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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 WRIT PETITION NO.6454 OF 2018

**KANTILAL NARAYAN GOSAVI
VERSUS
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
CO. LTD. AND OTHERS**

...

Mr S. S. Thombre, Advocate for petitioner;
Mr A. S. Bajaj, Advocate for respondents

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 16th November, 2021

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B) and (C) as under :

“B. The Departmental Enquiry initiated against the petitioner allegedly under SR 88 of MSEDCL Service Regulations, 2005 dated 22.06.2017 may kindly be quashed and set aside, being premature and contrary to the law laid down by the Hon’ble Apex Court;

C. Pending the hearing and final disposal of this Writ Petition, the respondent nos.1 to 3 may kindly be directed to defer the Departmental Enquiry initiated against the petitioner under Charge Sheet dated

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22.06.2017, till the conclusion of Criminal Prosecution launched against him by ACB authorities under the provisions of Prevention of Corruption Act, 1988, under FIR No.3001/2017 dated 27.01.2017;”

2. By an order of this Court (Coram : S. V. Gangapurwala and Sunil K. Kotwal, JJ.), dated 26/06/2018, the petitioner was granted interim relief. The said order reads as under :

“ . The learned counsel submits that the criminal case is filed against the petitioner under the Prevention of Corruption Act, 1988 and for the same charge Departmental Enquiry is also being proceeded.

2. Issue notice to respondents, returnable on 31.07.2018.

3. Till then, the departmental proceedings shall not proceed further.”

3. It is, therefore, obvious that the petitioner has been protected for more than three years and five months as the departmental enquiry has been stayed.

4. We have heard the learned Counsel for the respective sides for quite sometime and have perused the petition paper book with their assistance. We have also perused the judgments/orders

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passed by this Court granting protection to delinquent employees as against the departmental enquiries, as under :-

- (a) Writ Petition No.4758/2014 and connected matters, decided by this Court (Coram : S. V. Gangapurwala and V. K. Jadhav, JJ.), vide Judgment dated 23/09/2015;
- (b) Writ Petition No.11870/2016, decided by this Court (Coram : S. V. Gangapurwala and S. M. Gavhane, JJ.), vide Judgment dated 15/11/2017; and
- (c) Writ Petition No.13443/2017, decided by this Court (Coram : S. V. Gangapurwala and V. L. Achliya, JJ.), vide order dated 21/12/2017.

5. It is well settled law that criminal trial vis-a-vis departmental enquiry, are conceptually distinct and different. In a criminal trial, evidence of a very high quality proving the case beyond any doubt, is necessary. In departmental enquiries, a charge levelled against a delinquent employee can be held to be proved on the basis of the material available, including hearsay material, by preponderance on the principles of probabilities. It is only when the evidence to be recorded in the criminal trial and the evidence to be recorded in a departmental enquiry are identical

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and the witnesses are also the same, thereby rendering the departmental enquiry fully dependent upon the evidence recorded in criminal trial, that a departmental enquiry can be stayed until less the criminal trial is concluded.

6. In the case of **State Bank of India and Ors. versus Neelam Nag, 2016 (8) SCALE 826**, the Honourable Apex Court has held in paragraphs 6, 8, 9, 10, 20 and 21, as under :

“6. The appellants relying on a recent decision of this Court in the case of [Stanzen Toyotetsu India Private Limited v. Girish V. & Ors.](#) contend that the departmental proceedings cannot be suspended indefinitely or delayed unduly. It is contended that inspite of the direction given by the Division Bench to the concerned criminal Court to take up the case pending since 2006 on day-to- day basis, the trial is still pending and only 3 witnesses out of total 18 prosecution witnesses cited in the charge-sheet have been examined. There is no hope of an early completion of the trial nor of completion of prosecution evidence. The delay is attributable to the accused in the said criminal case, including the respondent herein. In the backdrop of this grievance vide order dated 1st July 2016, the State of Chhattisgarh was directed by this Court to file a status report regarding the criminal proceedings launched against the respondent, giving details of the total number

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of prosecution witnesses cited in the charge-sheet; number of witnesses examined so far; and the cause for delay in the completion of trial. The State of Chhattisgarh has filed an affidavit of the Additional Superintendent of Police dated 1st August 2016. From this affidavit, it is noticed that the criminal trial No.1043/2006 before framing of charge on 12th June 2007, was listed on 13 dates. After framing of charge, the matter has proceeded before the Sessions Court on 133 dates. In paragraph 9 to 11 of the affidavit, the break up has been given as under:

“9. It is further respectfully submitted that the perusal of Court proceedings of 133 dates reveal that the delay in completion of trial was due to multiple reasons. It is submitted that on some dates, the case was adjourned due to absence of accused persons. On some dates, the case was adjourned as the prosecutor was absent. The case was also adjourned due to non-availability of files as it was sent to the Sessions Court for deciding the Bail Application u/s 439 Code of Criminal Procedure. The case was also adjourned on the application made by the accused persons to make available some documents. The case was also adjourned due to Ld. Presiding Officer on leave, the transfer of Presiding Officer, the change of Court. The case was also adjourned due to strike

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by the Lawyers or due to Court holiday. In the gist of dates on which the case was listed before the Ld. Trial Court, are as follows:

S.No.	Particulars (Reason for Delay)	Dates
1.	Accused Laxman Ratre not present	06
2.	Accused Neelam Nag not present	14
3.	Prosecution witnesses not present	10
4.	Accused persons not present	05
5.	ADPO not present	23
6.	Documents	07
7.	Arguments	05
8.	Application for bail	07
9.	Receiving of demand letter	06
10.	Case Diary sent to the Magistrate	05
11.	Receiving of Diary	04
12.	Court holiday	03
13.	Strike of Advocates	02
14.	Service of copy of the case	01
15.	Change of charges	01
16.	Time sought by the Advocates of accused persons	01
17.	Presiding Officer on leave	05
18.	Transfer of Presiding Officer	03
19.	Reply	04
20.	Keeping current status	04
21.	Evidence	10
22.	Case sent to copying department	03
23.	Issuance of instruction regarding case	01

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	hand-over		
24.	Receiving of case on transfer	01	
25.	Framing of charges	01	
26.	Order	01	
		TOTAL= 133 DAYS	

10. It is further submitted that the perusal of the Court proceedings reveal the dates on which, the prosecution witness were present and the outcome on that date :

30.06.2007 Prosecution witnesses Joy C. Aryakara and Pushpkala present in Court, however, since the matter was fixed for 02.07.2007, they were asked to come again on that date.

02.07.2007 The above 2 prosecution witnesses were present, however, they could not examined due to non-availability of case diary and seized documents.

18.07.2008 prosecution witness Pushpkala present in Court however, she could not be examined since the Ld. Presiding Officer was on leave.

09.03.2009 Prosecution witness Pushpkala present in Court however, she could not be examined.

08.10.2010 Prosecution witnesses Joy C. Aryakara and Ms. Pushpkala present in Court, however, they could not be examined since co-accused Laxman

Ratre was not present nor any advocate appeared on his behalf.

22.07.2011 Prosecution witness Pushpkala was examined Prosecution witness Joy C. Aryakara also present in Court however, the defence refused to cross- examine on the ground of non-availability of certain bank documents. This prosecution witness was therefore could not be cross-examined.

15.09.2011 prosecution witness K.G. Goswami present in Court however, the examination could not take place due to absence of accused / respondent No.1 Neelam Nag.

24.09.2011 Prosecution witnesses KG. Goswami and N. Chandrashekhar present in Court. The co-accused Laxman Ratre is absent. Witness N. Chandrashekhar could not be examined due to non-availability of some documents.

04.11.2011 Witness N. Chandrashekhar present. The examination could not take place due to non-availability of certain documents.

01.09.2012 Prosecution witness A.S. Jitendra present in Court. The accused / Respondent No.1 Neelam Nag was absent, however, at the request of his Counsel, the examination of prosecution witness was deferred.

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03.09.2015 Prosecution witness Ramesh Kumar present in Court. The accused Neelam Nag was absent. Examination of witness did not take place.

02.11.2015 Prosecution witness Ramesh Kumar Present. The accused Neelam Nag was absent. Examination of witness did not take place.

11. It is submitted that 3 prosecution witnesses have been examined. The delay in completion of trial is due to reasons mentioned in the above paras. Relying on these facts, the appellants contend that no further indulgence can be shown to the respondent and the protection given to the respondent by the High Court should be vacated keeping in mind the exposition in the above mentioned reported decision. As regards the argument of the respondent that the disciplinary proceedings must be suspended in view of Clause 4 of the Memorandum of Settlement dated 10th April 2002, arrived at by the Management of 52 'A' Class Banks as represented by the Indian Banks' Association and their workmen under [Section 2\(p\)](#) and [Section 18\(1\)](#) of the Industrial Disputes Act, that cannot be considered as a legal bar at least in the fact situation of the present case. The interpretation of Clause 4 of the said settlement, as put forth by the appellant, would further the cause of justice and in particular larger public interest,

considering the fact that the misconduct is in relation to embezzlement of substantial amount by an employee of the public sector bank - which has caused financial loss not only to the bank but resultantly to the public exchequer. It is in the interest of all concerned that the action, as permissible in law, must be taken forward in connection with the gross misconduct and the provision in the Memorandum of Settlement such as Clause 4 cannot be treated as an impediment thereto. Any other interpretation of Clause 4 of the Settlement would be against public policy and also encouraging unscrupulous employees of the bank to stall the disciplinary proceedings by taking advantage of the pending criminal case, which is an independent action in law. The respondent being named as an accused in the criminal case; and also responsible for prolonging the trial of the criminal case, cannot be permitted to take advantage of her own wrong.

