

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9177 OF 2014

Dinkar Hanumant Dokhe,
Age : 57 years, Occu. Service,
R/o Saiprasad Housing Society,
Nimgaon Korhale, Taluka Rahata,
District Ahmednagar

PETITIONER

VERSUS

Shri Saibaba Sansthan Vishwastha
Vyavastha, At Post Shirdi,
Taluka Rahata, District Ahmednagar,
through its Chief Executive Officer

RESPONDENT

Mr. Parag V. Barde, Advocate for the Petitioner
Mr. N.R. Bhavar, Advocate for the Respondent

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

JUDGMENT RESERVED ON : 1st JULY, 2016
JUDGMENT PRONOUNCED ON : 19th JULY, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is heard finally.

2. The petitioner, who was serving as a Ward-Boy with the respondent since 1978, has been suspended on 9th July, 2014 on the allegations of committing theft of

cash amount while counting the donations received by the respondent. An FIR No. I-113/2014 came to be registered against the petitioner in Shirdi Police Station for the offence punishable under section 379 of the Indian Penal Code. After investigation, a criminal case bearing Regular Criminal Case (R.C.C.) No. 225 of 2014 has been instituted against the petitioner in the Court of the Judicial Magistrate First Class at Rahata for the said offence. The said case is still pending.

3. The respondent initiated a regular disciplinary enquiry against the petitioner and served chargesheet on him on 14th July, 2014. The said enquiry is being conducted by the Enquiry Officer, namely, Advocate B.Y. Kalwaghe. The petitioner filed applications dated 30th August, 2014 and 29th September, 2014 before the Enquiry Officer and prayed for keeping the disciplinary enquiry in abeyance until final decision of R.C.C. No. 225 of 2014 (Crime No. I-113/2014) on the grounds that the criminal case has been instituted in respect of the same incident which is the subject matter of the disciplinary enquiry. The witnesses in the disciplinary enquiry as well as in the criminal case are identical. Therefore,

if he disclosed his defence in the disciplinary enquiry, his right to get himself defended before the Criminal Court would be prejudiced. He further prayed that the Presenting Officer appointed in the disciplinary enquiry is the Law Officer having thorough knowledge of law. He has conducted hundreds of disciplinary enquiries. There is no employee available with the Union of the employees of the respondent having thorough knowledge of law, who would represent the petitioner in the disciplinary enquiry. The petitioner has studied upto 5th standard only. He has no knowledge of law and the procedure for facing the disciplinary enquiry. He, therefore, prayed that he may be permitted to engage an Advocate on his behalf to defend himself. Both the applications came to be rejected by the Enquiry Officer. The application dated 29th September, 2014 was containing the composite prayer for staying the disciplinary enquiry and seeking permission to engage an Advocate to represent the petitioner. It has been rejected as per the impugned order dated 2nd October, 2014.

4. The learned counsel for the petitioner pointed out to the names of the witnesses to be examined in the

disciplinary enquiry as well as before the Criminal Court, which are identical, as also the statement of imputations served on the petitioner and the contents of the chargesheet in R.C.C. No. 225 of 2014 which also are identical. Therefore, relying on certain judgments of the Bombay High Court and that of the Hon'ble the Supreme Court of India, he submits that the impugned order may be quashed and set aside and the reliefs claimed by the petitioner for staying the disciplinary enquiry until the final decision of R.C.C. No. 225 of 2014 and further to permit the petitioner to engage an Advocate to defend the petitioner before the Enquiry Officer, may be granted.

5. The learned counsel for the respondent filed reply on behalf of the respondent through one Rajendra s/o Marutirao Jadhav and strongly opposed the petition. On the basis of the contents of this reply, the learned counsel for the respondent submits that the petitioner is participating in the disciplinary enquiry and availing of full and fair opportunity of hearing. The said disciplinary enquiry are being conducted in accordance with the principles of natural justice. He

states that the Presenting Officer in the disciplinary enquiry is a Diploma holder in Labour Laws and working as a Labour Officer. He is not legally trained. The charges levelled against the petitioner are not complex or complicated. In the circumstances, he is not entitled to get assistance of a legal practitioner to defend himself in the disciplinary enquiry. He submits that it is not at all necessary to stay the disciplinary enquiry only because a criminal case based on the same facts is pending against the petitioner before the Criminal Court. He supports the impugned order and prays that the writ petition may be dismissed.

6. As seen from the documents produced on record in respect of the disciplinary enquiry initiated against the petitioner and the chargesheet filed against him in the Court of Judicial Magistrate First Class at Rahata that both the proceedings are based on the same facts. The witnesses proposed to be examined before the Enquiry Officer and before the Criminal Court also are the same.

