



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE FOURTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 8031 OF 2021

Between:

1. Kanijam Sridhar S/o K.V.Koteswara Rao,
50 years, E.368650, Conductor, H.No.1882, New Rajeev Nagar,
Payakapuram, Vijayawada-520015.

...PETITIONER(S)

AND:

1. Andhra Pradesh State Road Transport Corporation, Rep.by its Managing
Director, Pandit Nehru Bus Station, Vijayawada.
2. Regional Manager, APSRTC, Krishna. Region, Vijayawada.
3. The Dy.Chief Traffic Manager, APSRTC. Vijayawada.
4. The Depot Manager, APSRTC. Gannavaram depot,Vijayawada.
5. The Enquiry Officer and Assistant Manager(Traffic), APSRTC,
Vidyadharapuram depot, Vijayawada

...RESPONDENTS

Counsel for the Petitioner(s): A G SATYANARAYANA RAO

Counsel for the Respondents: P DURGA PRASAD

The Court made the following: ORDER



***HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+WRIT PETITION No.8031 of 2021

% 04.07.2022

Kanijam Sridhar

....Petitioner.

And:

Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Pandit Nehru Bus Station, Vijayawada and others.

....Respondents

! Counsel for the petitioner : Sri A. G. Satyanarayana Rao

^ Counsel for the respondents : Sri P. Durga Prasad, Standing counsel for the APSRTC.

< Gist:

> Head Note:

? Cases referred:

¹ 1999(3) SCC 679

² (2014) 3 SCC 636

³ 2016 (9) SCC 491

⁴ 2006(3) L.L.N. 245: 2006) 2 ALD 560

⁵ 1997(2) SCC 699

⁶2015(5) ALD 124

⁷ (2012) 1 SCC 442

⁸ (2005) 10 SCC 471

⁹1996(6) SCC 417

¹⁰ (2020) 9 SCC 471

¹¹ 2020(2)ALD 284

¹² 2020 SCC OnLine Ts 1050



HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.8031 of 2021

04.07.2022

Between:

Kanijam Sridhar

....Petitioner.

And:

Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Pandit Nehru Bus Station, Vijayawada and others.

....Respondents

DATE OF JUDGMENT PRONOUNCED: 04.07.2022.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be Marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair Copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

**HON'BLE SRI JUSTICE RAVI NATH TILHARI****WRIT PETITION No.8031 of 2021****JUDGMENT:**

1. Heard Sri A. G. Satyanarayana Rao, learned counsel for the petitioner and Sri P. Durga Prasad, learned standing counsel for the Andhra Pradesh State Road Transport Corporation (for short, "the A.P.S.R.T.C") appearing for the respondents.

2. By means of the present writ petition under Article 226 of the Constitution of India, the petitioner has prayed for the relief in the nature of Mandamus declaring the action of the respondents in conducting departmental enquiry on charge sheet No.01/114(07)/2020-GVRM dated 16.11.2020 being arbitrary, unjust, contrary to law and APSRTC Employees (CC&A) Regulations, 1967, in violation of principles of natural justice, discriminatory and in violation of Article 14 and 21 and 22 of the Constitution of India, pending criminal case under Sections 406 and 420 IPC vide FIR No.449/2020 dated 16.09.2020 of Satyanarayanapuram Police Station, Vijayawada and vide FIR No.790/2020 dated 17.09.2020 of Bhavanipuram Police Station, Vijayawada, allegedly to be on the very same set of facts and same charges, and to set aside the same.

3. The petitioner's case is that he was appointed in the year 1992 as Conductor and rendered unblemished service of 28 years. One V.M.S Sirajuddin along with others lodged a false police complaint holding the petitioner responsible in some cheating affected upon them. FIR No.449/2020 dated 16.09.2020 and FIR No.790/2020 dated 17.09.2020 at Satyanarayanapuram Police Station and Bhavanipuram Police Station, Vijayawada respectively were registered against the petitioner under Sections 406 and 420 IPC. The Station House Officer informed the 4th respondent-Depot Manager, APSRTC, Gannavaram



Depot of those cases, and the 4th respondent issued a charge memo No.01/114(07)/2020-GVRM dated 16.11.2020 to the petitioner on the charge of involvement in the cheating case for having cheated Sri B. Srinivasa Manikanta and his followers by collecting money of Rs.1,75,000/- from each of them assuring to provide house sites under 'JNNURM' Scheme in Singhnagar, Vijayawada punishable under the provisions of Indian Penal Code, also, the said acts constituting misconduct under Regulation 28(xv) of APSRTC Employees (Conduct) Regulations, 1967 (for short, "the Regulations"), which tarnished the reputation of the Corporation in the eyes of the public as the incident was published in the news paper.

