

(2018) 09 BOM CK 0112

In the Bombay High Court

Case No : Criminal Public Interest Litigation No. 1 Of 2017

Laxman S/O Marati Pundkar (In Jail)

APPELLANT

Vs

Superintendent, Central Prison, Nagpur

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 109, 379, 409
Indian Forest Act, 1927 — Section 33(1)(b)
Code of Criminal Procedure, 1973 — Section 482
Maharashtra Civil Services (Discipline and Appeal) Rules, 1982 Rule 26, 27, 27(1),
27(2)(b)(ii), 27(3)

Citation : (2018) 09 BOM CK 0112

Hon'ble Judges : B. P. Dharmadhikari, J; M. G. Giratkar, J

Bench : Division Bench

Advocate : R. M. Daga, F. N. Haidari, Sunil Manohar, S. Y. Deopujari

Final Decision : Dismissed

Judgement

B. P. Dharmadhikari, J

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the parties.

2. Before proceeding further, we find it appropriate to refer to order dated 30-08-2016. There, after hearing respective counsel for parties, this Court

has found the excuse of not proceeding against high ranking officials because of expiry of period of four years from the date of their superannuation

unsustainable. This Court also remarked that said period may be relevant for initiation of departmental enquiry but it had no bearing insofar as the

criminal prosecution or investigation is concerned. While passing that order, this Court also noted that the applicant Laxman Shende has superannuated

in the year 2006 and, as such, thereafter it was not possible for him to take any

steps for removal of alleged encroachment. The report then submitted by the Chief Conservator of Forest (Mantralaya) dated 31/08/2015 was therefore found unsatisfactory.

3. Thereafter some orders are passed by this Court but we find it sufficient to mention the order dated 20/06/2018. That order reads as under :

1. Perused earlier orders.

2. In terms of earlier orders of this Court Secretary, Forest Department Shri Kherge is present today.

3. We have also looked into the controversy involved in the matter. Impression prima facie is, the officers of Forest Department appointed to perform

their duties have disowned trust put in them by not advising and not initiating either departmental action or criminal prosecution within time. One of the

petitioners before us viz. Shri Laxmanrao Shende retired sometime in 2006. If any departmental action against him was to be taken the same need to

be initiated at least by the year 2010. Other petitioner namely Shri B.G. Pawar is reported to be still in employment, however, dispute in relation to him

pertains to period prior to 2007.

4. The only reason for filing first information report is direction of this Court dated 6th May, 2015 in Criminal Application No.462 of 2014. None of the

officers has pointed out any independent application of mind thereafter to show that a particular officer or employee was not involved. The first

information report has been lodged mechanically on the direction of this Court. After registering F.I.R. the concerned Police Station has carried out

some investigation. We will look into that investigation little later.

5. However, during hearing, our attention is invited to a note dated 3rd August, 2015. That note is prepared by Chief Conservator of Forests

(Mantralaya) Shri Virendra Tiwari. In that note, he has mentioned the names of subordinate staff working in the area in paragraph 3 and thereafter

names of officers in paragraph 5. In paragraph 6 it is mentioned that in the proposal for action and report submitted on 21/12/2013, names of officers

mentioned in paragraph 5 also figured. Thereafter it is mentioned that before taking departmental action against these officers and employees or

registering offences under Indian Penal Code against them, principles of natural justice mandate an opportunity to them. In paragraph 7 name of one

Deputy Conservator of Forest Dr. Dilip Gujar is also mentioned. It is pointed out

that he was posted in Nagpur region till 11/04/2008 and

superannuated on 31/10/2012. It is also mentioned that the period in excess of four years has expired after his posting in Nagpur region and hence,

action under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is not possible against him.

6. In this situation, we before proceeding further, grant respondents an opportunity to place on record list of such matters in which because of

appointment of some Enquiry Committee or other issues actions have not been initiated by invoking bar of Rule 27 or then time is allowed to lapse so

as to enable the employee to rely upon that Rule. We take note of the fact that on 13/08/2015 when note was prepared by Shri Virendra Tiwari period

of four years had not lapsed from superannuation of Shri Gujar.

7. It is admitted position that the course recommended by Shri Tiwari has not been adopted in case of Shri L.U. Shende and Shri B.G.Pawar.

8. While taking up Public Interest Litigations, this bench has found that in all such matters where superior officers are involved the machinery of the

State Government is avoiding to implement provisions of law. In matter popularly known as "Irrigation Scam" (PIL No. 12/2016) no steps were

taken and ultimately after this Court passed order just before vacations, again SIT has been formed to look into the old allegations. Â

9. In Writ Petition No.3243 of 2018 we have taken note of the fact that for dealing with the allegations a committee of the retired Judge of this Court

(Justice Gaikwad) was constituted and after receipt of its report, another committee to study that report i.e. Karandikar Committee (a retired IAS

Officer) has been appointed.

