

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.721 OF 2014

Dilip Ladharam Wadhawani .. Petitioner

vs.

Commissioner,
Pimpri-Chinchwad Municipal Corporation and Anr. .. Respondents

Mrs.Lata Desai i/b Ms.Pallavi Divekar for the petitioner

Mr.G.H.Keluskar for the respondent nos.1 and 2

CORAM : K. K. TATED, J.
DATE : JANUARY 27, 2017

PC.:

1 Heard the learned counsel for the parties.

2 By this Petition under Article 227 of Constitution of India, the petitioner is challenging the order dated 26.11.2013 passed by learned Member, Industrial Court, Pune below Exhibit (U-2) in complaint (ULP) No.120 of 2013 rejecting petitioner's application for staying a domestic enquiry until a criminal case against him is decided.

3 The petitioner was appointed as a clerk in the office of the respondent no.1 on 22.11.1987. On 13.3.2012 the FIR No.3077 was lodged against the petitioner by Anti Corruption Bureau under the Anti Corruption Act, 1988 for demanding 30% of the salary from one Nivrutti Landge for marking him present on the days he was absent and

Rs.40,000/- as bribe from safai kamgar marking him present for two months. A Criminal case No.24 of 2012 was filed in Special Court at Pune under the provisions of Anti Corruption Act. Same is pending for hearing on its own merits. On same day i.e. 13.3.2012 the petitioner was arrested. Thereafter on 14.4.2012 petitioner was placed under suspension by the Respondent no.1. Thereafter on 19.7.2012, the respondent lodged FIR with Bhosari Police Station against the petitioner for the offences of cheating and forgery of documents. The charge of forgery was in respect of the Attendance registers of Ward No.15 for the period January, 2010 to March 14, 2012. A criminal case no.347 of 2013 was filed in the court of JMFC, Pune and the same is pending. The respondent considering the offence committed by the petitioner issued charge sheet dated 10.12.2012 for domestic enquiry for following charges:

- a) The petitioner had forged the Attendance Registers for the period January, 2010 to March 14, 2012.
- b) That the petitioner had demanded bribe of Rs.40,000/- from safai kamgar to mark him present for two months.

4 Because of the domestic enquiry started by the respondent, the petitioner filed complaint before the Industrial Court under section 28(1) read with item Nos. 4, 7, 9 and 10 of the M.R.T.U. And P.U.L.P Act, 1971 for declaration that the charge sheet dated 30.11.2012 issued by the respondent was illegal and same to be quashed and for other reliefs. In the said complaint, the petitioner preferred application under section 30(2) of the MRTU and PULP Act, 1971 for an order of injunction restraining the Respondent from conducting departmental

enquiry during the pendency of criminal case in the criminal court on the ground that departmental enquiry as well as criminal cases were in respect of same offences. The said application was dismissed by the Industrial Court by impugned order dated 15.4.2013. Hence, the present Writ Petition.

5 The learned Counsel for the petitioner submits that the learned Member, Industrial Court failed to consider the fact that criminal matters and departmental enquiry were one and the same. He submits that the learned Member of the Industrial Court failed to appreciate the documents involved in both the cases i.e. the attendance Registers for the period January 2010 till March 14, 2012. He further submits that most of the witnesses in criminal cases and departmental enquiry were common.

6 The learned Counsel for the petitioner submits that the learned Member of the Industrial Court failed to appreciate that since the facts and the documents involved in the criminal case as well as departmental enquiry were one and same for the defences of the petitioner in criminal cases as well as departmental enquiry, the petitioners interest will affect in case the departmental enquiry proceeded on its own merits. He submits that though the petitioner pointed out the Industrial Court all these facts, the Industrial Court rejected his application. He submits that the Industrial Court erred in coming to the conclusion that charges in departmental enquiry as well as criminal case were not identical.

7 The learned Counsel for the petitioner submits that the Apex Court in the matter of *Kusheshwar Dubey v. M/s.Bharat Coking Coal*

Ltd., and others, AIR 1988 SC 2118 held that if criminal trial started for the same cause of action then it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. He relies on paragraph 6 and 7 of the said authority which reads thus:

“6. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual-situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

“7. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.”

