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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3604 OF 2015

Lalitkumar G. Chawardol ... Petitioner
Vs.
The State of Maharashtra ... Respondent

WITH

WRIT PETITION NO. 3605 OF 2015

Nazir Abdul Raheman Shaikh ... Petitioner
Vs.
The State of Maharashtra ... Respondent

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Mr. A.Y. Sakhare, Senior Advocate a/w. Mr. Sagar Mane for the Petitioners.
Mr. C.P. Yadav, AGP for the Respondent-State.

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CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JULY 19, 2016

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1] The learned counsel for the parties agree that these two petitions can be disposed of by a common order. In fact, the challenge in both these petitions is to the common judgment and order dated 20 March 2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in Original Application Nos. 897 of 2012 and 896 of 2012. Therefore, it is appropriate that both these petitions are disposed of by a common order.

2] The petitioners are senior officers in the department of Sales Tax, holding the rank of Deputy Commissioner. This Court in Criminal Public Interest Litigation No. 22 of 2010 (Surinder M. Arora Vs. State of Maharashtra and others), whilst dealing with the issue of "***Palghar Refunds Scam***" involving unauthorised refunds granted to several traders, thereby causing loss of crores of rupees to the State exchequer, had issued certain directions with regard to launch of criminal prosecution and initiation of departmental enquiries against the officers suspected to be involved. Since, the petitioners were also suspected to be involved in the scam, the prosecution as well as departmental enquiries came to be initiated against them. A retired District Judge and President of Sales Tax Appellate Tribunal came to be appointed as Enquiry Officer for conduct of joint enquiry against the seven charged officers, including the petitioners herein.

3] The Enquiry Officer has already submitted enquiry report holding that the charges leveled against the officers, including the petitioners stand proved. For no explicable reason, the matter is stated to be pending at the level of the Government for the purposes of taking further action on the basis of enquiry report. This is despite the circumstance that this Court, in Criminal PIL No. 22 of 2010 had taken cognizance of the scam and directed the expeditious conclusion of the departmental action against those involved. In a matter of this nature, we really cannot appreciate the delay on the part of the State Government in the matter of action on the basis of report of Enquiry Officer. We refrain, however, saying anything further in the present proceedings, since the present petitions concern enquiry into further charges levelled, *inter alia,* against the petitioners.

4] During pendency of the first departmental enquiry, further instances of unauthorised refunds granted to several traders came to light. Accordingly, fresh chargesheets were issued to the petitioners in this regard. The same Enquiry Officer, i.e., Retired District Judge and President of Sales Tax Appellate Tribunal came to be appointed as Enquiry Officer to enquire into the second chargesheet as well.

5] No sooner, the petitioners were informed that the same Enquiry Officer will be holding enquiry into the second chargesheet, the petitioners, without even appearing before the Enquiry Officer instituted the original applications before the MAT, questioning the conduct of enquiry by such Enquiry Officer, primarily on the following two grounds:

a} That the Enquiry Officer was biased against the petitioners; and

b} That in terms of Service Rules and the Government Resolutions holding the field, the State was barred from appointing a retired official as an Enquiry Officer.

6] The MAT, by detailed judgment and order dated 20 March 2015 (impugned judgment and order) has dismissed the original applications instituted by the petitioners. Hence, the present petitions.

7] Initially, the interim relief was granted by this Court. However, upon noticing that the petitioners were not even clearing the office objections or providing for translation of documents, despite specific orders, such interim order was vacated on 2 April 2016. Further, directions were also issued to the learned AGP to take appropriate instructions in the matter of action in pursuance of the first departmental enquiry, since, it was suspected that further action is not forthcoming only on the ground of pendency of the present petitions. In fact, the present petitions do not concern the first enquiry, particularly as the petitioners did not even challenge the appointment of the very same Enquiry Officer, insofar as the conduct of the first departmental proceedings are concerned.