7. The learned counsel for the petitioner relied on the decision in the case of **Kusheshwar Dubey Vs. M/s**

Bharat Coking Coal Ltd. And others AIR 1988 S.C. 2118, wherein the criminal action and the disciplinary proceedings were grounded upon the same set of facts. Therefore, it was held that the disciplinary proceedings should be stayed pending the criminal trial. In the case of ***State Bank of India and others Vs. R.B. Sharma AIR 2004 S.C. 4144,*** it has been observed in paragraph No. 7 of the judgment that it is fairly well settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. On the same point, the learned counsel for the petitioner also relied on the judgments in the cases of ***M/s Stanzen Toyotetsu India P. Ltd Vs. Girish V and others AIR 2014 S.C. 989*** and ***Surendrasingh Govindsingh Rajput Vs. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), and another, Writ Petition No. 4758 of 2014*** (with companion writ petitions), decided by the Bombay High Court, Bench at Aurangabad on 23rd September, 2015. The ratio laid down in these judgments is fully applicable to the facts of the present case. The facts

and circumstances of the present case warrant stay to the disciplinary proceedings during pendency of the trial instituted against the petitioner in the Court of Judicial Magistrate First Class, Rahata on the basis of the same facts which have been proposed to be proved by the common evidence through common witnesses.

8. The petitioner has been prosecuted for the offence punishable under section 379 of the Indian Penal Code. He is bound to take assistance of a legal practitioner to defend himself before the Criminal Court. He has been indicted by the Enquiry Officer on the same facts and the evidence proposed to be adduced in proof thereof also is the same. The petitioner has studied upto 5th standard. He cannot be said to have thorough knowledge of the legal provisions as well as the procedure governing the disciplinary proceedings. Considering the grave charges levelled against the petitioner, it is desirable that he should get sufficient opportunity to defend himself by engaging an Advocate on his behalf before the Enquiry Officer. The petitioner has come with a specific case that the Presenting Officer Shri M.D. Dhaneshwar is a Law Officer

who has thorough knowledge of law and procedure. He has a great experience of conducting the disciplinary enquiries. If that be so, the principles of natural justice would demand that the petitioner should be given necessary opportunity of defending himself by engaging an Advocate on his behalf.

9. The learned counsel for the petitioner has rightly relied on the judgment in the case of ***The Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others AIR 1983 S.C. 109*** wherein it has been held that where in the enquiry before a domestic tribunal, the delinquent officer is pitted against a legally trained mind and if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to refusal of a reasonable request to defend himself and the essential principles of natural justice would be violated. He further cited the judgment in the case of ***Yeshwant Harichandra Gharat Vs. M/s Clairant Chemicals (I) Ltd. and another 2010 (2) ALL MR 875*** (Bombay High Court), wherein it is observed that even if the charges are simple and apparently uncomplicated, an employee would

be entitled to the assistance of a legally trained person, if the Management representative/Presenting Officer is a legally trained person. To strengthen the same relief of taking the services of a Legal Practitioner for defending the petitioner, the learned counsel for the petitioner placed reliance on the cases of ***Chandrakant s/o Shridhar Deshpande Vs. Government of Maharashtra and another 1990 (1) Bom C.R. 17*** and ***J.K. Aggarwal Vs. Haryana Seeds Development Corporation Limited 1991 AIR (SC) 1221.***

10. In view of the facts and circumstances of the case, the impugned order will have to be quashed and set aside. The respondent will have to be directed to permit the petitioner to engage an Advocate to defend himself in the disciplinary enquiry. Moreover, the disciplinary enquiry will have to be ordered to be stayed until the final decision of R.C.C. No. 225 of 2014. However, it is well settled that the disciplinary/departmental proceedings cannot be unduly delayed if the criminal case does not proceed, as held by the Hon'ble the Supreme Court in the case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. 1999 (3) SCC***

679. It is observed in Para 22, clause (V) of the judgment in the said case that if the criminal case does not proceed or its disposal is being unduly delayed, the disciplinary 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, the administration may get rid of him at the earliest. In view of these observations, in the present case, while staying the disciplinary enquiry, necessary directions will have to be given for expeditious disposal of R.C.C. No. 225 of 2014. In the result, we allow the writ petition with the following order.

- (i) The impugned order dated 2nd October, 2014, passed by the Enquiry Officer in the disciplinary enquiry, initiated against the petitioner by the respondent, is hereby quashed and set aside.
- (ii) The disciplinary enquiry initiated against the petitioner by the respondent shall remain

stayed for a period of one year from the date of this order or until decision of R.C.C. No. 225 of 2014, whichever is earlier.

- (iii) The learned Judicial Magistrate First Class, Rahata shall conclude the trial of R.C.C. No. 225 of 2014 as expeditiously as possible and preferably within a period of one year from the date of this order.
- (iv) The petitioner shall cooperate with the Trial Court for early disposal of R.C.C. No. 225 of 2014.
- (v) If the trial in R.C.C. No. 225 of 2014 is not concluded within a period of one year from the date of this order, the stay granted today shall stand vacated and the disciplinary enquiry initiated against the petitioner shall be resumed and concluded by the Enquiry Officer.

- (vi) The Enquiry Officer shall permit the petitioner to engage an Advocate to defend himself in the disciplinary enquiry.
- (vii) The Registrar (Judicial), High Court Bench at Aurangabad shall communicate this order to the learned Judicial Magistrate First Class, Rahata for taking necessary steps for expeditious disposal of R.C.C. No. 225 of 2014.
- (viii) Rule is made absolute in the above terms and the writ petition is disposed of.
- (ix) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE