

Vishnu Pal Singh Vs. Delhi Tourism and Transportation Development Corpo

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Court : Delhi

Decided On : Jul-24-2013

Judge : Vibhu Bakhru

Appellant : Vishnu Pal Singh

Respondent : Delhi Tourism and Transportation Development Corpo

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

24. 07.2013 LPA 471/2013 VISHNU PAL SINGH Appellant versus DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION .Respondent Advocates who appeared in this case: For the Appellant : Mr Bharat Bhushan. For the Respondent : None. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE HONBLE MR JUSTICE VIBHU BAKHRU JUDGMENT VIBHU BAKHRU, J 1.This is an appeal filed by the Vishnu Pal Singh seeking to challenge the order dated 04.04.2013 passed by a learned Single Judge in W.P.(C) No.5331/2012. By the order dated 04.04.2013 impugned in the present proceedings, a learned Single Judge of this Court has vacated the ad interim order passed on 14.09.2012 staying the departmental inquiry initiated against the appellant. By the order dated 04.04.2013, the learned Single Judge has permitted the continuation of departmental proceedings, albeit, with a condition that any order passed pursuant to the departmental proceedings would not be implemented without the permission of the Court.

2. The appellant is an employee of the respondent corporation and at the material time was employed as a store keeper and is alleged to have been incharge of a liquor vend owned by the respondent situated at Deshbandhu Gupta Road, New Delhi. It is alleged that the officers of the respondent corporation received information that a certain quantity of liquor in excess of the transport permit had been off loaded at the liquor vend on 30.07.2011 which was under the charge of the appellant at the material time. It is alleged that based on the information, officers of the respondent corporation visited the liquor vend and conducted a search of the stocks as well as the cash available in the cash box. It is alleged that the stocks of liquor available at the liquor vend as well as the cash available in the cash boxes were found to be in excess. The inference drawn by the respondent is that the appellant was involved in illegal sale of liquor from the vend.

3. Pursuant to the search conducted on 30.07.2011, the concerned officer of the respondent corporation also lodged an FIR bearing No.156/2011 at P.S. Deshbandhu Gupta Road, New Delhi under Section 33 of the Delhi Excise Act, 2009. The incident of 30.07.2011 has also resulted in the respondent corporation framing a charge of gross misconduct against the appellant. The appellant has been charged with failure to maintain absolute integrity and is alleged to have exhibited conduct unbecoming of a government servant and thus violated Rule 3 of the CCS (Conduct) Rules read with Rule 11 of DTTDCs Staff Service Rules, 1986. The Article of charge as well as the statement of imputation has been served upon the appellant and an inquiry is currently being conducted by the respondent pursuant to the charge framed.

4. The appellant has contended that the disciplinary proceedings as well as the FIR bearing No.156/2011 stem from the same incident of search being conducted on 30.07.2011. The allegations made against the appellant in both the proceedings are identical and based on the allegation that excess stock and excess cash was found at the liquor vend which was under supervision of the appellant at the material time. It is contended on behalf of the appellant that the charges involved are grave and involve complicated questions of fact and law. Whilst examination of witnesses in the criminal case is likely to take some time, the departmental proceedings have commenced. It is urged on behalf of the

appellant that participation of the appellant in the departmental proceedings would seriously prejudice the appellant in the criminal trial. The counsel for the appellant has relied upon a decision of the Supreme Court in the case of Captain M. Paul Anthony v. Bharat Gold Mines Ltd: AIR 199.SC 141.in support of his contention that in cases where departmental proceedings and criminal proceedings arise out of the same alleged set of facts, the departmental proceedings should be stayed in order that the defence of the accused is not prejudiced in the criminal trial.

5. We have heard the learned counsel for the appellant.

6. The question whether disciplinary proceedings can be allowed to proceed in cases where a criminal trial based on similar allegations is pending has come up before the Courts on various occasions. In the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan: AIR 196.SC 806.the Supreme Court considered a case where the respondent had been accused of stealing a bicycle. Whilst, the employer instituted disciplinary proceedings against the respondent employee, the allegation of theft was also made the subject matter of a criminal case. Although, the respondent appeared before the inquiry committee, he refused to answer any questions on the ground that a criminal case was pending against him. The inquiry was completed and the respondent was found guilty and consequently, dismissed from services. In the meantime, the criminal court acquitted the respondent of the alleged offence of stealing a bicycle. The employer approached the Labour Appellate Tribunal for approval of the punishment of dismissal which was rejected by the Labour Tribunal. A Special Leave Petition was preferred by the employer. The Supreme Court set aside the order of the Tribunal and granted approval to the order passed by the employer dismissing the services of the respondent. While, allowing the appeal, the Supreme Court held as under:(3) It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Shri Bimal Kanta Mukherjee v. Messrs. Newsmans Printing Works, 1956 Lab AC 188.this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the

employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. (emphasis supplied) 7. It is also relevant to refer to the decision of the Supreme Court in the case of State of Rajasthan v. B. K. Meena: (1996) 6 SCC 417. In that case, the Supreme Court noted several other decisions and held as under:¹⁴ 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 situation, it may not be desirable, advisable or appropriate to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. 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 rules can be enunciated in that behalf. 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. The ground indicated in D.C.M., AIR 196.SC 80. and Tata Oil Mills, AIR 196.SC 15. is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations 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 are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice 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

interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not 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 vindicated 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 to enumerate the 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 of the various principles laid down in the decisions referred to above."