10. Today morning in one of the cases we also felt that protection available due to Rule 27 of the Maharashtra Civil Services (Pension) Rules 1981 is

being abused by the officers by helping each other. That was in PIL No.34 of 2015 concerning the Employment Guarantee Scheme and audit between

1994 and 2003 of FDCM. In the matter of FDCM, photographs of old records lying in torn condition and report of audit pointed out inability to conduct

full proof exercise have been placed on affidavit before us.Â

11. We are therefore, at pains to note that the officers on whom democracy keep faith may be either failing in their duties or avoiding to shoulder the

responsibilities. Hence, the frauds or offences or then instances of dereliction

may go unpunished or then without any action.

12. In this case, Court is considering the matter since long and we have also therefore, reproduced the shelter of Court order only as an excuse to

justify action to proceed against Shri Shende and Shri Pawar.

13. Hence, we direct the respondent/ State to obtain appropriate explanation from Shri Virendra Tiwari, Chief Conservator of Forests (Mantralaya)

within four weeks and to place it on record on affidavit without fail. In default, we direct that Shri Tiwari and the officer responsible for obtaining his

affidavit, shall remain present on next date of hearing with relevant records.

14. Similarly, instances of cases affected by Rule 27 of the Pension Rules and their number shall also be disclosed on affidavit by the State

Government through its Chief Secretary.

15. The affidavit of the Chief Secretary shall also point out number of matters in which this High Court either at its Principal Seat or at Nagpur or at

Aurangabad has directed it to initiate inquiries, period to which the same relate and stages at which such matters are pending.

16. The affidavit shall also point out the amount spent on these two Public Interest Litigations and on Ganatra Committee by the State Government

from the public exchequer.

17. We feel that all this runs counter to the transparent functioning and basic rules of democracy.

18. We, therefore, feel that the State Government has to modify Rule 27 of the Pension Rules properly so as to bring such officers, whose

involvement is noticed later on and / or then who get benefit merely because four years have expired, within its ambit.

19. The affidavit to be filed, therefore, shall also explain why such direction should not be issued to the State Government and this Court should not in

larger public interest, issue other suitable orders.Â

20. In this situation, as we find that in most of the matters, after Court intervenes, additional and incomplete affidavits are filed and adjudication is

delayed, subject to further orders, we direct the State Government to deposit Rs.One Lakh with the Registry of this Court to show its bonafides. Â

21. List the matter after four weeks for further consideration.

Steno copy granted.â??

4. It is in this backdrop, Advocate Shri Daga submits that the period of service put in by Laxman at Pachgaon Forest Beat is only from 22/06/2001 to

27/02/2003. During this period, he worked as Round Officer. First Information Report (FIR) has been lodged on 10/08/2015 and it is for period from

2002 till December, 2012. FIR alleges loss of Rs. 2,75,34,000/-.

5. Inviting our attention to orders of this Court dated 05/05/2015 in Criminal Application (APL) No. 462/2014, he states that somewhat similar FIR

was filed against applicant Anil Ramchandra Babhale therein and while considering challenge thereto, this Court has made certain observations. This

Court then directed lodging of FIR for offences under Indian Forest Act and Indian Penal Code against officers/officials of Forest Department for

abetment etc., in pursuance of report dated 21/12/2013 submitted by Deputy Conservator of Forests. Similarly, there was a direction to initiate

departmental proceedings.

6. Advocate Shri Daga submits that because of these directions, State Government has on 03/08/2015 sent a communication to Principal Chief

Conservator of Forests, Nagpur and directed filing of FIR. He states that though the said communication mentions 21 names, in effect, action is

suggested only against 9 persons and two out of nine have expired. He also points out that the name of applicant Laxman appears in same list at serial

no. 11 with remark that it is added since it is mentioned in report dated 21/12/2013.

7. He argues that this communication itself shows discrimination made against officers like Laxman who were at the bottom and superiors whose

names appear at serial nos. 1 to 10 have been spared. He contends that same standard should have been applied even to Laxman. He also points out

that insofar as superiors are concerned, the State Government has opined that before initiating departmental enquiry or lodging in FIR against them,

they needed to be given an opportunity to explain. Further exception has been made in relation to one Deputy Conservator of Forest Dr. Gujar

because he had retired on 31/10/2012. He submits that when petitioner had retired, almost six years prior to Dr. Gujar, same treatment should have

been given to him and no FIR should have been filed against applicant Laxman.

