

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION No. 4553 of 2017

%7.3.2017

M Raghunath S/o Laxminarayana
Deputy Superintendent (P)
TSRTC, Thorrur depot, Warangal & 2 others

... Petitioners

Vs.

\$ Telangana State Road Transport Corporation
Rep by its MD, Hyderabad
And others

.... Respondents

!Counsel for the petitioner : Sri A Jagan

Counsel for the Respondents : Sri G Vidyasagar senior counsel
for Sri B Mayur Reddy

<Gist :

>Head Note:

? Cases referred:
(1996) 6 SCC 257
AIR 1987 SC 2257
[(1994) 4 SCC 126]
(2013) 16 SCC 147
AIR 1997 SC 2559
2009 (4) ALT 530 (DB)
(2015) 7 SCC 291



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

WRIT PETITION No. 4553 of 2017

BETWEEN:

M Raghunath S/o Laxminarayana
Deputy Superintendent (P)
TSRTC, Thorur depot, Warangal & 2 others

... Petitioners

Vs.

Telangana State Road Transport Corporation
Rep by its MD, Hyderabad
And others

.... Respondents

JUDGMENT PRONOUNCED ON : 7.3.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? : YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to : YES
See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No. 4553 of 2017****ORAL ORDER:**

Petitioners are presently working in the cadre of Deputy Superintendent in Telangana State Road Transport Corporation (TSRTC). At the relevant point of time, all the petitioners were working in Thorurur depot of the respondent corporation; Petitioners 1 and 2 were working in the Personnel department and third petitioner in Finance department. First petitioner continues to work in the same depot, whereas, petitioners 2 and 3 are later transferred and working in other depots. By the orders impugned individually passed against three petitioners, they are placed under suspension. Petitioners challenge the said suspension order in this writ petition on the ground that it was resorted to in a selective manner by adopting pick and choose method and is made in arbitrary exercised of power.

2. Heard Sri A. Jagan learned counsel for petitioners and Sri G.Vidyasagar, learned senior counsel for Sri Mayur Reddy, standing counsel for respondent corporation.

3.1 Sri Jagan, contended that the issue on which the order of suspension is passed, relates to the period 2014-15 and two petitioners are not working at the place of incidence. The allegations in the suspension order relate to improper assessment of rent collectable from the tenants and recovery of dues and what is alleged, at the most, amounts to procedural irregularity and therefore suspension from service is not warranted.

3.2. He would emphasize that there is no allegation of misappropriation of funds of the corporation or collusion with the tenants to cause loss to the respondent corporation. He further

submitted that all dues payable by the license holders were paid and there are no arrears due to the corporation.

3.3. He further submitted that suspension is also liable to be set aside on the ground that the petitioners were alone targeted and placed under suspension and it amounts to selective suspension. According to preliminary enquiry conducted by the respondent corporation, there are several other employees who are also held responsible similar to the petitioners; however, no disciplinary action is initiated against them and they are not placed under suspension. He would submit that officers below and above the rank of petitioners are not suspended and that the allegations related to Finance and Accounts branches but none of the employees working in Finance and Accounts branches are suspended. In paragraph 4 of the affidavit filed in support of the writ petition, petitioners referred to names i.e., Smt Rajeswari, Accounts Officer, Sri K.Rajeshwar Rao, Deputy Superintendent (F), Sri Veeraiah, Junior Assistant (F), Sri B Nageswara Rao, Junior Assistant (F), Sri P.T.Reddy, Junior Assistant (F) and Sri Venkateswara Rao, D.E (E), who are not suspended. He therefore submitted that on this ground, order of suspension is liable to be suspended. It is illegal to resort to selective suspension.

3.4. By relying on Accounts Circular No. 19/ 1994 AD dated 17th August, 1994, Mr Jagan contended that the said circular would show that the Finance and Accounts Sections are alone responsible in these matters, whereas petitioners were working in personnel branch and though this circular instructions are very clear, persons working in Finance and Accounts Sections

were not proceeded against and illegally petitioners are implicated. It is thus vindictive.

