

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 780/2020 WITH M.A 450/2021

DISTRICT : MUMBAI

Shri S.M Bhagwat,)
Age : 57, presenting residing at Flat No.101,)
1st floor, Renuka CHS, Jaggatvidya Marg,)
Bandra (East), Mumbai 400 051)...**Applicant**

Versus

The State of Maharashtra,)
Through Additional Chief Secretary,)
Revenue and Forest Department,)
1st floor, Mantralaya, Mumbai.)...**Respondent**

Shri M.D Lonkar with Shri M.V Thorat, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondent.

CORAM : Justice Mridula Bhatkar (Chairperson)

Mrs Medha Gadgil (Member) (A)

DATE : 14.12.2021

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant, challenges the Departmental Enquiry and prays that the charge sheet dated 10.12.2020 in the D.E No.

2017/Case No. 423/E-4 be quashed and set aside. The applicant further prays for grant of interim relief that pending hearing and final disposal of the Original Application, the operation of the charge sheet in the Departmental Enquiry be stayed.

2. Learned counsel for the applicant submits that during the period 13.3.2009 till 1.9.2010 the applicant was posted as Deputy District Election Officer at Mumbai City Collectorate. As per Imputation No. 1, he failed to follow the conduct of the Election Rules of 1961 and so also the guiding instructions issued by the Election Commission of India dated 29.3.2001. He was also charge sheeted under Imputation No. 2 that he in respect of the Electronic Voting Machine (EVM) did not prepare the necessary data base. As per Imputation No. 3, he did not take the necessary precaution for safety and protection of the Electronic Voting Machines in the Godown. Under Imputation No. 4, he was charged that he failed to give necessary directions to all the concerned to maintain log book movement register regarding Electronic Voting Machines kept in godown. Imputation No. 5 states that the applicant was prosecuted in the offence of theft of the Electronic Voting Machine (EVM) and the offence is registered against him along with other persons under Sections 380, 454, 457 of the Indian Penal Code, which brought the image of the State Government to disrepute. Thus, he has violated Rule 3(1) of the Maharashtra Civil Services (Conduct) Rules, 1979. A detailed charge sheet dated 10.12.2020, was served on him on 14.12.2020 under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. The facts, peculiar circumstances and issues involved in this matter.

In the Criminal prosecution the applicant was granted pre-arrest bail by the Learned Sessions Judge, Bombay by order dated

11.1.2011. On the basis of the observations made by the learned Sessions Judge in the order of granting him pre arrest bail, the State of Maharashtra refused to grant sanction on 25.9.2015 to prosecute the applicant. Thereafter, on the basis of these two orders, the State of Maharashtra took decision on 2.11.2018 not to institute Departmental Enquiry against the applicant. Being the incident of theft of Electronic Voting Machine, the Election Commission of India was informed about the dropping of the prosecution. However, the Election Commission of India directed the State of Maharashtra to initiate Departmental Enquiry against the applicant and gave time bound programme that D.E should get over by January 20, 2022. Hence Misc Application for interim relief and Original Application are heard together as per the request of learned Counsel of both the sides.

4. Learned counsel Mr Lonkar for the applicant had submitted that the challenge to this enquiry is twofold. First on the ground of inordinate and unexplained delay in instituting the Departmental Enquiry and second the decision of dropping the Departmental Enquiry was taken by the Government, cannot be reviewed by the Government for want of statutory power of review. Learned counsel for the applicant had submitted that the incident of theft of Electronic Voting Machine has taken place in between March-April, 2010. The applicant had played no role in the theft of Electronic Voting Machine or any other Criminal offences under which the prosecution has been initiated. The State Government has no right to institute the Departmental Enquiry after period of 10 years and institution of Departmental Enquiry after 10 years has caused great prejudice to the applicant, who retired peacefully on 31.12.2020 and the charge sheet was served on him 15 days prior to his retirement, i.e. on 14.12.2020. The Government of Maharashtra had taken a correct decision to not to initiate D.E

against the applicant on the basis of the order passed by the Learned Sessions Judge. The Learned Sessions Judge has clearly observed that the applicant has not at all committed criminal offence like theft and he has also expressed that if at all anybody should be held responsible, it is the Collector himself. The Government has not initiated any action against the said Collector and therefore, the Government has also correctly taken decision not to proceed against the applicant. Learned counsel for the applicant has further submitted that before serving the charge sheet, the Respondent-State ought to have served the show cause notice to the applicant and the principles of natural justice should have been followed by giving opportunity of hearing to the applicant. All of a sudden before last few days of his retirement, serving charge sheet on the applicant against whom proceeding of Departmental Enquiry was dropped is unjust and caused prejudice to the applicant, hence, is violative of Article 21 of the Constitution of India.