8. He further adds that note prepared by Forest Department in the matter of encroachment and illegal excavation in December, 2013 is the foundation

for initiating this action. In that note, period from 1st 2001 till 1st 2013 has been looked into and in list of Foresters, found involved in misconduct,

name of applicant Laxman does not appear. However, suddenly, while concluding report in penultimate para, name of Laxman has been added. He

contends that this shows victimization of applicant and is also an instance of non-application of mind. Affidavit filed by Vikas Kharge, Secretary

(Forests), Revenue and Forest Department vide Stamp No. 2424/2018 on 7th 2018 is relied upon to show that there, an attempt has been made to

justify exclusion of name of Dr. Gujar. He states that only emphasis appears to be on his retirement on 31st 2012. Relevance of period of service

put in by Dr. Gujar at Pachgaon Beat is overlooked. He submits that in this affidavit, respondents accept that applicant Laxman has retired on 31st 2006. He also adds that as per this affidavit, most probably, no departmental

enquiry is being initiated against applicant Laxman because of his superannuation prior to 4 years.

9. Our attention is drawn to the communication of Principal Chief Conservator of Forests dated 24th 2015 to point out that on 26th 2015,

Committee by name Ganatra Committee under chairmanship of Deputy Conservator of Forests, Wardha was formed and that committee has enquired

into everything. Committee then recommended departmental enquiry against all 4 Deputy Conservator of Forests. He submits that in spite of this,

action has not been taken against Dr. Gujar.

10. Affidavit filed by one Pramod Raut, Police Sub Inspector of Police Station, Kuhi on 17th 2018 is also read out by him to urge that only reference

therein is to a Primary Office Report No. 94/2001 and no action thereafter. He therefore submits that though there has been investigation, no material

could be brought on record to show involvement of applicant Laxman in offence under Sections 379, 409 and 109 of the Indian Penal Code and

Section 33(1)(b) of the Indian Forest Act.

11. Senior counsel Shri. Manohar a/w learned government pleader has pointed out that after directions of this Court in its order dated 6.5.2015 the

respondents have promptly proceeded further. Report of Ganatra Committee dated 26.6.2015 was perused and that report extensively consider the

facts. He relies upon measures suggested by Committee insofar as petitioner Laxmanrao is concerned. He also points out that said report suggests

measures against Shri.D.G. Pawar, who is applicant in Criminal Public Interest Litigation No.2 of 2017. The application of mind qua Dr. Dilip Gujar

contained in that report is also relied upon by him. He submits that thus, after appreciating necessary material said Committee has recommended a

particular course of action. Committee finds tenure of Dr. Dilip Gujar very short and hence has found that no action is necessary against him. He also

points out that Shri. Dilip Gujar was concerned with Pachgaon Beat till 11.5.2018 and he retired on 31.10.2012 i.e. more than four years after leaving

his charge of that beat.

12. Senior learned counsel adds that if during investigation in FIR, already lodged, any material adverse to Shri. Dilip Gujar is discovered, always

necessary action can be initiated against him.

13. Inviting attention to FIR dated 10.8.2015, he submits that FIR itself shows some material against the applicant Laxmanrao and hence investigation

into it cannot be stalled. He also relies upon provisions of Rule 27 of Maharashtra Civil Services (Pension) Rules 1982 to submit that Shri.Shende has

retired more than four years before the report of Ganatra Committee or before lodging of FIR and hence government cannot initiate any departmental

inquiry against him. He is relying upon Division Bench Judgment in the matter between Suvarna Bhimrao Kamble Vs.State of Maharashtra and ors.

reported in 2015 (3), Bombay Cases Reporter (Cri.)802 and Manohar B. Patil Vs. State of Maharashtra and ors. reported in 2013 (6) 6 Mh.L.J 311 to

support this submission.

14. He has also invited our attention to the provisions of Rule 27 (3) explanation 6(b) to urge that Criminal prosecution can be deemed to be instituted

only on date when complaint or report of police officer of which Magistrate takes cognizance. While assisting the court he draws its attention to the

judgment in the matter between State of Maharashtra Vs. Keshav Ramchandra Pangare and anr. reported in 1999(9) SCC 479 to show that period of

limitation specified in rule 27 is found in conflict with period of limitation stipulated in Code of Criminal Procedure and therefore struck down by

Honâble Apex Court.

15. Learned Senior Counsel argues that facts and material on record show involvement of Laxmanrao in the matter and accordingly the FIR has been

filed. The suppression and connivance is expressly pointed out in FIR and here

cause of action to file criminal complaint arose only when said involvement and connivance were discovered.

