

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5291 OF 2003

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
DR. KANAIHYASINGH G. TEHRA AND OTHERS

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Mr. V. M. Kagne, A.G.P. for petitioner
Mr. S. B. Talekar, Advocate for respondent No. 1
Mr. S. P. Brahme, Advocate for respondent No. 3

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CORAM : A.V. NIRGUDE &
V.K. JADHAV, JJ.

Dated : 20.10.2015

PER COURT :-

1. By this petition, the State of Maharashtra has challenged the judgment and order dated 10.06.2002, passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, thereby allowing Original Application TA No. 2274 of 1991 filed by respondent No. 1 herein, and exonerating him from the departmental enquiry. Reasons mentioned in the judgment are quite cogent and the defects in the enquiry and the proceedings conducted against the respondent are almost admitted.

2. The facts leading to this litigation, in short, can be stated as under :

While respondent No. 1 was the Head of the Department of Ophthalmology in Government Medical College, Nagpur. Respondent No. 1 and his team performed surgeries on the needy patients. After the surgery, due to infection, the patients lost their sight. It was alleged that the respondent was responsible for gross negligence in the treatment given to the patients. An experts committee was appointed, who, upon investigation, submitted its report holding the respondent guilty of gross negligence. In view of these circumstances, the respondent was subjected to

departmental enquiry. The Enquiry Officer found the respondent guilty and submitted his report to the Disciplinary Authority, who penalized the respondent with compulsory retirement. The learned Member of the Tribunal found three defects in the entire proceedings. First and the foremost defect is the admitted fact that though experts committee report was placed on record, no witness was examined to prove the report. The respondent was not given opportunity to cross-examine such witnesses and he did not get opportunity to question the correctness of the opinion expressed in the report. There are two more reasons recorded by the learned Member of the Tribunal. On perusal of the judgment, we found that the conclusions drawn by the learned Member of the Tribunal were inescapable and inevitable.

3. The learned AGP tried to assert that the Tribunal erred in re-appreciating the evidence on record. We are afraid, this is erroneous submission even on facts. The learned Members of the Tribunal did not re-appreciate the evidence on record. They simply pointed out gross defects in the proceedings and held that the petitioner could not prove the guilt of the respondent. The petition should therefore, fail.

4. The writ petition is dismissed. Rule discharged.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)