8 The learned Counsel for the petitioner further submits that the Apex Court in the matter of *Tata Oil Mills Co. Ltd. vs. The Workmen, AIR 1965 SCC 155* held that it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is

being tried in criminal court, the employer should stay the domestic enquiry pending final disposal of the criminal case. Paragraph 9 of the said authority reads thus:

“9. There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the [Delhi Cloth and General Mills Ltd. v. Kushal Bhan](#), (1960) 3 SCR 227, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer, should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or malafide. In fairness, we ought to add that Mr. Menon did not seek to justify this extreme position. Therefore, we must hold that the Industrial Tribunal was in error when it characterised the result of the domestic enquiry as malafide partly because the enquiry was not stayed pending the criminal proceedings against Raghavan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer are based on evidence which he accepted as true. That being so, it was not open to the Industrial Tribunal to reconsider the same questions of fact and come to a contrary conclusion.”

9 On the basis of these facts and the law declared by the Apex Court the learned Counsel for the petitioner submits that impugned

order passed by the Industrial Court dated 26.11.2013 below Exhibit (U-2) in complaint (ULP) No.120 of 2013 be set aside and petitioner's application under section 30(2) of the MRTU and PULP Act, 1971 dated 19.4.2013 be allowed. He submits that if the present Writ Petition is not allowed, irreparable loss and injury will be caused to the petitioner. He submits that the petitioner has good chance of success in criminal matters which are pending against him.

10 On the other hand, the learned Counsel for the respondent submits that there is no substance in the present proceeding at all. He submits that Industrial Court after considering the facts of the present matter and the law declared by various courts rejected the petitioner's application below Exhibit (U-2). He submits that both the proceedings in criminal court as well as departmental enquiry can proceed parallel. He submits that the principal to decide the criminal case is altogether different than the domestic enquiry. He further submits that advocate for the petitioner mainly relied on the two Apex Court judgments in the matter of *Kusheshwar Dubey v. M/s.Bharat Coking Coal Ltd., and others*, (Supra) and *Tata Oil Mills Co. Ltd. vs. The Workmen* (Supra). He submits that both these authorities were considered in subsequent judgment by the Apex Court in the matter of *State of Rajasthan vs. B.K.Meena and others*, (1996) 6 SCC 417. He submits that the Apex Court after considering the authorities relied by the petitioners advocate held that both the proceedings i.e. criminal as well as departmental enquiry can proceed simultaneously. Paragraph 17 and 19 of the said authority reads thus:

“17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary

proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether offences registered against him under the [Prevention of Corruption Act](#) (and [the Indian Penal Code](#), if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the case are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

“19. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellant are estimated at Rs. 5,000/-.”

11 On the basis of these submissions, the learned Counsel for the respondent submits that there is no substance in the present proceeding and same is required to be dismissed with costs.

12 I have heard both the sides at length. It is to be noted that in the present proceeding, Anti Corruption Bureau filed a case against the petitioner for demanding bribe and that criminal case is for forging the original documents and cheating and whereas respondent started departmental enquiry for following charges. (Original is in Marathi). Same is translated as under:

“EXHIBIT “F”

ANNEXURE 1

Charge against Shri Wadhwani Dilip Ladharam, Post :- Sanitary Inspector “K” Ward

CHARGE-I

Shri. Wadhwani Dilip Ladharam, was working in the post of Sanitary Inspector “K-ward” from 31/03/2008. He was entrusted with the work of maintaining sanitation in ward No.15, Chakrapani colony. He was given Mukadam, Safai Kamagar, Gutter-collie, Spray-collie under his supervision. Upon the action taken by Anti-Corruption Bureau under Prevention of Corruption Act, on the basis of the complaint filed by Shri Vikas Nivrutti Landage, safai kamgar, the working of Shri Wadhwani Dilip Ladharam, was inspected by the inspecting team. From the inspection it has become clear that in ward No.15 Chakrapani Colony the attendance register from 01/01/2010 to 14/03/2012, was bogus and that wrong and mis-leading entries were made in it. Shri. Wadhwani Dilip Ladharam, Post Sanitary Inspector has deliberately not produced the original attendance register. As Shri. Wadhwani Dilip Ladharam demanded sum of Rs.40,000/- from worker Shri. Landage Vikas Nuvrutti, Safai Kamgar, working under him to mark him present, Criminal Case no.3077/2012 has been filed against him by Anti-Corruption Bureau under Sec 7/15 of the Prevention of the Corruption Act. It has become clear that Shri. Wadhwani Dilip Ladharam has prepared bogus attendance register and has made bogus, wrong and mis-leading entries of the attendance of safai kamgar from 01/01/2010 to March 2012, so that his mis-conduct may not be exposed. Shri.Wadhwani Dilip Ladharam, Post Sanitary Inspector, has not produced original Attendance Register for the period from January, 2010 to 14/03/2012, for inspection. Shri. Wadhwani Dilip Ladharam has cheated the Corporation and on account of his extreme irresponsible conduct the image of corporation has become tainted. Shri Wadhwani Dilip Ladharam, Sanitary Inspector has violated Rule-3 of Maharashtra Civil Service (Conduct), Rules 1979 and it has become necessary to hold departmental enquiry against him.