4. The petitioner submitted explanation to the charge sheet on 04.12.2020 denying the charges and requested to drop the charges in view of the criminal cases, but the 4th respondent did not consider such explanation. The 5th respondent also issued enquiry notice dated 06.01.2021 asking the petitioner to attend the enquiry on 11.01.2021 against which the petitioner again submitted representations but inspite thereof not only the notices dated 26.01.2021, 03.02.2021 were issued to attend the enquiry but the enquiry also proceeded ex parte and the enquiry officer submitted the ex parte enquiry report to the disciplinary authority, the 4th respondent, who issued letter No.01/114(7)/2021 GVRM dated 20.03.2021 seeking petitioner's comments on the ex parte enquiry report.

5. This court vide interim order dated 09.04.2021 granted a stay in passing of the final orders in the disciplinary proceedings.

6. The challenge is mainly on the ground urged at the time of arguments, that all the charges in the charge memo are pursuant to the charges as in the FIR No.449/2020 dated 16.09.2020 and FIR



No.790/2020 dated 17.09.2020 under Sections 406 & 420 IPC, based on the same set of facts. The witnesses in the criminal cases and in the departmental proceedings are the same and if the departmental enquiry proceeds it would cause prejudice to the defense of the petitioner in the pending criminal cases. Learned counsel for the petitioner placed reliance on the judgments in cases of **Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd.,¹, Stanzen Toyotestsu India Pvt., Ltd., vs. Girish², State Bank of India vs. Neelam Nag³, A. Peddanna vs. Divisional Security commissioner, Railway Protection Force, Guntaka⁴** and the judgment dated 01.04.2021 of this Court **in W.P.No.23315 of 2020** (D. Ravi Bababu vs. The Director General of Police, Andhra Pradesh at Mangalagiri Guntur District Amaravathi and others) in support of his contentions.

7. Learned counsel for the petitioner further submitted that as per the Circular No.LC.5/82-83 dated 14.02.1983, the petitioner ought not to have been placed under suspension pending criminal cases, but his request to revoke the suspension order was not acceded to against which the petitioner has filed an appeal/representation dated 19.12.2020 before the 3rd respondent-Deputy Chief Traffic Manager, APSRTC, Vijayawada which is still pending.

8. Sri P. Durga Prasad, learned standing counsel for the Corporation submitted that while the petitioner was working as Conductor at Gannavaram Depot a complaint was received from Sri N. Seetaramaiah, retired TI-III of Vidhyadharapuram depot complaining that the petitioner had created belief that he will arrange to allot JNNURM Houses near Dump Yard, Singh Nagar, Vijayawada by collecting Rs.1,70,000/-, Rs.1,75,000/- from each person totaling up to 30

¹ 1999(3) SCC 679

² (2014) 3 SCC 636

³ 2016 (9) SCC 491

⁴ 2006(3) L.L.N. 245©2006) 2 ALD 560



members and even after two years, they have neither received any allotment orders for houses nor received back the amount paid by them. Further he complained that the petitioner along with one officer encashed the DDs., obtained on behalf of them from Bank of Baroda of Vijayawada I-Town and Eluru road branches in favour of “Commissioner, Municipal Corporation of Vijayawada”. On such complaint the Assistant Manager (Traffic) of Regional Manager’s office conducted a preliminary enquiry and submitted report dated 13.11.2020, wherein it was proved *prima facie* that the allegations leveled against the petitioner that he cheated many people were correct. Consequently on the basis thereof charges were framed against the petitioner to which he submitted the reply but not being satisfied with the explanation, a domestic enquiry was ordered in which the petitioner, inspite of due information and notice to appear did not appear and consequently an *ex parte* enquiry was conducted of which the enquiry report dated 19.03.2021 was submitted to the disciplinary authority, but, in view of the interim order dated 09.04.2021, the final orders have not been passed.

