

(2021) 03 GUJ CK 0023
In the Gujarat High Court

Case No : R/Special Civil Application No. 13658 Of 2020

Vijaykumar Ishwarlal Salat

APPELLANT

Vs

Inquiry Officer And Others

RESPONDENT

Date of Decision : 05-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Civil Services (Discipline And Appeal) Rules, 1971 — Rule 9(14)

Citation : (2021) 03 GUJ CK 0023

Hon'ble Judges : Dr. Justice Vineet Kothari, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Ashish M Dagli, Shalin Mehta, Hemang M Shah

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, a Judicial Officer has prayed for a writ, order or

direction, quashing and setting aside the order below Exh.384 in Departmental Inquiry No.7 of 2016. The Application at Exh.384 was moved by the

Presenting Officer for production of certain documents in context of the Charge Sheet issued to the Petitioner. By the impugned Order dated

16.09.2020, the Inquiry Officer overruling the objections of the Petitioner allowed the Application and permitted that the documents be exhibited.

2. The facts in brief are that a Charge Sheet dated 07.10.2016 was issued to the Petitioner. Imputations, nine in number have been levelled against

the Petitioner, while the Petitioner was working as 7th Additional District Judge, Surat, during the period from 25.07.2015 to 01.10.2015 and as 4th

Additional District Judge, Surat, during the period from 09.02.2016 to

09.05.2016. An Inquiry Officer was appointed and the Departmental Inquiry proceeded in context of the charges in question.

3. Mr. Ashish Dagli learned Advocate for the Petitioner submits that a closing pursis has been filed by the Presenting Officer at Exh.373 on

05.02.2019 and by the Petitioner at Exh.376 on 24.12.2019. The inquiry is practically concluded.

4. Mr. Dagli would further submit that the written submissions were also filed and thereafter after the proceedings having been adjourned on five

occasions, the Presenting Officer gave an Application at Exh.384 for production of certain documents. The Petitioner filed extensive written

submissions opposing the Application on various grounds. Some of the grounds on which the Application was opposed, are as under:

(i) That it was not open for the Presenting Officer to ask for documents to be exhibited, 70 in number, after the inquiry proceedings have been practically concluded.

(ii) That once the inquiry had come to a stage wherein it was almost concluded, production of documents was clearly barred in view of Sub-[^]Rule (14)

of Rule 9 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

(iii) Mr. Dagli would submit that the documents which are sought to be produced were documents already relied by the Petitioner and on record and

therefore it was not necessary for the Presenting Officer to seek permission to produce such documents.

(iv) That production of documents is impermissible inasmuch as it would entail a fresh round of litigation and the same also being in violation of

principles of natural justice, ought to have not been permitted.

5. Mr. Shalin Mehta learned Senior Advocate appearing for Respondent No.2 would submit that reading the imputations in the Charge-[^]Sheet would

indicate that there were instances where decisions were rendered in several sessions cases which were considered as not in due discharge of judicial

duties and therefore the inquiry was initiated.

6. He would further submit that reading of the Application Exh.384 itself would indicate that the documents were already annexed as a part of list of

documents, Annexure-[^]III to the Charge-[^]Sheet. The documents, some of them were even part of the record produced by the delinquent himself. No

prejudice would be caused to the Petitioner if such documents are allowed to be produced.

7. Inviting the Court's attention to the order impugned below Exh.384, learned Senior Advocate Mr.Mehta would submit that certain documents which

are part of the Charge Sheet were required to be produced and needed to be exhibited. Strict rules of evidence would not apply to the Departmental

Proceedings. The documents which are required to be produced are already marked as Annexure III and in one case, the witness could not be

examined and the documents were not in a position to be proved, such documents are required to be produced on record. As far as some other

documents, are concerned certified copies of the proceedings are required to be produced and exhibited. No prejudice is caused to the Petitioner as

not only are some of them already produced by the Petitioner here and though admittedly these documents could have been produced at the relevant

time by the Presenting Officer, they are now sought to be produced. He would submit that they are not new documents and therefore Sub Rule(14)

of Rule 9 shall not be applicable.

8. Having heard submissions made by the learned Counsel for the respective parties, what appears is that the Petitioner had even initially approached

this Court by filing Special Civil Application No.22558 of 2017 challenging the Charge Sheet dated 07.10.2016. This Court thought it fit not to

exercise discretion in his favour under Article 226 of the Constitution of India at the stage of issuance of a Charge Sheet.

9. Perusal of the Application Exh.384 and the order below the Application would indicate that 70 documents are enlisted to the Charge Sheet at

Annexure III. What the Presenting Officer sought to produce, by way of the Application were such documents, which even included those which

were already brought on record by the Petitioner himself.

10. Reading of the impugned order would indicate that the Inquiry Officer has found that not only some of the documents were part of the record

produced by the Petitioner/Delinquent himself, certain documents were true copies received with the Charge Sheet from the High Court of Gujarat.

Certified copies of such documents are sought to be produced.

11. In other words, the documents which are sought to be produced and which the Inquiry Officer so permitted by the impugned order cannot be said

to be production of evidence not included in the list of documents given to the Petitioner or calling for new evidence as envisaged under SubÂRule(14)

of Rule 9 of Discipline and Appeal Rules. The contentions of Shri Dagli therefore that this amounts to bringing in new evidence, needs to be rejected.

12. Even otherwise, by the impugned order, what the Inquiry Officer has done is, granted permission to produce such documents on the record of a

pending disciplinary proceedings. The Petitioner will be given an opportunity to deal with the documents so produced in the process of leading

evidence and/or by lodging his objections before the Inquiry Officer. This he can do before the Inquiry Officer, in absence of any prejudice that has

been shown by the Petitioner in the present case. Moreover, even when the Inquiry Officer concludes and submits a report and the same is under

consideration before the Disciplinary Authority, at an appropriate stage, if and when a penalty is sought to be imposed, the grounds raised in this

Petition and on the question whether such exercise violated the principles of natural justice, would be available to the Petitioner while assailing the

order of penalty if the Disciplinary Authority so considers it fit to impose. A remedy of Appeal also against the Order of penalty would be available

where such contentions raised in the present Petition are so raised.

13. We therefore do not deem it fit to interfere with the Order passed below Exh.384 at an interlocutory stage. When the Departmental Proceedings

against the Petitioner are still at large based on which the Inquiry Officer shall adjudge the culpability of the Petitioner, if any, and when the Report is

under consideration before the Disciplinary Authority who accordingly will take an appropriate decision.

14. The Petition is therefore dismissed as being premature.