

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.613 of 2017

and

C.M.P.No.8556 of 2017

1.The District Collector,
Chengalpattu,
Kancheepuram District.

2.The Revenue Divisional Officer,
Madurantakam,
Kancheepuram District.

... Appellants

-vs-

K.Devendran

.. Respondent

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.1398 of 2015 dated 21.10.2016.

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified mandamus to call for the records of the respondents in connection with the impugned order passed by the 2nd respondent in Rc. No.1998/2014/B dated 14.10.2014 and quash the same and to direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Appellants :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent :: Ms.Dakshayani Reddy

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

By consent, the writ appeal is taken up and being disposed of in the admission stage itself.

2.This appeal has been filed against the order passed by

this Court in W.P.No.1398 of 2015 dated 21.10.2016, wherein the appellants herein are directed to reinstate the respondent herein in any non-sensitive post where the Department feels that the respondent can be accommodated, as per the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India, reported in (2015) 7 SCC 291 .

3.It is the case of the respondent herein that he is a Science Graduate and he appeared for the examination conducted by the Tamil Nadu Public Service Commission for appointment as Village Administrative Officer. He got selected and appointed as Village Administrative Officer in Kancheepuram District on 10.03.2005. One P.Kothandam claimed that he is in enjoyment of Maikal poramboke comprised in Survey No.64 for the last 20 years and he was running a cycle shop. The B-memo was issued to him for few years. After some time, the said Kothandam allowed his servant Rajeswari to enjoy the said property and the said Rajeswari has obtained patta for 25.0 cents of land in Survey No.64 and the remaining 0.8 cents of land was in her possession. There was some misunderstanding between the said Kothandam and Rajeswari. Consequently, a complaint was preferred and a mediation was conducted between them. In the meantime, the said Rajeswari constructed a thatched house. The said Kothandam preferred a complaint to the Tahsildar to remove the superstructure. Pursuant to the complaint, with the help of the respondent and other Village Administrative Officers under whose jurisdiction the property is situated, the thatched house constructed by the said Rajeswari was removed. The said Rajeswari belongs to Schedule Caste Community and with the help of local politicians, she reconstructed the thatched house and was residing there. In order to prevent communal clash between the two communities, a Peace Committee Meeting was held in the village and subsequently, the request of the said Kothandam was rejected on the ground that he is possessing other properties and he is not eligible for assignment of poramboke land. In order to get patta for the maikal poramboke, a person must have constructed a house which must be assessed to property tax and also he must reside there. There is no provision for grant of patta to an extent of 10 cents for maikal poramboke. While so, on 24.08.2014, a tractor bearing Regn.No.TN-07-AY-4767 owned by the said Kothandam was seized for transporting river sand. He has also made an attempt to sell maikal poramboke land comprised in Survey No.223 to the extent of 8 cents, which was prevented by the Revenue Inspector Kavitha and Village Menial. The said Kothandam was under the impression that the respondent herein was responsible for rejection of patta for maikal poramboke land as well as seizure of his tractor while carrying the river sand. Enraged over the same, the said Kothandam preferred a false complaint to the Vigilance and Anti-corruption Department, Kancheepuram Detachment Wing, alleging that the respondent has

demanded illegal gratification of Rs.4,000/- for transfer of patta in respect of the property not owned by him, but owned by Suydia Sultana. Following the said complaint, a criminal case was registered against the respondent in Crime No.7/AC/2014 on the file of the Vigilance and Anti-Corruption Detachment, Kancheepuram on 09.10.2010 and a trap was organised. On 09.10.2010, the said Kothandam came to the office of the respondent and kept the money hidden in between the files and fled away from the scene of occurrence as if the respondent has demanded and accepted illegal gratification. As soon as he fled away from the scene of occurrence, the officials of the Anti-corruption and Vigilance Department came inside the office and asked the respondent as to whether he has demanded any gratification. Though the respondent had replied that he did not demand any gratification, he was arrested and remanded to judicial custody and thereafter, he was released on bail on 20.10.2014. In view of the said criminal case, the respondent was placed under suspension by the second appellant vide the order dated 14.10.2014 in Rc.No.1998/2014/B, with effect from 10.10.2014. Thereafter, there is no progress either in the criminal case or in the departmental proceedings. The respondent has been under prolonged suspension. Though the respondent made requests on several occasion to revoke the suspension order, the same was not considered. Hence, the writ petition in W.P.No.1398 of 2015 has been filed.

4. When the matter was taken up for consideration by the writ Court, the learned counsel appearing for the respondent herein, has placed reliance upon the decision passed by this Court in W.P.(MD).No.18326 of 2015 dated 01.08.2016 (G.Chelliah v. The Principal Secretary-cum-Commissioner of Commercial Taxes, Chennai), wherein a learned Single Judge of this Court by placing reliance on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291], directed the respondent therein to revoke the order of suspension and post the respondent therein in any non-sensitive post where the Department feels that the respondent can be accommodated. Placing reliance on the said judgment, the learned counsel for the respondent prayed for passing such order by this Court.