3.5. In support of his contentions, he placed reliance on the decision of the Supreme Court in **K.SUKHENDAR REDDY Vs. STATE OF A.P. AND ANOTHER**¹ and judgment of learned single Judge of this Court in W.P. No. 16165 of 2013 (D.POSHETTY Vs. APSRTC) dated 1.7.2013.

4.1 Sri G Vidyasagar, senior counsel, refuted the contentions of the counsel for petitioner on the ground of discrimination and selective suspension.

4.2 He would submit that suspension from service is not punishment. It is not the case of the petitioners that authority that passed orders of suspension is not competent to place them under suspension. The order of suspension is passed based on the material available on record. On prima facie consideration of delinquency, the competent authority passed the order of suspension. It is also not a case of prolonged suspension. He would thus contend that same cannot be interfered with. He would therefore submit that the parameters of judicial review are not satisfied in the case on hand to set at naught order of suspension.

4.3 He further submitted that on account of dereliction of duties by the petitioners, the respondent corporation was exposed to financial loss. Merely because amounts due were subsequently recouped, cannot be a ground to set at naught the alleged delinquency.

¹ (1996) 6 SCC 257

4.4 With reference to the allegation of selective suspension, he would submit that detailed explanation is furnished by the deponent to the counter affidavit in paragraph-9. By referring to the averments in paragraph-9, he would submit that each case was examined and having regard to the nature of duties and responsibilities of employees concerned and their involvement, decision was taken independently. Having found that *prima facie* no allegation, much less serious allegation, can be leveled against some of the employees named in paragraph-4 of the affidavit filed in support of the writ petition, they are not placed under suspension. Wherever the competent authority felt that the allegations are grave, order of suspension was passed. As per the instructions in vogue, PD and AD supervisors have to verify the particulars of the stalls whose license fee is due and have to reconcile the statement. He would submit that *prima facie*, material on record would disclose that P.D. Supervisor had to authorize payment and stall rents by the licensee and cash remittance form has to be signed by the PD supervisor; PD supervisor has to provide a list of the stalls for which rents are due. On account of the negligence on the part of the petitioners for several stalls, license fee was not collected. He would therefore submit that the contention of the counsel for the petitioners that petitioners were not responsible for collection of the license fee is not correct.

4.5 He would further submit that the principle laid down in **K.SUKHENDAR REDDY** has no application to the facts of this case. Having regard to the peculiar facts of said case and as he was on prolonged suspension, the Supreme Court held the

suspension of appellant therein as illegal. The case on hand is not a case of prolonged suspension; disciplinary proceedings have already commenced and would be concluded within a fixed time frame.

4.6 On the allegation that circular instructions dated 17.8.1994 are violated, learned senior counsel contended that the said circular is not applicable to the facts of this case. Said circular is applicable to functioning of finance wing in the regional offices, whereas, petitioners were working in depot.

5. The duties and responsibilities, conduct and discipline of an employee in public service are governed by service rules/regulations. On allegation of misconduct, employer is entitled to take disciplinary action which may result in dismissal/ removal from service. The power to suspend an employee flows out of power to take disciplinary action on allegation of misconduct. The conduct rules/ regulations delineate the power of suspension and competent authority to exercise such power. When an allegation of misconduct comes to the notice of disciplinary authority and in the opinion of disciplinary authority that it is not desirable to entrust duties to the delinquent employee while enquiry/ investigation is in progress/contemplated, he may place services of an employee under suspension. Suspension from service results in temporary withdrawal of duties and responsibilities of the delinquent employee. During the period of suspension the relationship of master and servant remains; the employee continues to be on the rolls of employment and is not entitled to take up any other assignment. He is still amenable to disciplinary control of the

employer for any other misconduct. He is only disabled from attending to his work. For his sustenance during the period of suspension, he is paid allowance which in normal parlance called 'subsistence allowance'. It is normally fixed at 50% of last pay drawn, which can be enhanced to 75%.

6. Ordinarily an employee's services can be placed under suspension in the following contingencies:

- a) Where disciplinary proceedings are contemplated or pending;
- b) Where the disciplinary authority was of the prima facie opinion that the employee is engaged in activities prejudicial to the interest and security of the State;
- c) Where the case against him in respect of criminal offence is under investigation, enquiry or trial;
- d) Pending investigation/ enquire into allegations, it is found not desirable to continue the employee in service in public interest;
- e) Such continuation in service during pending enquiry/ investigation is likely to prejudice the investigation, trial, enquiry; there is a possibility of tampering of documents, influencing the witnesses, etc;
- f) It is also permissible to suspend an employee if his continuation is likely to cause /encourage indiscipline in the organization.

7. In matters of suspension, there are two competing interests. On the one side is employer's eagerness to ensure transparent operation of public service and to enforce discipline.

Therefore, he would mince no words to take disciplinary action when it comes to his notice of misconduct. When allegations are grave/ disobedience is palpable, it is also in public interest to place such employee under suspension. On the other hand is the concern of the employee. It is an accepted fact that though suspension does not take away the employment and is not a punishment per se, but it has deleterious effect on the employee and his family and attaches stigma as he would be looked down in the community whenever person is placed under suspension. The suspension from service continues for months together and in many cases for years together.

8. In matters of suspension, the exercise of extraordinary power of judicial review vested in this court under Article 226 of the Constitution of India is very limited. Scope of consideration is limited to the extent of examining the competence of the authority who places an employee under suspension; arbitrary exercise of power; selective suspension; allegations are frivolous/ technical in nature; suspension was wholly unwarranted; and there was no application of mind. Court can also examine the justification for further continuation in suspension if suspension is prolonged and there is no progress in the domestic enquiry and delay is not attributable to employee. In matters of suspension, each case has to be examined in the factual back ground of given case.

9. In exercise of power of judicial review, Writ Court has to resort to balancing process to assess the competing interests of employee and employer, within the narrow compass. Be it noted

employer's right to regulate the behavior of his employees is unfettered. What is required, more particularly in public employment, whether there is any transgression in exercise of such power by authority enjoying power of disciplinary control, within well laid down parameters of judicial review. Judicial review is intended to check excesses by the public authority, but not to act as appellate authority and undertake microscopic scrutiny of his decisions.

10.1. At this stage, it is necessary to parade briefly the precedent pronouncements of Supreme Court and this Court on the issue of suspension.

10.2. In **O.P. GUPTA V. UNION OF INDIA**², Supreme Court held that order of suspension should not be lightly passed:

“15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair.....**The real effect of the order of suspension as explained by this Court in *Khem Chand v. Union of India*¹ is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended.** There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression “subsistence allowance” has an undeniable penal significance. The dictionary meaning of the word “subsist” as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is “to remain alive as on food; to continue to exist”. “Subsistence” means — means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, **an order of suspension is not to be lightly passed against the government servant.** In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni*² the court held that the expression “life” does not merely connote animal existence or a continued drudgery through life. The expression “life” has a much wider meaning. Suspension in a case like the present

² AIR 1987 SC 2257

where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action.....”(emphasis supplied).

10.3. In **STATE OF ORISSA Vs BIMAL KUMAR MAHANTY**³

Supreme Court laid down parameters of suspension and scope of judicial review. Supreme Court held:

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. ***It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.*** The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. ***Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc.*** But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. ***The suspension must be a step in aid to the ultimate result of the investigation or inquiry.*** The authority also should keep in mind public interest of the impact of the delinquent’s continuance in office while facing departmental inquiry or trial of a criminal charge.”

(Emphasis supplied)

³ [(1994) 4 SCC 126]

10.4. In **UNION OF INDIA V. ASHOK KUMAR AGGARWAL**⁴, Supreme Court held,

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or **indiscipline or refusal to carry out the orders of superior authority** are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on *the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available.* It cannot be actuated by *mala fide, arbitrariness, or for ulterior purpose.* Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. *However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc (emphasis supplied).*

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, **it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues.** The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner but *with due care and caution after taking all factors into account.”*

(emphasis supplied)

⁴ (2013) 16 SCC 147

10.5. In **SECRETARY TO GOVERNMENT AND ANOTHER Vs K.MUNNIAPPAN**⁵, Supreme Court held:

“order of suspension can be resorted to pending further investigation or contemplate disciplinary action in only grave charges. ***It is permissible to place an employee under suspension only grave charges in contemplation of the disciplinary action***” (emphasis supplied)

