

Hindustan Petroleum Corporation Ltd. & ... vs Sarvesh Berry on 9 December, 2004

Equivalent citations: AIR 2005 SUPREME COURT 1406, 2004 AIR SCW 7290, 2005 LAB. I. C. 1624, (2005) 27 ALLINDCAS 315 (SC), (2006) 2 JCR 341 (SC), (2004) 4 KHCACJ 527 (SC), 2005 (1) UJ (SC) 442, 2005 (10) SCC 471, 2005 SCC(CRI) 1605, 2005 LAB LR 193, 2005 (1) SLT 126, 2004 (4) KHCACJ 527, 2004 (10) SCALE 340, 2005 (1) SRJ 329, (2004) 10 JT 392 (SC), (2004) 10 SCALE 340, (2005) 104 FACLR 305, (2005) 1 LABLJ 588, (2005) 1 SUPREME 388, (2005) 1 CURLR 263, (2005) 1 LAB LN 655, (2005) 32 OCR 813, (2005) 1 SCT 179, (2005) 1 SCJ 1, (2005) 1 SERVLR 641

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:

Appeal (civil) 7980 of 2004

PETITIONER:

Hindustan Petroleum Corporation Ltd. & Ors.

RESPONDENT:

Sarvesh Berry

DATE OF JUDGMENT: 09/12/2004

BENCH:

ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T (Arising Out of S.L.P. (Civil) No. 24560 of 2003) ARIJIT PASAYAT, J.

Leave granted.

Appellants calls in question legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court which set aside the judgment of the learned Single Judge and directed that departmental proceedings were not to be continued until conclusion of criminal charge.

Background facts in a nutshell are as under:

Hindustan Petroleum Corporation Ltd. (hereinafter referred to as the 'employer') is a Government of India enterprise.

Officials of the Central Bureau of Investigation (in short the 'CBI') raided the house of the respondent (hereinafter referred to as the 'employee') on 13.3.1998 and found that he was in possession of assets disproportionate to his known sources of income and consequently a case was registered on 5.5.1998. After completion of investigation charge sheet was filed. In the meantime departmental proceedings were initiated against the respondent and charge sheet was issued. The employee filed a writ petition before the Andhra Pradesh High Court taking the stand that departmental proceedings should be stayed till completion of the criminal case. It was specifically stated that once sanction has been granted to launch criminal prosecution nothing further warrants initiation and continuance of departmental proceedings as the issues involved in both the departmental inquiry and the criminal case are identical. The appellants filed counter affidavit stating that raid was conducted in the year 1988 and after completion of investigation, CBI requested the employer-appellant no.1 to sanction prosecution on 21.12.2000 and on 19.6.2001 sanction has been accorded to prosecute the employee for the criminal charges. Though CBI had filed the charge sheet there was no noticeable progress for four years. Employer initiated the disciplinary proceedings on the ground that continuation of the employee in service of the employer-Corporation would not be in the public interest. Learned Single Judge dismissed the writ petition holding that there is no legal bar on departmental proceedings and criminal case continuing simultaneously even though they are based on identical or similar set of facts. Reference was made to a decision of this Court in *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Anr.* (1999 (3) SCC 679). Matter was carried in appeal by the employee before the Division Bench of the High Court in writ appeal and by the impugned judgment the High Court held that there were 3 charges indicated in the charge sheet. The first related to possession of assets disproportionate to the known sources of income and the other two related to misconduct in (a) not filing correct property returns and/or (b) not filing return at all for some years as required under Rule 13(1)(c) of the Hindustan Petroleum Management Employees Conduct, Discipline and Appeal Rules, 1976 (in short the 'Rules'). The third charge related to failure of the respondent-

employee to file property returns for the years 1991-92, 1994-95, 1995- 96, 1996-97 and 1997-98. The High Court stated that though the charges 2 and 3 related to non-disclosure or non-submission of property returns they are relatable to the first charge relating to possession of assets disproportionate to the known sources of income. It would not be safe to permit the appellants to continue the departmental proceedings till completion of criminal case. However, an opportunity was given to take steps for early disposal.

In support of the appeal, learned counsel for the appellants submitted that charges 2 and 3 as noted above are different from the charge no.1 which related to possession of assets disproportionate to the known sources of income. The Criminal Court will have no occasion to deal with those charges. Further the criminal case is under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (in short the 'PC Act'). It would not be proper to continue respondent in the employment of the appellants as it would not be in the public interest and in any event the

respondent would be able to place facts relevant to all the charges in the departmental proceedings.

Per contra, learned counsel for the respondent submitted that respondent-employee would be required to disclose its defence and in any event charge no.1 is not covered by any of the provisions of the Rules and the departmental authorities have no jurisdiction to deal with the matter in any departmental proceedings. Additionally, it is submitted that the trial has commenced and, therefore, the order of the High Court is correct in view of what has been stated in Capt. M. Paul Anthony's case (supra).

It is fairly well-settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is in these cases, the Court has to decide, taking into account special features of the case, whether simultaneous continuance of both would be proper.

The purpose of departmental enquiry and of prosecution is 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 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 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. Under these circumstances, what is required to be seen is whether the department 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.

A three-judge Bench of this Court in *Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Ors.* (1997 (2) SCC

699) analysed the legal position in great detail on the above lines.

The aforesaid position was also noted in *State of Rajasthan v. B.K. Meena* (1996 (6) SCC 417).

There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

In Capt. M. Paul Anthony's case (*supra*) this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised. They are 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 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, the administration may get rid of him at the earliest.

It is to be noted that in cases involving Section 13 (1)(e) of the P.C. Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression 'known sources of income' is related to the sources known to the authorities and not the accused. The Explanation to Section 13(1) of the P.C. Act provides that for the purposes of the Section, "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets were acquired and from what source of income is

within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally, issues covered by charges 2 and 3 cannot be the subject matter of adjudication in the criminal case.

That being the position, the High Court was not justified in directing stay of the departmental proceedings pending conclusion of the criminal charge. As noted in Capt. M. Paul Anthony's case (supra) where there is delay in the disposal of a criminal case the departmental proceedings can be proceeded with so that the conclusion can be arrived at an early date. If ultimately the employee is found not guilty his honour may be vindicated and in case he is found guilty the employer may get rid of him at the earliest.

Regarding aspects which are related to the criminal case, we do not express any opinion. The appellants are free to continue departmental proceedings. Since the criminal trial has commenced, it would be in the interest of parties to assist the Court for its expeditious disposal.

The appeal is allowed accordingly with no order as to costs.