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Ct. No. 04

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M.A.T. 1493 of 2023
CAN 1 of 2023

M/s. Eastern Coalfields Limited
Vs.
Shankar Nath Dutta & Ors.

Mr. Bijoy Kumar.

... for the appellant.

Mr. Partha Ghosh,

Mr. Amal Dutta,

Ms. Simran Sureka,

Mr. Debasish Das.

... for the respondent.

Challenging the charge sheet a writ petition is taken out by the respondent wherein the Court passed an order permitting the appellant to continue with the enquiry proceedings, but the report of the enquiry officer shall not be filed without obtaining leave of the Court. The matter thereafter travelled in the docket of the Court and the direction was also passed for filing the affidavit-in-opposition to the writ petition. Subsequently an application is taken out for leave to file the enquiry report, as the enquiry officer has completed the enquiry proceedings and by the impugned order the said application is disposed of declining to grant such leave.

The Trial Court observed that the aforesaid application contained a composite reliefs in the form of modification and/or setting aside the order dated October 8, 2021, i.e. the order in which the interim order was passed with a further prayer for seeking leave. However, the Single Bench observed that in course of hearing the appellant did not press the relief in the form of modification and/or setting aside the order dated October, 8, 2021 and insisted for leave to file the enquiry report. The Single Bench was of the view that it would not be appropriate at the present

stage to grant such relief, as the main writ petition has to be heard for deciding whether the enquiry proceedings were appropriately initiated and accordingly directed the matter to be listed for hearing in the Monthly List of September, 2023.

Both the Counsels appearing before us have argued basically on the conduct and role of the parties; at one hand it is stated by the appellant that because of some connivance with the officer of the Court the writ petition could not be disposed of, but we do not find any cogent material having produced in this regard. Such a serious allegation has to be viewed more scrupulously and bald statement should not be permitted to be made in absence of iota piece of evidence in this regard. On the other hand, it appears that there has been a considerable delay in affirming the affidavit-in-opposition to the main writ petition which, according to the respondent, is nearly two years and the Trial Court has also declined to take the affidavit-in-opposition on board and directed the applications filed by the respective parties to be decided first.

It is the contention of the appellant that the respondent did not permit the writ petition to be disposed of finally with an intent to frustrate the proceedings initiated against him, if he attains superannuation in the meantime.

The respondent submits that the appellant was apathetic and lethargic in complying the said order which would be evident from the conduct of the appellant that despite the direction passed for filing the affidavit-in-opposition, it could not affirm the same for nearly two years and, therefore, the delay in disposal of the writ petition can be attributed to the conduct of the appellant.

We do not intend to go to the nitty-gritty of the aforesaid allegation in the instant appeal, as we feel that the seminal point involved in the instant appeal is whether the leave to file the enquiry report should have been granted by the Single Bench or not.

Our attention is drawn to an unreported judgement and order of the Single Bench passed on 10th February, 2021 in WPA 16117 of 2017 (Rabindra Kr. Bharati vs. Eastern Coalfields Ltd. & Ors.), which, according to the appellant, had been passed in the similar circumstances and, in fact, the leave was ultimately granted to pass a final order in the departmental enquiry in accordance with law.

The fact emerged from the said case, as unfurled, is that both the disciplinary proceeding and the criminal proceeding were initiated on the self-same charges and it was sought to be contended that pending the criminal proceeding the disciplinary proceeding should not be permitted to continue. An interim order was passed by the Single Bench at the time of admitting the writ petition that the disciplinary proceeding shall continue but no final order shall be passed.

Taking into account the various judgements of the Apex Court including the case of *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.* and another reported in (1999) 3 SCC 679 and *G. M. Tank vs. State of Gujarat and others* reported in (2006) 5 SCC 446, the Single Bench held that the moment the petitioner therein participated in the departmental enquiry and disclosed his defence, there is no impediment in granting leave to pass the final order. The aforesaid observation was made on the argument advanced before the Single Bench that the moment disciplinary proceedings and criminal proceedings are initiated on

the self-same facts, the disclosure of defence in the disciplinary proceeding may be counter productive in the criminal proceeding. Ultimately the Court found that the moment the defence has been disclosed during the departmental enquiry, such point becomes an academic and is not sustainable.