10.6. In **DEPUTY INSPECTOR GENERAL OF POLICE, KURNOOL RANGE Vs R S MADHUBABU, RSI, KURNOOL DISTRICT, KURNOOL**⁶, Division Bench of this Court held as under:

“18. Having regard to the facts and circumstances of the case, we are of the opinion that the Tribunal ought not to have interfered with the order of suspension passed by competent authority, particularly when the authorities have got the power under Rule 8 of the APCS (CCA) Rules 1991 to place an employee under suspension pending enquiry. All the aspects have to be gone into by the fact finding authority and the enquiry will disclose the truth and otherwise of the allegations. ***Further, it is settled preposition of law that suspension pending enquiry cannot be interfered with and the Courts can direct only to conclude and complete the proceedings.*** In the circumstances of the case, the Tribunal instead of directing the authorities to complete and conclude the disciplinary proceedings pending against the respondent within the time frame, exceeded its limit and over stepped its jurisdiction by directing the authorities that he should be transferred to a far off place, which is impermissible under law and unwarranted. As the task undertaken by the Tribunal is impermissible under law, the order passed by it suffers from various serious legal infirmities and therefore, the impugned order is liable to be set aside.” (emphasis supplied)

10.7.1. In **AJAY KUMAR CHOWDHARY Vs UNION OF INDIA**⁷ Supreme Court considered the justification for prolonged suspension, the right of employee to seek speedy trial and disposal of disciplinary proceedings.

⁵ AIR 1997 SC 2559

⁶ 2009 (4) ALT 530 (DB)

⁷ (2015) 7 SCC 291

10.7.2. Supreme Court held as under:

“12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — **“We will sell to no man, we will not deny or defer to any man either justice or right.”** In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

.....

.....

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 authorise 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 Division Bench in *Raghubir Singh v. State of Bihar* [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and more so of the Constitution Bench in *Antulay* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , ***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) 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. ***We recognise 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.***

(emphasis supplied)

11. The principles that can be culled out from above precedent decisions are:

- (i) The real effect of the order of suspension is that employee continues to be a member of service of employer but is not permitted to work and further, during the period of suspension he is paid subsistence allowance;
- (ii) It would not be as an administrative routine or an automatic order to suspend an employee and not to be lightly passed. It should be on consideration of the

gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee;

- (iii) Suspension must be a step in aid to the ultimate result of the investigation or inquiry;
- (iv) The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground; should not be vindictive and in misuse/abuse of power;
- (v) Suspension should be made only when there is a strong prima facie case of delinquency;
- (vi) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered;
- (vii) Order of suspension can be resorted to pending further investigation or contemplated disciplinary action only on grave charges;
- (viii) Competent Authority should take into consideration relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent is not placed under suspension;
- (ix) Suspension should not be continued for long time. Soon after suspension, charges should be drawn and served and disciplinary proceedings should be concluded as expeditiously as possible;
- (x) Prolonged suspension without reasons recorded in support of the continuation under suspension is not valid.

12. Guided by the above principles, it is necessary to assess the respective contentions of learned counsel. It was the forceful submission of learned counsel for the petitioner that the order of suspension of the petitioners is vitiated on the ground that it amounts to arbitrary exercise of power and is vindictive and that it amounts to selective suspension. With equal vehemence, senior counsel defended the decision of the respondent corporation.

13. Placing an employee under suspension and taking disciplinary action is individual to each of the employees. In a given case, there may be more number of employees involved in dealing with the subject. Merely because employees were working in a particular office or section during the particular period where alleged irregularities are noticed, cannot automatically result in suspension of all of them and/or initiating disciplinary proceedings on all of them. Mass suspension without regard to involvement in alleged misconduct merely based on place of posting or office can be frowned upon as amounting to arbitrary exercise of power. It is thus necessary for the disciplinary authority to look into the issue, identify the employees alleged to be responsible for committing the misconduct, segregate them from other employees and initiate appropriate action.

