

A. Ravinder Vs. the Managing Director, Fci, Barakhamba Lane, New Delhi and Others

A. Ravinder Vs. the Managing Director, Fci, Barakhamba Lane, New Delhi and Others

SooperKanoon Citation : sooperkanoon.com/949971

Court : Andhra Pradesh

Decided On : Apr-27-2012

Judge : V. Eswaraiah & N. Ravi Shankar

Appeal No. : WRIT APPEAL NO. 624 OF 2010 & WRIT PETITION NO. 16546 OF 2010

Appellant : A. Ravinder

Respondent : The Managing Director, Fci, Barakhamba Lane, New Delhi and Others

Judgement :

COMMON JUDGMENT: (Order of the Court)

1. Heard Sri C.Kodandaram, the learned senior counsel appearing for the appellant and Sri B.Anjaneyulu, the learned counsel appearing for respondents.
2. The appellant in this writ appeal is the petitioner in Writ Petition No.16546 of 2010. He filed that writ petition for declaring the disciplinary proceedings initiated against him by the first respondent [Managing Director of the Food Corporation of India (FCI)] through his memorandum dated 15.04.2010 and other consequential proceedings dated 25.05.2010 and a preliminary enquiry proceedings dated 06.07.2010 of the fourth respondent as illegal on the ground of pendency of the

criminal case i.e. C.C.No.35 of 2007 on the file of the Court of Special Judge for CBI cases at Hyderabad (criminal court) against him. His plea is both the departmental enquiry and as well the criminal case are based on identical facts and evidence and the charges in the criminal case involve complicated questions of law and fact and therefore the departmental enquiry is illegal or in any event they have to be stayed or postponed till the disposal of the criminal case as the findings in it will clinch the matter one way or the other. He also raised the plea of prejudice factor which is highlighted by his counsel.

3. Along with the writ petition, the appellant filed WPMP No.20855 of 2010 for interim stay of the departmental proceedings pending disposal of the writ petition. The learned single Judge by his order dated 29.07.2010 dismissed that miscellaneous petition. It is questioning that order the appellant has come up with this writ appeal. One Sri M.M.Vijay Manohar working as Assistant General Manager (Civil) in the FCI at Hyderabad filed counter affidavit on behalf of all respondents. At the time of arguments both sides agreed that this court can dispose of the writ petition itself as the arguments in the miscellaneous petition, writ appeal and the writ petition are same. That is how we have taken up both the matters for disposal.

4. The point in the writ petition (main matter) is whether the disciplinary proceedings initiated by the respondents (all officials of FCI) should be set aside as illegal, or stayed, or ordered to be postponed till the disposal of C.C.No.35 of 2007 in the criminal court.5. Both sides argued the matter at length and hence an elaborate order has become necessary. Hereinafterwards, for convenience, we shall refer to the parties as they are arrayed in the writ petition.

6. At the relevant time, the petitioner Sri A.Ravinder was working as area manager of the FCI, Nizamabad in Andhra Pradesh. On the report/complaint of one J.S.S.Rambabu a contractor of the FCI, the Inspector of CBI, Hyderabad registered a case on 26.02.2007 in Crime No.RC.6(A)/07-CBI/Hyd under Section 7 of the Prevention of Corruption Act, 1988 (for short PC Act). That offence relates to a charge of demanding bribe roughly of Rs.3 lakhs from the above contractor for releasing certain amount i.e. clearing his bill of Rs.19,20,378/- due to him from the

