

A M/S STANZEN TOYOTETSU INDIA P. LTD.

v.

GIRISH V & ORS.

(Civil Appeal Nos. 763-768 of 2014)

JANUARY 21, 2014

B

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

*Service law: Disciplinary proceedings – Stay of disciplinary proceedings pending the decision of criminal case in respect of same incident – Vacation of stay – Propriety of – Held: The disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity – While seriousness of the charge leveled against the employee is a consideration for stay of disciplinary proceedings, the same is not by itself sufficient unless the case also involves complicated questions of law and fact – Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court has to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution.*

**The question that arose for consideration in these appeals was whether the High Court so also the courts below were right in holding that the disciplinary proceedings initiated by the appellant-company against its employees (respondents) ought to remain stayed pending conclusion of the criminal case instituted against the respondents in respect of the very same incident.**

**Partly allowing the appeals, the Court**

**HELD: 1. While there is no legal bar to the holding**

H

of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees. [Para 13] [770-C-G]

2. The charges leveled against the respondents in the instant case were under Sections 143, 147, 323, 324, 356, 427, 504, 506, 114 read with Section 149 I.P.C. These are no ordinary offences being punishable with imprisonment which may extend upto 3 years besides fine. At the same time seriousness of the charge alone is not the test. What is also required to be demonstrated by the respondents is that the case involves complicated questions of law and fact. That requirement does not appear to be satisfied in an adequate measure to call for an unconditional and complete stay of the disciplinary proceedings pending conclusion of the trial. The incident as reported in the first information report or as projected by the respondents in the suits filed by them did not suggest any complication or complexity either on facts or law. That apart the respondents had already disclosed

**A** the defense in the explanation submitted by them before  
the commencement of the departmental enquiry in which  
one witness has been examined by each of the Enquiry  
Officers. The charge sheet was filed on 20th August, 2011.  
**B** The charges were framed on 20th December, 2011. The  
trial court has ever since then examined only three  
witnesses so far out of a total of 23 witnesses cited in the  
charge-sheet. Going by the pace at which the trial court  
is examining the witnesses it would take another five  
years before the trial may be concluded. The High Court  
**C** has in the judgment under appeal given five months to  
the trial court to conclude the trial. More than fifteen  
months has rolled by ever since that order, without the  
trial going anywhere near completion. Disciplinary  
proceedings cannot remain stayed for an indefinitely  
long period. Such inordinate delay is neither in the  
interest of the appellant-company nor the respondents  
**D** who are under suspension and surviving on subsistence  
allowance. The number of accused implicated in the case  
is also very large. It is not that the incident must be taken  
to be false only because such a large number could not  
**E** participate in the incident. But there is a general tendency  
to spread the net wider and even implicate those who  
were not concerned with the commission of the offences  
or who even though present, committed no overt act to  
show that they shared the common object of the  
**F** assembly or be responsible for the riotous behaviour of  
other accused persons. Interest of such accused as may  
be innocent also cannot be ignored nor can they be  
made to suffer indefinitely just because some others  
have committed an offence or offences. [Paras 14, 15]  
**G** [770-H; 771-A-H; 772-A]

**H** 3. In the circumstances and taking into consideration  
all aspects as also keeping in view the fact that all the  
three courts below have exercised their discretion in  
favour of staying the on-going disciplinary proceedings,

the said order cannot be vacated straightaway. Interests of justice would be sufficiently served if the Court dealing with the criminal charges against the respondents is directed to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. The trial court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. The accused in the criminal case should co-operate with the trial Court for an early completion of the proceedings. This is so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the trial court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order. [Para 16] [772-B-G]

*Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan* (1997) 2 SCC 699: 1996 (8) Suppl. SCR 941; *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao* (2012) 1 SCC 442: 2011 (14) SCR 1089; *Capt. M Paul Anthony v. Bharat Gold Mines Ltd* (1999) 3 SCC 679: 1999 (2) SCR 257; *HPCL v. Sarvesh Berry* (2005) 10 SCC 471: 2004 (6) Suppl. SCR 834; *State of Rajasthan v. B.K.Meena* 1996(6) SCC 417: 1996 (7) Suppl. SCR 68 – relied on.

**A Case Law Reference:**

1996 (8) Suppl. SCR 941 relied on Para 9

2011 (14) SCR 1089 relied on Para 9

**B 1999 (2) SCR 257 relied on Para 10**

2004 (6) Suppl. SCR 834 relied on Para 11

996 (7) Suppl. SCR 68 relied on Para 12

**C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 763-768 of 2014.**

From the Judgment & Order dated 15.06.2012 of the High Court of Karnataka at Bangalore in Writ Petition Nos. 8487-8491 of 2012 and Writ Petition No. 9381 of 2012.