9. Sri P. Durga Prasad, learned standing counsel next submitted that the departmental enquiry and the criminal proceedings both may proceed simultaneously. The departmental enquiry need not be stopped during pendency of the criminal cases. He further submitted that the departmental enquiry is in respect of misconduct under Regulation 28(xv) of the Regulations. The departmental enquiry is decided on the basis of preponderance of probabilities whereas in criminal proceedings the charge is to be proved beyond reasonable doubt. The departmental enquiry cannot be prolonged till conclusion of the criminal proceedings which may take long time. The prejudice if any, that may be caused to the petitioner, has not been clearly pleaded nor established. The



number of the criminal case, the nature of the evidence, names of the witnesses, have also not been disclosed by the petitioner and there is mention of the FIR(s) only. Consequently, it would not be in the interest of the administration to stop disciplinary proceedings. He has placed reliance in the cases of **Deputy Manager, A.P.S.R.T.C, Andhra Pradesh vs. Mohd Yousuf Miya**⁵, and **State of A.P vs. G.L.Nageswara Rao**⁶ in support of his contentions.

10. I have considered the submissions advanced by the learned counsels for the parties and perused the material available on record.

11. In view of the submissions advanced, the following point arises for consideration:-

“Whether the departmental proceedings, in the present case, be legally continued and concluded during pendency of the criminal proceedings against the petitioner, or the same deserve to be deferred till conclusion of the criminal proceedings?”

12. The law on the point is no more *res integra*.

13. The court therefore, proceeds to first consider the legal position on the subject of continuance of the departmental proceedings during pendency of the criminal proceedings.

14. In **Capt.M. Paul Anthony** (Supra), the Hon’ble Apex Court, on review of the case laws on the subject, identified the broad principles for application in a given case. It is apt to refer paragraph No.22 of **Capt. M. Paul Anthony** (supra) as under:

“22. The conclusions which are deducible from various decisions of this Court referred to above are :

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

⁵ 1997(2) SCC 699

⁶ 2015(5) ALD 124



(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, administration may get rid of him at the earliest.”

15. In **Stanzen Toyotetsu India Pvt. Ltd** (supra), the Hon’ble Apex Court held as under in paragraphs 10 to 16:

“10. The relatively recent decision of this Court in **Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao**⁷, is a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

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

(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.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The

⁷ (2012) 1 SCC 442



interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(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.”

11. We may also refer to the decision of this Court in **Capt. M Paul Anthony** (supra), 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:

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

12. In **Hindustan Petroleum Corporation Limited v. Sarvesh Berry**⁸ the respondent was charged with possessing assets disproportionate to his known sources of income. The question was

⁸ (2005) 10 SCC 471



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: (SCC p.475, para 8)

“8... So, a 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 a grave nature involving complicated questions of fact and law.... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defense 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.” (emphasis supplied)

13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge leveled against the employees is a consideration, 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 will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

14. In **Paul Anthony** (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.

15. To the same effect is the decision of this Court in **State of Rajasthan v. B.K.Meena**⁹, where this Court reiterated that there

⁹ 1996(6) SCC 417



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: (B.K. Meena case), SCC pp.422-23, paras 14-15)

“14.....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 be enunciated in that behalf. The only ground suggested in the above questions 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. 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 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, 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.

15. ... Indeed, in 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)

16. Suffice it to say that while there is no legal bar to the 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 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.”

16. In **Neelam Nag** (supra), the Hon’ble Apex Court reiterated that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. It was further held that, no straightjacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis.

17. In **Mohd Yousuf Miya** (supra), the judgment upon which learned standing counsel placed reliance, the Hon’ble Apex Court held in paragraphs 7 and 8, as under:

“7. The rival contentions give rise to the question: whether it would be right to stay the criminal proceedings pending departmental enquiry?

