

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and

THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.Nos.1031 to 1033 of 1999

State of Tamil Nadu,
Rep. by its Secretary to Government,
Transport Department,
Fort St.George,
Chennai - 9.

...Appellant in all the Writ Appeals

Vs.

1. M.Veerappan ...Respondent in W.A.1031/1999

2. C.Rengasamy ...Respondent in W.A.1032/1999

3. T.Sethuraman ...Respondent in W.A.1033/1999

Appeals filed under Clause 15 of the Letters Patent against
the order dated 23.03.1999 in W.P.Nos.8422, 10129 and 11528 of
1997.

For Appellants :: Mr.V.Raghupathy, Govt. Pleader
For Respondents :: Mr.S.Ayyathurai

सत्यमेव जयते
J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The
Chief Justice)

These writ appeals are against the impugned common order dated
23.03.1999 passed by the learned single Judge.

2. The respondents/writ petitioners were suspended pending
enquiry on serious charges of corrupt practices and financial
irregularities to the tune of crores of rupees committed by them
during 1993-1996 when they were at the helm of affairs of the
respective State Transport Corporations, viz. Managing Director of
the Transport Corporations.

3. To appreciate the nature and gravity of the financial irregularities committed by the writ petitioners/respondents, we quote the five charges mentioned in the charge sheet dated 21.08.1996 issued by G.O.Ms.No.170 to the respondent/writ petitioner M.Veerappan in W.A.No.1031 of 1999 arising out of W.P.No.8422 of 1997.

"Charge No.I: He, while serving as the Managing Director, Jeeva Transport Corporation Limited, Erode during the period from 26.12.1994 to 11.07.1996 purchased Bus Body Kit and Seat Assemblies during the periods of 1993-1994, 1994-95 and 1995-96 to the tune of Rs.4.08 crores from certain firms which were not approved firms of the Corporation and without adhering to the purchase procedure in vogue and also by paying exorbitant rates towards the purchase of above items.

Charge No.II: He, during the above said periods had not fully utilised the infrastructure facilities available at their Body Building Units at Dharapuram and Palliapalayam for fabricating Kits and Seat Assemblies but procured such items from private sources at an exorbitant price though infrastructure facilities were available in other Corporation, namely., Cheran Engineering Corporation Ltd., and thus caused the Jeeva Transport Corporation Limited to incur an excess expenditure to the tune of Rs.2.06 crores during the periods of 1993-94, 1994-95 and 1995-96.

Charge No.III: He, while functioning in the aforesaid office had purchased materials other than Kits and Seat Assemblies costing Rs.42.18 lakhs during the periods from 1993-94 to 1996-97 from the particular Firms instead of approaching Original Manufacturers especially plywoods, laminated sheets, tyres, tubes, etc., thereby caused a heavy loss by violating the accepted procedures.

Charge No.IV: He, while functioning in the aforesaid office printed the tickets without following the usual procedures, by paying exorbitant rates especially when the contract for printing of tickets was not finalised.

Charge No.V: He, while functioning in the aforesaid office, had appointed four Technical Supervisors and 32 Drivers during May 1996 over and above the norm fixed and paid salary and wages to them and thus caused surplus man power with consequent loss to the Corporation."

4. The nature and gravity of the charges are almost similar in cases of the other two writ petitioners/respondents. F.I.Rs. were also lodged against the writ petitioners on these charges, and the petitioners were arrested but later released on bail.

5. The writ petitioners/respondents challenged the orders suspending them from service in the writ petitions and the learned single Judge, by the impugned common order, directed the State Government to revoke the orders of suspension imposed upon the writ petitioner/respondents. The State Government, by these appeals, challenges the impugned order of the learned single Judge.

6. We have heard the learned counsel for the parties, and have perused the records.

7. We are of the opinion that the impugned order was not the proper order for the learned single Judge to have passed. The proper order, in our opinion, for the learned single judge to have passed, if the learned single Judge felt that there was delay in completing the disciplinary proceedings against the respondents, was to direct the completion of the enquiry expeditiously or within a specified time-frame, say within six months. However, when there were such serious charges of corruption and financial irregularities, running to crores of rupees in public Transport Corporations, against the persons who were at the helm of affairs of the said Corporations, it was not proper for this Court to direct the revocation of the suspension orders pending enquiry issued against them and direct their reinstatement until the departmental enquiry initiated against them is completed and their innocence is established in that enquiry. This Court must exercise restraint in such matters where public money is involved.

