A.F.R.

Court No. - 37

Case :- WRIT - A No. - 1475 of 2019
Petitioner :- Ganesh Prasad Dubey
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Ramesh Upadhyaya, Rajan Upadhyay
Counsel for Respondent :- C.S.C.

Hon'ble Siddhartha Varma,J.

The petitioner who was working as a Deputy Director, Agriculture in the Agriculture Department in the District of Maharajganj was put under suspension by the order dated 27.8.2018. This order was challenged by the petitioner in Writ - A No. 18884 of 2018. However, after looking into the suspension order and after seeing to the seriousness of the allegations, this Court on 5.9.2018 disposed of the writ petition with an observation that the contemplated departmental enquiry be held and be completed within three months of the serving of the charge sheet which itself had to be served, within one month of the

passing of the order on the petitioner. The operative portion of the order dated 5.9.2018 is being reproduced here as under: -

> "We, therefore, dispose of the writ petition with a direction that if the respondents have contemplated a departmental inquiry against the petitioner, then they shall issue a charge-sheet to him within a month from today and thereafter, shall bring the departmental proceedings to its logical conclusion within a further period of three months.
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> Needless to say that the petitioner will co-operate with the inquiry and no unnecessary adjournment will be granted to any of the parties by the inquiry officer.
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> The suspension order dated 27.8.2018 shall be subject to any final order which may be passed in the departmental proceedings."

Thereafter, the learned counsel for the petitioner submits that nothing had been done and therefore he had approached this Court for the quashing of the suspension order.

Learned counsel for the petitioner submitted that when as per the order 5.9.2018, the charge sheet had to be served upon the petitioner within a month then it ought to have been served upon him by 5.10.2018.

Learned counsel for the petitioner submitted that when the service of the charge sheet itself was delayed and was not actually served upon the petitioner within the time provided by this Court and was thereafter served on 29.11.2018 then alongwith the suspension order the entire enquiry proceeding should be set aside.

Learned counsel also informed the Court that after the service of the charges, the enquiry had not proceeded at all. Neither had any date been fixed nor any time or place for conducting the enquiry was fixed. Learned counsel submitted that if a departmental enquiry is unnecessarily prolonged then the delinquent's honour and reputation are tarnished. Till such time as the enquiry is completed though he is deemed to be innocent yet as he remains under suspension he and his family have to suffer ignominy. In this regard, learned counsel for the petitioner relied

upon the judgement reported in **2015 (7) SCC 291 (Ajay Kumar Chaudhary vs. Union of India through its Secretary and another).** Since the learned counsel for the petitioner read out paragraphs no. 17, 18, 19, 20 and 21 of the judgement, the same are being reproduced here as under:-

> **"17.** The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in *Abdul Rehman Antulay vs. R.S. Nayak, 1992 (1) SCC 225*, underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Cr.P.C., 1973; that it encompasses all stages, viz., investigation, inquiry, trial, appeal, revision and re-trial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind the CAT had in the case in hand directed that the Appellant's suspension would not be extended beyond 90 days from 19.3.2013. The High Court had set aside this direction, viewing it as a substitution of a judicial determination to the authority possessing that power, i.e., the Government.
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> **18.**This conclusion of the High Court cannot be sustained in view of the following pronouncement of the Constitution Bench in Antulay[1]:
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> > 86. In view of the above discussion, the following propositions emerge, meant to

1 (1992) 1 SCC 225;

serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

> (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
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> (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
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> (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of [pic]death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is

interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As

has been observed by Powell, J. in Barke 33 L Ed 2d 101 "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell 15 L Ed 2d 627 in the following words:

> 'The Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of [pic]accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker 33 L Ed 2d 101and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court

comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and [pic]exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

19. State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570 deserves mention, inter alia, because action was initiated on 25.3.1992 and a

Memorandum of Charges was issued on 9.7.1992 in relation to an incident which had occurred on 1.1.1987. In the factual matrix obtaining in that case, this Court reserved and set aside the High Court decision to quash the Inquiry because of delay, but directed that the concerned officer should be immediately considered for promotion without taking the pendency of the Inquiry into perspective.