This Court in Meena's case had elaborately considered the entire case law including Kusheshwar Dubey's case relieving the necessity to consider them once over. The Bench, to which one of us, K. Venkataswami, J., was a member, had concluded thus:

"It would be evident from the above decisions that each of them starts with the indisputable proposition that 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, it is emphasised, 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 be enunciated in that behalf. The only ground suggested in the above decisions 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. 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. The ground indicated in D.C.M. and Tata Oil Mills is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. so far as criminal cases are concerned, it is well- known that they drag on endlessly where high officials or persons holding high public officers are involved. They get bogged down on one or the other ground, They hardly even reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even whether the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay if disciplinary proceedings, we found it necessary to emphasis 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, 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."

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. 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 under the Prevention of corruption Act (and [the Indian Penal Code](#), if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence in 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, 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 offence as per the evidence defined under the provisions of the [Evidence Act](#). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct of 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. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as



in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of [Evidence Act](#). The evidence required in the departmental enquiry is not regulated by [Evidence Act](#). Under these circumstances, what is required to be seen is whether the departmental 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. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under [Sections 304A and 338 IPC](#). Under these circumstances, the High Court was not right in staying the proceedings.”

18. In **A. Peddanna** (supra), upon which the learned counsel for the petitioner placed reliance, this Court held that the underlying principle for and against the continuation of departmental and criminal proceedings simultaneously is that irrespective of the similarity or identity of the charge in both sets of proceedings, the requirement of law is that the delinquent-employee must not be required to reveal the defense, available to him in the criminal proceedings, in the departmental proceedings.

19. Recently, in **Pravin Kumar vs. Union of India**¹⁰, the Hon'ble Apex Court held that it is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. Such distinction between standards of proof amongst civil and criminal litigation is deliberate,

¹⁰ (2020) 9 SCC 471



given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances. It was further held that the employer always retains the right to conduct an independent disciplinary proceeding, irrespective of the outcome of a criminal proceeding.

20. In **G.L. Ganeswara Rao** (supra), relied upon by the learned standing counsel, the same principle of law as mentioned above has been applied by a Division Bench of this Court.

21. Thus, it is well settled in law that the disciplinary proceedings and criminal proceedings may continue simultaneously and pendency of the criminal proceedings is no legal bar in conducting the departmental proceedings, unless there is a statutory provision barring the continuation of the disciplinary proceedings in such circumstances.

22. Crime is an act of commission, in violation of law or misconduct of public duty. The departmental enquiry is to maintain discipline in service and officials of the public service. In criminal cases, strict rules of evidence are applicable. In departmental proceedings, the rules of evidence do not strictly apply. The delinquent employee is liable to be punished on proof of misconduct. The disciplinary authority is under a statutory obligation to ensure that the delinquent employee does not get any undue benefit because of long pendency of criminal proceedings. It is, expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible and the authority need not to await the outcome of the decision of the investigating/prosecuting agency or court trial.



23. There are no inflexible rules, in which the departmental proceedings may be stayed pending trial in criminal case against the delinquent officer, but, mainly what is required to be seen is whether the departmental enquiry would definitely prejudice the defence of the delinquent employee at a time in a criminal case if the charge in the criminal trial is of grave nature involving complicated questions of fact and law. If it is so, the stay of the disciplinary proceedings may be a possible course. However, the gravity of the charge is not by itself enough to determine the question, unless the charge involves complicated question of law and fact. Even when the charge is found to be serious involving complicated questions of fact and law as also the likelihood of the prejudice to be caused to the delinquent in criminal proceedings, the Court has to keep in consideration that the criminal trials get prolonged indefinitely, and the departmental proceedings cannot be suspended indefinitely or delayed unduly and has to draw a balance between the need for a fair trial to the accused delinquent on the one hand and an expeditious conclusion of the on-going disciplinary proceedings on the other as it is always in the interest of the employee and the employer both because if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty he should be dealt with properly according to law as it would not be in the interest of the administration to continue with such employee awaiting the result of the criminal proceedings. Each case requires to be considered in the back drop of its own facts and circumstances.