8. It is thus, now well settled that there is no bar against an employer initiating disciplinary proceedings against an employee for mis-conduct in relation to an offence which may also be a subject matter of criminal proceedings. However, in certain cases it may be advisable to stay the disciplinary proceedings, if the same are likely to cause prejudice to the employee in the criminal proceedings. Each case has to be considered on its own facts and as held by the Supreme Court in the case of *Kusheshwar Dubey v. Bharat Coking Coal Ltd.*: AIR 198.SC 2118:6.it is neither possible nor advisable to evolve a hard and fast straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation."

9. In the case of *M. Paul Anthony* (supra), the Supreme Court was considering the case of a security officer employed with Bharat Gold Mines Ltd. The residence of the security officer was raided by the police and a mining sponge gold ball weighing 4.5 grams and 1276 grams of 'gold bearing sand' were recovered. The

security officer was placed under suspension and disciplinary proceedings were commenced. The officer was found guilty of misconduct and consequently dismissed from service. Subsequently, the criminal Court acquitted the security officer and on basis of the acquittal he asked for reinstatement in service which was rejected. The security officer (appellant therein) challenged the denial of reinstatement before the High Court, where he was unsuccessful. He, therefore, approached the Supreme Court. The Supreme Court held that it would be unjust, unfair and rather oppressive to allow findings recorded in the departmental proceedings to stand as there was no difference in the facts and evidence in the departmental and the criminal proceedings. The Supreme Court also took note of various earlier decisions passed by the Supreme Court and summarized the law as under: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 stay the departmental proceedings till the conclusion of the criminal case. (iii) Whether the 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, administration may get rid of him at the earliest."

10. Before considering the facts of the present case we may also refer to the decision of the Supreme Court in the case of HPCL v. Sarvesh Berry: (2005) 10 SCC 471. In this case the respondent was charged as being in possession of assets disproportionate to his known sources of income. A criminal case was registered by CBI and while, the same was pending, the employer (appellant therein) initiated disciplinary proceedings against the respondent employee. A Division Bench of the Andhra Pradesh High Court stayed the departmental proceedings till completion of the criminal case. On appeal, the Supreme Court set aside the decision of the High Court and held as under:⁸ The purposes of departmental enquiry and of prosecution are two different and distinct aspects. 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 a grave nature involving complicated questions of fact and law. Offence generally implies infringement of public 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 Indian Evidence Act, 1872 (in short the "Evidence Act"). Converse is the case of departmental enquiry. The enquiry in 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. 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.

11. In view of the above settled law, the only question that is necessary to be examined in the present case is whether the charges in the present case are of a grave nature and which involve complicated questions of fact and law. It is further, to be considered whether conduct of the departmental inquiry would prejudice the appellant in the criminal proceedings initiated against him.

12. While, it is alleged in the writ petition that participation of the appellant in the departmental proceedings would cause serious prejudice to him in the criminal trial, no further particulars have been provided as to how the appellant would be prejudiced. Similarly, a bald statement is made that the charges are grave and involve complicated questions of fact and law but the appellant has failed to indicate the questions of law which he considers to be complicated. Similarly, there is no averment as to the facts which are contended to present complications. Although, it is not expected that the appellant should disclose his defence, however, in order for the Court to appreciate and assess whether the case presents complicated questions of fact and law, it would be necessary for the appellant to briefly indicate why he claims that the question of facts and law are complicated. The writ petition filed by the appellant is silent in this respect.

13. The appellant has, further, claimed that the facts, on the basis of which, the charge-sheet has been filed both in the departmental proceedings as well as in the criminal proceedings are essentially based on the same allegations and, the witnesses are also common. The respondent in the affidavit filed in response to the writ petition, has pointed out that there are only six witnesses which are to depose in the disciplinary proceedings while, in the criminal case twenty witnesses have been named and only three witnesses are common with the witnesses named in the departmental proceedings. The respondent has, further, contested the claim of the appellant that the matter involves complicated questions of law and fact.

14. The allegations against the appellant are essentially that the appellant had been selling illegal liquor from the vend in his charge. The evidence against the

appellant also essentially revolves around the excess stock and cash alleged to have been found during the search conducted at the vend on 30.07.2011. In our view, the facts relating to the allegations cannot be stated to be complicated. We also are unable to foresee any complicated questions of law arising in the matter.

15. Although, the allegation on the basis of which both the departmental proceedings as well as the criminal proceedings have been initiated may be the same. However, the purpose of the two proceedings as well as the standards of proof required are entirely different. While, criminal proceedings are intended to take punitive measures in relation to offences committed by a person against the society, the disciplinary proceedings are intended to ensure that employees act honestly, maintain discipline and conform to the rules of conduct specified by the employer. We do not think that facts of the present case warrant any interference in the conduct of the disciplinary proceedings by the respondent. We also note the assertion made by the appellant that the criminal proceedings are likely to take some time. In our view, it would not be apposite to delay domestic proceedings to await progress in the criminal proceedings.

16. We, accordingly, dismiss the present appeal. The parties are left to bear their own costs. VIBHU BAKHRU, J BADAR DURREZ AHMED, ACJ JULY 24 2013 MK

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