14. Thus, the contention of selective suspension requires to be examined with reference to alleged involvement of employees working in a particular branch of the corporation and nature of delinquency alleged against them. Learned counsel for petitioners contended that the Accounts Officer, Deputy Superintendent (F), Junior Assistants working in the Finance division and DE (E) who were concerned with the subject of disciplinary action, but were

left out and only petitioners are placed under suspension. Names of employees are mentioned in paragraph 4 of the affidavit filed in support of the writ petition.

15. In response to the said allegation, in the counter affidavit deposed by Sri R Shiva Kumar, Law Officer of respondent corporation, it was asserted that involvement of each employee was considered and having found that some of the employees are not involved in the misconduct or their delinquency is not as grave as alleged against the petitioners, some of them were left out from disciplinary action and others were not placed under suspension, though disciplinary action is also initiated against them. It is specifically contended in paragraph 9 that on prima facie examination of the record, it was found that in so far as Sri K Rajeswara Rao, Deputy Superintendent (F) is concerned, he erroneously showed the license fee as due from a particular shop, though the licensee was not handed over possession of the shop till November, 2012. Thus, from May, 2011 to October, 2012 the licensee was not liable to pay license fee. It was therefore found that it was only a calculation error and thus he was not placed under suspension. It was further asserted that Sri Veeraiah, Sri B.Nageshwar Rao, Sri P.T.Reddy, were working as Junior Assistants (F) under the supervisors and as per the circular instructions, responsibility could not be fixed on them. It was also asserted that in fact Sri Veeraiah, noticed the irregularities and submitted the report based on which action is set in motion. It was asserted that petitioners were working as supervisors (PD/F) in Thorrur depot during the relevant period and according to the circular instructions, supervisors are responsible for assessment

and collection of license fee/rents and therefore primary responsibility is fixed on them and thus, it is not a case of selective suspension. Learned senior counsel by placing reliance on these averments contended that there was no selective suspension.

16. *Prima facie*, as seen from the circular instructions dated 19.2.2014 enclosed at running page no.62 to the counter affidavit, Supervisor should provide a note on monthly due list of stalls rents and other receipts to DC (E) on first day of every month and also mark one copy to the Accounts Supervisor; stall licensee should get the cash remittance form entrusted by the Supervisor and verified by the Accounts Supervisor authorizing the remittance to pay cash. The DC (E) section would accept the cash and issue MR only after receiving the authorization by the PD and AD Supervisor. The Accounts Supervisor is required to record details of the pre-remittances in a register and confirm cash remittances. The remittance particulars should also be entered in the register. He is also required to cross check the stall rents register with the realizable amount. Thus, *prima facie* reading of this circular would show that responsibility is vested on the Supervisor to ensure that the rents are collected properly. It is common knowledge that one of the major source of revenue to the corporation is by leasing out its properties and proper collection of rents from the licensees is essential to augment its resources and utilization of the said amounts for its maintenance and developmental purposes. Petitioners admit that during the relevant period they were working in Thorrur depot to which period allegations are made.

17. Whether petitioners were responsible for the alleged illegalities; whether action of the petitioners was not deliberate or intentional; whether failure of petitioners to discharge their duties properly lead to causing loss to Corporation; and whether the Corporation was subjected to loss/ exposed to loss are all matters which have to be gone into in the domestic enquiry. On the date of suspension order, charge sheet was also drawn and served on the petitioners leveling various allegations. It is premature for this Court to express any opinion on merits of the alleged delinquency of the petitioners and their role and responsibilities vis a vis the nature of allegations made, when disciplinary enquiry is pending. What is pointed above is only to show that, *prima facie*, Supervisor is vested with the responsibility for proper assessment of rent from the licensee, monitoring of remittances and taking steps for collection of rents if rents are not properly remitted. As per provisional assessment of disciplinary authority petitioners are answerable to the allegations and, therefore, they are suspended.

