

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 318 OF 2018
WITH
STAMP NUMBER (APPLN.) NO.2801 OF 2019

Surg. Lt. Cdr. Trishna Taralkar. Petitioners.

V/s.

The Director General, Married Accommodation Project (MAP) and others. Respondents.

Mr. Virendra Mohan with Mr. Ravi Anand, Advocates for the Petitioners.

Mr. Mahesh Amonkar, Central Government Standing Counsel for Respondents No.1 and 2.

Mr. Raviraj Chodankar, Central Govt. Standing Counsel for Respondents No.3 and 4.

Mr. D.J. Pangam, Advocate General with Ms. Neha Kholkar, Addl. Govt. Advocate for Respondents No.5 & 6.

Mr. D. Lawande, with Mr. P. Dangui, Advocates for Respondents No.7 & 9.

Mr. P. Kamat, Advocate for Respondent No.10

Mr. Aalok Tiwari, Head (Contracts), NKG Infrastructure Ltd.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 23rd January, 2020.

P.C. :-

Heard Mr. Virendra Mohan, who appears along with Mr.

Ravi Anand for the Petitioners, Mr Mahesh Amonkar, learned Central Govt. Standing Counsel for Respondents No.1 and 2, Mr. R. Chodankar, Standing Counsel for Respondents No.3 and 4, Mr. D. Pangam, learned Advocate General with Ms. Neha Kholkar, learned Additional Govt. Advocate for Respondents No.5 & 6, Mr. D. Lawande, with Mr. P. Dangui, learned Counsel for Respondents No.7 and 9 and Mr. P. Kamat for Respondent No.10.

2. This Petition has been instituted by the parents of Master Atharva Taralkar, a 4 and half years old child who met his untimely demise in most unfortunate circumstances.

3. The Petitioners are the members of the Defence Force, who, at the relevant time were posted at INHS Jeevanti, Dabolim, Goa. They were allotted Flat No.6B, 6th Floor, F-Block, NOFRA-F, Dabolim, Goa.

4. On 6th April, 2017, at around 12.50 p.m., whilst Master Atharva Taralkar was playing near the western window of the said flat, a grill installed on the said window dislodged and fell out, causing Atharva to fall from the 6th Floor of the building to the ground. Master Atharva unfortunately succumbed to the injuries caused by fall.

5. The Petitioners, consistent with the culture of the Defence Forces, donated their son's cornea to science. The Petitioners, however, were aggrieved by the fact that no action was forthcoming from the Respondents against the persons responsible for this incident. The Petitioners addressed several representations to the Authorities. Finally, the Petitioners instituted the present Petition, seeking following reliefs :

“(A) directing the Respondents No.1 to 4 to pay to the Petitioners an exemplary compensation in the amount of Rs.2,00,00,000/- (Rupees two crore only) under Article 21 of the Constitution of India towards the loss of life of a child suffered by the Petitioners on account of gross negligence of the said Respondents.

(B) directing the Respondent No.3 to disclose the Section on Attainability of Blame in the report of the Board of Inquiry.

(C) directing the Respondent No.3 to provide full co-operation and assistance to the Vasco Police in their investigation in the matter.

(D) directing the Respondent No.5 to expedite its investigation and to file charge-sheet in accordance with law, at the earliest, against all persons responsible for the incident.

(E) directing the Respondents No.3 and 4 to expeditiously take disciplinary action against all the erring officers pointed out in the Report of the Board of Inquiry dated 31/05/2017.

(F) directing the Respondents No.1 to 4 to forthwith implement the recommendations given by the Board of Inquiry in its report and to take all safety measures and to incorporate sufficient safeguards in their tender conditions to ensure that such a tragedy does not recur.

(G) granting costs.”

6. From time to time, several orders were made in this Petition. Today, the learned Counsel for the Petitioners and Respondents No.7 and 9 hand in the minutes, which are taken on record and marked as “X” for the purpose of identification.

7. The Minutes, read as follows :

“A. In order to provide some solace and also on humanitarian ground to the Petitioners whose son Mast. Atharva Taralkar (age (then) 4 and half years) unfortunately died in a tragic accident on 06.04.17, being the mainstay of the writ petition for which the Respondent nos. 7 & 9 herein have paid compensation of Rupees 1.35 crores, drawn vide demand draft bearing no 016888 and dated 22/01/2020 in favour of Trishna Narender Taralkar (Petitioner no.1 herein) drawn on ICICI Bank, Patto Panaji, Branch-Goa after obtaining Petitioners approval and assurance that they shall not seek any further compensation and Petitioners have accepted this amount as full and final amount towards the compensation and will have no further claims whatsoever against the Respondents.

