

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.37971 of 2016

Date : 30.01.2017

Between :

Smt D.Neeraja W/o R.Srinivas, Aged about 39 years,
Occu: Bank Manager, R/o. Plot No.943, Defense Colony,
Sainikpuri, Secunderabad.

.....Petitioner

And

State Bank of Hyderabad, Prajashakti Building,
Baghlingampalli, Hyderabad, rep.by its Disciplinary
Authority/General Manager (Hyderabad network)
And another.

.....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.37971 of 2016

ORDER:

Petitioner is working in the capacity as Bank Manager in the service of State Bank of Hyderabad. She worked as Branch Manager of West Malkajgiri Branch during the period from 07.07.2014 to 01.01.2016. Petitioner was placed under suspension by order dated 16.01.2016 and by proceedings dated 17.10.2016 statement of imputation of charges were communicated to her. The Official Liquidator lodged complaint with Malkajgiri Police, which was later transferred to CBI and CBI registered crime bearing RC No.25(A)2015-CBI/ACB/ Hyderabad on 17.12.2015. It appears investigation is not completed so far.

2. The sum and substance of the charge memo communicated to the petitioner is that petitioner has utilized service of mediator/facilitator by name K.V.Ramana Rao for collection of deposits in violation of Bank Book of instructions; handed over 22 TDRs to Sri K.V.Ramana Rao, who sourced the deposits, for onward delivery at office of the Official Liquidator; opened TDRs in CIR and other Branches without verifying the authorized signature of the Official Liquidator in the home branch; opened TDR accounts for the amounts received through RTGs without obtaining KYC documents; failed to send confirmatory letter of Banks to the depositor through speed post/email/SMS; failed to make personal visit to the office of the Official Liquidator.

3. It is evident from the averments made in the affidavit filed in support of the writ petition that on a request sent by the petitioner

to Official Liquidator on 17.10.2015 an amount of Rs.9,86,11,679/- was transferred from Punjab National Bank by way of RTGs with a request to invest in TDR for a period of one year in the name of different companies. Accordingly, Branch issued 22 number of TDRs and same was sent through K.V.Ramana Rao, a retired Bank Employee. On 05.11.2015, Branch received a sealed cover from Official Liquidator's office enclosing one TDR for Rs.8,45,67,745 issued in the name of M/s. Allwyn Watches Limited with a request to close prematurely and credit the same into various accounts through RTGs. The TDR was closed and transferred the amount as requested by the Official Liquidator. Subsequently, Official Liquidator informed that he never sent TDR with a request to pre-close and original TDR is with the Official Liquidator only. Having found some illegalities in handing over these TDRs, Official Liquidator lodged police complaint. Crime was registered on the complaint lodged by the official liquidator.

4. In this writ petition, petitioner prays to issue the mandamus and to declare the action of the first respondent in continuing disciplinary proceedings against the petitioner even before completing the trial in criminal case pending on the file of CBI though the allegations in the departmental enquiry and criminal proceedings are similar and identical.

5. Heard Sri P.Nagendra Reddy, learned counsel for petitioner and Sri N.Vijay, learned counsel for respondent-Bank.

6.1. Learned counsel for petitioner submits that when allegations in the criminal complaint lodged against the petitioner and the

allegations in the domestic enquiry are one and the same and concerning the same issue, the domestic enquiry proceedings should be stayed till criminal proceedings are concluded. If the proceedings are simultaneously conducted, grave prejudice would be caused to the petitioner. If the petitioner is compelled to participate in the departmental proceedings, she will be forced to disclose her defence and would result in compromising on her defence in the criminal proceedings. He would therefore submit that the disciplinary proceedings ought to be stayed till the criminal proceedings are concluded.

6.2. By referring to various allegations levelled in the domestic enquiry and in the remand report filed by the CBI in the Court of Principal Special Judge for CBI Cases at Nampally, Hyderabad, he would contend that, this would show that the allegations are one and the same.

6.3. In support of his contention that departmental proceedings should be stayed pending criminal proceedings, learned counsel placed reliance on the decision of the Supreme Court in the case of **Stanzen Toyotetsu India Private Limited vs. Girish V and others¹**, **State Bank of India and others v Neelam Nag and another²** and **Capt. M.Paulanthony v. Bharat Gold Mines Ltd and another³**.

7.1. Learned counsel appearing for respondent-bank would submit that departmental proceedings and criminal proceedings are entirely different and there is absolutely no bar in conducting

¹ (2014) 3 SCC 636

² (2016) 9 SCC 491

³ (1993) 3 SCC 679

departmental proceedings even while criminal proceedings are pending.

7.2. He would further submit that the criminal proceedings are only at the stage of conducting investigation into the crime registered against the petitioner and, therefore, at this stage conducting departmental proceedings is not barred even as per the decisions relied by the counsel for petitioner.

7.3. He would further submit that the allegations levelled in the departmental proceedings are on violation of service regulations and the circular instructions and, therefore, the allegations in the departmental enquiry are independent of the criminal charges.

7.4. He would further submit that petitioner has already submitted her explanation on 08.02.2016, prior to issuance of charge memo and after the charge memo was issued, statement of defence was filed on 03.11.2016 and, therefore, the plea of prejudice on discloser of defence is no longer available to the petitioner. Copy of the statement of defence dated 03.11.2016 is enclosed to the counter-affidavit filed on behalf of the respondent-bank.

8. The facts which are not in dispute are, crime registered against the petitioner is at the stage of investigation and so far charge memo is not filed; the criminal complaint was lodged by official liquidator; and petitioner has already submitted her defence statement in response to the charges framed against her in the domestic enquiry.