FCI. It is stated in the CBI charge sheet in the aforesaid criminal case that the petitioner demanded the contractor to pay the first instalment of Rs.50,000/- of the above bribe amount in Room No.110 of Central Court Hotel, Lakdikapul, Hyderabad and accordingly a trap was arranged in the said hotel on 26.02.2007 in between 18.45 hrs and 20.30 hrs. According to CBI, that trap was successfully laid with the help of the contractor and the mediators.⁷ It is not necessary to go into the merits of the trap. It would however be sufficient to note that according to CBI the tainted money/bribe money was recovered from the left side pant pocket of one B.Surender, a friend of the petitioner, and who was also present in the hotel room along with the latter. The CBI's version is that its investigation disclosed that the petitioner and the aforesaid B.Surender are guilty of offences punishable under Sections 120-B and 109 IPC and Sections 7 and 13(2) r/w S.13(1)(d) of the PC Act and it accordingly filed charge sheet in the criminal court. These offences are alleged to have been committed by the petitioner on the allegations of bribery and Surender is added as a conspirator and abettor and other offences are also alleged against him. The criminal court took cognizance of that charge sheet as C.C.No.35 of 2007. The petitioner and B.Surender are shown as A-1 and A-2 in the case.⁸ Sri Kodandaram raised two contentions in support of the plea of the petitioner for declaring the departmental proceedings illegal or for their stay pending disposal of the criminal case inviting our attention to the charges and lists of witnesses in both of them. The first is that charges in the criminal case involve complicated questions of fact and law and they should be allowed to be decided first by the court. The second is that if in such a situation if the departmental enquiry is permitted to go on, the petitioner would be compelled to disclose his defence in the same and that would prejudice him in conducting his defence in the criminal case. On the other hand, Sri B.Anjaneyulu repelled the above contentions and pointed out that since the trial in the criminal case has already begun and it is being delayed, the FCI should be allowed to go ahead with the departmental enquiry. He also pointed out that since the petitioner did not furnish his list of witnesses in the criminal case he became responsible for the delay in disposal of the same and therefore stay cannot be granted. He also argued comparing the charges in both and pointed out that as it is a case of simple bribery charge, no complicated questions of law and fact arise in the criminal case and no prejudice

would also arise for the petitioner in defending the criminal case.9. At the instance of both counsel, we have seen the charges both in the criminal case and the departmental enquiry. The charges against petitioner and B.Surender (A01 and A02) in the criminal case read as follows.

“That A.1 of you while working as Area Manager, Food Corporation of India, Nizamabad during the period between January, 2006 and February, 2007, by abusing your official position demanded and accepted illegal gratification of Rs.50,000/- from Sri JSS Rambabu, the complainant who was functioning as Handling and Transport Contractor at Andhra Pradesh Warehousing Corporation (APSWC) Investor Godown at Janakampet, Nizamabad for releasing the withheld amount of Rs.19,20,317/- on 26.2.2007 at Room No.110 of Central Court Hotel, Hyderabad towards illegal gratification as a motive and thereby committed an offence punishable under Section 7 of P.C. Act, 1988 and within my cognizance.

Secondly, on the same date, time and place mentioned in Charge No.1 supra, A.1 of you, being a public servant employed as Area Manager, Food Corporation of India, Nizamabad by corrupt or illegal means obtained Rs.50,000/- from Sri JSS Rambabu, the complainant (L.W.1) by abusing your official position as such public servant for releasing the withheld amount of Rs.19,20,317/- to Sri J.S.S.Rambabu, complainant and thereby committed the offence of Criminal Misconduct as mentioned in Section 13(1)(d) punishable under Section 13(2) of P.C.Act, 1988 and within my cognizance.

Thirdly, that A.2 of you, a childhood friend of A.1, on the same date, time and place mentioned in Charge No.1 supra, took the tainted amount of Rs.50,000/- from Sri A.Ravinder, A.1 on his instructions and kept it in your left side pant pocket and thereby abetted Sri A.Ravinder, A.1, a public servant to commit an offence under Section 7 of Prevention of Corruption Act and thereby A.2 of you committed an offence under Section 12 of P.C.Act or the offence punishable under Section 7 of P.C.Act read with Section 109 of IPC and within my cognizance.

Fourthly, on the same date, time and place mentioned in Charge No.1 supra, A.2 of you, a childhood friend of A.1, as per his instructions who handed over to you the tainted amount of Rs.50,000/-, fraudulently concealed the said amount in your

left side pant pocket which you knew to be the bribe amount and that you thereby committed an offence punishable under Section 206 of IPC and within the cognizance of this Court.”