18.1. The decision in **K.SUKHENDAR REDDY** does not come to the rescue of petitioners. K.Sukhendar Reddy was an All India Service Officer, he was governed by All India Service (Discipline) and Appeal Rules, 1969 (for short the Rules, 1969). Rule 3 the Rules 1969, vests power in the competent authority to place an All India Service Officer under suspension, 1) if disciplinary proceedings are pending under Sub Rule (1); and (2) if he is involved in a criminal case under Sub Rule (3). K.Sukhendar Reddy was placed under suspension on 6.2.1997 under Rule 3 (1) the Rules 1969, but later replaced by another order which spelt out that disciplinary proceedings were not contemplated but officer

was involved in a criminal case. Supreme Court noticed that by the time appeal has come up before the Supreme Court also, the CID was still investigating into the crime and charge sheet was not filed. Supreme Court also noticed that as per the record of investigation there was a possibility of involvement of more IAS officers, even senior to the appellant, though nothing positive and definite could be said as yet, as investigation would likely to take time. Supreme Court therefore observed that officer could not have been kept under suspension for indefinite period and in that context also observed where many more senior officers would ultimately be found involved but appellant alone was placed under suspension. In the said context, Supreme Court held 'Government cannot be permitted to resort to selective suspension' and sets aside the order of suspension. It was also a case of prolonged suspension.

18.2. It is useful to extract para 7 of the order:

"7. Another vital fact which has come on record is that in the criminal case a number of senior IAS officers, even senior to the appellant, may be found involved, but nothing positive or definite can be said as yet as the investigation is likely to take time. The matter is pending with the police since 1-12-1996 when the FIR was lodged at Anakapalli Town Police Station. The investigation has not been completed although about two-and-a-half years have passed. We do not know how long it will take to complete the investigation. That being so, the officer of the rank of the appellant, against whom it has now come out that the disciplinary proceedings are not contemplated, cannot be kept under suspension for an indefinite period, particularly in a situation where many more senior officers may ultimately be found involved, but the appellant alone has been placed under suspension. The Government cannot be permitted to resort to selective suspension. It cannot be permitted to place an officer under suspension just to exhibit and feign that action against the officers, irrespective of their high status in the service hierarchy, would be taken."

19. In W.P.No.16165 of 2013, conductor was placed under suspension on the allegation of short remittance of money. This Court observed that on noticing the short remittance, petitioner himself repaid the money, almost immediately and it is not a case where upon detection by the higher official the remittance was made. This Court therefore observed that there appears to be semblance of *bona fide* conduct on the part of the petitioner in rectifying his error of judgment. For an error of judgment committed by a conductor, misconduct attributable would relatively be in a minor scale which at the best would attract imposition of a minor punishment. It was also observed that placing an employee under suspension for months together is also unjust and imposing of minor punishment, suspension is not prescribed by the regulations. Having regard to these findings, the Court found that the suspension was wholly illegal. The said decision also does not come to the rescue of the petitioners herein.

20. On detailed analysis of facts on record, the suspension from service of petitioners cannot be termed as a selective suspension. The explanation offered by the respondents in their counter affidavit, cannot be brushed aside to hold that the petitioners were alone picked up excluding others concerned with the same incident. It is not in dispute that petitioners were working at the relevant point of time in the Thorrur depot. A preliminary enquiry was conducted. The Disciplinary Authority had material before him to assess, *prima facie*, delinquency committed by petitioners and having considered material on record, the orders of suspension were passed. Vague allegation of *mala fide* cannot be a ground to nullify order of suspension and it

cannot be said that disciplinary authority was prejudiced. It cannot be said that suspension is resorted to in arbitrary exercise of power and in a vindictive manner; and their suspension cannot be termed as selective suspension.

21. The writ petition is dismissed accordingly. It is made clear that there is no expression of opinion on merits. The defense of petitioners is preserved. It is open to petitioners to raise all contentions including contentions urged in this writ petition in the disciplinary proceedings. It is needless to observe that the disciplinary action should be completed expeditiously and that the petitioners shall cooperate for early conclusion of disciplinary proceedings. It is also needless to observe that for any reason there is delay in concluding the disciplinary proceedings not attributable to petitioners, the desirability of further continuation of their suspension should be reviewed. No costs. Miscellaneous petitions if any pending shall stand closed. There shall be no order as to costs.

P NAVEEN RAO,J

DATE: 07 -03-2017
TVK

Note : L R Copy to be marked—YES

HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No. 4553 of 2017

Date : 07-03-2017

L R Copy to be marked--YES