16. Inviting attention to scheme of Rule 26 and 27 of 1982 ,learned Senior counsel points out that the Rules permit action against a retired government servant also after he is convicted by criminal Court. He therefore, submits that if departmental action is not possible because of expiry of period of

four years, after conviction by Criminal Court, on the strength of that conviction, in view of Rule 26, suitable punishment can still be inflicted. He has

therefore, prayed for dismissal of present Public Interest Litigation.

17. The controversy has arisen only after order of this Court in Criminal Application (APL) No.462 of 2014 dated 6.5.2015 said order reads as under:

Â O R D E R

(i) Respondent nos.1 to 3 are directed to lodge First Information Report for the offences under the Indian Forest Act as well as Indian Penal Code

against the officers/employees of forest department for abatement etc. in respect of which report No.KakshaÂ9/DakshataÂ 1/13Â 14Â2211 dated

21.12.2013 was made by Deputy Conservator of Forests, Nagpur Forest Division, Nagpur and Chief Conservator of Foresters (Regional), Nagpur

within two months.

(ii) Respondent nos.1 to 3 are directed to initiate the action against the officers/employees of Forest Department and also the petitioner, for recovery

of loss of revenue caused and quantify the amount of loss to be recovered from each of them including the petitioner, within two months.

(iii) Respondent nos.1 to 3 are directed to initiate the departmental enquiry for misconduct against the erring officers/employees of Forest Department

within two months and complete the same within a period of six months thereafter.

18. That order shows that directions were issued by Division Bench on 6.5.2015 only in public interest. In view of these directions, action has been

initiated against applicant Laxmanrao and applicant D.G. Pawar. Cognizance of their grievance therefore has again been taken in public interest only.

This cognizance or tenability of PIL is not at all in dispute.

19. The orders passed from time to time by this Court also show the effort to concentrate more on public angle involved in the matter. Arguments

advanced by learned Advocate Shri. Daga also show an attempt to demonstrate that superiors and responsible officers, who could have taken positive steps in the matter, are exonerated and the subordinate staff only has been victimized.

20. The provisions of Rule 27(1) are looked into by Division Bench of this Court under Manohar B. Patil Vs. State of Maharashtra and ors. 2013 (6) 6

Mh.L.J 311. That petition was filed by a person who had taken exception to a charge sheet dated 7th September 2011. He was relieved from

employment on 30th April 2010. The Division Bench has in paragraph no.15 after looking into various precedents noted that Rule 27 of the pension

Rules permitted initiation of departmental proceedings only for a limited purpose and such proceedings have to be in respect of an event which has

taken place not more than four years before its institution. There on facts it was noticed that the initiation of proceedings against the petitioner was not

hit by said provision and hence petition was dismissed.

21. In Suvarna Bhimrao Kamble Vs.State of Maharashtra and ors supra the Division Bench has considered a prayer that respondents should initiate

appropriate departmental proceedings against guilty officers. In paragraph no.8 the Division Bench finds that respondent no.3 against whom action

was sought had retired more than four years prior to said request. The decision of Director General of Police not to initiate departmental proceedings

against respondent no.3 in the wake of provisions of Rule 27(2)(b)(ii) of Pension Rules, 1982 was therefore maintained. Here, the respondents have

stated that they are not initiating any departmental action against applicant Laxmanrao. However, the issue cropped up because of argument of

discrimination advanced on the strength of note which is prepared by Chief Conservator of Forest Mantralaya on 3.8.2015. That note recommended

grant of opportunity before initiating criminal action or departmental action, only to superior officers. Name of Dr. Dilip Gujar appears at Sr. no.2 in

that list. Such a treatment has not been recommended in case of applicant Laxmanrao, whose name appears at Sr. no.11 in very same list.

22. The material looked into by the respondents particularly the report of Ganatra Committee submitted in June 2015 shows that Shri. Dilip Gujar was

concerned with Pachgaon beat from 1.11.2007 till 11.05.2008 only. Committee has noted that he retired on 31.10.2012. It is also noted that during his

regime offences were not registered. Even before that while working in similar areas he had not taken steps to remove encroachment or to prohibit it.

Committee therefore observed that he had neglected work of conservation of forest else action should be taken against him.

