SUPREME COURT OF INDIA

Depot Manager, A.P. State Road Transport Corporation

Vs.

Mohd. Yousuf Miya

C.A.Nos.15419 with 15420-22 of 1996

(K. Ramaswamy, G. T. Nanavati and K. Venkataswami, JJ.)

20.11.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides. The facts in appeal arising out of S.L.P. (C) No. 16342/96, are sufficient for disposal of the common controversy raised in these cases.

3. This appeal by special leave arises from the judgment of the Division Bench of the Andhra Pradesh High Court, made on June 18, 1996, in W. P. No. 612 of 1996. The appellants had initiated disciplinary proceedings against the respondent on the imputation that on September 15, 1995, while driving the Corporation's doubledecker vehicle near Gandhi Hospital in Hyderabad City, due to lack of anticipation, he had caused an accident in which a cyclist died. Consequently, action was initiated for misconduct and enquiry was ordered for misconduct under Regulation 28(ix) of the Employees Conduct Rules, 1963. It would appear that prosecution has been launched by the police for an offence punishable under Section 304, Part II, I.P.c. and in some cases under Section 338 I.P.C. and they are pending trial. Therefore, the respondents filed writ petition in the High Court for

stay of the departmental proceedings. The learned single Judge stayed the proceedings. On appeal, the Division Bench confirmed the same. Thus, these appeals by special leave.

4. It is contended the Shri Altaf Ahmad, the learned Additional Solicitor General appearing for the appellants that the High Court was not right in directing stay of the departmental enquiry on the ground that it would cause prejudice to the respondents at the trial. In the criminal case, the question is the culpability of rash and negligent driving of the respondent. In the departmental enquiry, the misconduct relates to his failure to anticipate the accident and prevention thereof by his misconduct. Therefore, there would be no prejudice in conducting the departmental enquiry. The High Court, therefore, was not right in staying the proceedings.

5. In support thereof, learned counsel has placed reliance on the judgment of this Court in State of Rajasthan v. B. K. Meena, (1996) 7 SCALE 363 : (1996 AIR SCW 4160). Shri L. N. Rao, learned counsel for the respondent, on the other hand, has contended that the ratio in that judgment itself would indicate that only in grave cases, the enquiry should be permitted to be completed as expeditiously as possible. Otherwise, the administration would be jeopardised. In this case, such a grave nature does not arise. The facts in both, the criminal case and the disciplinary enquiry constitute the same cause of action or material disclosure of which would gravely prejudice the defence of the respondents in the criminal cases. Therefore, the High Court was right in staying the proceedings. In support thereof, he placed strong reliance on the judgment on this Court in Kusheshwar Dubey. v. M/s. Bharat Coking Coal Ltd., (1988) 4 SCC 319: (AIR 1988 SC 2118). He also placed reliance on the judgment of this Court in Food Corporation of India v. Geroge Varghese, (1991) Supp (2) SCC 143: (AIR 1991 SC 1115). Therein, the question was; that whether the High Court would be justified in quashing the enquiry proceedings, after the acquittal of the delinquent officer in the criminal case? The High Court had held in that case that it was not expedient to conduct enquiry after acquittal. While interfering with that view and holding that the employer with that view and holding that the employer is entitled to initiate the disciplinary proceedings, after the acquittal, this Court made an observation that the employer fairly had stayed its hands till the conclusion of the criminal case so that it would not be contended that the employer intended to over-reach the judicial proceedings. That observation, far from helping the respondents, would go to show that it would be open to the employer to take appropriate disciplinary action based upon the fact situation; whether it could be proceeded with or not would be left to the disciplinary authority and the facts and circumstances obtainable in each requires to be considered.

6. The rival contentions give rise to the question; whether it would be right to stay the criminal proceedings pending departmental enquiry? This Court in Meena's case, (1996 AIR SCW 4160), had elaborately considered the entire case law including Kusheshwar Dubey's case, (AIR 1988 SC 2118), relieving the necessity to consider them once over. The Bench, to which one of us, K. Venkataswami, J., was a member, had concluded thus: (Paras 14 and 17 of AIR)

"It would be evident from the above decisions that each of them, starts with the indisputable

proposition that there is no legal bar for both proceedings to go on simultaneously and then say 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. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rule can be enunciated in that behalf. The only ground suggested in the above decision as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', desirability' or 'propriety, as the case may be, has to be determined in each case taking into consideration all the facts and circumstances, of the case. The ground indicated in D. C. M., (AIR 1960 SC 806) and Tata Oil Mills, (AIR 1965 SC 155), is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public officers are involved. They get bogged down on one or the other ground. They hardly even reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that these proceedings are concluded expeditiously. It must be remembered that undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant nor really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be indicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. it is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible the enumerate to various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above."

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending

criminal proceedings, to repeat, should not be a matter of course not a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are 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 commission 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 no 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. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304 A and 338 I. P. C. Under these circumstances, the High Court was not right in staying the proceedings.

7. The appeals are accordingly allowed. No costs.

Appeals allowed.