

Kendriya Vidyalaya Sangathan & Ors vs T.Srinivas on 5 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4127, 2004 AIR SCW 4558, 2004 LAB. I. C. 3226, (2005) 3 JCR 225 (SC), 2004 (5) SLT 180, 2004 (7) SCC 442, 2004 (7) SRJ 318, 2004 (6) SCALE 467, 2004 (6) ACE 507, (2004) 6 JT 292 (SC), 2004 (6) JT 292, (2004) 22 ALLINDCAS 466 (SC), (2005) 1 GUJ LH 565, (2004) 3 KER LT 719, (2004) 3 LAB LN 1232, (2004) 4 PAT LJR 127, (2004) 3 SCT 819, (2004) 5 SERVLR 729, (2004) 6 SUPREME 4, (2004) 6 SCALE 467, (2004) 4 ESC 492, (2004) 4 JLJR 50, (2004) 3 ALL WC 2714, (2004) 3 CURLR 4, (2004) 106 FJR 915, (2004) 102 FACLR 1045, (2004) 29 OCR 1, (2004) 22 INDLD 133, 2004 SCC (L&S) 1011

Bench: N.Santosh Hegde, S.B.Sinha

CASE NO.:

Appeal (civil) 4985 of 2004

PETITIONER:

Kendriya Vidyalaya Sangathan & Ors.

RESPONDENT:

T.Srinivas

DATE OF JUDGMENT: 05/08/2004

BENCH:

N.Santosh Hegde & S.B.Sinha.

JUDGMENT:

J U D G M E N T (Arising out of SLP)No.24698 of 2003) SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

The appellants being aggrieved by the dismissal of their writ petition filed before the High Court of Judicature, Andhra Pradesh at Hyderabad are in appeal before us. Basic facts required for the disposal of this appeal are as follows:

The respondent herein while working with the first appellant as Upper Division Clerk at Visakhapatnam was arrested by the CBI after a trap and was charged for offence punishable under Section 7 read with Section 13(i)(d) of Prevention of Corruption Act

and a case in this regard is pending trial before the competent court. During the pendency of the said trial, the appellants decided to initiate departmental proceedings against the respondent and a charge memo framing three charges was issued to the respondent. First Article in the memo of charges referred to the allegations of the respondent receiving Rs.200/- as bribe in violation of Rule 3(1)(i)(ii) & (iii) of CCS (Conduct) Rules, 1964. Article II of the said charge memo referred to the conduct of the appellants in not maintaining absolute integrity devotion to duty and acting in a way unbecoming of an employee in violation of Rule 3(i) (ii) & (iii) of the CCS (Conduct) Rules, 1964 and Article III of the said charge memo referred to the respondent suppressing the fact that he was in police custody on 16th of September, 2002 which according to the appellants was again a misconduct in violation of Rule 3(1)(i)(ii) & (iii) of the CCS (Conduct) Rules, 1964.

The respondent herein challenged the said decision of the appellants to hold a departmental enquiry while a criminal trial on identical facts was pending against him before a competent court. This challenge was made before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad. The tribunal by its order dated 2.7.2003 came to the conclusion that the first two Articles of charges are identical to the charge levelled against the petitioner before the special court under the provisions of the Prevention of Corruption Act and the third Article of charge though not a subject matter of the trial is an inter-connected charge with charges 1 and 2, hence it allowed the application of the respondent and directed the appellant that proceedings pursuant to the charge memo be stayed till the applicant discloses his defence in the pending criminal trial. It, however gave permission to the appellant to proceed with the disciplinary proceedings after the disclosure of the defence by the respondent which in effect would mean that the disciplinary proceedings will stand stayed almost till the disposal of the trial before the criminal court.

Being aggrieved by the said order of the tribunal, the appellants herein, as stated above, preferred a writ petition before the High Court . The High Court by the impugned order agreed with the tribunal that the disciplinary proceedings should be stayed till the criminal trial was over and the request of the appellant, atleast to permit it to proceed with the departmental enquiry in regard to the charge No.3 which was independent of charges 1 and 2 was rejected on the ground that the said charge No.3 is inter-connected with the other two charges. It is against the said order of the High Court confirming the order of the tribunal, the appellants are before us in this appeal. Mr.Rakesh K.Khanna, learned counsel appearing for the appellants submitted that it is now a well settled principle in law that merely because a criminal trial is pending a departmental enquiry involving the very same charges as is involved in the criminal proceedings is not barred or can not be initiated, therefore, the courts below erred in holding otherwise. He also submitted that atleast in regard to charge No.3 which is not a subject matter of the trial the department ought to have been permitted to proceed with the departmental enquiry. In support of his contention, the learned counsel placed reliance on two judgments of this Court in the case of

State of Rajasthan vs. B.K.Meena & Ors. (1996 (6) SCC 417) and Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (1999 (3) SCC 679). Shri P.S.Narasimha, learned counsel appearing for the respondent contended that the charges before the criminal court and before the Departmental Enquiry Committee being identical the appellants could not have initiated a parallel proceedings which would prejudice the defence of the appellants. He submitted the facts and the material that would be relied upon in the departmental enquiry would be the same upon which the prosecuting agency before a criminal court would also rely upon, hence, the respondent will be compelled to disclose his defence in advance which would seriously prejudice his case before the criminal court. The learned counsel also relied upon the very same judgments on which reliance was placed by the learned counsel for the appellant in support of his contention, reference to which has been made herein above.

A reading of M.Paul Anthony's case (supra) it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however this court noticed that certain exceptions have been carved out to the said basic principle. In State of Rajasthan vs. B.K.Meena & Ors. (supra), this court held:

"The only ground suggested in the decisions of the Supreme Court 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. 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, of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. 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 Supreme Court's decisions."

(Emphasis supplied) From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course. In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious

charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that 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 are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings.

We think the above ratio of law laid down by this Court applies aptly to the facts of the present case also. It is also to be noted that in Capt. M.Paul Anthony case (supra), this court has accepted the principle laid down in Rajasthan case (supra) As stated above, in the case in hand, both the tribunal and the High Court proceeded as if a departmental enquiry and a criminal trial could not proceed simultaneously, hence, they stayed the departmental enquiry which by itself, in our opinion, is contrary to the principles laid down in the above cited cases. We are of the opinion that both the tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges, in this background it is not necessary for us to go into second question whether atleast charge No.3 by itself could have been permitted to be decided in the departmental enquiry as contended alternatively by the learned counsel for the appellant. For the reasons stated above, this appeal succeeds. The impugned order of the tribunal and the High Court are set aside. The appeal is allowed.