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NOIDA ENTREPRENEURS ASSN.

v.

NOIDA AND ORS.

JANUARY 15, 2007

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[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]

Service Law:

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Disciplinary proceedings—Alleged irregularities in allotment, conversion and regularisation of plots—Departmental disciplinary proceedings against delinquent officer kept in abeyance till finalization of CBI inquiry—Finally dropped on consideration of the CBI Inquiry Report—Correctness of—Held, Order of the State Government deciding not to continue the departmental proceedings is incorrect and hence quashed—Standard of proof required in departmental proceedings is not the same as required to prove a criminal charge—Even if there is an acquittal in criminal proceedings the same does not bar departmental proceedings.

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Certain irregularities were allegedly made in allotment, conversion and regularization of plots in New Okhla Industrial Development Authority (NOIDA). One man Inquiry Commission was constituted. Based on its report, Departmental inquiry proceedings was initiated against Respondent No.7, who at the relevant time was posted as the Chief Executive Officer, NOIDA. Since the matter was also being inquired into by the CBI, the State Government decided to keep the departmental disciplinary proceedings in abeyance till the CBI inquiry was over. The CBI submitted its report on consideration whereof, the State Government decided to drop the pending departmental proceedings against Respondent No.7. The said order of the State Government has been challenged before this Court.

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Setting aside the order of the State Government, the Court

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HELD: 1. The stand taken by the State Government *prima facie* shows that the State Government is interested to protect Respondent No.7 at any cost. A bare perusal of the order passed by the State Government goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has

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not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [Paras 10 & 11] [899-F-G]

Tata Cellular v. Union of India, [1994] 6 SCC 651; *Teri Oat Estates (P) Ltd. v. U.T. Chandigarh and Ors.*, [2004] 2 SCC 130; *Kendriya Vidyalaya Sangathan and Ors. v. T. Srinivas*, [2004] 7 SCC 442; *Hindustan Petroleum Corporation Ltd. and Others v. Sarvesh Berry*, [2005] 10 SCC 471 and *Uttanchal Road Transport Corpn. v. Mansaram Nainwal*, [2006] 6 SCC 366, relied on.

2. 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. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding 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.

[Para 12] [900-B-G]

A *Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Ors.*, [1997] 2 SCC 699 and *State of Rajasthan v. B.K. Meena and Ors.*, [1996] 6 SCC 417, relied on.

B 3. 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. [Para 15] [901-B]

C *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*, [1999] 3 SCC 679 and *Union of India and Anr. v. Bihari Lal Sidhana*, [1997] 4 SCC 385, relied on.

D 4. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

[Para 18] [902-H, 903-A]

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 150 of 1997.

E Under Article 32 of the Constitution of India.

WITH

W.P. (Civil) NO. 529 of 1998.

F Rajeev Dhawan (A.C.), Dipankar P. Gupta, Rakesh Dwivedi, K.T.S. Tulsii, Ashok H. Desai, L.N. Rao, Sr. Advs., Dayan Krishnan (A.C.), Nikhil Nayyar (A.C.), E.C. Vidya Sagar, Ms. Manjula Gupta, M.D. Pandeya, P. Parmeswaran, R.S. Suri, Vinay K., Ajay Dhaiya, Shivinder Diwedi, Ms. Sangeeta Kumar, Vijay Kumar, Gorab Librahan, K. Sultan Singh, Manish K. Sanyal, M.S. Yadav, Raj Kamal, Abhish Kumar, Ravi Prakash Mehrotra, Ms. Deepti Mehrotra, Garvesh Kabra, Ajay K. Agrawal, Ms. Alka Agrawal, Ms. G Anamika Agrawal, K.B. Rohtagi, Sunil Malhotra, Ms. Aparna Rohtagi Jain and Mahesh Kasana, Advs. with them for the appearing parties.

