

Mohammad Kamil Sindgikar Vs. Divisional Controller, Nwkrctc and anr.

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Court : Karnataka

Decided On : Apr-10-2000

Reported in : (2002)IVLLJ540Kant

Judge : P. Vishwanatha Shetty, J.

Acts : Karnataka State Road Transport Corporation Regulations, 1979 - Regulation 23(8)

Appeal No. : W.P. No. 3095/2000

Appellant : Mohammad Kamil Sindgikar

Respondent : Divisional Controller, Nwkrctc and anr.

Disposition : Petition allowed

Judgement :

ORDER

P. Vishwanatha Shetty, J.

1. Though this petition is posted for preliminary hearing, with the consent of the learned counsel appearing for the parties, it is taken up for final hearing and disposed of by this order.

2. The petitioner, in this petition, is presently working as Junior Assistant in the North-West Road Transport Corporation (hereinafter referred to as the 'Corporation').

3. In this petition, the petitioner has made two prayers-firstly, for a direction to the respondents to keep in abeyance the disciplinary proceedings initiated against him in No. VARASA: VIJA: SHISTU: 1392/99 No. 2498-99 till the conclusion of the criminal proceedings registered against him in Crime No. 156/98; and secondly, in the alternative, for a direction to the respondents to permit the petitioner to engage the services of a Legal Practitioner to defend him in the disciplinary proceedings initiated against him.

4. However, at the time of the hearing of the petition, Sri Pabhuling Navadgi, learned counsel appearing for the petitioner, submitted that he may be permitted to seek for quashing of the order Annexure-D dated May 28, 1999 wherein the claim of the petitioner to engage the service of a Legal Practitioner came to be rejected by the respondents.

5. Sri Navadgi submitted that since the petitioner is facing the criminal charges for identical charges in respect of which the disciplinary proceedings have been initiated, the disciplinary proceedings initiated against him are required to be stayed till the conclusion of the criminal proceedings. According to him, if the disciplinary proceedings are allowed to take place, pending disposal of criminal trial, it would seriously prejudice his case in the criminal trial as the petitioner will be compelled to disclose his defence. He also pointed out relying upon the decision of the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., : (1999)ILLJ 1094 SC that since the charges in the departmental proceedings and criminal proceedings are based on identical and same set of facts, it is necessary to stay the departmental proceedings till the conclusion of the criminal case. Secondly, he submitted that for any reason, if the disciplinary proceedings cannot be stayed, order Annexure-D dated May 28, 1999 wherein the claim of the petitioner for taking the services of a Legal Practitioner (sic) (was rejected), may be quashed and the petitioner may be permitted to take the services of a Legal Practitioner, Elaborating this submission, he pointed out that

the request of the petitioner to take the services of a Legal Practitioner came to be rejected by order Annexure-G only on the ground that there is no provision under the KSRTC (Conduct and Discipline) Regulations, 1979 (hereinafter referred to as 'the Regulations'), to permit the petitioner to take the services of a Legal Practitioner. He pointed out that the entire understanding of Clause (8) of Regulation 23 of the Regulations, which provides for appointment of a legal practitioner by the respondents, is totally erroneous. According to the learned Counsel, discretion is conferred on the Authorities to permit the delinquent official to take the service of a Legal Practitioner, depending upon the facts and circumstances of each case.

6, However, Sri Govindaraj, learned counsel appearing for the Corporation, strongly countering the submission of the learned counsel for the petitioner, submitted that there is absolutely no justification to stay the disciplinary proceedings initiated against the petitioner till the disposal of the criminal trial. He submitted that if the disciplinary proceedings are allowed to proceed and conclude, pending disposal of the criminal trial, the petitioner will not be prejudiced in any manner. It is his submission that if the petitioner is innocent of the charges levelled against him, his honour will be vindicated and in case he is found guilty, it would be open to the administration to impose appropriate penalty on the petitioner, which is in the larger interest of public service. He further pointed out that order Annexure-D does not suffer from any infirmity; and the first respondent, having regard to the facts and circumstances of the case, has taken a decision to reject the claim of the petitioner to take the services of a Legal Practitioner and the said order being a discretionary order, is not liable to be interfered with by this Court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