23. This material is looked into when on 3.8.2015 Chief Conservator of Forest Mantralaya send a letter to Principal Chief Conservator of Forest at

Nagpur. This officer has taken note of short period and superannuation of Dr. Dilip Gujar. He has also found that as he superannuated more than four

years after leaving charge, departmental action against him was not possible. This consideration and material looked into by Ganatra Committee does

not militate with each other. Misconduct if any, to attract departmental enquiry pertains to period prior to 31.10.2007 which falls more than four years

before his superannuation i.e. 31.10.2012.

24. Material looked into by Ganatra Committee only mentions that during Dr.Gujar's period no offences were registered. Material before us, as of

now, does not show that Ganatra Committee could find his involvement either in encroachment or excavation carried out in forest area prior to

11.5.2008.

25. In view of this material on record, though in earlier orders this Court has made certain comments on use of Rule 27 of Pension Rules in the matter,

we are not in a position to find any fault with treatment extended to Shri. Dilip Gujar on 3.8.2015.

26. Respondents have also shown their bonafides by submitting that if during investigation into any crime, his involvement is noticed, appropriate action

against him will be taken.

27. Insofar as present applicant Laxmanrao is concerned, his name appears in report of Ganatra Committee and while dealing with foresters.

Committee has placed his name at Sr.no.1,. He has worked till 28.2.2003. Ganatra Committee has noted that during his period first offence vide no.94

of 2010 has been reported against Anil Ramchandra Babhale on 16.9.2002. Â However, no further action on it was taken. It is further noted that

though offence was registered on 16.9.2002, he failed to take effective steps to protect forest and its boundaries. Committee has therefore,

recommended action against him. The documents on which applicant Laxmanrao has placed reliance upon us is part of note submitted by Deputy

Conservator of Forest to Chief Conservator of Forest at Nagpur on 21.12.2013. This document therefore is prior to orders of Division Bench of this

Court dated 16.05.2015 supra and also prior to report of Ganatra Committee. In this note though period during which the applicant worked as forester

at Pachgaon beat appears to have been looked into, his name does not figure anywhere. Note begins with mention of 14 forest crimes which were

registered in the matters relating to illegal excavation in reserved forest compartment. In this note in a chart, where name of officers and their duty

period is pointed out, name of officers, who worked prior to 7.7.2003 are also included. In list of foresters first name mentioned is of Mr. B.N.Shelke

and period of his service is from 1.5.2003 to 3.5.2007. Thus, while, period prior to 13.5.2003 is looked into in case of Assistant Conservator of Forest

or Range Forest Officers, period prior to that date in case of foresters and others has not been mentioned. However, at the bottom of chart while

mentioning a case of forest labour, period from 1.1.2001 has been looked into.

28. It is in this backdrop, that name of petitioner suddenly appears in penultimate paragraph of said report and service period mentioned is from

22.6.2001 to 28.2.2003. It therefore shows that when in case of other officers and employees, this period is already looked into and responsibility

therefor is fastened. In case of foresters this period is not appearing in the chart prepared earlier.

29. When fact that petitioner Shri.Shende worked for a period from 22.6.2001 till 28.2.2003 at Pachgaon beat is not in dispute, omission of his name in

chart appears to be at least at this stage an inadvertent error.

30. We have already noted that this note is prior to report of Ganatra Committee. Ganatra Committee has in its report prepared on 24.7.2015 found

petitioner Shende responsible for not taking action. First offence vide crime no.94 of 2010 is registered on 16.9.2002 during this period only. The

investigating officer has in reply affidavit in paragraph no.5 highlighted this aspect and he has pointed out that this offence was registered at the

instance of Shri.Shende only. He has also then briefly communicated upon investigation and submitted that Laxmanrao has avoided to discharge his

duties to protect forest and forest land, he deliberately allowed and virtually helped Anil to encroach upon land admeasuring 3.90 H out of survey

no.256 of 2001 in Reserve Forest and allowed him to illegally excavate the minor

minerals like Murum and stones in large quantity. He has also stated that this mining activity which continues thereafter has resulted in loss of Rs.2,75,34,000/Â? to state exchequer.

31. In exercise of jurisdiction under Section 482 of Cr.P.C. intervention is possible only when a strong case is made out. Hence in view of material

available on record, we cannot prevent investigation and trial. Public angle is taken care of as the officer or staff found involved during investigation,

can be proceeded against and respondents have shown that willingness for that purpose. No case for intervention in extraordinary jurisdiction is

therefore made out.

32. | We, therefore, find prima facie some material with respondents to proceed against applicant Laxmanrao. Prayer made by him to quash crime No.

77 of 2015 registered against him therefore cannot be granted.

33. Accordingly, with these observations, we dismiss the criminal application no.1 of 2017.

34. Needless to clarify that it is now open to investigating officer to present chargesheet to competent Court.