20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of

> Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

Learned counsel further submitted that if any departmental enquiry is delayed it infringes on a persons right to life. In this regard, he relied upon a decision reported in **JT 1993 (3) SC 617 (D.K. Yadav v. M/s. J.M.A. Industries Ltd.)**

In this regard, the counsel read out paragraph

12 of the judgement and, therefore, the same is being reproduced here as under:-

> "12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Art. 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable. "

Learned counsel further submitted that if the charge-sheet which was served upon the petitioner on 29.11.2018 was perused then it would become clear that all the 10 charges were such charges which should not have taken more than a month's time to be thrashed out. The petitioner had already submitted his reply. The charges, he submitted, were such that certain amounts had been

transferred wrongly to the accounts of others. He submits that all these transfers were made electronically and, therefore, they could have been checked in no time but only to pester the petitioner, the enquiry was being lingered and prolonged.

Learned counsel for the petitioner further submitted that the whole of the disciplinary enquiry was vitiated on account of the fact that the time frame as was fixed by the Court was not adhered to.

Learned counsel relied upon a Full Bench decision of this Court reported in **2014 (6) ALJ 662 (Abhishek Prabhakar Awasthi vs. New India Assurance Company Ltd.)** and submitted that if a time frame had been provided by a Court and if the enquiring authority could not complete the enquiry within that time frame then the enquiry would stand vitiated. He submitted that the enquiring authority had not prayed for any extension of time which

was provided by the Full Bench.

Learned counsel further submitted that had the disciplinary authority/enquirying authority been serious about the enquiry then they would have applied for an extension of time. In the event they they have not applied for any extension of time, this Court should quash the enquiry itself.

Further relying upon a judgement which was passed in **Service Single No. 10690 of 2017 (Prahlad Kumar Nigam vs. State of U.P. Thru Secy. Urban Development Deptt. Lko & Ors.)** learned counsel submitted that a suspension order should be quashed if the enquiry had been inordinately delayed.

Learned Standing Counsel, however, in reply, submitted that the judgement reported in **2014 (6) ALJ 662 (Abhishek Prabhakar Awasthi vs. New India Assurance Company Ltd.)** had provided that even if the disciplinary authority was not

praying for extension of time, this Court should *suo motu* extend the time. Learned Standing Counsel relied upon the ratio laid down by the Full Bench and read out paragraph 18 of the judgement which is being reproduced here as under:-

> 18. In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.
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> (A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;
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> (B) Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra v. State of M.P. & Anr, 2005 12 SCC 355 as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not *ipso facto* nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The Court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the

> original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time *suo motu* in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the court has come to an end.

Further learned Standing Counsel submitted that since the petitioner had already filed a writ petition earlier being Writ - A No. 18884 of 2018 for quashing of the suspension order, he could not file a second writ petition for the same relief.

Having heard the learned counsel for the petitioner, and the learned Standing Counsel and after having gone through the record, this Court finds that firstly, the direction, that the charges had to be submitted within one month of the passing of the order dated 5.9.2018 in Writ A No. 18884 of 2018, was not complied with. The charge sheet, in fact, was served upon the petitioner very late on 29.11.2018. This Court further finds that the

enquiry had thereafter not progressed at all. The suspension order, therefore, it appears, would continue till the time the enquiry was completed.

In the instant case, the Court finds that the charges which were 10 in number were such charges which if had been dealt with properly could have been thrashed out within no time. The Court feels that the prevailing practice these days of lingering disciplinary enquiries is extremely deprecable. When a person joins a service he does so in the hope that he would serve the country with dignity. He also depends on his job for his livelihood and also because of the job which he does he gets respect in society. When a disciplinary enquiry is lingered for no reason the delinquent suffers not only because the disciplinary enquiry is not brought to its logical end but also because he and his family suffers from ignominy.

The argument of the learned Standing

Counsel that the instant petition was not maintainable, it being a second writ petition for the same cause of action, is not tenable in view of the judgement of this Court reported in **1996 AWC 1514 (Surya Bali Ram v. State of U.P. And others).**

Under such circumstances, I feel that the suspension order has been kept operational for an extremely long period and should, therefore, be set aside. The Suspension Order dated 27.8.2018 is, thus, quashed.

However, since the disciplinary authority has till date not applied its mind on the reply which the petitioner had submitted and on the evidence on record, I feel that a further time of two months should be granted to the Disciplinary Authority to complete the enquiry.

Under such circumstances, even though no extension of time has been prayed for by the

learned Standing Counsel by any application in writing, the time for completing the enquiry is extended by two months. The enquiry shall now be completed within two months from today.

The writ petition is allowed.

Order Date :- 30.1.2019
praveen.

(Siddhartha Varma,J.)