



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 27.10.2017

CORAM

WEB COPY

**THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MS. JUSTICE J.NISHA BANU**

W.A(MD) No.1312 of 2017
against WP(MD)No.15710 of 2017
and CMP(MD)No.9189 of 2017

Arignar Anna Sugar Mills Ltd.
Kurungulam, Thanjavur Taluk
rep. through the Chief Executive
Pin Code - 613 303.

.. Appellant

Vs.

1. R.Vengatasamy

2. The Commissioner of Sugar Mills
State of Tamil Nadu
696, Anna Salai
Nandanam, Chennai.

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent Act against the order passed by the learned Single Bench dated 12.9.2017 in W.P.(MD) No.15710 of 2017.

Prayer in WP(MD) . 15710/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records of the respondent passed in Ref.No.Estt/999/B5/2015 dated 12.11.2015 suspending the petitioner and quash the same and consequently direct the respondents 1 and 2 to reinstate the petitioner with all attendant benefits.

For Appellant : Mr.S.Saji Bino

For Respondents : Mr.S.Devasena
for 1st respondent

Mr.V.R.Shanmuganathan
Spl. Government Pleader
for 2nd respondent



JUDGMENT

(Delivered by the Hon'ble Chief Justice)

This appeal is directed against a judgment and order dated 12.9.2017 passed by the learned Single Bench allowing the writ petition filed by the Respondent No.1/writ petitioner, being W.P. (MD) No.15710 of 2017, and setting aside an order of suspension of the respondent No.1/writ petitioner dated 12.11.2015.

2. From the order under appeal it appears that the Respondent No.1/writ petitioner questioned the prolonged suspension vide the order dated 12.11.2015, on the ground that the appellant had not reviewed or reconsidered the suspension, even though a charge memo had been issued on 16.4.2016.

3. The charge memo may not have been issued within three months as contended by the Respondent No.1/writ petitioner before the learned Single Bench. The charge memo, however, was on the face of the documents on record issued on 16.4.2016, that is within five months and four days of issuance of the impugned order of suspension.

4. There does not appear to be any Rule or Regulation which makes it obligatory on the appellant to issue a charge memo within three months from the date of suspension. However, there can be no doubt that the charge memo has to be issued as expeditiously as possible.

5. The learned Single Bench relied on the judgment of the Supreme Court in *Ajay Kumar Choudhary v. Union of India and another*, reported in (2015) 7 SCC 291, wherein the Supreme Court held:

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature.

...

14. More recently, the European Convention on Human Rights in Article 6(1) promises that

"in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...."

and in its second sub article that:

"everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

.....

16. In *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the



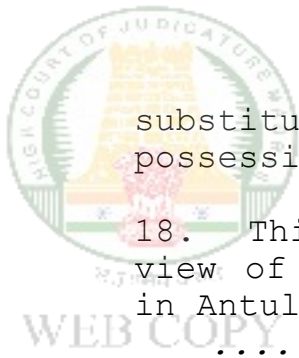
right of speedy trial as a fundamental right, and we can do no better the extract these paragraphs from that celebrated decision-

"86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. 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. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar* while dealing with Article 21 of the Constitution of India has observed thus:

No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right Under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right Under Article 21.

17. The legal expectation of expedition and diligence being present at every stage of a criminal trial and a *fortiori* in departmental inquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak*, 1992 (1) SCC 225, underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Code of Criminal Procedure, 1973; that it encompasses all stages, viz., investigation, inquiry, trial, appeal, revision and re-trial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind the case in hand directed that the Appellant's suspension would not be extended beyond 90 days from 19.3.2013. The High Court had set aside this direction, viewing it as a



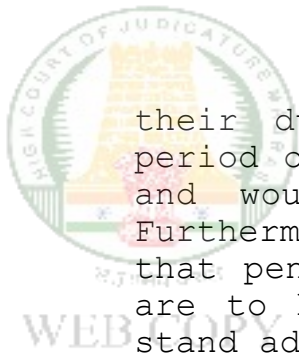
(4)

substitution of a judicial determination to the authority possessing that power, i.e., the Government.

18. This conclusion of the High Court cannot be sustained in view of the following pronouncement of the Constitution Bench in *Antulay*.....

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 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 *Raghubir Singh v. 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) of the Code of Criminal Procedure 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) Code of Criminal Procedure 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/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



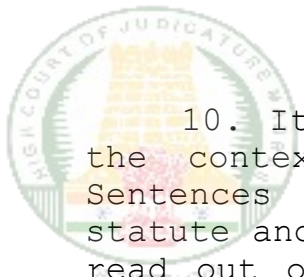
their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

6. With the greatest of respect to the learned Single Bench, *Ajay Kumar Choudhary* (supra) does not lay down any absolute proposition that a suspension order should be set aside whenever charges are not served within three months. On the other hand, the Supreme Court propounded the proposition that the principles of expedition and diligence at every stage of a criminal trial ought to be applied in case of departmental enquiries. At all stages, i.e., investigation, inquiry, appeal, revision, the burden lies on the prosecution and in this case on the employer to justify and explain the delay. The Court is to engage in a balancing test to determine whether this right had been denied in the instant case.

7. In the case before the Supreme Court, the Central Administrative Tribunal had, having regard to the facts and circumstances of the case, directed that the suspension of the appellant in that case could not be extended beyond 90 days from 19.3.2013. The High Court had set aside the aforesaid direction viewing it as a substitution of a judicial determination to the authority possessing the power, i.e., the Government. The Supreme Court set aside the pronouncement of the High Court as unsustainable.

8. In *Ajay Kumar Choudhary* (supra), the Supreme Court observed that if within three months the memorandum was not served, a reasoned order must be passed for the extension of the suspension. The Supreme Court also observed that the Government was free to transfer a 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 might have and which he might use for obstructing the investigation against him.

9. We are of the view that *Ajay Kumar Choudhary* (supra) does not lay down any absolute proposition that an order of suspension should never extend beyond three months. In fact, in *Ajay Kumar Choudhary* (supra), the Supreme Court observed that the directions regarding the restriction on extension of a suspension order beyond three months would not apply as the appellant had been served with a charge sheet. The appellant had only been given the liberty to challenge his continued suspension in any manner known to law, if so advised, and it was clarified that the action of the respondents in continuing suspension would be subject to judicial review. In our view, the learned Single Bench erred in setting aside the suspension placing reliance on *Ajay Kumar Choudhary* (supra).



10. It is well settled that a judgment is to be understood in the context of the facts in which the judgment is rendered. Sentences in a judgment cannot be read in the same manner as a statute and in any case, words and sentences in a judgment cannot be read out of context. In *Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others*, reported in (2002) 3 SCC 533, cited by Mr.S.Saji Bino, learned counsel appearing on behalf of the appellant, a Five Judge Bench of the Supreme Court held as under:

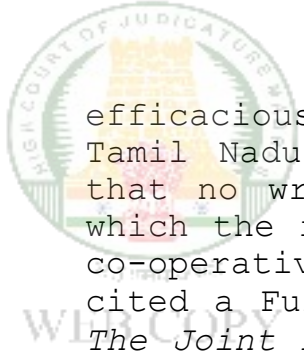
"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

11. In the instant case, as observed above, a charge sheet had been issued, though after five months and four days of the suspension. The learned Single Bench ought to have considered the question of whether the suspension should outright be set aside or allowed to continue upon consideration of all relevant facts and circumstances, including the nature of the charges.

12. The decision of the Supreme Court in *Ajay Kumar Choudhary (supra)* enunciates the proposition that principles of criminal law should be applied to departmental proceedings. Even criminal law permits incarceration beyond three months in serious and grave cases pending trial.

13. The learned counsel appearing on behalf of the appellant argued that the writ petition was disposed of at the admission stage without directions on the appellant to file their counter affidavit. Perhaps the allegation of the petitioner that the request of the petitioner to furnish documents mentioned in the charge sheet had not been conceded to in entirety, ought to have been adjudicated after giving the appellant an opportunity to counter such allegation. Admittedly, some of the documents were given. It was alleged that the most important documents had been refused. There is no reference in the order under appeal to the documents which had allegedly been refused and whether those documents were going to be relied upon in the enquiry and/or would have bearing on the enquiry. Before us, the appellant has contended that the documents had been supplied and has also disclosed a copy of an acknowledgment receipt.