24. In this case, as per the charge memo, the statement of allegation based upon which the charges have been framed, reads as under:-



STATEMENT OF ALLEGATION:

“A complaint has been received from Sri N. Seetaramaiah, retired TI-III of Vidhyadharapuram depot complaining that you have created belief that you will arrange to allot JNNURM Houses near Dump Yard, Sing Nagar, Vijayawada by collecting Rs. 1,70,000/- Rs. 1,75,000/- from each person totaling up to 30 members. Even after 2 years, they have neither received any allotment orders for houses nor received back the amount paid by them. Further he complained that you along with one officer encashed the D.D.'s obtained on behalf of them from Bank of Baroda of Vijayawada I-town and Elurur road Branches in favour of “Commissioner, Municipal Corporation of Vijayawada”. E2Police Stations and you were arrested. In this regard, the Assistant Manager (T) of Regional manager's Office, Vijayawada has conducted an enquiry and submitted report vide ref. 5th cited where in it was prima facie proved that you have cheated many people by collecting money in lakhs of rupees duly saying that you would provide houses under JNNURM Scheme near Dump Yard, singh Nagar, Vijayawada.

It is also alleged that 1). Smt. N. anasuya W/o. Sri N. Seetharamaiah (Rtd RTC Employee), 2). Sri B. Srinivasa Manikanta, s/o. B.V. Narayana, 3). Smt. B. Jayamma, W/o. B.V. Narayana, 4). Smt. B. Malleswari, W/o. N. Gopinadh for two houses 5). S.t. Simhadri Jhansi Lakshmi, W/o. S.V. Sivayya, 6). Smt. B. Padmavathi, W/o. B. Mallikarjunarao, have paid @ Rs. 1,75,00/- per each house towards allotment of houses under JNNURM Scheme near Dump Yard, Singh Nagar, Vijayawada to you totaling to an amount of Rs. 12,25,000 for 7 houses. But the houses were not allotted and amounts were also not paid back to the concerned by you.

It is also alleged that, 1). Sri.P. Satyanarayana, S/o. P. Rangarao for two houses 2). Sri G. Chinna Chakramma, W/o. N. Prasad. 3). Smt. V. Annapurna W/o. Sri V. Vasantha Rao (Rtd RTC Employee), 4). Sri I. Sambasivarao s/o. I. Venkatanarayana have paid @ Rs. 1,70,000/- per each house towards allotment of houses under JNNURM Scheme near Dump Yard, Singh nagar, Vijayawada to you totaling to an amount of Rs. 8,50,000 for 5 houses. But the houses were not allotted and amounts are also not paid back to the concerned by you

Further the allotment of houses under JNNURM Scheme should be done as per the guidelines of Government and eligible candidates should only be the real beneficiaries. But collecting the amounts and offering the allotment of house s is nothing but cheating the public as well as Government. You are neither employee of VMC nor any Govt. Dept. which deals with JNNURM scheme. But you, being an employee of APSRTC made the above persons to believe your words and deceived them by collecting huge amounts.



In this matter, a police case was registered at Bhavanipuram Police Station vide FIR No. 790/2020 u/s. 406, 420 IPC, dated. 17.09.2020 against you on receipt of a complaint made by Sri B. Srinivasa Manikanta, S/o. narayana, R/o. Muvvala vaari veedhi, Vidhyadharapuram, Vijayawada. Another police case also has been registered against you at Satyanarayanapuram police station vide FIR No. 449/2020 u/s. 406,420 IPC, dated 16.09.2020 on receipt of a complaint made by I. Sambasivarao, S/o. Venkata Narayana And also a news item was also published in “Sakshi” daily news paper on 17.09.2020 against you in this regard under the caption.”

25. On the statement of allegation, the following charges are framed against the petitioner.

Charge No.1: For having involved in a cheating case vide FIR No.790/2020 under Section 406, 420-IPC, dated 17.09.2020 of Bhavanipuram Police Station filed against you as you have cheated B. Srinivasa Manikanta, S/o. B. Narayana, R/o. Vidhyadharapuram and his followers duly collecting money of Rs.1,75,000/- from each person by giving them assurance to provide houses under JNNURM scheme near Dump Yard, Singh Nagar, Vijayawada, which is punishable under the provisions of the Indian Penal Code, which constitutes misconduct on your part under Reg.28(xv) of APSRTC Employees (conduct) Reg. 1963.