5. Learned counsel for the applicant, on the point of power of judicial review of the Respondent-State, submitted that it is illegal on the part of the Respondent-State to review its own order when the power to review is specifically barred in law. The Respondent-State has no power to review its own decision once it has taken a conscious decision to drop the Departmental Enquiry proceedings. Learned counsel for the applicant further submitted that the applicant, who was Deputy Collector was promoted to the post of Additional Collector. Had the enquiry started earlier, the applicant was in a better position to defend himself.

6. Learned counsel for the applicant has categorically submitted that there is long delay of 10 years. The Election

Commission of India remained silent from 2010 till 2019 and thus applicant's Constitutional rights are going to be seriously affected.

7. Learned counsel for the applicant relied on the following judgments:-

- (1) **STATE OF MADHYA PRADESH Vs. BANI SINGH & ANR, 1990 (Supp) SCC 738.**
- (2) **Judgment of the Hon'ble Delhi High Court dated 9.1.2007 in UNION OF INDIA & Ors Vs. LALIT KUMAR.**
- (3) **Judgment of the Maharashtra Administrative Tribunal, Mumbai Bench dated 8.12.2003 in O.A Nos 830 & 831/2003, Shri P.C Hakay & Ors Vs. The Government of Maharashtra & Ors.**
- (4) **Judgment of the Hon'ble Supreme Court in M/s MOTILAL PADAMPAT SUGAR MILLS CO. LTD Vs. STATE OF UTTAR PRADESH & ORS, (1979) 2 SCC 409.**
- (5) **Judgment of the Hon'ble Kerala High Court in V. Kunhabdulla & Anr Vs. State of Kerala & Ors, (2000) 3 KLT 45.**
- (6) **Judgment of the Hon'ble Bombay High Court dated 13.8.2008, in The State of Maharashtra & Ors Vs. Bhaskar D. Sanap & Ors, W.P 6839/2003.**

8. Learned C.P.O relied on the affidavit in reply dated 26.4.2021 in the Original Application filed by Dr Madhav V. Veer, Deputy Secretary in the office of the Addl. Chief Secretary, Revenue and Forest Department, Mantralaya, Mumbai and also affidavit in sur-rejoinder dated 4.10.2021. She also relied on the short affidavit in reply dated 1.12.2021 and 2.12.2021 filed by Dr Madhav V. Veer, working as Joint Secretary, in the office of Additional Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai.

9. Learned C.P.O has submitted that the disciplinary proceedings if instituted against the Government servant under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1981 it can be continued after his retirement. It is admitted fact that earlier State of Maharashtra has decided not to initiate disciplinary proceedings against the applicant and hence the D.E was dropped. However, the alleged misconduct was in respect of the dereliction in Election duty when the employee was on deputation to duty of Election Commission of India. The Election Commission was keen to initiate the disciplinary proceedings against the applicant and therefore, the Government of Maharashtra has reviewed its earlier decision of dropping the Departmental Enquiry and has taken a conscious decision to initiate departmental enquiry under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 against the applicant. She further submitted that the Electronic Voting Maching was stolen when the applicant was discharging the duty as Deputy District Election Officer. So it would not be just and proper in the interest of justice to set aside the disciplinary proceedings initiated against the applicant. It is submitted that no serious prejudice is likely to be caused to the applicant and the Respondent-State has acted upon and initiated the departmental enquiry on the basis of the directions given by the Election Commission of India, which is a Constitutional authority to control the entire election process in India.

10. Learned C.P.O relied on the following Judgments of the Hon'ble Supreme Court:-

- (i) **Secretary, Ministry of Defence & Ors Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250.**
- (ii) **Secretary, Forest Department & Ors Vs. Abdur Rasul Chowdhury, (2009) 7 SCC 305.**

11. First we will consider the correspondence and the documents placed on record as they are very important to unfold the issue between the office of the Election Commission of India and the Respondent-State. It is necessary to consider all these letters chronologically to get the exact idea how the matter proceeded.

