

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 3033 OF 2017**

Shri Vijaykumar Pandharirao Narwade  
Age – 53, Occupation : Govt. Service  
Address :  
C/o. Ramdas Ganpat Waghmare  
Near Hanuman Mandir, Keshav Nagar,  
Buldhana 443 001

.. Petitioner

Vs.

1. The State of Maharashtra,  
Through  
Secretary,  
Law & Judiciary Department,  
Mantralaya, Mumbai 400 032.

2. Charity Commissioner,  
Maharashtra State,  
3<sup>rd</sup> Floor, Dharmday Aayukta Bhavan,  
Dr.Anil Bezant Road, Worali,  
Mumbai 400 018.

3. Asst.Charity Commissioner,  
Akola (Now at Bhuldhana),  
Administrative Building, Opp.Bus Stand,  
Buldhana 443 001.

4. Superintendent,  
Office of the Assistant Charity Commissioner,  
Buldhana (Previously at Akola),  
Administrative Building, Opp. Bus stand,  
Buldhana 443 001.

.. Respondents

Mr.C.T.Chandratre, for the Petitioner.  
Mr.Vishal Thadani, AGP for State.

**CORAM : SMT. V.K.TAHILRAMANI &  
M.S.KARNIK, JJ.**

**DATE : 19<sup>th</sup> APRIL, 2017**

**ORDER (PER M.S.KARNIK, J) :**

. Rule. By consent of the parties, Rule is made returnable forthwith and the matter is heard finally.

2. The petitioner challenges the order dated 27/01/2017 passed by the Maharashtra Administrative Tribunal, Mumbai. The petitioner had approached the Tribunal with a grievance that in view of the inordinate delay in completing the departmental enquiry, the Tribunal may hold and declare that the departmental enquiry which is initiated by charge-sheet dated 16/07/2005 is vitiated and the petitioner be exonerated of the charges which are leveled against him.

3. The petitioner was serving in the office of the

Assistant Charity Commissioner, Buldhana during the period of 19/02/2002 and 30/06/2004. The charge-sheet dated 16/07/2005 was served on the petitioner and the charges were :

(i) that during the period while he was working at Buldhana, in a pending proceeding relating to Gopi Shikshan Prasarak Bahuuddeshiya Mandal Kingaon, in order to ensure an order in favour of Shri Gnyaneshwar Chate the petitioner allegedly took illegal gratification of Rs.1,00,000/- because of which Chate's opponent held out threat of self immolation; (ii) The other charge pertains to the petitioner's behavior with the litigants, advocates and colleagues in a manner as to evoke irritation and rage; (iii) The petitioner was charged of unnecessary picking up quarrels.

4. According to the petitioner though he responded to the charge-sheet but till 09/04/2007, nothing happened. Thereafter by 2 separate orders, the Enquiry Officer and Presenting Officer came to be appointed. According to the petitioner even thereafter there was hardly any progress with

the enquiry.

5. The learned Counsel for the petitioner submits that on account of inordinate delay in completing disciplinary proceeding which is not explained, grave prejudice to the petitioner is caused on account of delay. According to the learned Counsel for the petitioner the delay is abnormal and there is no explanation for the same. Learned Counsel for the petitioner invited our attention to the complaint dated 06/05/2004 based on which the disciplinary enquiry was initiated to contend that the material on record was not at all sufficient to proceed against the petitioner. According to him, allegations made in the complaint are not serious.

6. Learned Counsel for the petitioner invited our attention to the abstract of events and roznama at page 31 of the Petition to contend that delay is abnormal and there is no explanation for the delay. According to the learned Counsel for the petitioner there is no material on record to show that the

petitioner is to be blamed for the delay. Learned Counsel for the petitioner contended that the respondents have not properly explained the delay in conducting the disciplinary proceedings and therefore, this is a fit case where the Tribunal ought to have interfered with the disciplinary proceedings on the ground of inordinate delay. According to the learned Counsel for the petitioner the material on record is not even sufficient to initiate departmental enquiry.

7. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of **State of M. P Vs. Radhakrishnan, 1998 AIR (SC) 1833**. Paragraph 19 reads thus :

19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of

charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

8. Learned AGP for the respondents on the other hand supported the order passed by the Tribunal. According to him, charges leveled against the petitioner are very serious in as much as the same pertains to taking illegal gratification of Rs.1,00,000/- in order to ensure an order in favour of Gnyaneshwar Chate coupled with other charges.

9. Learned AGP invited our attention to an order passed by the Nagpur Bench of the Tribunal in Civil Application No. 376 of 2012 filed by the petitioner. In respect of Civil Application No. 446 of 2012 which was filed by him for stay of the disciplinary enquiry, the same came to be disposed of by the Tribunal on 05/02/2013. According to the learned AGP even

while disposing of the Civil Application, the Tribunal had expected the petitioner to co-operate in the enquiry observing that in the recent past, the applicant had remained absent. According to him the delay is not intentional as even the petitioner has contributed to the delay in completing the proceedings.

10. Having considered the submissions of the learned Counsel appearing for the respective parties, we are of the opinion that the order passed by the Tribunal calls for no interference. Learned Counsel for the petitioner mainly argued on the point of inordinate delay in completing the enquiry. The Tribunal has observed that though the disciplinary enquiry prolonged endlessly, even the petitioner is contributory to the delay.

11. The Tribunal has in paragraphs 6 & 7 of the impugned order discussed the reasons for the delay in proceeding with the enquiry and has observed that on some

occasions even the petitioner was remaining absent. The delay was also on account of administrative exigencies as noted by the Tribunal in some detail in the order.

12. The Tribunal has also observed that it is one of the grievance of the petitioner that he is denied promotion in view of pending departmental enquiry. However, affidavit-in-reply filed by respondents before the Tribunal clearly mentions that the petitioner came to be promoted as a senior clerk on 13/09/2011. The Tribunal has further observed that despite being already promoted in 2011, the petitioner has pursued his case of he having been denied promotion.

13. Having regard to the nature of charge i.e. taking illegal gratification of Rs.1,00,000/- in order to ensure an order in favour of Gnyaneshwar Chate, the same undoubtedly is a serious charge. The Tribunal has also observed that the petitioner was working in the office of Charity Commissioner and that the Enquiry Officer and the Charity Commissioner are

Judicial Officers and they are quite conscious of the fact that the departmental enquiry should be expeditiously concluded. It is in these circumstances that the Tribunal has directed that the departmental enquiry against the petitioner be concluded within a period of 4 months from the date of the order of the Tribunal i.e. 27/01/2017 and if necessary, the Enquiry Officer should conduct the enquiry on day to day basis.

14. We may note here that after the Petition was filed in this Court, the petitioner had moved this Petition for urgent reliefs when this Court had passed following interim order on 23/03/2017.

“ Not on board. Taken on board.

1.Heard the learned counsel for the petitioner. Even according to his case, the enquiry is proceeding. He states that the enquiry is being conducted in his absence. He submits that the enquiry is being conducted without notice to the petitioner. If the enquiry is in progress, the petitioner is free to appear before the Enquiry Officer. Place the petition on 10<sup>th</sup> April 2017.”

15. Learned AGP has further pointed out that the Enquiry Officer has already submitted the report in respect of the departmental enquiry. The learned Counsel for the petitioner makes a grievance that he was not allowed to

effectively defend himself in the enquiry before submission of enquiry report. However, we are not entertaining this plea of the learned Counsel as the objection to the enquiry report is a distinct cause of action altogether and is not a subject matter of challenge in Original Application.

16. In our opinion, therefore, after taking into consideration all the relevant factors and the gravity of the charges and the manner in which departmental enquiry has progressed, the Tribunal was of the opinion that final opportunity needs to be given to the respondents to conclude departmental enquiry against the petitioner within a specified period. We do not find any reason to interfere with the view taken by the Tribunal in the facts and circumstances of the present case.

17. Writ Petition is therefore dismissed with no order as to costs. Rule is discharged accordingly.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)