

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.33396 of 2018
and
M.P.No.38767 of 2018

V.Veerasamy

...

Petitioner

Vs.

1. The Joint Registrar
Triplicane Urban Co-operative Society
Chennai - 600 005.
2. The Enquiry Officer
Triplicane Urban Co-operative Society
Chennai - 600 005.

...

Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the second respondent from proceeding with departmental proceedings vide Na.Ka.No. 450/2013/E2 dated 27.11.2018 against the petitioner for accumulation of disproportionate assets against the known sources of income until conclusion of the criminal prosecution pending against the petitioner in Special Case No.19/2012 on the file of CJM, Thiruvallur.

For Petitioner

:

सत्यमेव जयते
Mr.K.Ravi Anantha Padmanaban

For Respondents

:

Mr.L.P.Shanmugasundaram [For R1]
Special Government Pleader [Co-op]

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O R D E R

The enquiry notice dated 27.11.2018 issued to the writ petitioner directing the petitioner to participate in the process of enquiry held on 19.12.2018 is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner strenuously contended that the case on hand is a case where the facts, circumstances, evidences and documents are one and the same both in the departmental disciplinary proceedings as well as in the criminal proceedings instituted against the writ petitioner.

3.It is further contended that in the event of proceeding with the departmental proceedings, the right of defence to the writ petitioner would be prejudiced. The authorities are relying on the very same documents and the very same witnesses. Under these circumstances, the simultaneous proceedings are impermissible. The authorities are bound to wait for the final disposal of the criminal proceedings for the purpose of continuance of the departmental disciplinary proceedings under the Discipline and Appeal Rules.

4.This Court is of the considered opinion that merely on the ground that the evidences, documents and witnesses are one and the same, the departmental disciplinary proceedings cannot be stalled. In this regard, the authorities competent are bound to consider the facts and circumstances of each case and arrive a conclusion that whether it is necessary to keep the disciplinary proceedings in abeyance or not.

5.Thus, the competent authorities have to consider the nature of the departmental disciplinary proceedings and the availability of the documents and materials and accordingly, proceed with the departmental disciplinary proceedings and criminal proceedings. If the records, documents and evidences are sufficient to proceed against the employee under the Discipline and Appeal Rules, there is no impediment for the authorities to continue the departmental disciplinary proceedings, conclude the same and pass final order. In the event of non-availability of the materials and relevant documents for the purpose of establishing the charges framed against the writ petitioner, then the authorities competent shall keep the departmental disciplinary proceedings in abeyance, till the final disposal of the criminal case. However, the decision in this regard is to be taken based on the records and materials available.

6. A mere pendency of a criminal case alone, cannot be a bar for proceeding with the departmental proceedings. The standard of proof required before the Criminal Court, is high in nature and even preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules.

7. Thus, the writ petition filed, in order to keep in abeyance the departmental disciplinary proceedings are entirely different. The allegations against the writ petitioner is in

relation to the demand of bribe and by citing the pendency of the criminal case, the writ petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

8. In the case of Sri Bhagwan Ram v. The State of Jharkand, 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.

9. 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.

10. 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.

11. 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.

12. 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".

13. 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.

14. 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."

15. 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'.

16. 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.

17. 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)

18.The learned Special Government Pleader appearing on behalf of the respondents states that the writ petitioner is working in a co-operative society registered under the Tamil Nadu Co-operative Societies Act and therefore, no writ can be entertained against the order passed by a Co-operative society as the society is not a State within the meaning of Article 12 of the Constitution of India.

19.However, this Court is of an opinion that the writ petitioner has to approach the competent authorities in this regard for the purpose of redressing his grievances. However, the relief as such sought for cannot be granted as the simultaneous proceedings are certainly permissible for the purpose of punishing a person under the criminal law strict proof is required. However, no such strict proof is required for the purpose of punishing the employee under the Discipline and Appeal Rules. Even preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. The procedure contemplated for a criminal case and departmental

disciplinary proceedings are different and distinct. Under these circumstances, there is no impediment for the disciplinary authority to conclude the disciplinary proceedings based on the records available.

20. With these observations, this writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Registrar
Triplicane Urban Co-operative Society
Chennai - 600 005.
2. The Enquiry Officer
Triplicane Urban Co-operative Society
Chennai - 600 005.

+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate, S.R.No.31513
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.31424
+1cc to Government Pleader, in sr.no.31969

W.P.No.33396 of 2018

VBA(CO)
CS/15/05/2019

सत्यमेव जयते

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