**D S.S. Ramdas, Shanta Kumar Mahale, Rajesh Mahale, Pradip Sawakar, Kanakraj for the Appellant.**

E.C. Vidya Sagar, Kheyali Sarkar, Ananthram for the Respondents.

**E The Judgment of the Court was delivered by**

**T.S. THAKUR, J. 1. Leave granted.**

**F 2. The short question that falls for determination in these appeals is whether the High Court so also the Courts below were right in holding that the disciplinary proceedings initiated by the appellant-company against its employees (respondents herein) ought to remain stayed pending conclusion of the criminal case instituted against the respondents in respect of**  
**G the very same incident.**

**H 3. The appellant-company is engaged in the manufacture of automobile parts in the name and style of M/s Stanzen Toyotetsu India Pvt. Ltd. while the respondents are workmen engaged by the appellant in connection with the said business.**

It is not in dispute that the employees of the appellant-company including the respondents are governed by Standing Orders certified under Industrial Employees (Standing Orders) Act, 1946. A

4. The appellant's case is that on 19th March, 2011 at about 10.30 p.m. the respondents with the help of other Trade Union functionaries stage managed an accident making it appear as if an employee by the name of Mr. Kusumadhara had slipped and fallen in the press area. The incident was, it is alleged, used as a ruse by the respondents who rushed to the place of alleged fall only to create a ruckus. Appellant's further case is that although Mr. Kusumadhara had not sustained any injury, he was sent to the hospital in the ambulance of the appellant-company and that instead of resuming the work after the alleged incident, the respondents stopped the production activity and started abusing their superiors, damaged property of the company and even assaulted senior managerial personnel. These acts of indiscipline created an atmosphere of fear and tension in the factory and brought the production activity to a grinding halt. Senior managerial personnel injured in the incident were, according to the appellant, unable to report for work for about 15 days on account of assault on them. B C D E

5. Taking note of the incident and the acts of indiscipline which amounted to misconduct under several provisions of the Standing Order, the competent authority placed the respondents under suspension and issued charge-sheets to them. The explanation submitted by the respondents having been found unsatisfactory, a disciplinary enquiry was initiated and Enquiry Officers appointed to enquire into the allegations against the respondents. The Presenting Officers have examined one witness in each one of the enquiries. F G

6. The incident in question was it appears reported even to the police by one of the employees of the appellant-company who was a witness to the same, leading to the registration of H

- A Crime No.173/2011 in Ramanagara Rural Police Station for offences punishable under Sections 143, 147, 323, 324, 356, 427, 504, 506, 114 read with Section 149 I.P.C. A charge-sheet was filed pursuant to the said report and investigation is pending in which the respondents are accused of committing the offences mentioned above.
- B

7. While the disciplinary enquiry and the criminal case were both pending, the respondents filed Original Suits No.326-331 of 2011 in which they prayed for a permanent injunction against the appellant and the Enquiry Officers restraining them from proceeding with the enquiry pending conclusion of the criminal case. Interlocutory Applications seeking temporary injunctions in each one of the suits against the on-going enquiry were also filed in the said suits. The applications though opposed by the appellant-company were allowed by the Principal Civil Judge and JMFC Ramanagara by an order dated 13th October, 2011 staying the domestic enquiry pending against the respondents till the disposal of criminal case in C.C. No.1005 of 2011.
- C
- D

8. Misc. Appeals No.56/2011 and 61/2011 filed by the appellant against the said order before the Principal Senior Civil Judge and CJM Ramanagara having failed, the appellant filed Writ Petitions No.8487-8491 of 2012 (GM-CPC) and W.P. No.9381 of 2012 (GM-CPC) before the High Court of Karnataka which petitions too failed and have been dismissed by the High Court in terms of a common order dated 15th June, 2012 impugned in the present appeals. In the result the disciplinary enquiry pending against the respondents remained stayed pending conclusion of the criminal trial. The present appeals, as noticed earlier, assailed the correctness of the said judgment and orders.
- E
- F
- G

9. We have heard learned counsel for the parties at some length. The only question that falls for determination in the above backdrop is whether the Courts below were justified in staying the on-going disciplinary proceedings pending
- H

conclusion of the trial in the criminal case registered and filed against the respondents. The answer to that question would primarily depend upon whether there is any legal bar to the continuance of the disciplinary proceedings against the employees based on an incident which is also the subject matter of criminal case against such employees. It would also depend upon the nature of the charges in the criminal case filed against the employees and whether the case involves complicated questions of law and fact. The possibility of prejudice to the employees accused in the criminal case on account of the parallel disciplinary enquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary enquiry proceedings. The law on the subject is fairly well- settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any strait-jacket formula for application to all cases the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the Courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short cut solution to the problem. What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously. In *Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan (1997)* 2 SCC 699, this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different