Charge No.2: For having involved in a cheating case vide FIR No.449 /2020 u/s. 406, 420 IPC, dated 16.09.2020 of Satyanarayanapuram police station filed against you as you have cheated I Sambasiva Rao, S/o. Venkatanarayana, R/o. Madhuranagar, Vijayawada and his followers duly collecting money of Rs.1,70,000/- from each person by giving them assurance to provide houses under JNNURM scheme near Dump Yard, Singh Nagar, Vijayawada, which is punishable under the provisions of the Indian Penal Code, which constitutes misconduct on your part under Reg.28(xv) of APSRTC Employees (conduct) Reg.1963.

Charge No.3: For having cheated by collecting Rs.1,75,000/- each from 1) Smt N. Anasuya, W/o. N. Seetaramaiah, 2) Smt B. Jayamma, W/o. B.V.Narayana, 3) Sri B. Srinivasa Manikanta, S/o.B.V.Narayana, 4) Smt B. Malleswari, W/o. N. Gopinadh, 5) Smt S. Hansi Lakshmi, W/o. S.V. Sivaiah, conductor of Ibrahimpatnam depot 6) Smt B. Padmavathi totaling to Rs.12,25,000/- which is punishable under the provisions of the Indian Penal Code, which constitutes misconduct on your part under Reg.28(xv) of APSRTC Employees (conduct) Reg.1963.

Charge No.4: For having cheated by collecting Rs.1,70,000/- each from 1) Smt V. Annapurna, W/o. V. Vasantharao, retired RTC employee, 2)



Sri I. Sambasiva Rao, S/o. Venkatanarayana, 3) Smt G. Chinna Chakramma, W/o. N. Prasad, 4) Sri P. Satyanarayana totaling to Rs.8,50,000/- which is punishable under the provisions of the Indian Penal code, which constitutes misconduct on your part under Reg.28(xv) of APSRTC Employees (conduct) Reg.1963.

Charge No.5:For having involved in cheating cases and tarnished the reputation of the Corporation in the eyes of the public as a news item was published against you on 16.09.2020 in the daily news paper of "Sakshi" under the caption of "Illa Peruto Lakshllalo Tokara", which constitutes misconduct on your part under Reg.28(xxxii) of APSRTC Employees (conduct) Reg.1963."

26. The FIR No.449/2020 dated 16.09.2020 and the FIR No.790/2020 dated 17.09.2020 against the petitioner both under Sections 406 and 420 IPC, of which references are made in the charge memo, read as follows:

F.I.R.No.449 of 2020 dated 16.09.2020.

"We are all eking out our livelihood by doing small trades in the private sector. Sri Kanijam Sreedhar, Conductor E.368650, Gannavaram depot made us to believe that the Central Government is constructing houses to the poor under JNNURM Scheme and the Officers connected to this scheme is well known to him and stating that it is his responsibility has taken us to the Construction site at Singh Nagar dump yard and made us to talk to the Offices and asked us to pay Rs.1,75,000/- each. In the year 2017 we all believed the words of Kanijam Sreedhar, we have paid Rs.1,70,000/- each to Kanijam Sreedhar, in the house of Vinnakota Vasantha Rao residing in Madhura Nagar along with Xerox copies of Aadhar Cards.

Stating that for allotment of houses Demand Drafts for Rs.66,000/- each are drawn on Bank of Baroda, has handed over the Xerox copies of the said Demand Drafts to all of us. We have enquired Kanijam Sreedhar about allotment of houses several time and verified the copies of Demand Drafts in the Vijayawada Municipal Corporation and we are informed that no Demand Drafts are received on our name. We have enquired Kanijam Sreedhar, several times about the money paid by us and also regarding allotment of houses. But he has stated that you can do whatever you like and threatened that if you come to my house I will get you arrested by the



Police and send you to jail. The said Kanijam Sreedhar, is residing in the Payakapuram near Lahari School. The Phone Numbers of Kanijam Sreedhar, is 7382904740, 8309880875.

Hence we request you to take action as per law on Kanijam Sreedhar, who has made us to believe and taken away our amounts and request you to arrange to get back our amounts.”

