



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No. 14351 of 2020

and

W.M.P. (MD) No. 12000 of 2020

WEB COPY

S.Muthuselvan

... Petitioner

-Vs-

The District Collector,
Tenkasi District,
Tenkasi.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to defer with the enquiry proceedings initiated in pursuant to the charge memo issued in Na.Ka.No.Nu5/28377/2016, dated 03.08.2016 till the disposal of the criminal case in S.C. No. 2 of 2018 pending on the file of the learned Special Court (Prevention of Corruption Act) Tirunelveli.

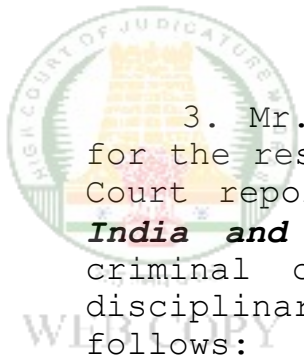
For Petitioner : Mr.G.Thalaimutharasu

For Respondent : Mr.J.Ashok
Additional Government Pleader

O R D E R

This Writ Petition has been filed to direct the respondent to defer the enquiry proceedings initiated against the petitioner, pursuant to the Charge Memo in Na.Ka.No.Nu5/28377/2016, dated 03.08.2016, till the disposal of the criminal case in S.C. No. 2 of 2018, which is pending on the file of the learned Special Court (Prevention of Corruption Act) Tirunelveli.

2. The learned counsel appearing for the petitioner would submit that the petitioner, while working as an Assistant Engineer in the Rural Development Department, was arrested in Crime No. 3 of 2016, by the Inspector of Police (Vigilance and Anti-corruption) Department on 20.07.2016, for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner was also slapped with a charge memo on 03.08.2016. It is the contention of the petitioner that the witnesses in the criminal case and the departmental proceedings are one and the same. If the departmental proceedings is taken up for investigation, the petitioner will raise certain points during examination and those points may be filled up by the respondent during the trial before the pending criminal case and it would definitely affect his chances of acquittal in the criminal case.



3. Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents by relying upon the Judgment of the Hon'ble Apex Court reported in **(2016) 9 SCC 491** in the case of **State Bank of India and others vs. Neelam Nag** submits that pendency of a criminal case is not a bar to proceed with the departmental disciplinary proceedings, wherein the Hon'ble Apex Court has held as follows:

"21. Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate the arrangement straightway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary.

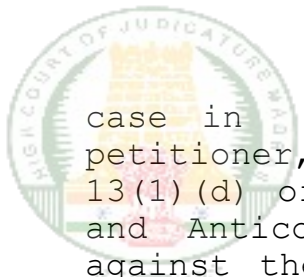
22. We also direct that the respondent shall extend full co-operation to the trial Court for an early disposal of the trial, which includes co-operation by the Advocate appointed by her.

23. If the trial is not completed within one year from the date of this order, despite the steps which the trial Court has been directed to take the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. The protection given to the respondent of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiring of the period of one year from the date of this order."

4. The learned Additional Government Pleader further submits that sofar two witnesses were examined and due to pandemic situation, the trial could not be conducted coupled with the fact that there is no Presiding Officer. Hence, prays for dismissal of the petition.

5. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6. The petitioner was arrested on 21.07.2016 in a trap proceeding by the Vigilance and Anti Corruption Department and a



case in Crime No. 3 of 2016, has been registered against the petitioner, for the offences under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. The Vigilance and Anticorruption Department has also filed the final report against the petitioner, which was taken on file in S.C. No. 2 of 2018 by the Special Court (Prevention of Corruption Act) Tirunelveli. Though the final report has been filed in the year 2018, it appears that there is no progress in the trial.

7. The grievances of the petitioner is that the witnesses in the departmental proceedings and in the criminal case are one and the same and if the enquiry is allowed to be proceeded, the petitioner will be forced to reveal his defence, which will affect his interest and right. It is a settled law that the pendency of the criminal case is not a bar for the Department to proceed with the departmental proceedings. Even if the petitioner is acquitted, the power of the authority to continue the departmental inquiry is not taken away nor its discretion in any way fettered. If the authority feels that there is sufficient evidence and good grounds to proceed with, it can certainly do so.

8. Though the final report has been filed in the year 2018 and so far two witnesses were examined, due to pandemic situation the trial could not be completed coupled with the fact that there is no Presiding Officer. Considering the above facts and circumstances of the case and the dictum laid down by the Hon'ble Apex Court in the Judgment reported in **(2016) 9 SCC 491** (cited supra), this Court issues the following directions:

(i) The Special Court (Prevention of Corruption Act) Tirunelveli shall conclude the said case pending in S.C. No. 2 of 2018 within a period of one year from the date of receipt of a copy of this order.

(ii) If the trial is not concluded within a stipulated period, it is open to the Department to proceed with the departmental proceedings pursuant to the charge memo in Na.Ka.No.Nu5/28377/2016, dated 03.08.2016.

9. With the above direction, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



vji

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The District Collector,
Tenkasi District,
Tenkasi.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-1122[F] dated 11/01/2022)

+1 CC to M/s.SPL.GP (SR-1461[F] dated 12/01/2022)

**ORDER MADE IN
W.P (MD) No. 14351 of 2020
and
W.M.P. (MD) No. 12000 of 2020
10.01.2022**

PKP/22.03.2022/4P/4C