5. Considering the judgment of the Hon'ble Supreme Court in K.Sukhendar Reddy vs. State of Andhra Pradesh, reported in (1999) 6 SCC 257, which has been referred to in Ajay Kumar Choudhary's case, and also Article 12 of the Universal Declaration of Human Rights, 1948, and also considering paragraph-21 of Ajay Kumar Choudhary's case, wherein it is stated 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, and if the memorandum of charges / charge sheet is served, a reasoned order must be passed for the extension of suspension, and also based on the Circular of the State Government dated 23.07.2015, the learned single Judge allowed the writ petition directing the appellants herein / respondents therein to reinstate the respondent herein in any non-sensitive post where the Department feels that he can be accommodated as per the judgment in Ajay Kumar Choudhary's case.

6. Now the State has come with this appeal challenging the said order passed by the learned single Judge.

7. The learned counsel for the appellants has relied upon the subsequent circular of the State Government in Letter No.43634/N/2016-1 dated 20.12.2016 and also the judgment of the Hon'ble Supreme Court in Allahabad Bank and another vs. Deepak Kumar Bhola, reported in (1997) 4 SCC 1, wherein the Hon'ble Supreme Court restored the orders of suspension, under similar circumstances, and prayed for allowing this writ appeal.

8. On the other hand, the learned counsel for the respondent has strongly refuted the submissions of the learned counsel for the appellants on the ground that the said circular will not come into effect as it was not available at the time of passing the order by the learned single Judge.

9. Heard the learned counsel on either side and perused the materials available on record.

10. Paragraphs 13 and 14 of the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case (cited supra), reads as under:

"13. 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 Cr.PC of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond 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 Division Bench in Raghbir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries 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/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. 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.

14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 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."

11. In Ajay Kumar Choudhary's case, the Hon'ble Supreme Court has referred to the Constitutional Bench judgment in Abdul Rehman Antulay vs. R.S. Nayak, reported in (1992) 1 SCC 225, in which the following guidelines have been framed. The relevant portions are extracted hereunder:

"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions

are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

.....

(8) Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case."

12.Paragraph 86(3) of the Constitution Bench judgment in Antulay's case, deals with the concerns underlying the right to speedy trial from the point of view of the accused. In Paragraph

86(9) it is stated that where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed.

13. In paragraph-13 of the Ajay Kumar Choudhary's judgment, referring to the observations made in the judgment of the Hon'ble Supreme Court in Raghubir Singh vs. State of Bihar (1986) 4 SCC 481, and also the above Constitutional Bench Judgment (Antulay), the Hon'ble Supreme Court held 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 and that the proviso to Section 167(2) Cr.PC 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.

14. In paragraph-10 of the Ajay Kumar Choudhary's judgment, a reference was made to the judgment of the Hon'ble Supreme Court in Kartar Singh vs. State of Punjab, reported in (1994) 3 SCC 569, wherein it was stated that the right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.

15. Thus, after referring to several judgments, the Hon'ble Supreme Court, in Ajay Kumar Choudhary's case, directed that the currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. It was also held that the Government is free to transfer the concerned person 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; that 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.

16. Rightly, the learned single Judge of this Court has taken into consideration all the above aspects which have been discussed by the Hon'ble Supreme Court in its judgment in Ajay Kumar Choudhary's case, while rendering the judgment in the writ petition which is challenged in this writ appeal.

17.The learned Special Government Pleader appearing for the appellants, relied upon the stand taken by the Government by virtue of the Circular in Letter No.43634/N/2016-1 dated 20.12.2016 and also the judgment of the Hon'ble Supreme Court in Allahabad Bank and another vs. Deepak Kumar Bhola, reported in (1997) 4 SCC 1. The said circular is non-est in the eye of law, because of the fact that the said circular came to be issued and brought into effect only during December 2016, whereas the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case is much prior to that. The decision of the Hon'ble Supreme Court in (1997) 4 SCC 1, is also much prior to that. Hence the said circular cannot be made applicable to the case on hand.

18.In view of the foregoing reasons, the writ appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed. It is for the State to post the respondent / officer in a non-sensitive post.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

1.The District Collector,
Chengalpattu,
Kancheepuram District.

2.The Revenue Divisional Officer,
Madurantakam,
Kancheepuram District.

+lcc to M/s.Dakshyani Reddy, Advocate SR.No.42718

+lcc to Government Pleader SR.No.42732

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W.A.No.613 of 2017
and

C.M.P.No.8556 of 2017

KJI (CO)
GN(13/07/2017)