9. The issue for consideration in this writ petition is whether a mandamus can be issued to disciplinary authority to defer the disciplinary proceedings pending investigation into Crime No.RC25(A)2015-CBI-ACB/Hyderabad ?

10. Disciplinary proceedings and criminal proceedings operate in two different fields. Disciplinary action is taken against an employee when employer loses trust and confidence in the employee on account of misconduct committed by him and also affecting the image and reputation of the employer. Criminal proceedings relate to committing of crime, by a person against society. If such crime is committed by a person, who is in public employment, during the course of his employment and in gross abuse of his position in the service, ordinarily employer not only initiates departmental action but also lodges complaint with the police.

11. The relationship of employee-employer is based on trust and confidence of the employer on the employee. If the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service. However, before taking action against an employee in public service, the employer is required to follow due process and on establishment of charges leveled against him, appropriate punishment can be imposed. In domestic enquiry on the charges leveled against the employee what is required is preponderance of probabilities to establish the charges. Circumstantial evidence can be taken into consideration to hold that the charge is proved and to impose appropriate punishment.

12. Nature of evidence required in the criminal proceedings is quite different from the nature of evidence that is required in departmental proceedings. Criminal law requires that the charges leveled against a person must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt will go against the prosecution.

13.1. There is long line of precedents on the issue of desirability to continue domestic enquiry pending criminal investigation/trial.

13.2. In **CAPT M.PAUL ANTHONY** (supra), Supreme Court has delineated the principles on the desirability of continuing disciplinary proceedings during the pendency of the criminal proceedings. The parameters of judicial intervention are set out in para 22. They read as under:

“22. The conclusions which are deducible from various decisions of this Court referred to above 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 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 the 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.”

13.3. In **State of Rajasthan v. B.K.Meena and others**⁴, Supreme

Court held as under:

“14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be ‘desirable’, ‘advisable’ or ‘appropriate’ to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that “the defence of the employee in the criminal case may not be prejudiced”. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, ‘advisability’, ‘desirability’ or ‘propriety’, as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.

.....

One of the contending considerations is that the disciplinary enquiry cannot be — and should not be — delayed unduly.

.....

While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.”

13.4. In **Stanzen Toyotetsu** (supra), Supreme Court reviewed

the entire case law on the subject and held as under:

“8. The law on the subject is fairly well settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any straitjacket formula for application to all cases, the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the courts concerned to take an appropriate view in the

⁴ AIR 1997 SC 13

peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short-cut solution to the problem. ***What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously.***

.....
.....

13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. ***Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.***

.....
.....

16.The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. 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 ongoing disciplinary proceedings on the other. ***An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.***

(emphasis supplied)

14. Broad principle that emerges from the precedent decisions is, ordinarily disciplinary action should not be stayed even when criminal case is pending on the same set of facts and law. In several decisions including ***Stanzen Toyotetsu***, Supreme Court held that if the employee has already disclosed the defence in the explanation submitted by him, he is not entitled to ask to defer enquiry.

15.1. In ***Neelam Nag***, charges were already framed, trial commenced and three prosecution witnesses were examined. The

respondent also placed reliance on Clause-4 of the Memorandum of Settlement dated 10.04.2002 which give protection to the Clerk at the time of initiation of disciplinary proceedings.

15.2. While emphasizing the need to provide the delay in conclusion of the disciplinary proceedings in the larger public interest, having regard to the peculiar facts of the case, Supreme Court directed the deferment of disciplinary action for a period of one year while simultaneously directing the trial Court to decide expeditiously for not later than one year. Supreme Court also granted liberty to revise disciplinary proceedings if the trial is not completed within the time granted. Thus, the said case do not come to the aid of the petitioner.

16. As seen from the precedent decisions, the parameters to stay the disciplinary proceedings pending criminal proceedings depends on facts and circumstances of given case. Ordinarily, the disciplinary proceedings should not be stayed. Common thread in all the precedent decisions is there should not be inordinate delay in conducting domestic enquiry. Supreme Court held that even if charges are same and evidence is same, if there is a likelihood of delay in concluding the criminal case, departmental proceedings should be allowed to be completed. In the instant case, the criminal complaint lodged by the Official Liquidator is only at the stage of investigation. It is not known how much time CBI would take to complete the investigation and lay the charge sheet. Thus, in the instant case even the parameters set out by the Supreme Court in the precedent cases referred to above, within the limited scope to stay the domestic enquiry, are not attracted.

17. I do not see any error in the decision of the disciplinary authority in proceeding with the disciplinary action. I see no merit in the contentions urged to entertain the writ petition and to stay the domestic enquiry. In the facts of this case, the Court is not inclined to exercise its discretionary jurisdiction and grant relief to petitioner.

18. The writ petition is accordingly dismissed. However, if the investigation into Crime No.RC25(A)2015-CBI/ACB/Hyd results in laying of charge sheet before the domestic enquiry is completed, it is open to the petitioner to apply to the disciplinary authority to stay the domestic enquiry till the criminal case is disposed of and the dismissal of the writ petition do not come in the way of consideration of such request. It is also made clear that the discussion in the above paragraphs is for the purpose of disposal of the issue for consideration in this case and there is no expression of opinion on merits of the allegations and the defence of the petitioner is preserved.

Miscellaneous petitions pending if any shall stand closed.
There shall be no order as to costs.

Date: 30.01.2017
kkm

JUSTICE P.NAVEEN RAO

HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.37971 of 2016

Date : 30.01.2017

kkm