10.The single charge framed in the departmental enquiry against petitioner reads as follows.

“Shri A.Ravinder, while he was functioning as Area Manager, FCI District Office, Nizamabad during the years 2006 and 2007 under the administrative control of General Manager (AP), FCI, R.O., Hyderabad had failed to maintain absolute integrity and devotion to duty, to serve the Corporation honestly and faithfully and acted in a manner unbecoming of an employee of the Corporation inasmuch as he had demanded and accepted the bribe of Rs.50,000/- (Rupees fifty thousand only) in denomination of Rs.500/- on 26.2.2007 from Shri J.S.S.Ram Babu, Transport Contractor, APSWC, Janakampet in connection with release of an amount of Rs.19.20 lakhs which was recovered from HandT Bills for the period from June, 2006 to November, 2006 in spite of instructions from General Manager (AP), R.O., Hyderabad to release said amount as stated in the imputations.

That the said Shri A.Ravinder, AGM (Genl.) (under suspension) is, therefore, charged with contravention of Regulations 31, 32 and sub-Regulation 2 of Regulation 32A of the Food Corporation of India (Staff) Regulations, 1971.”

11. It is true that a perusal of the charges in the criminal case and the disciplinary enquiry would show that they are based on the CBI trap which is the subject matter of the criminal case. In the departmental charge sheet six witnesses viz., J.S.Sriram Babu (bribe giver), H.Ramakrishna Murthy (Chemical Examiner), B.Surender (A.2 in the criminal case), N.Aswani Kumar (Inspector, CBI, Hyderabad), A.C.Rajender and B.V.Rao (public servants who acted as mediators in the trap) are cited. These witnesses are also, among other witnesses, cited in the charge sheet filed in the criminal case. The only difference is the disciplinary proceedings are initiated against the petitioner alone as the other gentleman B.Surender is not an employee of the FCI but nevertheless his name also figures in the statement of imputations on the basis of which the charge has been framed against the petitioner in the departmental enquiry and he is cited as a witness.12.

Sri Kodandaram relied upon **Capt. M.Paulanthony v. Bharat Gold Mines Ltd.** (1999) 3 SCC 679 in support of his contention that when departmental enquiry and criminal case are based on identical facts, the former should be stayed or postponed pending disposal of the criminal case. This was a decision where the Supreme Court after considering the facts and circumstances of the case has set aside the punishment imposed in the departmental proceedings on the ground that the criminal case which was based on same set of facts ended in acquittal. However the Supreme Court dealing with the question as to when departmental proceedings should be stayed or postponed pending the criminal case when both of them are found to be on same set of facts, after considering the previous case law on the point, laid down its conclusions in para 22 of the judgment as follows:

(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 stay 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 proceedings 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.

13. Thus from the above conclusions, it follows that in principle departmental proceedings and a criminal case can proceed simultaneously even if they are based on identical facts. However conclusions (ii) to (v) conjointly show that where the charge in the criminal case is a grave or serious one and involves complicated questions of law and fact, those questions must be allowed to be decided by the court and in such a situation, the departmental proceedings should be postponed till the conclusion of the criminal case. This is stated to be an exception. The other exception mentioned in the above decision is where the disposal of the criminal case is being delayed or is likely to be delayed. Thus here itself it should be mentioned that the relief of declaring the departmental disciplinary proceedings as illegal just because of the pendency of the criminal case even though both are based on same set of facts cannot be granted and it is accordingly rejected. We have now to see whether the relief of staying or postponing the departmental proceedings till the disposal of the criminal case in the present matter can be granted.14. On the above question, as already mentioned, Sri Kodandaram's argument is that the charge of bribery in the criminal case against the petitioner involves complicated questions of law and he also relied upon the prejudice factor which may affect the defence of the accused in the criminal case. He also pointed out that the criminal case is of 2007 whereas the disciplinary proceedings were not commenced at all immediately and were commenced only in April, 2010 and therefore having waited for three years, the FCI authorities could have waited further and allowed the criminal case to be disposed of. He also argued that though the petitioner was initially placed under suspension, he was subsequently reinstated into service on 20.04.2010 and this is also a plus point for the petitioner for staying the departmental proceedings. His contention is that if the present criminal case against the petitioner ends in acquittal there may not be any need to proceed with the departmental enquiry and this contention is based on the ultimate decision reached in M.Paulanthony's case (1 supra) on the facts and circumstances of that case. He also relied upon **G.M.Tank v. State of Gujarat** (2006) 5 SCC 446 in support of his above