The order of the Single Bench was assailed before the Division Bench and we have been given to understand that the Division Bench reversed the said order, which was further assailed by the appellant before the Apex Court and the Apex Court after taking into consideration the earlier judgement of the Apex Court held *“It is undoubtedly true that this Court has taken the view that when the charges are identical and gives rise to complicated issues of the fact and law and evidence is the same, it may not be appropriate to proceed simultaneously in disciplinary proceedings, along with the criminal case. The rationale behind the principle largely is that the employee who is facing the disciplinary proceeding would necessarily have to take a stand. This in turn would amount to revealing his defence and therefore prejudice the employee in the criminal proceedings. No doubt, this Court has laid down that it is not an absolute embargo and the principle is one to be applied based on the facts of each case.”*

After observing and summarizing the law as quoted hereinabove the Apex Court held that once the delinquent disclosed the defence in the departmental enquiry, it is not open to him to contend that such disclosure would have an enormous negative impact on the criminal proceeding. Ultimately the Apex Court held that a direction to pass an interim order in a departmental proceeding as granted by the Single Bench cannot be faulted with nor the Division Bench was justified in interfering with the same.

It is no doubt true that the law enunciated in the above noted Report is that there is no fetter in simultaneous continuance of the departmental proceeding and the criminal proceeding. However, an exception is carved out that in the event both the proceedings are initiated on the self-same facts requiring self-same evidences to adduce and the similar documents are to be accepted, the continuance with the disciplinary proceeding is not warranted until disposal of the criminal proceeding. The obvious reason as laid down in the above Report is that in a departmental proceeding the delinquent has to disclose his defence; whereas in a criminal proceeding it is the duty of the prosecution to prove the case beyond any reasonable doubt. On the other hand, the disciplinary proceeding is decided on the basis of preponderance of probability.

The question involved in the instant proceeding is not whether the disciplinary proceeding should continue pending the criminal proceeding, but the only point involved in the instant appeal is whether the leave should be granted to the appellant to file the report of the enquiry officer. The inspiration can be drawn from the facts of the above noted decision rendered in case of Rabindra Kr. Bharati (*supra*) that the delinquent has participated in the proceeding may be on the teeth of an order of the Court and the moment the defence is disclosed, there is no fetter in granting leave to file report or to pass the final order, as the case may be.

A plea is taken by the respondent that since the challenge is founded upon the charge sheet, therefore, the enquiry report if allowed to be filed would invite the instant writ petition to be dismissed as infructuous. It is further submitted that pending the writ petition the respondent has attained superannuation and there is no rule which permits continuance of departmental

proceeding against the retired employee.

In support of the aforesaid contention the learned Counsel for the respondent refers to the judgement rendered in case of *P.V. Mahadevan vs. Md. T.N. Housing Board* reported in (2005) 6 SCC 636 that inordinate delay of several decades in initiating a disciplinary proceeding shall not be permitted to continue as the sufferance and prejudice can be perceived against the said delinquent. Another judgement of the Apex Court in case of *Devf Prakash Tewari vs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow & Ors.* reported in (2014) 7 SCC 260 is relied upon to contend that after attaining superannuation the departmental proceeding cannot continue unless expressly provided by the Rules and Regulations applicable therein.

The aforesaid plea in our opinion can be conveniently taken in the writ petition, as the same is expected to be disposed of in the month of September, 2023 in terms of the order of the Single Bench. Even if the leave to file the enquiry report is granted, it will not take away the valuable right of the delinquent to take the plea or defence available to him both on facts and law. Furthermore, the writ petition if decided in favour of the respondent in holding that the charge sheet is vague and not in consonance with the statutory provision, anything standing thereupon would fall automatically and need not be separately declared to be so. When the edifice is destroyed, the structure cannot stand independently and have to suffer the consequences thereof.

Mere granting leave to file enquiry report can never be construed as sacrosanct on the findings returned therein which is obviously subject to the conscious decision of the disciplinary authority and

since the matter has travelled to the Court on the ultimate decision taken therein, we, therefore, do not find that there is any difficulty in granting leave to the appellant to file the enquiry report, but such filing shall not defeat the valuable right accrued to the respondent and if such right is pressed in service, the same shall be decided in accordance with law.

With the above observations the appeal and application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)