B. This payment made by the Respondent Nos. 7 & 9 herein to the Petitioners is without prejudice to the rights

and contentions of the Respondent nos.7 & 9 herein and further it shall not be construed to be admission of any of the Petitioners case raised in the present Writ Petition or otherwise Tor for that matter admission of any culpability on part of the Respondent Nos. 7 & 9 herein.”

8. The learned Counsel for the Petitioners, on the basis of the instructions from the Petitioners, who are today present in the Court, as well as the learned Counsel for Respondents No.7 and 9, on the basis of the instructions from the authorised signatory on behalf of Respondents No.7 and 9 who is also present in the Court, submits that prayer clause (A) of this Petition stands worked out in terms of the aforesaid minutes and, accordingly, the relief in terms of prayer clause (A) of the Petition be made absolute in terms of the Minutes.

9. According to us, the minutes can be accepted and the relief in terms of prayer clause (A) can be granted to the extent indicated in the minutes. We order accordingly.

10. In so far as prayer clauses (B) and (C) of the Petition are concerned, the the learned Counsel for the Petitioners accepts that the same need not be pursued in the light of the orders earlier made by us and further, in the light of the fact that Respondent No.3 has offered full co-operation and assistance to the Vasco Police in the investigation of the matter. Accordingly, there is no necessity to make any further orders in relation to prayer clauses (B) and (C) of the

Petition, as well.

11. In so far as prayer clause (D) is concerned, Respondent No.5 *i.e.* Shri Nilesh Rane, Police Inspector, Vasco Police Station has filed an affidavit before us, in which, he has stated that he has already filed Charge-sheet dated 18/8/2019 being Charge-sheet No.88/2019 against all the accused persons, except Respondent No.2. In the affidavit, he has stated that once sanction is accorded by the Appropriate Authority, only then he will be in a position to file the charge-sheet against Respondent No.2. Correspondence relating to sanction has been placed on record, so also a copy of the Charge-sheet No.88/2019 has been placed on record. According to us, since the charge-sheet is already filed, the relief in terms of prayer clause (D) of the Petition also stands substantially granted.

12. On the issue of sanction, which, according to Respondent No.5, was required to be granted by the Central Government, we made several orders, particularly, because no decision was forthcoming on the issue. Finally, we were informed that the Ministry of Defence has taken a decision not to grant sanction to prosecute Respondent No.2 before Courts under the Code of Criminal Procedure, but instead to proceed against Respondent No. 2 under the Army Act, 1950. In this regard, reference was made to Section 125 of the Army Act which, *inter alia*, provides that when a criminal

court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

13. Now that Respondent No.2 is to be proceeded against under the provisions of the Army Act, 1950, we feel that the relief in terms of prayer clause (D) of this Petition stands substantially worked out.

14. Mr. Amonkar, learned Standing Counsel, on behalf of the Central Government, submitted that disciplinary proceedings have already commenced against the erring officers. He pointed out that tentative charge-sheet has already been placed and three hearings have already taken place in the matter. He assures this Court that these proceedings will be concluded expeditiously.

15. Mr. Mohan, in the context of proceedings for court-martial, as also the disciplinary proceedings, expressed some apprehensions as regards the speed at which they are proceeding. In particular, in he

pointed out to the provisions of Section 122 of the Army Act, 1950 to submit that if the proceedings are not expedited, it is possible that the defences of limitation are raised by the erring officers.

16. According to us, the proceedings have to be expedited in a matter of this nature, so that the justice is done to all the parties involved. We say so because a situation should not arise where for want of expedition, unnecessary defences of limitation, etc. are made available and there is no proper investigation into the matter. We, therefore, direct that the proceedings should be conducted with utmost dispatch and expedition. Mr. Amonkar assures us that the proceedings will be conducted with utmost dispatch and expedition, no doubt after safeguarding the interest of all the parties. This, according to us, substantially takes care of the relief in terms of prayer clause (E) of this Petition.

17. Mr. Mohan, on instructions, states that the relief in terms of prayer clause (F) of this Petition is not being pressed.

18. Accordingly, we dispose of this Petition by accepting the minutes, as aforesaid, as also by passing the various directions as aforesaid. In the facts of the present case, there shall be no order as to costs.

19. All concerned to act on the basis of an authenticated copy of

this order.

20. The Civil Application Stamp Number (Appln.)
No.2801/2019 no longer survives and the same is also disposed of.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.