contention that where a criminal case ends in acquittal, penalty in departmental proceedings on same set of facts, can be set aside. That was a case relating to an offence of possessing disproportionate wealth.

15. The impugned order in W.P.M.P.No.20855 of 2010 (stay petition before the learned single Judge) shows that it mainly proceeded on the premise that disciplinary proceedings can be stayed because of the pendency of criminal case till the public servant/accused is called upon to produce or file the list of witnesses in the criminal case before the criminal court and this was the contention raised by Sri B.Anjaneyulu, the learned counsel for the FCI. In support of that conclusion reliance was placed upon a decision of the Supreme Court given in **Arivazhagan V. State, represented by Inspector of Police** AIR 2000 SC 1198 cited by Sri B.Anjaneyulu. In holding so, it was also observed in the impugned order that in view of Section 22 of the PC Act which amends Section 243 of the Code, the entire prosecution evidence also need not be let in by it for directing the accused to file his list of witnesses to be examined in defence.

16. Section 5(1) of the PC Act describes the procedure to be followed by the Special Judge in dealing with the cases under it. It says that the Special Judge shall follow the procedure prescribed in the Code for the trial of warrant cases by the Magistrate. Chapter 9 of the Code prescribes the procedure for trial of warrant cases by the Magistrate. It is not necessary to deal with the whole of that chapter, but it would be sufficient to note part A of it deals with the cases instituted on a police report/ charge sheet which is applicable to this case as it is registered on a CBI charge sheet. Section 242 which occurs in part A in substance says that where the accused denies the charges brought against him, the prosecution shall first lead its evidence. Then Section 243 speaks of evidence for defence and it says that after prosecution completes its evidence, the accused shall be called upon to enter upon his defence and produce his evidence. This Section 243 has been amended by Section 22 of the PC Act in its application to trial of offences under the said Act. Section 243 (1) as amended reads that the accused/public servant should first be called upon to furnish at once or within such time as prescribed by the court his list of witnesses proposed to be examined by him in his defence i.e. before he commences his evidence. The purpose of this amendment,

it is now settled, is to speed up the trial of cases under the PC Act.

17. Now in the present case the undisputed copy of the various docket orders in the criminal case filed by the petitioner's counsel would show that by the date of filing of the writ petition, the prosecution has examined only four witnesses (P.Ws.1 to 4) and the trial of the criminal case was pending at that stage and the prosecution has to examine many other witnesses and complete its evidence. These docket orders would of-course show that petitioner was not responsible for the delay in the conclusion of trial. In the impugned order, as it discloses, it was held that the accused i.e. the petitioner was bound to furnish his list of witnesses even before the prosecution completes its evidence as required by Section 242 of the Code and as he did not do it, that was a good ground for refusing stay of departmental proceedings. We are unable to agree with that view of the learned Single Judge as it is not a relevant factor in the present case to refuse stay of departmental enquiry.