(A) The terms of settlement were executed between the Election Commission of India and the Union of India, pursuant to the order of the Hon'ble Supreme Court dated 21.9.2000 in the case of Election Commission of India Vs. Union of India & Ors, in I.A No. 5 of 2000 in W.P (C) No. 606 of 1993, in respect of Disciplinary jurisdiction of Election Commission of India over officers, staff and police deputed to perform election duties.

(B) In Office Memorandum dated 7.11.2000 observation was made by the Election Commission of India that Government in many cases do not initiate proceedings promptly against the Government servants on the Commission's recommendations.

(C) Office Memorandum dated 20.3.2008 was issued regarding terms of settlement between Election Commission of India and Union of India, which are as follows:-

“The disciplinary functions of the Election Commission over officers, staff and police deputed to perform election duties shall extend to—

- (a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;
- (b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;

- (c) making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority and action taken will be communicated to the Election Commission; within a period of 6 months from the date of the Election Commission's recommendations;
- (d) the Government of India will advise the State Government that they too should follow the above principles and decisions since a large number of election officials are under their administrative control."

(D) The District Election Officer and Collector, Mr Oak, Mumbai had also submitted report dated 30.8.2010. He has stated that Deputy District Election Officer has not maintained the register of Electronic Voting Machines properly and the measures prescribed by the Election Commission of India were not strictly complied with by Mr Bhagwat. Thereafter Mr Bhagwat has proceeded on Foreign tour without intimating the District Election Officer or the State Government. Even after his leave period was over he extended his leave without intimating the District Election Officer. Considering the above mentioned facts, Mr C.V Oak, Collector and District Election Officer proposed the D.E against Shri Sanjay Bhagwat and sought permission from the Election Commission of India.

(E) Letter dated 31.8.2010 issued by the Election Commission of India, by Mr K.N Bhar, Secretary, Election Commission of India, to the Chief Secretary, Government of Maharashtra wherein it is mentioned that in telecast on TV channel TV-9 on 28.4.2010 has shown that the control unit of EVM bearing Sr. No. E13812 was shown by one Mr Hariprasad which was used in Maharashtra Election and it was taken out from Old Custom House Godown in Mumbai. Thereafter, FIR was registered on 12.5.2010 about the theft of the said EVM. The Deputy Election Officer, Mumbai, has

reported that Shri Bhagwat the then Deputy District Election Officer was responsible for the safe custody of the said EVM and Deputy Election Officer has reported that there was lack of sense of responsibility and casualness on the part of Shri Bhagwat and therefore Election Commission of India demanded immediate suspension of Shri Bhagwat and initiation of departmental proceedings and report of compliance to be sent immediately on the next day on 1.09.2010.

(F) Office Memorandum of Govt. of India dated 28.7.2008 issued in respect of Government servants deputed for Election duty and wherein in para 2 it was observed:-

“2. The matter concerning departmental proceedings against officials appointed on election duty has recently been further considered by the Government. It has now been decided that it shall be mandatory for the disciplinary authorities to consult the Election Commission if the matter is proposed to be closed only on the basis of a written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the Disciplinary Authorities takes a final decision.”

(H) The Respondent-State has produced the communication dated 24.4.2019 written by S.K Das, Secretary, Election Commission of India to the Chief Electoral Officer, Maharashtra, Mumbai, regarding permission for prosecution Shri Sanjay Bhagwat, the then Deputy District Election Officer, Mumbai City. Letter dated 2.3.2019, has sent letter to Election Commission of India thereby informing the decision to refuse sanction for prosecution.

The Election Commission has mentioned that it was surprising that the subsequent action of the State Government of

not according the permission to prosecute Mr Bhagwat taken on 24.9.2015 was not communicated to the Commission, which is against the instructions of the Commission dated 7.2.2001.

It is specifically mentioned that Election Commission of India has powers to initiate disciplinary proceedings against the officer and it is directed that decision regarding permission to prosecute the applicant in case of theft of EVM should be revisited and necessary permission be accorded.

(I) Thereafter, there is a letter dated 8.7.2019 written by Mr M.A Gutte, Joint Secretary, Government of Maharashtra to Addl. Chief Secretary and Chief Electoral Officer, Mumbai, where the letter of the Election Commission of India dated 24.4.2019 was referred and again the proposal to prosecute Mr Bhagwat was put up for orders. The Government of Maharashtra decided not to change the earlier stand in the matter and not to grant the permission to prosecute Mr Bhagwat.

(J) By letter dated 9.7.2019 Shri A.N Valvi, Deputy Secretary and Joint Chief Electoral Officer, Maharashtra State, informed Secretary, Election Commission of India by which the Government of Maharashtra has taken decision not to change the earlier stand in respect of prosecuting Shri Bhagwat.

(K) Letter dated 27.1.2020, written by Mr Sudeep Jain, Deputy Election Commissioner to Chief Electoral Officer, Maharashtra, Mumbai, calling upon him to submit the present position in the matter to the Election Commission by 30.10.2019.

(L) Letter dated 3.2.2020 by Shri Dilip Shinde, Addl. Chief Electoral Officer, Office of the Chief Electoral Officer to Shri Madan

Gupta, Secretary, Election Commission of India that by earlier letter dated 9.7.2019 the decision of the Government of Maharashtra not to change the earlier stand and recalling of earlier decision not to grant permission to prosecute Mr Bhagwat, the then Dy. District Election Officer, has already been conveyed to your office.

(M) Thereafter on 4.11.2020, Shri Sudeep Jain, Deputy Election Officer, wrote to Sanjay Kumar, IAS, Chief Secretary, Government of Maharashtra. He has referred to the communication of 3.2.2020 refusing the permission to prosecute Mr. Bhagwat. However, he has informed that thereafter, meeting was held by Election Commission of India on 20.10.2020. He reiterated the decision taken in the meeting dated 23.4.2019 and directed the Government of Maharashtra to initiate D.E under the major disciplinary action against Mr. Bhagwat, failing which the Commission will seek appearance of the Chief Secretary, State of Maharashtra along with concerned Secretary (Appointments), to explain as to why the Government is defying Commission's directions and decide further course of action. In the said letter it is further mentioned that there is a specific direction given by the Election Commission of India for initiating the departmental proceedings and prosecuting Mr Bhagwat. It was shocking that Government of Maharashtra is repeatedly shielding the delinquent officer.

Pursuant to this letter of giving ultimatum to the State of Maharashtra, the Respondent-State has initiated the D.E against the applicant Shri Bhagwat on 10.12.2020.

12. The refusal to grant sanction to prosecute the applicant and decision to drop the departmental enquiry against the applicant

are admitted facts. It is also admitted by the Respondent-State that the decision of dropping the enquiry was not communicated to the Election Commission of India till today, but only the decision refusing to grant sanction to prosecute the applicant was communicated by letter dated 3.2.2019.

13. Let us deal with the law which is relied by the learned counsel for the applicant.

- (1) In **STATE OF MADHYA PRADESH Vs. BANI SINGH & ANR, 1990 (Supp) SCC 738**, Departmental Enquiry was initiated against the Officer in April, 1987 in respect of the incident which has taken place in the years 1975-76. The Tribunal has quashed the enquiry on the ground of delay. The Hon'ble Supreme Court upheld the decision of the Tribunal and the appeal was dismissed. The facts of the present case are peculiar and the case is distinguishable.
- (2) In **UNION OF INDIA & Ors Vs. LALIT KUMAR**, the order of the Tribunal quashing the charge sheet which was issued after 16 years of the incident was challenged. The Delhi High Court upheld the order of the Tribunal. In the said case, the Central Vigilance Commission of C.B.I had recommended the initiation of proceedings for major penalty and in the present case at the instance of the directions of the Election Commission of India the Departmental Enquiry is instituted. In the judgment, the Division Bench crystallized the law on the point of institution of Departmental Enquiry and delay, which are found useful for the Respondents, wherein it is held:-

“(i) That there is no limitation for initiating Departmental Enquiry, unless restricted by the statutory rules.

(ii) The courts can intervene and grant appropriate relief, if prejudice is caused to the charged employee.

(iii) If there is a bona fide and reasonable explanation for delay, then Court should not interfere in the matter.

(iv) The Court has to consider whether prejudice on account of delay is made out and the delinquent is unable to defend himself on account of delay.

