

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4611 of 2016

Keshab Kumar Gandhi

....

Petitioner

Ms. A.K. Dei, Advocate

-versus-

State of Odisha and others.

....

Opposite Parties

Mr. Prem Kumar Pattnaik, AGA

CORAM:

JUSTICE M.S. RAMAN

ORDER

02.12.2022

Order No.

03.

1. With a prayer to stay the Disciplinary proceeding initiated by SOUTHCO Utility, Courtpetta, Berhampur, the petitioner, Sub-Divisional Officer, during the pendency of criminal trial, filed the writ petition on the plea that identical charges in the Disciplinary Proceeding and in the criminal case have been made.

2. Ms. A.K. Dei, learned counsel appearing for the Petitioner taken this Court to Annexure-2-Final Form which indicates charge under Section 120-B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d)/7 of the Prevention of Corruption Act, 1988. The said Final Form shows that there was demand for gratification by the Sub-Divisional Officer. Referring to Annexure-3, Ms. A.K. Dei, learned counsel submitted that article of charges issued by the SOUTHCO Utility showing initiation of Disciplinary Proceeding on the same facts. Ms. Dei, learned counsel further submitted that since the criminal trial is in progress and has not yet been concluded, the relief sought for is required to be

extended to the petitioner. She placed reliance on the order dated 30th August, 2022 passed in WPC (OA) No.1629 of 2017 (***Saroj Kumar Mirdha v. State of Odisha and others***).

3. Copy of the aforesaid order is served on Mr. Prem Kumar Pattnaik, learned Addl. Government Advocate appearing for the Opposite parties-State, who conceded to the legal position.

4. Having perused the Final Form filed before the learned Special Judge, Vigilance, Berhampur and the Memorandum along with Article of Charges issued by the SOUTHCO Utility in the Disciplinary Proceeding, this Court is satisfied that both the cases emanate from same fact and charges are identical.

5. This Court in the case of ***Saroj Kumar Mirdha (supra)*** held as follows:-

“3. ★ Considering the submission that during pendency of the criminal trial, filing of defence by the petitioner in the disciplinary proceeding will jeopardize the prospect of the delinquent-petitioner involving the criminal case, this Court finds support of the submission of the learned counsel has also the support of decision of the Hon’ble apex Court reported in AIR 1999 SC 1416, decided taking support of the old decision of the Hon’ble apex Court reported in AIR 1965 SC 155. This Court accordingly disposes of the writ petition directing stay of the Disciplinary Proceeding vide Proceeding No.2923/Estt. Dated 14.10.2015 under Annexure-3 involving the petitioner till finalization of the Criminal Case vide Sambalpur Vigilance P.S. Case No.14 dated 04.02.2015 pending in the court of Special Judge, Vigilance, Sambalpur. This Court also directs the trial court involving Sambalpur Vigilance P.S. Case No.14 dated 04.02.2015 be expedited.”

6. In view of the above position, the Disciplinary Proceeding stated to be initiated *vide* HR/Proc-V-04-16/17 No.10519 dated 26th August, 2016 is directed to be stayed till finalization of the criminal case *vide* Berhampur Vigilance P.S. Case No.02 dated 22nd January, 2016 pending in the Court of the learned Special Judge, Vigilance, Berhampur. Further, it is directed that the trial in the said Vigilance P.S. Case be expedited.

7. With the aforesaid direction, the writ petition stands disposed of.

MRS

