

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5856 of 2019

Shambhu Nath Mishra S/o Shri Dilip Kumar Mishra Aged About 42 Years
Assistant General Manager, At Food Corporation Of India , Regional Office,
Ranchi Jharkhand, R/o Bhramapur, Police Station Bihpur, District Bhagalpur
Bihar.

---- Petitioner

Versus

1. Managing Director Food Corporation Of India, 16-20, Barakhamba Lane,
New Delhi- 110001., District : New Delhi, Delhi
2. Regional Office Food Corporation Of India, Vidhan Sabha Road, Kapa
Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Sunil Otwani, Advocate
For Respondents	:	Mr. R.S. Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/08/2019

1. The prayer made by the petitioner in the present writ petition is for staying/quashing of the departmental enquiry pending the criminal case against the petitioner.
2. The contention of the petitioner is that for the same charges the petitioner has already been subjected to a criminal prosecution for the offence punishable under Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and Sections 420, 467, 468, 471, 477-A read with Section 120(B) of Indian Penal Code. That for the same set of facts, the Department has also decided to conduct a departmental enquiry and charge-sheet also has been issued and there are all likelihoods of the defence of the petitioner getting adversely affected in case if the petitioner is made to lead evidence prior of the criminal trial.

3. The petitioner also has claimed for an appropriate direction to the respondents for providing the documents which have been shown along with the list of documents enclosed with the charge-sheet in as much as one of the documents that is reflected in serial No.5 of Annexure-3 of the charge-sheet has not been provided to the petitioner and which are the most relevant documents for defending himself in the departmental enquiry.
4. So far as the first contention of staying of criminal case is concerned, taking into consideration the recent decision of the Hon'ble Supreme Court in the case of “**Shashi Bhushan Prasad v. Inspector General, CISF**” decided on 01.08.2019 in Civil Appeal No. 7130/2009 and also the decision rendered by the Hon'ble Supreme Court in the case of “**State Bank of India and others v. Neelam Nag and another**” (2016) 9 SCC 491 and “**Stanzen Toyotetsu India Private Limited v. Girish V. and others**” (2014) 3 SCC 636, this Court is of the opinion that the Hon'ble Supreme Court has reiterated the principles that the criminal case as well as the departmental enquiry can proceed simultaneously unless the issue involved in the case is having complicated questions of law and facts.
5. Moreover, what has to be seen is that the criminal case in the instant case has not been progressed much. The F.I.R. though was lodged on 07.06.2016 and the charge-sheet was filed before the Criminal Court on 31.12.2017 till date charge itself has not been framed against the petitioner, whereas on the other hand, the Department has proceeded to conduct the departmental enquiry by issuance of the charge-sheet dated 18.05.2017.
6. Initially, an Inquiry officer was appointed, against whose appointment the petitioner has certain apprehensions and on the objection of the petitioner, the Inquiry officer has been changed and a new Inquiry officer has been appointed.

7. Given the said facts that since the criminal case itself has not reached at the evidence stage, this Court is of the prima facie opinion that no prejudice as such would be caused as of now, if the Department is permitted to proceed with the departmental enquiry.
8. The prayer of the petitioner thus, so far as staying the departmental enquiry is concerned, is not acceptable. However, the second prayer of the petitioner so far as granting of documents which are being relied upon by the respondent/establishment in the course of proving the charges are concerned, there can be no doubt that the petitioner (the delinquent employee) would be entitled for all those documents, which the management intends to rely upon during the enquiry to prove the charges which have been leveled against the petitioner. The charge-sheet itself is supported with Annexure-3, which is a list of documents and it is expected that all those documents cited therein are made available to the petitioner.
9. The petitioner herein submits that except for the document cited in serial No.5 of Annexure-3, he has been served with all other documents. This Court does not see any good reason why the copies of the documents reflected in serial No.5 of Annexure-3 cannot be made available to the petitioner. Accordingly, it is directed that the respondents shall provide the petitioner with the entire documents cited in serial No.5 of Annexure-3 before proceeding further with the departmental enquiry unless the department takes a stand that they may not be relying on these documents.
10. With the aforesaid observations and directions, the present writ petition stands partly allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge