

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14040 of 2018
and
WMP.Nos.16593 & 16594 of 2018

Arumaiselvi

... Petitioner

...Vs...

1. Chairman / Managing Director,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintatripet, Chennai-600 002.

2. Vigilance Officer / General Manager,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintatripet, Chennai-600 002.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the notice issued by the second respondent vide Lr.No.CMWSSB/DIR(TC)/ENQUIRY/26880/2/2018 dated 10.05.2018 and quash the same consequently directing the second respondent herein to hold the enquiry after the criminal case in CC No.Nil on the file of Special Court for Vigilance and Anti-Corruption at Chennai is over.

For Petitioner : Mr.T.Muruganatham

For Respondents : Mr.N.Ramesh - SC for CMWSSB
for R1 & R2

O R D E R

The enquiry notice issued by the 2nd respondent in proceedings dated 10.05.2018 is under challenge in the present writ petition.

2. The writ petitioner joined as Draughtsman in the Office of the respondents. Subsequently, the writ petitioner was promoted as Junior Engineer and on account of the allegations of demand and acceptance of bribe a criminal case was registered against the writ petitioner in Cr.No.05/2015/AC/CC-I by the Inspector of Police, Vigilance and Anti-Corruption Department. A criminal case was registered under Section 7 of the Prevention of the Corruption Act for an allegation of receipt of illegal gratification of the sum of Rs.15,000/- from one Mr.S.Shankar.

2. The writ petitioner was arrested and subsequently released on bail. In proceedings dated 06.07.2015, the writ petitioner was placed under suspension. On initiation of disciplinary proceedings, a charge memo was issued against the writ petitioner by the Vigilance Officer / Managing Director of Chennai Metro Water Supply and Sewerage Board.

3. The charges against the writ petitioner are extracted as under:-

"Charge 1: Thirumathi P.Arumai Selvi while working as Junior Engineer, Depot 182, Area-XII, has demanded a sum of Rs.15,000/- as illegal gratification for effecting metro water connection to the residence of consumer Thiru Shankar, S/o.Subramaniam, No.30/2, Thiruveethiamman Kovil Street, Thiruvannamiyur, Chennai-41. When the consumer met Tmt.P.Arumai Selvi, J.E on 2.7.2015 at about 13.45 hrs, and enquired about Metrowater connection she has reiterated the earlier demand and accepted Rs.15,000/- as illegal gratification by breaching the rule, while discharging her official duties and has failed to maintain absolute integrity and devotion to duty which is unbecoming of a public servant and thereby violated Regulation 6(20) of Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations 1978.

Charge 2: Thirumathi P.Arumai Selvi while working as Junior Engineer, Depot 182, Area-XII, has demanded a sum of Rs.15,000/- as illegal gratification for effecting metro water connection to the residence of consumer Thiru Shankar, S/o.Subramaniam, No.30/2, Thiruveethiamman Kovil Street, Thiruvannamiyur, Chennai-41. When the consumer met Tmt.P.Arumai Selvi, J.E on 2.7.2015 at about 13.45 hrs, and enquired about Metrowater connection she has reiterated the earlier demand and accepted Rs.15,000/- as illegal gratification by breaching the rule, while discharging her official duties and has failed to maintain absolute integrity and devotion to duty which is unbecoming of a public servant and misconduct of

public servant and thereby violated Regulation 6(29) if Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations 1978.

Charge 3: Thirumathi P.Arumai Selvi while working as Junior Engineer, Depot 182, Area-XII, has demanded a sum of Rs.15,000/- as illegal gratification for effecting metro water connection to the residence of consumer Thiru Shankar, S/o.Subramaniam, No.30/2, Thiruveethiamman Kovil Street, Thiruvannamiyur, Chennai-41. When the consumer met Tmt.P.Arumai Selvi, J.E on 2.7.2015 at about 13.45 hrs, and enquired about Metrowater connection she has reiterated the earlier demand and accepted Rs.15,000/- as illegal gratification by breaching the rule, while discharging her official duties and has failed to maintain absolute integrity and devotion to duty which is unbecoming of a public servant and thereby violated Regulation 6(37) if Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations 1978.

Charge 4: Thirumathi P.Arumai Selvi while working as Junior Engineer, Depot 182, Area-XII, has demanded a sum of Rs.15,000/- as illegal gratification for effecting metro water connection to the residence of consumer Thiru Shankar, S/o.Subramaniam, No.30/2, Thiruveethiamman Kovil Street, Thiruvannamiyur, Chennai-41. When the consumer met Tmt.P.Arumai Selvi, J.E on 2.7.2015 at about 13.45 hrs, and enquired about Metrowater connection she has reiterated the earlier demand and accepted Rs.15,000/- as illegal gratification by breaching the rule, while discharging her official duties and has failed to maintain absolute integrity and devotion to duty which is unbecoming of a public servant and thereby violated Regulation 6(38) if Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations 1978.

6(20) - "Any breach of any rule"

6(29) - "Taking or giving bribes or illegal gratification of any nature whatsoever"

6(37) - "Any other activity which in the opinion of the Board is a misconduct"

6(38) - "Breaching the rule of integrity and devotion to duty and doing any act which is unbecoming of a member of the Board service"

4. Annexure-2 to the charge memo provides the statement of allegations, namely imputation of misconduct in support of the charges framed against the writ petitioner. Annexure-3 indicates

list of documents relied on by the department for the purpose of establishing the charges against the writ petitioner. Annexure-4 to the charge memo denotes list of witnesses. Thus, there is no infirmity in respect of the charge memo issued against the writ petitioner. The only ground raised by the writ petitioner is that, simultaneous proceedings are impermissible.

5. The learned counsel for the writ petitioner states that, when the criminal case is registered against the writ petitioner by the department of Vigilance and Anti-Corruption, the departmental disciplinary proceedings should be kept in abeyance till the final disposal of the criminal case. In other words, pendency of a criminal case is a bar for the continuance of disciplinary proceedings. Raising the said ground, the present writ petition is filed challenging the very enquiry notice issued by the 2nd respondent on 10.05.2018, directing the writ petitioner to attend for an oral enquiry to be conducted by the Managing Director.

6. This Court is of an opinion that, simultaneous proceedings are certainly permissible and only in certain circumstances, the Competent Authorities have to take a decision, whether to continue the departmental disciplinary proceedings during the pendency of the criminal case against an employee. If the files, documents and witnesses are available with the disciplinary authority, there is no impediment to continue the departmental disciplinary proceedings, conclude the same and pass final orders in the disciplinary proceedings. If no files are available with the disciplinary authority as well as in the department, then the Competent Authorities is empowered to keep the departmental disciplinary proceedings in abeyance till the final disposal of the criminal case by the Competent Criminal Court of Law. Thus mere pendency of criminal case is not a bar for continuance of departmental disciplinary proceedings.

7. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. Even a moral turpitude is sufficient to punish an employee under the conduct Rules. This being the distinct procedure in respect of the departmental disciplinary proceedings as well as criminal proceedings, this Court is of an opinion that, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings, conclude the same and pass final orders without causing any undue delay.

8. The trend of the delinquent Officers is that if it is not advantages to them, then they will file a writ petition to keep the disciplinary proceedings in abeyance till the pendency of the criminal case, as they are very much aware that disposal of the criminal case would take long years. If it is favour to them, then also they file writ petition stating that the departmental disciplinary proceedings must be concluded at the earliest point of time. Writ petitions are filed even to quash the charge memo on the ground of delay. Thus, the delinquent Officers to suit their conveniences changing the grounds and filing a writ petition in order to frustrate the departmental disciplinary proceedings. Such an attitude of the employees can never be encouraged nor be appreciated, but to be deprecated.

9. The employees who all are involved in such allegations are bound to establish their innocence or otherwise by participating in the departmental disciplinary proceedings as well as by facing the trial. Contrarily, they are adopting a tactics to protract and prolong the issues, in order to frustrate the proceeding one way or other and finally take an attempt to escape from the clutches of law. This being the practice which is noticed by the Constitutional Courts frequently, the Courts are of the opinion that all such proceedings initiated ought to be continued simultaneously and the decision is to be taken based on the records available and by examining the witnesses by affording opportunity to the delinquent official.

10. The allegations against the writ petitioner in the present case is of corruption. Corruption is a social evil and spreading like a cancer in our great Nation. The public servants involved in corrupt activities ought to be dealt with iron hand and iron heart. There cannot be any leniency or otherwise in respect of dealing with the corruption cases. Both the criminal court of law as well as the departmental disciplinary proceedings are bound to be vigilant and strict in dealing with all such cases of corruption. People at large are totally frustrated in respect of such corrupt activities of the public servants, more specifically, in Chennai Metropolitan Water Supply and Sewerage Board. Common men are frequently suffering, on account of such corrupt activities of these junior Engineer level Officers, even for getting water connection, sewerage connection or for name transfer or for all other services which all are to be provided under the Rules in force.

11. When such corruption activities are experienced by the common man day in and day out, the Competent Authorities are bound to initiate serious steps in controlling such corrupt activities by surprise inspections and the vigilance officers of

the Board would also conduct surprise inspection, gather materials and prosecute all those corrupt officials who all are in service for long years and tarnishing the image of the Government as well as causing disrepute to the institution itself.

12. Government servants play a significant role in running the administration of our great Nation. They are important constituents of the administrative setup of the Nation. They are pillars of the Government Departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibilities as compared to the counterparts in private sector. They are smartly played and they have some kind of perquisites given to them, but at the same time, they have heavy responsibilities to the Government in particular and public in general.

13. However, when the Government servants deviate from the established Rule of Conduct, departmental disciplinary proceedings would be initiated. It is the need of the hour to analyze whether conducting departmental disciplinary proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously. The Departmental Authorities are free to exercise such lawful powers as on confirmed by them by the departmental proceeding Rules and Regulations.

14. In the case of Sri Bhagwan Ram v. The State of Jharkhand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

15. In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

16. In the case of Ajith Kumar Das v. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the

departmental enquiry is to maintain discipline in service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guideline as inflexible rules in which the departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

17. In the case of Avinash Sadashiv Bhosale v. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced but even such grounds would be available only in cases involving complex question of fact and law. Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

18. The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to

the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

19. In the case of NOIDA Entrepreneur Association v. NOIDA and the others [JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

20. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of duty. The offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. #

21. In the case of Ajith Kumar Nag v. General Manager(PJ), Indian Oil Corporation Ltd., Haldia [2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is

to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.

22. In the case of West Bokaro Colliery (Tisco Ltd.) v. Ram Parvesh Singh (2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

23. In the case of S.A. Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in State of Rajasthan v. B.K. Meena and Others (1996) 6 SCC 417 held 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. Therefore, stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C. Kakkar, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S. Corp. Ltd. vs. K.S. Tandon, AIR 2008 SC 1235)

24. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government servant is lengthy and detailed one, giving

maximum opportunity to the government servant to prove his innocence. A Government employee is expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. Disciplinary proceedings are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if it is conducted simultaneously.

25. In view of the fact that the present writ petition is in relation to the allegations of corruption against the writ petitioner. This Court is of an opinion that the writ petitioner has to face both the departmental disciplinary proceedings as well as the criminal trial. The departmental disciplinary proceedings has already been initiated by the Competent Authorities and the very enquiry notice issued to the writ petitioner itself is under challenged in the present writ petition.

26. Thus, the respondents are at liberty to proceed with the departmental disciplinary proceedings by affording opportunity to the delinquent official in the manner prescribed and conclude the same and pass final orders in the departmental disciplinary proceedings as expeditiously as possible and without causing any undue delay. The writ petitioner is directed to cooperate for the conclusion of the enquiry proceeding in all respects and in the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the Enquiry Officer as well as by the Disciplinary Authority.

27. In view of the discussions made in the afore mentioned paragraphs, the writ petitioner has not made out any acceptable legal ground for the purpose of considering the relief as such sought for in the present writ petition. Accordingly, the writ

petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

Pkn

To

1. Chairman / Managing Director,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintatripet, Chennai-600 002.
2. Vigilance Officer / General Manager,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintatripet, Chennai-600 002.

+1cc to Mr.N.Ramesh, Advocate SR.No.15523

+1cc to Mr.T.Muruganantham, Advocate SR.No.15727

W.P.No.14040 of 2018

SAI (CO)
GMY (20/03/2019)

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