(v) Ordinarily court should not prevent a solely trial on account of delay when the delinquent is facing grave charges.

(vi) The Sword of Democles cannot be allowed to be kept hanging for a long period and speedy trial is a part of reasonableness and fair trial.

It is further held that a question to be answered, whether on facts is there a delay? If yes, then how long? Then, it is also further to be searched, was the delay inevitable, having regard to the nature of the charge? Whether the delay was beyond the control of the employer? Whether the employee willfully contributed to the delay or was responsible for the delay? And what prejudice is caused to the defense?

Thus, it is the responsibility of the Court to weigh all the facts in the case and decide.

- (3) In **O.A Nos 830 & 831/2003, Shri P.C Hakay & Ors Vs. The Government of Maharashtra & Ors**, the Departmental Enquiry were challenged on the ground of delay of 23 years from the date of the incidence. There was no explanation for this delay. The Tribunal held that the Respondent-State was entirely responsible for the delay.

(4) **M/s MOTILAL PADAMPAT SUGAR MILLS CO. LTD Vs. STATE OF UTTAR PRADESH & ORS, (1979) 2 SCC 409.**

In the landmark judgment the doctrine of Promissory Estoppel is explained and discussed at length, wherein the order of the exemption from the Sales Tax in favour of the appellant Company giving them exemption from Sales Tax was confirmed in the year January 1969 and in January, 1970 Government changes its policy decision and gave only partial concession in Sales Tax. On the basis of the earlier decision the Company has set up the factory and thus challenged the second decision on the doctrine of Promissory Estoppel. The Hon'ble Supreme Court allowed the appeal and set aside the judgment of the Hon'ble High Court and held that:-

“It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel, it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment.”

It was held that the doctrine of Promissory Estoppel cannot be availed to permit or condone breach of the law. It is true that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. Thus, the doctrine of Promissory Estoppel is applicable to the Government of State and the burden lies on the Government to show that changing its decision is justified under the law. In the present set of facts the delay and review is explainable.

(5) **In V. Kunhabdulla & Anr Vs. State of Kerala & Ors, (2000) 3 KLT 45,** the District Collector was given powers by the Election Commission of India for delimitation of Wards in

various Gram Panchayats in the State and the powers were conferred under Section 10-A of the Kerala Panchayat Raj Act. The Election Commission issued a circular that the Commission has power to review the decision of the District Collector. The validity of the decision was challenged, and it was held that the guidelines reviewing the powers under Section 10-A were held void. In the case in hand the Election Commission is acting within the disciplinary powers extended pursuant to the terms of settlement in view of the order of the Hon'ble Supreme Court dated 21.9.2000 in I.A No. 5 of 2000 in W.P (C) No. 606 of 1993.

- (6) In the **State of Maharashtra & Ors Vs. Bhaskar D. Sanap & Ors, W.P 6839/2003**, the appellant was given promotion in the year 1994 and thereafter it was cancelled by the Government in the year 2002, stating that it was granted by mistake. The said order was challenged before the Tribunal. The said application was allowed by the Tribunal, stating that Government has no powers to review its decision. The Division Bench upheld the decision of the Tribunal and held that Government doesn't have the power to review and if at all Government had power of review, the power has to be exercised within a reasonable time. In the case of Mr Sanap, the promotion order was issued in the year 1994 and it was withdrawn in the year 2002. It has caused a prejudice to the applicant as it was reviewed after 8 years only on the ground that there was mistake on the part of the Government. However, the applicant Mr Sanap has worked on the promotional post for 8 years. In the present case no such prejudice is caused.

14. Now we would like to address the powers of the Election Commission of India to raise the objection of dropping the

departmental proceedings or monitoring the D.E in respect of any misconduct or offence committed by any Government Officer on Election duty in the election process. In W.P (C) No. 606 of 1993 (Election Commission of India Vs. Union of India & Ors) the terms of settlement were drawn pursuant to the order dated 21.9.2000 by the Hon'ble Supreme Court. The Election Commission of India has issued the order on 7.2.2001 addressed to the Chief Secretary and Chief Electoral Officer of all the State and Union Territories. It was pertaining to disciplinary proceedings against the officials appointed on election duty. Thereafter, Office Memorandum was also issued by the DoPT on 7.11.2020. Immediately on 8.11.2000 DoPT wrote letter to the Chief Secretary of all the State and Union Territories about the disciplinary jurisdiction of the Election Commission of India over Government servants deputed for election duties. Thus, it is expressly clear that the Election Commission of India has full authority to control and power to regulate the election process and take disciplinary action against the misconduct committed by the Officer on Election duty.

15. In the present case, the Electronic Voting Machine was stolen and it was found in Hyderabad. The Police collected evidence against the applicant and offence was registered against him. He was granted anticipatory bail by the Sessions Judge on 11.1.2011. The Respondent-State has interpreted the said order in its own way and decided not to give sanction to prosecute the applicant and also decided to drop the departmental proceedings against the applicant. It was a foremost duty of the Respondent-State to communicate the said decision immediately to the Election Commission of India, as the incident of theft of Electronic Voting Machine was very serious matter, causing threat to the democracy.

16. The Respondent-State appears to be careless in not reporting their decision immediately to the Election Commission of India. The Respondent-State was legally duty bound to communicate this decision immediately. This delay in communicating the decision to the Election Commission of India creates a question mark in the mind. After going through the correspondence mentioned above in detail, it is transpired that the Election Commission of India has not wasted any time in making aware the Respondent-State that the decision to drop the prosecution is not correct in view of the seriousness of the incident and also directed the Respondent-State to initiate departmental proceedings against the applicant.

17. The submissions of Mr Lonkar that the applicant should not suffer due to inordinate delay caused by the Respondent-State, cannot be accepted on the background of the scenario of the correspondence between the State Government and the Election Commission of India. The theft of Electronic Voting Machine needs thorough scrutiny and all the doubts in respect of involvement of any suspect required to be ruled out. Under such circumstances, though State Government has reviewed its own decision of dropping the departmental enquiry, it would not cast prejudice to the applicant. It is not the case wherein D.E was initiated against the applicant in the year 2010 and thereafter Respondent-State has taken decision to withdraw the D.E and had communicated accordingly to the applicant and again has instituted a fresh D.E in 2020. Therefore, the applicant is not prejudiced. The applicant was in Government service holding a very responsible post and was officer on Election duty when the incident of theft has occurred. Every Government servant is answerable to the authority if any wrong takes place when he/she is on duty. Much is argued by learned counsel Mr Lonkar on the observations made by

Learned Sessions Judge, while granting anticipatory bail to the applicant. We need to mention only following points:-

- (a) It was not the final verdict either discharge or acquittal by the Criminal Court. The order of granting anticipatory bail is based on prima facie case against the accused and requirement of custodial interrogation.
- (b) The degree of standard of proof is much higher in the criminal court than the proof which is placed and required in the departmental enquiry.

18. We rely on the decision of the Hon'ble Supreme Court in the case of **SECRETARY, FOREST DEPARTMENT & ORS. Vs. ABDUR RASUL CHOWDHURY, (2009) 7 SCC 305**, wherein the Hon'ble Supreme Court held as under-

“16. The next issue is with regard to delay in concluding disciplinary proceedings. In our view that the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The un-explained protracted delay on the part of the employer may be one of the circumstance in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue.”

We are of the view that in the present case, the delay is explained satisfactorily. A decision taken by the State Government may be occasionally political and may not be in the interest of basic values of the State. However, Rule of law cannot be sacrificed at any time to appease a political leader or any high official.

19. In the case of **SECRETARY, MINISTRY OF DEFENCE & ORs Vs. PRABHASH CHANDRA MIRDHA, AIR 2012, S.C 2250**, the Hon'ble Supreme Court held that:-

“13. Thus, the law on the issue can be summarized to the effect that charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the ground that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates a prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

20. Thus, we do not find merit in the case of the applicant. We are not inclined to quash and set aside the charge sheet for Departmental Enquiry no. 2017/Case No. 423/E-4 dated 10.12.2020 issued against the applicant by the Respondent. We note that the said charge sheet is maintainable as the delay is properly explained. Moreover, we note that the Election Commission of India has given a time bound programme to the State of Maharashtra that the enquiry should be completed 25th January, 2022. We find that the said charge sheet is maintainable as the delay is properly explained.

21. Hence, we are not inclined to grant relief claimed by the applicant. Both the Original Application and Misc Application are dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 14.12.2021
Dictation taken by : A.K. Nair.