14. The appellant has also contended that the writ petition ought not to have been entertained as the writ petitioner had an



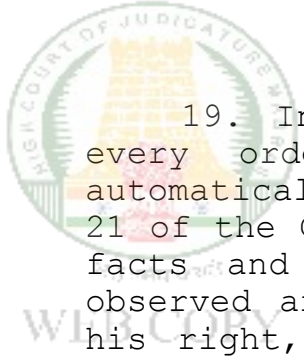
efficacious alternative remedy of appeal under Section 153 of the Tamil Nadu Co-operative Societies Act. In effect, it was argued that no writ would lie against Arignar Anna Sugar Mills Ltd., of which the respondent/writ petitioner was an employee, since it is a co-operative society. In support of his argument, the appellant cited a Full Bench decision of this Court in *T.K.Ananda Sayanan v. The Joint Registrar, Co-operative Societies*, reported in 2007-4-LW-724. It is submitted on behalf of the appellant that the co-operative society merely carries on business, it does not discharge any public duty or functions.

15. In support of his argument that the writ petition should be rejected on the ground of alternative remedy, Mr.Saji Bino, cited: (i) *Union of India v. T.R.Varma*, reported in AIR 1957 SC 882; (ii) *Veerappa Pillai v. Raman and Raman Ltd.*, reported in AIR 1952 SC 192; and (iii) *Y.Raja v. The Joint Registrar of Co-operative Societies*, 2011 (1) CTC 18.

16. The power of the High Court under Article 226 of the Constitution of India to entertain writ petitions is absolute, but discretionary. As a matter of discipline, the Courts do not entertain a writ petition where there is existence of an equally efficacious alternative remedy. However, the objection to entertaining a writ petition on the ground of existence of an alternative remedy should be taken at the first instance. Moreover, the existence of an alternative remedy is not a complete bar to the entertaining of a writ petition. Some of the recognized exceptions to the rule of alternative remedy, inter alia, include violation of the principles of natural justice. There were allegations by the respondent No.1/writ petitioner of violation of principles of natural justice by non supply of documents. Furthermore, objection to entertaining a writ petition on the ground of existence of an alternative remedy is to be taken at the first instance. Once a writ petition is entertained, it is not appropriate to reject the writ petition on the ground of existence of an alternative remedy alone. From the order under appeal, it does not appear that the appellant took the objection of existence of an alternative remedy before the learned Single Bench.

17. We do not find any patent error on the part of the learned Single Bench in not rejecting the writ petition on the ground of existence of an alternative remedy. None of the judgments cited by the appellant are authority for the proposition that a writ petition should be rejected on the ground of alternative remedy even though no objection may have been taken by the respondents.

18. It appears that in *T.K.Ananda Sayanan* (supra), the question was whether protection under Article 21 of the Constitution of India could be invoked in each and every case of suspension, termination or other orders passed in relation to the services of an employee of a co-operative society and whether a writ petition could be filed on that basis. The question was answered in the negative.



19. In *T.K.Ananda Sayanan* (supra), the Full Bench held that every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 of the Constitution enabling him to move the writ court. In the facts and circumstances of the aforesaid case, the Full Bench observed and held that for every alleged violation or invasion of his right, an employee of a co-operative society cannot move the Court on the ground that his right under Article 21 of the Constitution had been infringed.

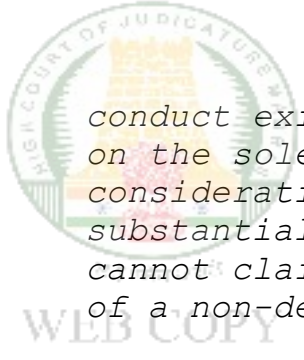
20. It is perhaps too late in the day to contend that an employee of a co-operative society could never move the writ court in case of wrongful suspension or disciplinary action. Whether a writ petition would lie against the co-operative society or not would depend on the nature of the functions performed, the composition and membership of the co-operative society and whether such co-operative society has the trappings of a State. We, however, find that the learned Single Bench has not considered the question of whether a writ would lie against the co-operative society in appeal before us, filed by its employee challenging an order of suspension. The aforesaid question would necessarily have to be decided only after calling for affidavits and, as stated above, after considering whether the co-operative society had the trappings of State.

