel for the Telangana State Road Transport Corporation (TSRTC) that the order of the learned single Judge is a reasoned one and also in tune to the expression of the 3-judge bench of the apex Court in **NOIDA Entrepreneurs Assn. v. NOIDA and Ors.**^[3] that was also reiterated in the subsequent expression of the apex Court in **DEPUTY INSPECTOR GENERAL OF POLICE AND ANOTHER v. S.SAMUTHIRAM**^[4] and thereby it is not from identity of the facts involved and same witnesses shown in both the cases that is a criteria but further showing of there are complicated questions of law and fact also involved. The disciplinary proceedings initiated thereby cannot be stayed and hence to dismiss the writ appeal for no grounds to admit.

4. Heard both sides at length as referred supra and perused the material on record.

5. The offence for which the crime pending against the petitioner writ appellant is under Section 379 IPC for alleged committing the offence of theft of scrap.

The charge is also for the self-same alleged act in asking him to face the departmental enquiry. The relief sought is to suspend the departmental enquiry proceedings till finalisation of the criminal case. The observation of the learned single Judge is that there are no complicated

questions of fact and law involved and the crime pending investigation is for the offence of theft and not even a grave crime and thereby the departmental proceedings cannot be stayed and the law is clearly settled in this regard by referring to another expression of the learned single Judge in **Sri A.X. Edwin vs. SBH**^[5] referring to several expressions of the Apex Court particularly of **Kendriya Vidyalaya Sangathan vs. T.Srinivas**^[6], **SBI vs. B.R. Sharma**^[7] besides **Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd.**^[8].

6. In fact, as can be seen from the expression of the Apex Court 3-judge bench in **NOIDA Entrepreneurs Assn.** (3 *supra*), particularly from para 15, the expression of the apex Court earlier made in **Capt. M.Paul Anthony** (8 *supra*) was referred among other expressions, wherein it is observed as under:

“(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 involved 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 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)

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(v)

.....”

7. The conclusion arrived at by the apex Court with reference to it thereby is that each case requires to be considered in the backdrop of its own facts and circumstances. Thus, there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case, unless it is shown the charge in the criminal case is of grave nature and involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights. Under these circumstances, what is required to be seen is that 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.

8. From this legal position, coming to the two expressions relied on by the learned counsel for the writ appellant; viz., (1) In **P.Venka Reddy** (1 *supra*) at para 11, it is no doubt observed that though the disciplinary proceedings are not required to be stayed until the criminal prosecution launched against the petitioner is over, but nonetheless, forcing or rendering

such accused to disclose their defence at a stage earlier than the time when he is required to disclose the same before the criminal Court, is bound to cause certain degree of prejudice to the accused. In that case, it is a proceeding in a Prevention of Corruption Act against a public servant. In this expression also at paras 4 to 6 several expressions referred which in one line speak that trial of criminal case and disciplinary proceedings can go on simultaneously – viz., **HPCL vs. Sarvesh Berry**^[9], **Anil Kumar Nag vs. General Manager, IOCL**^[10] and **G.M. Tank vs. State of Gujarat**^[11].

(2) Coming to the other expression of the Division Bench in **R.B. Ravi Shankar** (2 *supra*), the principle laid down at para 11 is that it is a different matter if subject-matter of the criminal case and departmental proceedings is similar or identical, further steps in the departmental proceedings cannot be taken till the conclusion of the criminal case.

9. However, the fact remains that in none of the two expressions *supra* that are relied on by the learned counsel for the writ appellant the expression of the 3-judge bench in **NOIDA Entrepreneurs Assn.** (3 *supra*) not came for consideration. Had it been the conclusion could have been different. The principle laid down in **NOIDA Entrepreneurs Assn.** (3 *supra*), which is also later quoted with approval in **Deputy Inspector General**

of Police (4 *supra*) is very clear that not only identity of the facts or same witnesses cited in the criminal case and departmental enquiry that is the criteria but also the complicated and disputed questions of fact and law involved and grave nature of the crime, without which there can be no stay of departmental enquiry as criminal case and departmental enquiry can be simultaneously proceeded with.

10. What is gravity of the offence is defined by the statutory penal provisions with respect to punishment from nature of the offence and impact on the society.

So far as the offences under Indian Penal Code concerned Section 53 speaks kinds of punishments right from death penalty to simple imprisonment or fine only or forfeiture as the case may be from nature and gravity of the offence. It is because right from Section 95 of IPC though it is an offence it falls within the general exceptions for it is very trivial in nature to complain or to take cognizance; whereas coming to grave crimes, for example offence under Section 302 IPC is provided with death penalty if comes under rarest of rare cases or otherwise with minimum sentence of life imprisonment to say for whole of remaining life of the accused if offence is proved to be convicted to undergo and also with fine to impose with default sentence. Thus from the nature and gravity of the offence and seriousness and impact on society, the punishments are provided.

11. Now, coming to the case on hand, it is a simple

theft of scrap. The offence for which the crime registered and pending investigation is under Section 379 IPC as defined in Section 378 IPC and the maximum sentence provided is 3 years with warrant case procedure and not even a Sessions Case. Merely because the accused got right of silence as a fundamental protection against testimonial compulsion, there is no privilege to suppress truth or to speak falsehood. Thus the departmental enquiry proceedings and any disclosure of facts as to what is truth in the proceedings no way be called as causing prejudice to the defence in a criminal case pending at the crime stage under investigation, in the event of police filing final report and taking of cognizance of the offence by the criminal court and framing of charge and from its denial subjecting him to face trial.

12. The learned single Judge in the conclusion rightly arrived made clear in the operative portion referred supra even that statements made during departmental enquiry cannot be made use in criminal case against him and during pendency of the departmental enquiry, if charge that is filed by police in the criminal case and cognizance of offence taken by criminal court, pending trial (after charges framed trial arises) the petitioner can ask for stay of further proceedings of the departmental enquiry pending trial and disposal of the criminal case.

13. Having regard to the above, there is nothing to

interfere with the finding of the learned single Judge much less to admit the writ appeal and pending disposal of the same to stay the departmental enquiry.

14. Accordingly and in the result the writ appeal is dismissed with no costs before admission stage for no grounds to admit.

15. The miscellaneous petitions, if any, pending in this writ appeal shall stand closed.

R.KANTHA RAO, J.

DR. B.SIVA SANKARA RAO, J.

18th April, 2016.

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Note:-

L.R. Copy to be marked – Yes.

(B/o)

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HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

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Writ Appeal No.260 of 2016
(Judgment of the Division Bench)

delivered by Dr. SSRB, J.)

18th April, 2016.
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[\[1\]](#) 2009(6) ALD 111

[\[2\]](#) 2014 (1) ALD 751 (DB)

[\[3\]](#) AIR 2007 SC 1161

[\[4\]](#) (2013) 1 SCC 598

[\[5\]](#) W.P.No.43044 of 2015, dated 20-01-2016

[\[6\]](#) AIR 2004 SC 4127

[\[7\]](#) AIR 2004 SC 4144

[\[8\]](#) AIR 1999 SC 1416

[\[9\]](#) (2005) 10 SCC 471

[\[10\]](#) (2005) 7 SCC 764

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