7. Now, let me proceed to consider whether the petitioner is entitled to seek for stay of the disciplinary proceedings till the conclusion of the criminal trial. Having regard to the facts and circumstances of the case, I am of the view that the petitioner is not entitled for the said relief. The disciplinary proceedings' have been initiated against the petitioner on an allegation of aiding the Conductor of the Corporation in misappropriation of certain amounts of the Corporation. No doubt,

the petitioner is facing the charge for the offence punishable under Section 409 of the Indian Penal Code before the Criminal Court. I am unable to accede to the submission of Sri Navadgi that if the disciplinary proceedings are allowed to continue, the petitioner will be compelled to disclose his defence in the Criminal Court. The charges levelled against the petitioner, in my view, are not of such a serious or grave nature which would warrant stay of the disciplinary proceedings till the conclusion of the criminal trial. I am also unable to accede to the submission of Sri Navadgi that the charges in the departmental proceedings and in the criminal trial are based on the same and identical facts. Merely because there is some connection in the charges framed in the departmental proceedings and criminal trial and the petitioner is asked to stand for a trial in the Criminal Court, it is not a ground to stay the departmental proceedings till the conclusion of the criminal trial. The facts and circumstances of each case has to be weighed by the Court while considering the question as to whether it is necessary to stay the charges in the departmental proceedings till the conclusion of the criminal trial. The charge in the departmental proceedings, even according to the petitioner, is that he, while discharging his duties as a Junior Assistant, failed to maintain and complete the accounts within the stipulated time; and on account of that, one J.P. Sangpal, Conductor, has misappropriated a sum of Rs. 3,58,854-75 between the period from October 16, 1996 and August 15, 1997. In this connection, it is useful to refer to the averments made in the petition, which read as hereunder:

'..... The charge was that he in discharge of his duty as junior assistant, failed to maintain and complete the accounts within the stipulated time, and due to which one J.P. Sangpal, conductor, has misappropriated a sum of Rs. 3,58,854.75 paise between the period October 16, 1996 and May 15, 1997.'

However, it is no doubt true that the petitioner was also arrayed as accused No. 7 along with the said J.R Sangpal for an offence punishable under Section 409, I.P.C. ... which relates to criminal breach of trust by a public servant. The substance of the charge, the nature of the evidence required to be appreciated by the Criminal Court and the burden of proof, is different. In my view, the substantial question that would arise for consideration in the departmental proceedings against the petitioner is as to whether he has failed to maintain and complete the accounts

within the stipulated time. May be that, in addition to the said question, the other incidental questions also may arise for consideration while considering the said question; and the default on the part of the petitioner in maintaining the accounts, has resulted in misappropriation of funds of the Corporation by the petitioner and others. In the light of the said discussion, I am unable to accede to the submission of Sri Navadgi that the decision of the Supreme Court in the case of Paul Anthony (supra) is of any assistance to the petitioner. On the other hand, I am of the view that if the observations made by the Supreme Court in the case of Depot Manager, A.P.S.R.T. Corporation v. Mohd. Yousuf Miya, : (1997) ILLJ902SC are kept in mind, there is absolutely no justification to stay the departmental proceedings. The Supreme Court has, at paragraph 7 of the said judgment, observed thus at 905, 906 of LLJ:

'7. ... 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 omission 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 not 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 (sic duty), 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 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 the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under those 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 the case of Paul Anthony (supra), the Supreme Court at Paragraph 22 of the judgment, while considering the question whether the disciplinary proceeding should be stayed till the conclusion of the criminal proceedings, has observed as follows 1999-II-LLJ-1094 at 1100:

'22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to study the departmental proceedings till the conclusion of the criminal case.

(iii) Whether nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceeding cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.'

I am of the view that in the light of the law laid down by the Supreme Court setting out the situation where the disciplinary proceedings are required to be stayed till the conclusion of the criminal case, if the claim of the petitioner is examined there is no justification to stay the disciplinary proceedings. Therefore the prayer of the petitioner for stay of the disciplinary proceedings till the disposal of the criminal case, is required to be rejected. Accordingly, it is rejected.

8. In so far as the prayer of the petitioner to engage the services of a Legal Practitioner is concerned, I am of the view that as rightly contended by Sri Navadgi, order Annexure-D is liable to be quashed. As can be seen from order Annexure-D, the prayer of the petitioner came to be rejected only on the ground that there is no provision under the Regulations to take the services of a legal Practitioner. Clause (8) of Regulation 23 of the Regulations relied upon by Sri Navadgi, which confers power on the respondents to permit a delinquent official to take the services of a Legal Practitioner or a co-employee, reads as follows:

'The Corporation servant may take assistance of any other Corporation servant from the same Division or Unit where the accused Corporation servant is working,

to present the case on his behalf but may not engage a legal practitioner for the purpose.'