8] Mr. A.Y. Sakhare, learned senior advocate for the petitioners, submitted that in terms of Service Rules and the Government Resolutions as applicable, there is no provision to appoint some outsider like a retired District Judge or a retired President of Sales Tax Appellate Tribunal as Enquiry Officer in a departmental enquiry. In any case, Mr. Sakhare submitted that the Enquiry Officer was biased against the petitioners, having already submitted an adverse report in relation to the first chargesheet. For these reasons, Mr. Sakhare submitted that the impugned judgment and order made by the MAT be set aside and the prayers made in the original applications instituted by the petitioners be granted by this Court.

9] Mr. C.P. Yadav, learned AGP for the State, has submitted that there was absolutely no case of bias made by the petitioners and there was no bar whatsoever to appoint retired District Judge as an Enquiry Officer, considering the peculiar facts and circumstances of the present case. Mr. Yadav also submitted that since the petitioners had participated in the departmental enquiry in pursuance of the first chargesheet before the very same Enquiry Officer, without raising any objection, the petitioners were dis-entitled to raise any such objection in the matter of enquiry into second chargesheet. Mr. C.P. Yadav submitted that even otherwise in terms of the order made by this Court in Criminal PIL No. 22 of 2010, the appointment of retired District Judge and President of Sales Tax Appellate Tribunal was entirely justified in the facts and circumstances of the present case. Mr. Yadav submitted that the petitioners are only bent upon stalling the progress in the departmental enquiries, so that their role in the "***Palghar Refunds Scam" "*** is not unearthed to the fullest extent. For all these reasons, Mr. Yadav submitted that the present petitions be dismissed.

10] We have perused the record as also the impugned judgment and order made by the MAT.

11] In the impugned judgment and order, the MAT has held that the petitioners were not right in directly instituting the original applications before the MAT, without raising their objections before the Enquiry Officer. In the impugned judgment and order, the MAT has further held that there is absolutely no basis to uphold the objection of bias, which has been so loosely made by the petitioners.

12] We agree with the MAT that the allegations of bias, in the present case, have been loosely made and consequently, deserves no acceptance. Merely because the Enquiry Officer may have found charges proved against the petitioners, insofar as the first chargesheet is concerned, that by itself, does not entitle the petitioners to object the Enquiry Officer enquiring into second chargesheet on the grounds of bias. Besides, the allegations of bias are required to be made with a degree of responsibility, which is quite lacking in the present case.

Accordingly, we see no reason to disturb the impugned judgment and order, insofar as it rejects the petitioners' objection based upon the doctrine of bias.

13] Insofar as, the other objection to the appointment of Enquiry Officer is concerned, we do not deem it appropriate to advert to the same at this stage. The petitioners can neither avoid facing the departmental enquiry nor delay the departmental enquiry. It must be noted though, that the petitioner, by institution of the original applications before the MAT followed by the institution of the present petitions, have to a great extent succeeded in delaying the departmental proceedings. Be that as it may, the interests of the petitioners can be protected by granting the petitioners liberty to raise such objection, in case, the Enquiry Officer finds that the charges leveled against the petitioners are proved or further, if any, action is taken against the petitioners on the basis of enquiry report, which may be submitted by the Enquiry Officer in relation to the second chargesheet.

14] At this stage, there is no necessity to either decide the objections raised by the petitioners or to delay the departmental proceedings any further. If, ultimately, the petitioners are exonerated in the departmental proceedings, then possibly there will be no necessity to decide upon the objection now raised by the petitioners.

Looking to the magnitude of the charges and the necessity to enquire into and fix responsibility in the matter of "***Palghar Refunds Scam*" ,** it is necessary that the departmental proceedings are concluded with utmost expedition.

15] Therefore, in the peculiar facts and circumstances of the present case, we dismiss the present petitions, but with liberty as aforesaid to the petitioners to agitate the objection raised by them to the appointment of Enquiry Officer (except objection of bias), should, occasion arise therefor, after the conclusion of the departmental proceedings.

16] The respondents are directed to dispose of the departmental proceedings against the petitioners as expeditiously as possible.

17] Both the petitions are accordingly, disposed of with liberty as aforesaid. There shall be no order as to costs.

[M. S. SONAK, J.] [V. M. KANADE, J.]