F.I.R.No.770 of 2020 dated 17.09.2020:

“This is a case of criminal breach of trust and cheating that occurred prior to 17.09.2020 at Near Nerusu Sitharamaiah House, Vidayadharapuram and Vijaywada and reported on 17.09.2020 at 11.30 hours by the complainant B. Srinivasa Manikanta, S/o. Narayana, A/33 years, C/Kapu, D.No.1-3/27-8, Muvvalavari Street, Vidyadharapuram, Vijayawada. He is resident of above said address and he is doing various private works. The Central Government launched scheme by JNNRM for providing houses to poor people. Wherein the accused by name Kanijam Sridhar who is working as a conductor in Gannavaram depot at Vijayawada city. He is explained the scheme that they assured the said scheme, he along with his followers believing his words and they paid an amount of Rs.1,75,000/- at Nerusu Sitharamaiah House, Vidayadharapuram. The allotment of houses for and also collecting documents of Aadhar cards, and taken DD on their names at the Bank of Baroda. As the complainant and his followers paid the said amount in good faith as they trusted him. When they asked about allotment of houses but the accused dragged the time and cheated them with false promise and also threatened them with dire consequences.”

27. The charges 1 and 2 specifically refer to the FIR Nos.449 dated 16.09.2020 and 790 of 2020 dated 07.09.2020 respectively, but the charges No.3 and 4 are with respect to the complaint made to the respondents by persons other than the informants of the F.I.R(s), although with respect to the same scheme but with respect to different incidents. In the preliminary enquiry on such complaint, *prima facie*, the complaint was found correct and the domestic enquiry was ordered. The charge No.5 relates to the conduct, of the petitioner in tarnishing the reputation of the Corporation and amounting to misconduct under



Regulation 28(xxxii) of the A.P.S.R.T.C Employees (CCA) Regulations, 1967.

28. The charges may be based on the same set of facts as in the F.I.Rs although for the charges 3 and 4 there is no mention of any FIR, and even if appear to be grave but do not involve any complicated question of fact and of law. There is allegation of cheating by getting advancement of money from many persons for the allotment of houses under the 'JNNURM' scheme and then neither getting the allotment in favour of those persons nor refunding the money to those persons. These are simple facts without involving any complication. The determination on the point if the petitioner committed the offence of cheating under Sections 406 and 420 IPC, also does not raise any complicated question of fact or of law. The learned counsel for the petitioner, could not submit as to how the charges, involve complicated questions of fact or of law or both, nor that with respect to charge Nos.3 and 4 any criminal case is pending.

29. In the writ petition as in the reply affidavit, the petitioner has not disclosed any particulars of the criminal cases, except mentioning the FIR. Whether on the basis of the FIRs, after investigation any charge sheet has been filed or not and if filed the criminal cases are pending in which court and at what stage, the pleadings are absolutely silent. On a specific query made to the learned counsel for the petitioner during the arguments, he expressed his inability to state if the criminal cases are pending or not and if pending at what stage. The FIR was lodged way back in the year 2020 and almost two years to elapse but till date there is nothing on record to show if a charge sheet has been filed in the court and the trial has commenced.



30. Under the circumstances, the criminal trial would take long time. The departmental enquiry it is settled in law cannot be stalled to await the decision of the criminal proceedings, indefinitely.

31. With respect to the witnesses also nothing has been brought on record to show as to who are the witnesses in the criminal case and whether those witnesses and the witnesses in the departmental proceedings are the same.

32. On the point of prejudice to the petitioner in his defence in the criminal cases, although, in the writ petition it is pleaded that in the disciplinary proceedings, based on the same set of facts, prejudice would be caused to the defence of the petitioner, but, how, in what manner, and what prejudice would be caused in the defence of the petitioner in criminal proceedings, has not been disclosed. Merely saying that the defence would be prejudiced because the charges are on the same set of facts, is not sufficient. The petitioner in this respect has failed to discharge the burden on the point of prejudice.

33. Further, pursuant to the charge memo the petitioner has already submitted his explanation taking the defences to the charges. He has thus disclosed his defence. A perusal of the petitioner's reply does not show that he raised any plea that any prejudice would be caused to his defence or that he was not taking certain defences as disclosure of those defences would cause prejudice to his defence in the criminal proceedings. The petitioner furnished full fledged reply to the charge memo without any reservation i.e with respect to any other defence not taken in the reply, which might cause prejudice to him in the criminal proceedings. It was only after filing the reply, the petitioner vide representation dated 29.01.2021, followed by more representations, raised the plea that in view of the pendency of the criminal case, the



departmental proceedings be not proceeded with as it would cause prejudice to his defence. But, even in those representations it is not stated as to in what manner and what prejudice would be caused to his defence.

34. Thus, there is nothing on record to substantiate the argument of the learned counsel for the petitioner that the defence of the petitioner in criminal proceedings would be prejudiced if the departmental proceedings are not stayed.

35. In **Mailaraset Rambabu vs. State of Telangana and others**¹¹, the pleadings in the affidavits filed in support of writ petition were found to be vague. There, it was not asserted as to how prejudice would be caused to the petitioner therein and what were the complicated questions of law and fact, the High Court of State of Telangana held that the petitioner therein, failed in discharging his burden to pray for stalling the departmental proceedings.

36. In **K. Ebnezer vs. State of Telangana, rep. by its Principal Secretary to Government and others**¹², the High Court of State of Telangana held that ordinarily disciplinary action should not be stayed even when criminal case is pending on the same set of facts and law and even if it is stayed, if there is delay in concluding trial, the employer should be permitted to hold domestic enquiry. Burden is on the employee to satisfy the Court that the charges leveled in both proceedings are same; the material facts and evidence relied on by the employer is same; that there are complicated questions of law and facts involved; and that the employee has not disclosed his defense so far. Even if employee satisfies above parameters, Court may refuse to stay

¹¹ 2020(2)ALD 284

¹² 2020 SCC OnLine Ts 1050



the domestic enquiry if there is a likelihood of delay in commencement and conclusion of the criminal proceedings.

37. The judgment of this Court in **D. Ravi Babu** (supra) upon which learned counsel for the petitioner placed reliance is of no help.

38. **D. Ravi Babu** (supra) is a case of initiation of the departmental proceedings contrary to the Police Standing Order 150 of the Andhra Pradesh Police Manual. It provided that whenever enquiry is ordered under C.C.A Rules and prosecution is also lodged against the Police Officer in a criminal court and if the departmental enquiry is completed before the judgment in the criminal court is pronounced, the decision in the departmental proceedings shall ordinarily be postponed till the criminal case is decided. **D. Ravi Babu** (supra) case is to be considered in the light of the Police Standing Order 150 of the Andhra Pradesh Police Manual. There is no dispute on the legal proposition that the departmental proceedings cannot simultaneously run with the criminal proceedings, if there is a legal bar. Police Standing Order 150 of A.P. Police Manual, operated as a legal bar for conclusion of the departmental proceedings in **D. Ravi Babu** (supra). Any such legal bar has not been brought to the notice of this Court.

39. Considering all the aforesaid factors, the disciplinary proceedings cannot be stalled till the conclusion of the criminal proceedings. Any stay of disciplinary proceedings cannot be granted in a routine manner. The present is not a fit case for direction of stay of disciplinary proceedings till the criminal case is decided.

40. Writ petition lacks merit and deserves to be dismissed.

41. The employer has a right to conclude the departmental proceedings even *ex parte* against the employee if the employee does not



respond to notices issued to him to participate in the departmental enquiry proceedings but in accordance with law. The petitioner inspite of repeated notices to participate in the enquiry proceedings did not attend those proceedings resulting into *ex parte* conclusion of the enquiry proceedings by the enquiry officer who has submitted *ex parte* enquiry report to the disciplinary authority.

42. In view thereof, the disciplinary authority shall proceed to expeditiously conclude the disciplinary proceedings and pass the appropriate orders, in accordance with law, proceeding from the stage of submission of the enquiry officer's report to the disciplinary authority. The petitioner shall cooperate in such proceedings.

43. So far as the suspension of the petitioner is concerned as for revocation of the suspension order, the matter is said to be pending before the 3rd respondent/Deputy Chief Traffic manager, A.P.S.R.T.C, Vijayawada, the same is to be considered by the competent authority in accordance with law.

44. With the aforesaid observations and directions, the writ petition is dismissed. No order as to costs.

Consequently, the Miscellaneous Petitions, if any, shall also stand closed.

RAVI NATH TILHARI, J

Date:04.07.2022,

Note:

L.R copy to be marked.

Issue CC in one week.

B/o.

Gk



HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.8031 OF 2021

04.07.2022

Gk