

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 33452 OF 2013

AND

M.P. NO. 1 OF 2013

A.Madhusudhanan

.. Petitioner

- Vs -

1. Tamil Nadu Generation & Distribution Corporation Ltd.
Rep. By its Chairman-cum-Managing Director, 144, Anna Salai
Chennai 600 002.
 2. The Secretary
Tamil Nadu Generation & Distribution Corporation Ltd.
144, Anna Salai, Chennai 600 002.
 3. The Superintending Engineer
Chennai Electricity Distribution Circle North
Tamil Nadu Generation & Distribution Corporation Ltd.
Chennai 600 002.
- .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent herein in Memorandum No.65526/A5/A51/2010-62 dated 22.01.2013 along with the enquiry report and quash the same and consequently direct the 1st respondent herein to defer all proceedings in pursuance of the Charge Memo No. 65526/A5/A51/2010-5 dated 28.10.2010, till the outcome of the criminal case registered against the petitioner herein.

For Petitioner : Mr. M.Ravi

For Respondents: Mr. Karthik Rajan

ORDER

It is the case of the petitioner that while he was functioning as Executive Engineer in the respondent Corporation, he was implicated in a criminal case in Crime No.14 of 2010 for offences u/s 13 (2) r/w 13 (1) (d) of the prevention of Corruption Act and investigation led to the filing of charge sheet, which is pending in C.C. No.26 of 2011 on the file of the IX Addl. Sessions Judge, Chennai. Thereafter, the case was transferred to the Court of Special Judge for Cases under the Prevention of Corruption Act and assigned new C.C. No.9 of 2011.

2. Pending the criminal case, disciplinary proceedings were initiated for which the petitioner submitted his explanation and not satisfied with the same, the respondents proceeded with the enquiry. The petitioner requested the respondents to defer the enquiry proceedings, pending completion of the criminal case. In the interregnum, the petitioner had preferred W.P. No.26478/11 against the order of suspension, in which a positive direction was issued by the learned single Judge against which W.A. NO.735/13 was filed by the respondents and the Division Bench of this Court directed the trial court to expedite the trial of the criminal case. Since the trial has not yet concluded, the respondents are proceeding with the enquiry, which would seriously jeopardize the trial and, therefore, the present petition has been filed for the relief stated supra.

3. Learned counsel appearing for the petitioner submitted that the departmental proceeding is proceeding on the same set of facts as the criminal case and allowing the departmental proceeding to proceed would only enure to the detriment of the petitioner as the petitioner would be forced to disclose his evidence before the departmental proceeding. Therefore, in the interest of justice, it is prayed that the relief sought for by the petitioner should be granted. Learned counsel for the petitioner placed reliance on the decision of the Hon'ble Apex Court in Capt. Paul Anthony - Vs - Bharat Gold Mines Ltd. & Anr. (1999 (3) SCC 679).

4. Per contra, learned counsel appearing for the respondents submitted that the contention advanced by the petitioner has already been decided against the petitioner in a plethora of judgments and, therefore, sought for dismissing the petition.

5. This Court heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

6. The contention of the petitioner that allowing the departmental proceeding to continue before completion of the criminal case would be detrimental to him is no longer *res integra* as the said issue has been considered and decided by the Hon'ble Apex Court in *Noida Entrepreneurs Assn. - Vs - Noida & Ors.* (2007 (10) SCC 385), wherein the Hon'ble Supreme Court has held as follows :-

"16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

7. The abovesaid view has been reiterated in the decision in *Indian Overseas Bank & Anr. - Vs - P.Ganesan & Ors.* (2007 (5) CTC 632), the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, has observed that the discretionary jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of competent jurisdiction. In this context, the Hon'ble Supreme Court held as under:-

"26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed

the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court."

8. From the above proposition of law, as adumbrated by the Hon'ble Apex Court, it is unambiguously clear that unless the petitioner is able to show the detriment that would be caused to him in the event of the departmental proceeding being permitted to go ahead simultaneously with the criminal case, it would not be open to this Court to grant the relief. As held in the above said decisions, the standard of proof required in a disciplinary proceeding and a criminal case are totally different and unless it is shown that the simultaneous conduct of both the proceedings would jeopardize the case of the petitioner in the departmental proceeding, merely stating that it would act as a detriment without there being specific averment as to the manner in which detriment would be caused, would not enable this Court to grant the relief sought for. In such view of the matter, this Court is of the considered view that the relief sought for by the petitioner cannot be granted.

9. Accordingly, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1.The Chairman-cum-Managing Director
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai 600 002.

2. The Secretary
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3. The Superintending Engineer
Chennai Electricity Distribution Circle North
Tamil Nadu Generation &
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Chennai 600 002.

+1cc to Mr.Karthik Rajan, Advocate, S.R.No.25329

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MR(CO)
CB(14/08/2020)



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