8. The contention of the learned counsel for the writ petitioners/respondents that the writ petitioners have been exonerated by the criminal court on the very same charges is to be stated only to be rejected. It is a well settled principle in service jurisprudence that departmental proceedings and criminal prosecution can be initiated on the same set of allegations, and even if the delinquent employee is acquitted by the criminal court, he can be found guilty in the departmental proceedings, because the standard of proof in a criminal prosecution is completely different from the standard of proof in the departmental proceedings. A Division Bench of this Court, to which one of us (Markandey Katju, C.J.) was a party in Mrs. Thenmozhi Vs. The Chairman & Managing Director, Neyveli Lignite Corporation, Neyveli & Another, 2005 Writ L.R. 188 (W.A.Nos.202 & 203 of 2005 decided on 08.02.2005) following the decisions of the Supreme Court in Secretary, Ministry of Home Affairs and Another Vs.

Tahir Ali Khan Tyagi, JT 2002 (Suppl.1) SC 520 and Allahabad District Co-operative Bank Ltd. Vs. Vidhya Varidh Mishra, (2004) 6 SCC 482, held that even if an employee is acquitted by the criminal court, he can be found guilty in the departmental proceedings.

9. It is well settled in service jurisprudence that on the same set of allegations of charges, a departmental proceedings as well as a criminal prosecution can be initiated against a delinquent employee. These two proceedings, though initiated on the very same set of facts, are independent proceedings and the outcome of the one will not have any bearing on the other. The standard of proof required in these two proceedings, and the procedure, is totally different. In the criminal prosecution, the offence has to be proved beyond reasonable doubt by the prosecution, whereas in the departmental proceedings the delinquency is to be proved by the preponderance of evidence against the delinquent i.e., as in a civil case. Even if an employee is acquitted by the criminal court, he can be found guilty in the departmental proceedings, vide Allahabad District Co-operative Bank Ltd. Vs. Vidhya Varidh Mishra, (2004) 6 SCC 482.

10. In paragraph - 12 of the aforesaid decision, the Supreme Court observed:-

"Mr. Rao submitted that the respondent had been exonerated by the criminal court. He submitted that the termination was only on the basis of his conviction. He submitted that as his conviction is set aside, the Courts below were right in reinstating the respondent. We are unable to accede to this submission. The termination was pursuant to a disciplinary inquiry. It is settled law that in a disciplinary inquiry a conclusion different from that arrived at by a criminal court, may be arrived at. The strict burden of proof required to establish guilt in a criminal Court is not required in disciplinary proceeding. The respondent has not claimed that the disciplinary proceedings were not conducted fairly. As the termination was based on findings of the Disciplinary Committee, the fact that the appellate Court exonerated the respondent was of no consequence."

11. Similarly, in Secretary, Ministry of Home Affairs and Another Vs. Tahir Ali Khan Tyagi, JT 2002 (Suppl. 1) SC 520, the Supreme Court observed (vide paragraph - 6):-

"Departmental proceeding and criminal proceeding can run simultaneously and departmental proceedings can also be initiated even after acquittal in the criminal proceeding, particularly, when the proof in a criminal proceeding is completely

different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of the preponderance of probability".

12. Learned counsel for the respondents then submitted that similarly placed persons were not suspended from service, and hence the present respondents were discriminated. In our opinion, Article 14 of the Constitution has no role to play in such matters. If one thief somehow manages to escape from the clutches of the law, it does not mean that all thieves should be allowed to get away. It is well settled that there is no violation of Article 14 of the Constitution in illegalities.

13. In Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, (1997) 1 SCC 35 the respondents had contended that the act of the appellant in not delivering the possession of the land to the respondent who was on par with other persons who had been delivered land, violates Article 14 of the Constitution. The Supreme Court observed (vide paragraph - 24):-

"Article 14 has no application or justification to legitimise an illegal and illegitimate act..... If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no."

14. In the same judgment in paragraph - 28 the Supreme Court observed:-

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities."

15. The contention of the learned counsel that the case against the respondents is politically motivated is also liable to be rejected. These days whenever an official is charged for some act of corruption the common practice has become to take the defence that the allegation is politically motivated.

16. For the reasons stated above, we are of the opinion that till the departmental enquiry against the respondents is completed, they cannot be directed to be reinstated in

service. Hence, the impugned order of the learned single Judge is liable to be set aside, and accordingly, it is set aside. The writ appeals are allowed. No costs. We, however, direct that the enquiry against the respondents shall be completed expeditiously, preferably within a period of six months from the date of production of a copy of this judgment before the authority concerned.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Jai/sm

The Secretary to Government,
Govt. of Tamil Nadu,
Transport Department, Secretariat,
Fort St. George,
Chennai - 9.

+1cc to The Government Pleader Sr 14604

+1cc to Mr.V.Ayyadurai, Advocate Sr 14513

SMK (CO)
km/4.4.

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