
(2000) 04 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 1702 with W.P. No. 1714 of 2000

Shivaji Mahadu Pagar

APPELLANT

Vs

The Sarvangin Vikas Mandal and others

RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 11

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 28

Penal Code, 1860 (IPC) — Section 34, 342, 354, 376, 405

Citation : (2000) 3 ALLMR 810 : (2000) 4 BomCR 376 : (2000) 4 MhLj 307

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : A.R. Shaikh and A.A. Khan, for the Appellant;

Judgement

Per Dr. D.Y. Chandrachud, J.—These two petitions under Article 226 of the Constitution of India challenge the convening of a departmental enquiry on the ground that a criminal prosecution is pending. The law governing these cases is now well settled, but before advertng to the position in law, the circumstances giving rise to these proceedings may, briefly, be set out.

2. The petitioner in Writ Petition No. 1702 of 2000 is serving as a Clerk in a school which is being run by the 1st respondent in the district of Nashik. The petitioner in the companion writ petition, being Writ Petition No. 1714 of 2000, is the Head Master of the School. On 23-11-1999, a complaint was lodged by a library assistant working in the school alleging that on 18-11-1999 while she and certain other staff members were attending a school camp at Nashik, she was taken to the room where the Head Master of the school was staying by the petitioner in the 1st petition and another lady staff member. The complainant alleged that the two members of the staff left the room on some pretext after which the Head Master, who is the petitioner in the 2nd petition, raped her. The

Head Master is alleged to have threatened the complainant against divulging what had happened to her to any person.

3. On 25-2-2000, a show cause notice was issued by the President of the 1st respondent to the petitioners in the two petitions before us ("the petitioners") calling upon them to show cause as to why disciplinary proceedings should not be adopted against them. These notices were replied to by the petitioners respectively on 7-2-2000 and 8-2-2000. Following this, charge-sheets have been issued on 13-3-2000 to the petitioners for the purpose of convening disciplinary proceedings. The charges against the petitioners include the charge relating to the commission of the alleged rape on a member of the staff by the petitioner in the 2nd petitions, as a result of which offences have been registered under sections 376, 354, 342 and 405 read with 34 of the Indian Penal Code. Reference has also been made to the fact that the two petitioners were in custody between 23-11-1999 and 22-12-1999. There are other charges also in respect of which the departmental enquiry is proposed to be held.

4. Learned Counsel for the petitioner submitted that the holding of a departmental enquiry was illegal in view of the fact that offences have been registered in respect of the incident in question. It was submitted that if a departmental enquiry was to be held, that would result in a disclosure of the defence of the petitioners in the criminal proceedings.

5. The submission made by the learned Counsel for the petitioners cannot be accepted. The position in law is that there is no hard and fast rule which mandates that departmental proceedings should be stayed during the pendency of a criminal prosecutions. Essentially, the purpose and object of holding a departmental proceeding is different from the underlying object of the State in proceeding with criminal prosecutions. The departmental proceeding is adopted for the purpose of dealing with a case of misconduct under the Rules and Regulations governing the service of the employer. On the other hand, a criminal prosecution is a proceeding for the purpose of dealing with a violation of the penal law of the land. The standard of proof in a criminal trial is of proof beyond reasonable doubt. In a departmental proceeding, the charge of misconduct has to be established on the preponderance of probabilities. The applicable rules of substantive law, of evidence and of procedure which govern departmental proceedings, are distinct from those which govern criminal prosecutions.

6. In State of Rajasthan Vs. B.K. Meena and others, , the Supreme Court laid down the following principles of law :

"14. ... The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary i.e. for long period awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and

dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be and should not be, a matter of course."

"17. 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 the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if establish, 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 cases are entirely distinct and different."

In *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , the Supreme Court laid down the following principles, after a review of the earlier decisions of the Court on the subject :

"The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his

honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

In view of the position in law as elaborated in the judgment of the Supreme Court and having regard to the facts and circumstances of the present case, we are of the opinion that this is not a fit and proper case for staying the departmental enquiry pending the outcome of the criminal proceedings. The case does not raise complicated questions of law and fact as enunciated by the Supreme Court so as to warrant the staying of the departmental proceedings. The criminal proceedings are still in their incipient stage. Having regard to the fact that the petitioners are employees of the school, being a clerk and Head Master respectively, it is in the interest of justice that the disciplinary proceedings are concluded without any delay. Considering the nature of the case, the fact that the institution in question is an educational institution, it is manifestly not proper for the disciplinary enquiry to be stayed pending the outcome of the criminal proceedings. Both the petitions are, therefore, dismissed with no order as to costs.

7. Before concluding, we wish to make it clear that we have not gone into the merits of the case, nor should any of our observations be construed as an expression of any opinion in the correctness of the allegations or charges against the petitioners. The petitioners would be entitled to a full recourse to their rights and remedies under the law.

8. Petitions to stand dismissed with no order as to costs.

Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court.

Certified copy expedited.

9. Petition dismissed.