The Judgment of the Court was delivered by

H Dr. ARIJIT PASAYAT, J. : 1. The present order will dispose of one of the issues relating to decision of the Uttar Pradesh Government not to

take disciplinary action against Smt. Neera Yadav-respondent No.7.

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2. A brief reference to certain earlier events and orders passed by this Court would be necessary.

3. On consideration of complaints received during the period 1994-96 the State Government decided to enquire into the allegations. These allegations related to irregularities in allotments and conversions of land in New Okhla Industrial Development Authority (in short 'NOIDA'). Explanation was asked by Principal Secretary (Heavy Industries) of the Government of U.P. from Smt. Neera Yadav. On 2.2.1995 the then Chief Minister of U.P. observed that there was no need for any action in the matter. In November, 1995, a Memorandum was submitted by NOIDA Entrepreneurs Association- the petitioner in the present writ petition, requesting for enquiry by the Central Bureau of Investigation (in short the 'CBI') regarding the alleged irregularities in allotments and conversions in NOIDA. It appears at different stages Smt. Neera Yadav submitted her explanations. On 13.12.1996 a letter was written by the then Director CBI Sri Joginder Singh regarding information received from sources pertaining to alleged irregularities in the matter of allotments, conversions and regularization of plots in NOIDA. Taking into account the said letter the State Government constituted a Commission (hereinafter referred to as Justice Murtaza Hussain Commission). A report was submitted by the said Commission on 9.12.1997. In the report various details were given. On the basis of the report, the then Chief Secretary recommended departmental action in respect of specific findings against Smt. Neera Yadav and also an enquiry by the Vigilance department in matters relating to which the Commission had not given any clear finding. The then Chairman of Board of Revenue Mr. A.P. Singh was recommended to be the enquiry officer. The then Chief Minister concurred with the findings of the then Chief Secretary. In the meantime, the writ petition had been filed before this Court. By order dated 6.1.1998 this Court directed the State Government to indicate its stand on affidavit in respect of the conclusions of Justice Murtaza Hussain Commission. On 9.1.1998 the then Chief Minister of the State approved the findings of the then Chief Secretary recorded on 27.12.1997 and specifically in relation to the suggestions for departmental action in accordance with the rules. On that very date the State of Uttar Pradesh filed an affidavit before this Court wherein it was stated that keeping in view the gravity of the irregularities committed, it has decided to start departmental proceedings against Smt. Neera Yadav. It was also stated in the affidavit that regarding those charges about which the Commission had expressed its inability to

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A give specific recommendations for want of further investigation, the State Government had decided to get the matter inquired into by the Vigilance department of the State. Taking note of all these aspects, this Court by order dated 20.1.1998 directed that the matter should be investigated by the CBI and if such investigation discloses the commission of criminal offence the person/persons found responsible should be prosecuted in a Criminal court. It was specifically noted that the State Government was proposing to initiate departmental proceeding against Smt. Neera Yadav. On 18.12.1998 the State Government of Uttar Pradesh filed an affidavit before this Court stating that the enquiry by the Vigilance department which was initiated in respect of those aspects about which Commission had expressed its inability to give specific recommendation was being dropped on account of the fact that the CBI was enquiring into the matter. Prior to that on 26.5.1998 charge sheet had been issued to Smt. Neera Yadav and an enquiry officer was appointed. Three charges framed were as follows:

D “1. Allotment and conversion of residential plots in her favour and also in favour of her two daughters.

2. Allotment/conversion of residential plots in favour of Anand Kumar/Subash Kumar within three months of their appointment as carpenter and junior clerk.

E 3 Allotment/conversion of the residential plot to Rajeev Kumar Dy. CEO and increase in area.”