A

B

C

D

E

F

G

H

- A spheres and are intended to serve distinctly different purposes. The relatively recent decision of this Court in *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao* (2012) 1 SCC 442, is a timely reminder of the principles that are applicable in such situations
- B succinctly summed up in the following words:

*“(i) There is no legal bar for both proceedings to go on simultaneously.*

- C *(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.*

- D *(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.*

- E *(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.”*

- F 10. We may also refer to the decision of this Court in *Capt. M Paul Anthony v. Bharat Gold Mines Ltd*, (1999) 3 SCC 679 where this Court reviewed the case law on the subject to identify the following broad principles for application in the facts and circumstances of a given case:

- G *“(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*

H

*(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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."*

11. In *HPCL v. Sarvesh Berry* (2005) 10 SCC 471 the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending a criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer-corporation this Court held:



(supra) this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of this Court in *State of Rajasthan v. B.K.Meena* 1996(6) SCC 417, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

*“there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be ‘desirable’, ‘advisable’ or ‘appropriate’ to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, 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 enunciated in that behalf. The only ground suggested in the above questions as constitution 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. While it is not possible to enumerate the various factors, for and against the stay*

A of disciplinary proceedings, we found it necessary to  
 emphasize 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,  
 B 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 decisions referred to above. ... Indeed, in  
 C such cases, it is all the more in the interest of the charged  
officer that the proceedings are expeditiously concluded.  
Delay in such cases really works against him."

(emphasis supplied)

13. Suffice it to say that while there is no legal bar to the  
 D holding of the disciplinary proceedings and the criminal trial  
 simultaneously, stay of disciplinary proceedings may be an  
 advisable course in cases where the criminal charge against  
 the employee is grave and continuance of the disciplinary  
 proceedings is likely to prejudice their defense before the  
 E criminal Court. Gravity of the charge is, however, not by itself  
 enough to determine the question unless the charge involves  
 complicated question of law and fact. The Court examining the  
 question must also keep in mind that criminal trials get  
 prolonged indefinitely especially where the number of accused  
 F arraigned for trial is large as is the case at hand and so are  
 the number of witnesses cited by the prosecution. The Court,  
 therefore, has to draw a balance between the need for a fair  
 trial to the accused on the one hand and the competing demand  
 for an expeditious conclusion of the on-going disciplinary  
 proceedings on the other. An early conclusion of the disciplinary  
 G proceedings has itself been seen by this Court to be in the  
 interest of the employees.

14. The charges leveled against the respondents in the  
 instant case are under Sections 143, 147, 323, 324, 356, 427,  
 H 504, 506, 114 read with Section 149 I.P.C. These are no

ordinary offences being punishable with imprisonment which may extend upto 3 years besides fine. At the same time seriousness of the charge alone is not the test. What is also required to be demonstrated by the respondents is that the case involves complicated questions of law and fact. That requirement does not appear to be satisfied in an adequate measure to call for an unconditional and complete stay of the disciplinary proceedings pending conclusion of the trial. The incident as reported in the first information report or as projected by the respondents in the suits filed by them does not suggest any complication or complexity either on facts or law.

15. That apart the respondents have already disclosed the defense in the explanation submitted by them before the commencement of the departmental enquiry in which one witness has been examined by each of the Enquiry Officers. The charge sheet, it is evident from the record, was filed on 20th August, 2011. The charges were framed on 20th December, 2011. The Trial Court has ever since then examined only three witnesses so far out of a total of 23 witnesses cited in the charge-sheet. Going by the pace at which the Trial Court is examining the witnesses it would take another five years before the trial may be concluded. The High Court has in the judgment under appeal given five months to the Trial Court to conclude the trial. More than fifteen months has rolled by ever since that order, without the trial going anywhere near completion. Disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the appellant-company nor the respondents who are under suspension and surviving on subsistence allowance. The number of accused implicated in the case is also very large. We are not suggesting that the incident must be taken to be false only because such a large number could not participate in the incident. But there is a general tendency to spread the net wider and even implicate those who were not concerned with the commission of the offences or who even though present committed no overt act to show that they shared

A  
B  
C  
D  
E  
F  
G  
H

A the common object of the assembly or be responsible for the riotous behaviour of other accused persons. Interest of such accused as may be innocent also cannot be ignored nor can they be made to suffer indefinitely just because some others have committed an offence or offences.

B 16. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

17. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs.

H D.G. Appeals partly allowed.