21. The appellant also contended that the writ petition ought not to have been entertained as there had been delay in approaching the Court.

22. Delay does not debar the writ court from entertaining a writ petition. There is no hard and fast rule as to when the High Court should refuse to exercise jurisdiction in favour of a party who moves the writ petition after considerable delay and is otherwise guilty of laches, but such discretion must be exercised judiciously and reasonably as held by the Supreme Court in *Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors.*, reported in (2013) 1 SCC 353.

23. Whether the Court would entertain a writ petition, notwithstanding the delay, or reject the writ application on the ground of delay, would depend upon various factors, including the gravity of the impugned action, the extent of the injury caused to the writ petitioner by the impugned action, the reasons for the delay, whether the delay has resulted in crystallization of third party rights and interests, whether any vested right has accrued to the respondent by reason of delay and whether grant of relief will upset and/or unsettle settled things.

24. To quote the Supreme Court in *Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors.* (supra) "If the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where the circumstances justifying the



conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done, because of a non-deliberate delay".

25. In *H.D. Vora v. State of Maharashtra* reported in (1984) 2 SCC 337, the Supreme Court condoned delay of 30 years in approaching the Court, where it found violation of substantive legal rights of the applicant. In that case, the requisition of property was under challenge.

26. In *State of Maharashtra v. Digambar*, reported in (1995) 4 SCC 683, the Supreme Court held:-

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

20. Laches or undue delay, the blameworthy conduct of a person in approaching a court of equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Hurd* thus:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect



either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

.....
23. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blame-worthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

In *State of Maharashtra v. Digambar (supra)* the Supreme Court found there had been unexplained delay of 20 years in filing the writ petition.

27. In *Parag Construction v. State of Maharashtra and Ors. reported in (2008) 16 SCC 198*, the Supreme Court found that the appellant petitioners had maintained a sinister silence right from 1983 till 2006, when they ultimately filed the writ petition, and accordingly the Supreme Court held that the writ petition was belated.

28. In *Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors., reported in (2000) 2 SCC 48*, the Supreme Court held:

"....It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction, has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle, Hence, the equitable doctrine, namely, 'delay defects equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise. The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for



(11)

public purposes of school playground and roads in the development plan and may reason therefore, the notification to acquire the land has, therefore, been issued under the provisions of the Act as stated above."

29. In the aforesaid judgment the Supreme Court reiterated the doctrine delay defeats equity. The doctrine was, however, applied in the particular facts of the case where the land owner had not only refrained from challenging the acquisition notification, but had filed application for the execution of the award, but later, filed a writ petition challenging the notification under section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with section 6 of the Land Acquisition Act, 21 years after the issuance of the notification and 16 years after the award had been passed. The proposition that delay defeats equity is well established.

30. There can be no doubt that the Court might decline discretionary relief under Article 226 of the Constitution of India when there is delay and laches on the part of the petitioners.

31. In this case, however, there does not appear to have been such gross delay as to dis-entitle the writ petitioner to relief under Article 226 of the Constitution of India, having regard to the contentions raised by the petitioner in the writ petition. The writ petitioner, being under suspension with effect from 12.11.2015, the cause of action was/is continuing.

32. The writ appeal is allowed. The order of the learned Single Bench is set aside and the writ petition is remitted to the learned Single Bench for fresh adjudication upon affidavits, including adjudication on the question of maintainability of the writ petition against a co-operative society. No costs. Consequently, C.M.P.(MD) No.9189 of 2017 is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To:

1. The Commissioner of Sugar Mills
State of Tamil Nadu
696, Anna Salai, Nandanam, Chennai.
2. The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.
(for follow up and posting the WP(MD)No.15710/2017).

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84026

+ 1 CC TO Mr.S.SAJI BINO, ADVOCATE IN SR No. 83938

SASI

<https://hcservices.hcscourts.gov.in/hcservices/>
12/11/2017 : 11P/5C

W.A(MD) No.1312 of 2017
27.10.2017