No doubt, Clause (8) of Regulation 23 of the Regulations specifically confers a right on the Corporation servant to take the services of any other Corporation servant from the same Division or Unit where the accused Corporation servant is working to present the case on his behalf. It does not confer such a right on the delinquent official to take the services of a legal Practitioner for the purpose of presenting his case. The language employed provides that 'the delinquent official' may not engage a Legal Practitioner. Now, the question is whether the words 'may not engage a legal Practitioner' provided under Clause (8) of Regulation 23 should be understood as denying the right of a delinquent official to take the services of a Legal Practitioner and whether any discretion is conferred on the Disciplinary Authority to permit the delinquent official to take the services of a Legal Practitioner. As noticed by me earlier, the language employed is 'may not engage a Legal Practitioner'. The word 'may' used in Clause (8) must, in my view, be understood as conferring discretion on the Disciplinary Authority either to permit the delinquent official to take the services of a Legal Practitioner or to deny him such services depending upon the facts and circumstances of each case. The same cannot be understood as interdicting the power of the Disciplinary Authority not to permit the delinquent official to engage the services of a Legal Practitioner. Such an interpretation, in my view, is not possible for two reasons firstly, the word used in Clause (8) is 'may' which should normally be understood as conferring discretion on the Authorities; and secondly, the power conferred on the Disciplinary Authority to permit the delinquent official to take the services of a Legal Practitioner is required to be understood in the backdrop of his right to continue in the services of the Corporation being put to jeopardy if reasonable opportunity is not given to such a delinquent official. Therefore, depending upon the facts and circumstances of each case, which includes the nature of the charges levelled against the delinquent official, the gravity of the charges and the nature of the evidence to be adduced in the case of the disciplinary proceedings, the Disciplinary Authority has to make up his mind as to whether the delinquent official should be permitted to take the services of a Legal Practitioner or not. If the circumstances of the case entitles the delinquent official to take the services of a

legal practitioner and if such a request is unjustifiably rejected, it may result in denial of natural justice to the delinquent official in proceeding with the enquiry. However, whether, in a given case, permission to take the services of a Legal Practitioner should be given or not, is a matter on which a decision has to be taken by the Disciplinary Authority on a case to case basis depending upon the facts and circumstances of each case and the special requirements of justice of the case. The Supreme Court, in the case of J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd., : (1991)11LLJ412SC while considering the rule some what similar to the one which is under consideration in this petition, at paragraphs 7, 8 and 9 has observed as follows at pp. 414, 415 of LLJ:

'7. In the present case, the matter is guided by the provisions of Rule 7(5) of the Civil Services (Punishment and Appeal) Rules, 1952 which says:

'7(5) Where the punishing authority itself enquires into any charge or charges or appoint an enquiry officer for holding enquiry against a person in the service of the Government it may, by an order, appoint a Government servant or a legal practitioner to be known as a 'presenting officer' to present on its behalf the case, in support of the charge or charges.' The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government servant, if he so desires, in order to produce his defence before the enquiring officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the enquiry officer, be represented by counsel.'

'8. It would appear that in the inquiry, the Respondent- Corporation was represented by its Personnel and Administrative Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry-authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this

purpose somewhat liberally construed and must include whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser. 'In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question' whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner' which was kept open in Board of Trustees of the Port of Bombay v. Dilip Kumar, : (1983)ILLJ1SC . However, it was held in that case.

'..... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind. If he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...'

'9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presiding Officer was a person with legal attainments and. experience. It was said that, the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in Pett's case that in defending himself one may tend to become 'nervous' or 'tongue tied'. Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.'

In the instant case, as rightly contended by Sri Navadgi, the claim of the petitioner to take the services of a Legal Practitioner is rejected on the ground that there is no such provision under the Regulations. In the light of the discussion made above, the conclusion reached by the Disciplinary Authority, in my view, is

erroneous in law.

9. In the light of the discussion made above order Annexure D dated May 28, 1999 is liable to be quashed. Accordingly, it is quashed. The matter is remitted to the Disciplinary Authority for reconsideration of the request of the petitioner to take the services of a Legal Practitioner before proceeding with the enquiry, in the light of the observations made in the course of this order. It is needless to observe that unless the claim of the petitioner to engage the services of a Legal Practitioner is considered by the Disciplinary Authority, the Enquiry Officer shall not proceed with the enquiry initiated against the petitioner.

10. In terms stated above, this petition is allowed and disposed of. Rule is issued and made absolute.

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