F 4. On 25.2.1999 Smt. Neera Yadav filed a representation stating that in view of the criminal investigation, departmental proceedings should not proceed. On 1.5.1999 the State of U.P. filed an affidavit before this Court indicating that disciplinary action had been initiated against Smt. Neera Yadav and charge sheet had been issued on her on 26.5.1998. It was also stated therein that Smt. Neera Yadav had requested that since the matter was being inquired into by the CBI, departmental inquiry should be dropped. The State Government obtained the opinion of its Law department which G found that the departmental inquiry was validly initiated, and further plea to keep the proceeding in abeyance was taking note of by referring to para 1.8 of the Vigilance Manual. On 8.7.1999 the Principal Secretary (Law) of the State took a stand that parallel inquiry should be avoided and that any action should be taken after completion of the CBI inquiry, on the basis of H its report. On 22.7.1999 the then Chief Minister noted that when the CBI

investigation was in progress, parallel administrative enquiry was not necessary. On 5.8.1999 the Government of Uttar Pradesh passed an order keeping the disciplinary proceedings in abeyance. On 19.1.2001 this Court passed the order directing the State of Uttar Pradesh to file an affidavit about present position in relation to departmental enquiry. In compliance of the said order, on 8.11.2001 the State of Uttar Pradesh filed an affidavit stating that it has kept the disciplinary proceeding in abeyance till the CBI enquiry is over. On 28.3.2002 CBI submitted its report in sealed cover. This Court directed the State of U.P. to file an affidavit in respect of action taken against the officers and directed that the affidavit should also indicate the stage of disciplinary proceedings against Smt. Neera Yadav.

5. Thereafter starts a new twist to the whole matter. On 13.6.2002 the Legal Remembrancer of the State opined that it would not be appropriate to accord sanction for prosecution or initiate departmental proceeding for any irregularity. On 24.6.2002 the Advocate General concurred with the said opinion. On 28.6.2002 the Government of U.P. decided not to take departmental action/initiate prosecution in relation to the recommendations in the report of the CBI. The State of U.P. on 17.9.2002 filed an affidavit before this Court stating that there was no justification for initiating departmental enquiry as "after detailed consideration of the report of the CBI no justification was found for initiating departmental enquiry", since the departmental enquiry recommended by Justice Murtaza Hussain's Commission was based only on those points. In the light of said facts the allegations were not legally tenable and the Government has decided to close the pending departmental enquiry. On 11.1.2005 this Court in relation to certain issues passed the following order:

"Having regard to the nature of the proceedings it would be appropriate to appoint a Commission to go into the various questions raised in these matters including the issue as to why the departmental action has been dropped against several respondents as pointed out by the *Amicus Curiae* in his report filed on 14.12.2004. Mr. K.T.Thomas, retired judge of this Court is appointed as the sole member of the Commission."

6. The Commission framed several issues and noted that the State Government should not have dropped disciplinary proceeding against Smt. Neera Yadav in the light of adverse findings against her in the report of the Judicial Commission as well as on the report of the CBI. The State of U.P.

A was asked to clarify as to under what circumstances the decision to drop the departmental proceeding was taken. The entire records relating to the decisions at different stages have been brought on record and a synopsis has also been filed referring to various letters/observations/findings at different points of time.

B 7. The order dated 16th September, 2002 is the one the legality of which is questioned. The entire order needs to be quoted. The same reads as follows:

C “By the notification no. 86/N/96, dated 25 January 97 one man inquiry commission was constituted. The Commission inquired into the irregularities committed by Smt. Neera Yadav, IAS (1971), during her posting as Chief Executive Officer, Noida in allotment of plots and properties.

D On the basis of the report submitted by Hon’ble Mr. Justice Murtaza Husain Inquiry Commission it was decided to initiate departmental inquiry against Smt. Neera Yadav and by the order of Appointment Section -5 No. 930(1)/Two-5-98-22(29)/74 dated 26.5.1998 charge sheet was issued against Smt. Neera Yadav.

E Smt. Neera Yadav *vide* her applications dated 16.9.98, 25.2.99 and 3.5.99 requested for cancellation of departmental inquiry being initiated against her, on which after due consideration the departmental inquiry initiated against Smt. Neera Yadav was stayed *vide* Govt. Order No.4209/Two-599-35(136)/97 dated 5 Aug., 1999 till finalization of inquiry by the CBI against Smt. Neera Yadav.