8. We have heard the learned counsel for the parties at some length. The only question that arises for consideration, is no more res-integra. It is well-settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straightjacket formula can be spelt out and the Court has to keep in mind the broad

approach to be adopted in such matters on case to case basis. The contour of the approach to be adopted by the Court has been delineated in series of decisions. This Court in [Karnataka SRTC vs. M.G.Vittal Rao](#) has summed up the same in the following words:

“(i) There is no legal bar for both the proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stated would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts or law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. (emphasis supplied)

9. The recent decision relied by the appellant in the case of *Stanzen* (supra), has adverted to the relevant decisions including the case of *M.G.Vittal Rao* (supra).

After adverting to those decisions, in paragraph 16, this Court opined as under:

“16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

(emphasis supplied)

10. The Court then went on to examine the facts of that case and observed in para 18 as follows:

“18.The charge-sheet, it is evident from the record, was filed on 20.8.2011. The Charges were framed on 20-12-2011. The trial Court has ever since then examined only three witnesses so far out of a total of 23 witnesses cited in the charge-sheet. Going by the pace at which the trial Court is examining the witnesses, it would take another five years before the trial may be concluded. The High Court has in the judgment under appeal given five months to the trial Court to conclude the trial. More than fifteen months has rolled by ever since that order, without the trial going anywhere near completion. The disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the appellant Company nor the respondents who are under suspension and surviving on subsistence allowance.....”

(emphasis supplied)

In paragraph 19, the Court proceeded to conclude thus:

“19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of

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staying the ongoing disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to cooperate with the trial Court for an early completion of the proceedings. We say so because experience has shown that the trials often linger on for a long time on account of non-availability of the defence lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the inquiry officer concerned. The impugned orders shall in that case

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stand vacated upon expiry of the period of one year from the date of the order.”

20. *We make it clear that we may not be understood to have expressed any final view on the scope of Clause 4 of the Settlement.*

21. *Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The Trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary.”*

7. In matters involving the same respondent Company before us, in Surendrasing Rajput (supra), Rushikesh Suryawanshi (supra) and Nitin Shankar Kamble (supra), this Court has preferred to stay the departmental enquiry for one year only and

the enquiry is to be proceeded with after one year, if the criminal trial is not concluded.

8. We were inclined to take a view that as the employer in this case is proceeding on a completely different footing of it's officer being involved in a corruption case having lost confidence in the employee, the departmental enquiry could have been proceeded with. If the criminal trial results in the conviction of the petitioner, the employer could straightway base it's disciplinary action on such conclusion. If the petitioner is acquitted from the criminal trial that would not ipso facto exonerate him from the departmental enquiry, as is the crystallized position of law. However, we are continuing the interim relief granted to the petitioner in the light of the above cited orders/judgments of this Bench, for a period of one year, as the petitioner was granted ex-parte ad interim relief on 26/06/2018 and the said relief was continued for almost three and half years. If the enquiry was stayed for a period of three and half years, we do not find that there could be any prejudice caused to the respondent Company if said relief is continued for the further period as the Company has already suffered such orders from this Court (cited above).

9. The learned Advocate for the Company places before us a printout of the Special Case ACB No.4/2017 (Case Details) from the website of the District Court and Additional Sessions Court, Bhusawal, indicating that the charge has already been framed on 26/10/2018 and the case is listed for recording of evidence from 11/01/2019.

10. In view of the above, this petition is partly allowed with the following directions :

(a) The departmental enquiry initiated under SR 88 of the MSEDCL Service Regulations 2005 vide charge dated 22/06/2017 shall stand stayed till 30/11/2022 or till the Special Case ACB No.4/2017 is decided, whichever is earlier;

(b) If the above stated Special Case is not decided by 30/11/2022, the respondent Company would be at liberty to resume the departmental enquiry w.e.f. 01/12/2022 and any request of the petitioner for continuance of interim relief would not be entertained;

(c) We direct the District Court and Additional Sessions Court, Bhusawal (ACB Court), dealing with Special Case ACB No.4/2017, to ensure that a preference is granted to this case, summons of witnesses are issued promptly using electronic mode of service as well and decide the said case as expeditiously as possible and preferably, on or before 30/11/2022;

(d) In the event, the Special Court is unable to complete the trial as directed above, despite adopting appropriate steps as directed, the interim protection granted to the petitioner shall be rendered ineffective from 01/12/2022;

(e) This order shall apply to the case of the petitioner only with reference to the departmental enquiry which is a cause put forth in this petition.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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