18. What should be noted is that the stage at which Section 243 of the Code comes into play is only after the prosecution completes its evidence, but not before that and even Section 22 of the PC Act does not change that position and it only seeks to speed up the trial after the progress in the case has crossed the stage of Section 242 of the Code. In Arivazhagan's case (3 supra), the Supreme Court was dealing with the question about the power of the Special Judge under the PC Act as to whether he can shortlist the witnesses from out of the lengthy list of witnesses furnished by the accused to be examined from his side in his defence in order to ensure that the accused does not indulge in delay tactics to protract the proceedings by citing and examining a number of unnecessary witnesses. The Supreme Court held that the Special Judge has got that power. That decision is however not an authority for the proposition that stay of departmental enquiry can be refused if the accused/ public servant fails to furnish list of his witnesses even though stage for that step has not reached. We accordingly reverse that view taken in the impugned order. We however refrain from expressing any view with regard to the question whether in any given case the failure of the accused/ public servant to furnish his list of witnesses under Section 243(1) of the Code in the corresponding criminal case can be made a ground by itself to refuse stay of the

departmental proceedings/ enquiry as that question does not arise here. 19. Now coming back to the controversy in this case the legal position stated in Paulanthony's case (1 supra) and G.M.Tank's case (2 supra) is relevant and of-course the application of the principles laid down therein have to be applied to each case depending upon its facts and circumstances as laid down in the said decisions itself. It has now to be examined whether the said principles can be applied to the present case to stay the departmental proceedings as pleaded by the petitioner.

20. Before we deal with the above question, we should mention here about another decision of the Supreme Court given in **State of Rajasthan v. B.K.Meena** AIR 1997 SC 13 relied upon by Sri B.Anjaneyulu. This was a case where a public servant was prosecuted in the criminal court on a charge of misappropriation of funds and on the same set of facts disciplinary proceedings were also commenced. The Central Administrative Tribunal, at the instance of the public servant, stayed the departmental proceedings on the ground of pendency of criminal case even though the said public servant already disclosed his defence by filing a written statement of his defence in the departmental proceedings. The Supreme Court reversed that order of the Tribunal holding that, that was not a fit case for granting stay. After considering the previous cases on the point, the Honourable Supreme Court answering the question when departmental proceedings can be stayed because of the pendency of criminal case stated the position in para 14 of the judgment as follows.

“.....The only ground suggested in the above decisions 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.

21. The above decision was considered in Paulanthony's case (1 supra) also. Thus one ground on which departmental proceedings can be stayed because of a pending criminal case is the prejudice factor to the accused in conducting his defence in the criminal case and this is relied upon by Sri Kodandaram also. In other words, if the public servant is called upon to disclose his defence in departmental proceedings even before the trial in the criminal case is commenced, the prosecution will be in an advantageous position in the criminal case to improve its case and overcome the defence of the public servant by alerting its witnesses to the said defence. The other ground pertaining to complicated questions of law and fact in the charges in the criminal case are mentioned in B.K.Meena's case (4 supra) are connected to the above ground. These are again mentioned as grounds in **Paulanthony** (1 supra) also. 22. In the present matters, the criminal case against the petitioner is based on trap and the charge relates to a bribery charge for releasing certain amounts legally due to the contractor who is the de facto complainant in the criminal case. It is brought to our notice that the contractor J.S.S.Rambabu who is cited as fourth witness in the charge sheet and who is the complainant has already been examined in the criminal case and was cross-examined by the petitioner's counsel though it is not clear what is the witness number given to him in the criminal court. This is admitted by Sri Kodandaram. It therefore follows that when the petitioner has already cross-examined the contractor J.S.S.Rambabu, the petitioner has disclosed his defence to him and he is the main and material witness.

23. It may also be noted that apart from J.S.S.Rambabu, the prosecution is also said to have examined three other witnesses and it is brought to our notice that one of them is one of two mediators namely A.C.Rajender and B.V.Rao in the criminal case. The petitioner must have disclosed his defence to them also. We therefore asked Sri Kodandaram that since the petitioner has already disclosed his defence to the contractor who is the main witness and a mediator in the criminal case what is the prejudice that would result to the petitioner, if the departmental proceedings are now proceeded to be continued. Sri Kodandaram pointed out that A.2 B.Surender in the criminal case is cited as third witness and therefore the prejudice factor will still operate for the petitioner. Except making this statement, Sri Kodandaram was unable to explain how the cross-examination of B.Surender

by the petitioner in the departmental enquiry will prejudice petitioner's defence in the criminal case.

24. To repeat, it may be noted that J.S.S.Rambabu and a mediator examined in the criminal case have been cross-examined by the counsel for the petitioner and the said B.Surender. They are material witnesses. Surender must have also therefore disclosed his defence in the criminal case. The averments made in the statement of imputations accompanying the charge in the departmental proceedings read that on the date and time of trap, when both Surender and the petitioner were in the hotel room, J.S.S.Rambabu entered the room and at that time the petitioner asked Surender to leave the room and after J.S.S.Rambabu left the room, Surender again entered the room and thereafter the petitioner handed over the bribe amount to Surender and asked him to keep it in his pocket. It is clear that it is to prove this allegation Surender was cited as a witness in the charge sheet.

25. It is stated that in the criminal case B.Surender also took the defence that the petitioner first sent him outside the hotel room after the contractor J.S. Rambabu entered it and later on when he went out petitioner called him (Surender) inside the room and handed him over the bribe amount. In the disciplinary proceedings against the petitioner, perhaps the FCI was relying upon aforesaid version of Surender to prove the guilt of the petitioner. Nothing is brought to our notice as to how the petitioner would be prejudiced in his defence in the criminal case by cross-examining Surender in the departmental enquiry. It should be noted, when J.S.S.Rambabu, the principal witness and a mediator who can be said to be important witnesses in criminal case were already cross-examined on behalf of the petitioner in the criminal case which results in disclosure of his defence to them and who are also cited as witnesses in the departmental enquiry, it follows that petitioner cannot be permitted to say that departmental proceedings have to be stayed or postponed, as Surender is also cited as a witness in the said proceedings on the ground of prejudice factor.

26. Then coming to the other contention of Sri Kodandaram that the charge in the criminal case involves complicated questions of law and fact that cannot also be

accepted. It may be noted that the charges in the criminal case or the departmental enquiry do not relate to any misappropriation of funds based on various entries in the books of account or various registers of the FCI over a considerable period involving the questions of mens rea. Nor is this a case pertaining to possession of assets disproportionate to the known sources of income of the petitioner wherein the petitioner has taken a defence that some of the assets can be explained by his income and savings and some assets do not belong to him at all which may require adjudication of complicated questions of fact. It is also not explained as to what are the complicated questions of law in the present charge relating to bribery or demand of bribe in the criminal case which require adjudication first by a court.²⁷ On the other hand, the charge in the criminal case is a simple charge relating to alleged demand of and taking bribe. Thus it cannot be said that this case would fall under that category where it would be desirable or appropriate to stay the departmental proceedings as laid down in M.Paulanthony's case (1 supra) and B.K.Meena's case (4 supra). To repeat, this is a case where the petitioner has disclosed his defence in the criminal case in cross-examination of the alleged bribe giver and one of the mediators and both can be said to be material and important witnesses and the disciplinary proceedings have been commenced only after that. Thus the factor relating to prejudice in defending the criminal case does not apply at all here, as it is the other way in the present matter. No complicated questions of law and fact are also involved. Thus, in the circumstances of this matter, it follows that the petitioner's plea for stay of departmental proceedings pending the criminal case cannot be accepted.

28. One argument which was advanced by Sri Kodandaram is that if the petitioner gets an acquittal in the criminal case, even if any finding of guilt is recorded in disciplinary proceedings, the same cannot be allowed to stand and therefore the present departmental proceedings should be stayed. He again relied upon Paulanthony's case (1 supra) and G.M.Tank's case (2 supra) for this proposition. That principle cannot be applied now. We therefore do not propose to go into that question.²⁹ For the aforesaid reasons, we are of the opinion that there are no merits in the writ petition. Accordingly, both the writ appeal and the writ petition are dismissed with costs.³⁰ Parting with the matter, it is made clear that the

criminal court and the concerned authorities can go ahead with the matters before them independently and uninfluenced in any manner by any observations made in this judgment.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com