F Because in the case under consideration the report of the CBI was received on 28.3.2002 along with the recommendation, after examination of which State Govt. did not find it necessary to take any action on the point of departmental inquiry against Smt. Neera Yadav:

G It is worth mentioning that the points on which Departmental Inquiry was initiated against Smt. Neera Yadav on the basis of the report of Hon’ble Mr. Murtaza Husain, on the same point after due consideration of the CBI inquiry report it was found that the departmental inquiry was not required. Therefore, in view of the above it was decided by the Govt. that the departmental inquiry

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pending against Smt. Neera Yadav may be dropped.

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Therefore, His Excellency, the Governor, grants permission to drop the pending departmental inquiry against Smt. Neera Yadav, IAS (1971).”

8. The basis as culled down from the order is as follows:

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“It is worth mentioning that the points on which Departmental Inquiry was initiated against Smt. Neera Yadav on the basis of the report of Hon’ble Mr. Murtaza Husain, on the same point after due consideration of the CBI inquiry report it was found that the departmental inquiry was not required. Therefore, in view of the above it was decided by the Govt. that the departmental inquiry pending against Smt. Neera Yadav may be dropped.”

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9. Learned *Amicus Curiae* has submitted that conclusions are not based on any rationality. Departmental proceedings and criminal proceedings stand on different footings. There is no rationality in the decision and it cannot be said to be reasonable by any standard.

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10. *Per contra*, learned counsel for the State of U.P. submitted that taking into account the totality of circumstances, the order was passed and there is nothing illicit in it. Mr. K.T.S. Tulsi, learned counsel appearing for Smt. Neera Yadav submitted that the order does not suffer from any infirmity and in any event if it is conceded for the sake of argument that there was any infirmity, this Court can direct the proceedings to take off from the stage as it stood on 5.8.1999 when the Govt. of Uttar Pradesh had passed order for keeping the departmental proceeding in abeyance. This is in fact a re-iteration of the stand taken by the State Government. We are not only baffled but also perplexed at such a stand being taken by the State. This *prima facie* shows that the State Government is interested to protect Smt. Neera Yadav at any cost.

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11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (See: *Tata Cellular v. Union of India*, [1994] 6 SCC 651 and *Teri Oat Estates (P.) Ltd. v. U.T. Chandigarh and Ors.*, [2004] 2 SCC 130. The conceptual difference

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A between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan and Others v. T. Srinivas*, [2004] 7 SCC 442, *Hindustan Petroleum Corporation Ltd. and Others v. Sarvesh Berry*, [2005] 10 SCC 471 and *Uttaranchal Road Transport Corpn. v. Mansaram Nainwal*, [2006] 6 SCC 366.

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12. 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.

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13. 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.

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14. The aforesaid position was also noted in *State of Rajasthan v. B.K. Meena and Ors.*, [1996] 6 SCC 417.

15. 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.

16. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*, [1999] 3 SCC 679, 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

A 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.

B 17. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and re-instatement in service has been dealt with by this Court in *Union of India and Anr. v. Bihari Lal Sidhana*, [1997] 4 SCC 385. It was held in paragraph 5 as follows :

C “5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Re- instatement would be a charter for him to indulge with impunity in misappropriation of public money.”

H 18. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental

proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

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19. Mr. K.T.S. Tulsi, learned counsel for Smt. Neera Yadav stated that an appropriate motion shall be made before the departmental authorities to keep the proceedings in abeyance till conclusions of the criminal proceedings. If such prayer is made, the same shall be considered in the light of the principles set out by this Court in *Hindustan Petroleum Ltd.'s* case (supra) and *Uttaranchal Road Transport Corpn.'s* case (supra). It is ordered accordingly.

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B.B.B.

Writ Petitions disposed of.

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