Sd

Commissioner
Pimpri Chinchwad Municipal Corporation
Pimpri-18

Sd
Joint Commissioner (Administration)
Pimpri Chinchwad Municipal Corporation
Pimpri-18

ANNEXURE-2

Particulars of charges regarding irresponsible and indisciplined conduct of Shri. Wadhwani Dilip Ladharam, Post:- Sanitary Inspector "K" Division.

Charge-1

Shri Wadhwani Dilip Ladharam, Post. Sanitary Inspector has prepared bogus attendance register (Forged document) of the safai kamgar working in Ward No.15, K Division for the period from 01/01/2010 to 14/03/2012, and has cheated the Municipal Corporation of Pimpri Chinchwad.

Charge-2

Shri Wadhwani Dilip Ladharam, Post. Sanitary Inspector has made an illegal demand of Rs.40,000/- from safai kamgar Shri. Landage Vikas Nivrutti for marking him present. The said conduct of Shri.Wadhwani Dilip Ladharam, Post.Sanitary Inspector is extremely irresponsible and his conduct lacks honesty and integrity

Charge-3

The information regarding the action taken against Shri. Wadhwani Dilip Ladharam, Post. Sanitary Inspector, by the Anti-Corruption bureau under the Prevention of Corruption Act has been published in daily newspaper by which the image of the Corporation has been lowered. On account of his illegal conduct the MNP has suffered loss and complaints regarding health have increased and there has been obstruction in day to day work.

Charge-4

Shri Wadhwani Dilip Ladharam, Post. Sanitary Inspector Ward-K, has breached his duties and has violated sec-3 of the Maharashtra Civil Services Conduct Rules, 1979

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ANNEXURE-3

List of Witness to be examined against Shri. Wadhwani Dilip Ladharam, Post. Sanitary Inspector, K-Ward

1. Shri P.B.Naikare (Asstt. Joint Health Officer)
2. Shri Tukaram S.L. (Prabhari Inspection Officer)
3. Shri Date T.H. (Chief/Sanitary Health Inspector)
4. Shri Babynanda Subhash Khumane (Post-Mukadam)
5. Shri Kamble Vijay Pandurang (Gutter Collie)
6. Shri Vikas Nivrutti Landage (Safaikamgar)
7. Shri Supe Meena Ramchandra (Post-Clerk)

13 The criteria to decide the criminal case as well as departmental enquiry is altogether different. In criminal case, for conviction it requires strict proof of evidence as well as material on record, whereas in departmental enquiry because of misconduct the employer can take overall view which is going to affect their reputation and its management. It is to be noted that the Apex Court in the matter of *State of Rajasthan vs. B.K.Meena and others* (Supra) held that the

approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. The Apex Court permitted the parties in that case to continue the departmental enquiry inspite of pendency of criminal case for same cause of action.

14 Considering these facts, I am of the opinion that the impugned order passed by the Industrial Court dated 26.11.2013 rejecting petitioners application below Exhibit (U-2) in complaint (ULP) No.120 of 2013 does not require any interference in the present Writ Petition. Writ Petition stands rejected summarily.

15 At this stage, the learned Counsel for the petitioner seeks stay of this order for some time.

16 Considering the facts and the circumstances of the present case and the law declared by the Apex Court in the matter of ***State of Rajasthan vs. B.K.Meena and others*** (Supra), I do not find any reason to stay this order as the case is already pending before the Industrial Court for last more than 4 years. Hence, oral application for stay stands rejected.

JUDGE