

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 14137/2009**

% **Reserved on :04.08.2010**
Date of Decision :18.08.2010

MUNICIPAL CORPORATION OF DELHI Petitioner
Through Mr.H.S.Phoolka,Sr.Advocate with
Ms.Mini Pushkarna, Standing Counsel
for MCD

VERSUS

SANGEETA BANSAL Respondent
Through Mr.Amit S.Chadha, Sr.Advocate with
Mr.Beswajit Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J.

1. The question posed for our consideration is, "whether, for the same misdeamnor after revocation of a suspension order, passing a second suspension order is permissible or not?". Our answer to this question is in affirmative in the given facts of this case. We find that the second suspension order dated 29.02.2008 was validly passed. We say so on the strength of the judgment of the Supreme Court in the case of U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. Vs. Sanjiv Rajan, JT1993(2)SC550, and a judgment of the Coordinate Bench of this Court in Government of National Capital Territory of Delhi through its Chief Secretary and Deputy Commissioner Vs. Mrs. Beena Mehra, 155 (2008) DLT 583.

2. Now, coming to the facts of this case, we find that the respondent joined the petitioner as ADC/DC, Land and Estate Department in December, 2006 and was also appointed as Director Planning and Monitoring on 30.08.2007. While in the course of her employment it was found out that the respondent illegally colluded with her subordinate officials and processed the cases of two prime remunerative properties, namely, 'Shehnai Banquet Hall' located opposite LNJP Hospital and 'Cup and Saucer Restaurant' situated at Minto Road for conversion from license to lease hold and then to free hold. The respondent further approved the demand note/NOC issued by her subordinate officer, thus causing huge pecuniary loss to the department. Considering this gross misconduct on her part, departmental proceedings were proposed to be taken against the respondent and she was put under suspension vide order No.ADOV-/BBB/VIG/2007/DS-81 on 03.12.2007. It is a matter of record that with respect to the same allegations an FIR was also registered by the Central Bureau of Investigation (for short "CBI") against the respondent and in fact even a final report was also submitted by the CBI. It is true that the CBI exonerated the respondent but against the final report submitted by the CBI, objections were filed by the MCD. Till then, the charge sheet had not been issued.

3. The respondent made a representation to the then Commissioner who on his last working day vide order dated 18.02.2008 revoked the order of suspension and directed reinstatement of the said respondent with immediate effect, after a note was put up by the Deputy Commissioner on 15.02.2008 without even discussing the matter with the CVO of the organization. And it was in these circumstances in view of the detailed opinion furnished by the counsel who was dealing with the civil case of the respondent, which is available on file, the new Commissioner directed passing of an order suspending the respondent again. Noting portion of the file shows that the order of revocation of suspension was passed without

consulting the Vigilance Department and probably in view of that the Director of Vigilance put up a note to the Commissioner for passing a second suspension order. The observations made in the note of Director of Vigilance, which are relevant, are reproduced hereunder:

“A meeting was held in the Chamber of Commissioner on 29th February, 2008 with regard to reinstatement of Smt. Sangeeta Bansal, Dy Commissioner and Shri K. Srivatsan, Administrative Officer in the matter of Shehnai Banquet Hall and Cups & Saucer Restaurant at Minto Road.

Suspension of both Smt. Sangeeta Bansal, and Shri K. Srivatsan was reviewed by the Commissioner on their representations and Smt. Sangeeta Bansal was reinstated vide order No.ADOV-I/BBB/Vig./2008/R-17 dated 19.02.2008 and the suspension of Shri K. Srivatsan was revoked vide Order No. ADOV-I/BBB/Vig./2008/R-14 dated 05.02.2008.

Addl. Commissioner (Revenue) mentioned that their Counsel Mr. Amit Paul had discussed the reinstatement and revocation of suspension with Shri Ravi Shankar Prasad, Sr. Advocate, appearing in Shehnai Banquet Hall matter before the Hon’ble High Court of Delhi. Shri Amit Paul stated that the severity of the action in the case has been diluted due to reinstatement of these officers and under such conditions, Shri Ravi Shankar Prasad may not appear before the Hon’ble Court in the matter.

Addl. Commissioner (Revenue) stressed the need to again place the above named officers under suspension for the benefit of the case in the Court. The Commissioner, after considering the above matter, has ordered maintenance of status quo ante in the matter, meaning thereby putting both Smt. Sangeeta Bansal and Shri K.Srivatsan, under suspension again in the matter.

The above proceeding may kindly be got approved by the Commissioner.”

4. After the respondent’s suspension for the second time vide order 29.02.2008, she challenged the suspension order vide WP(C)No.7949/2008, which matter was subsequently transferred to Central Administrative Tribunal, Principal Bench (hereinafter referred

to as “the Tribunal”) vide order dated 20.01.2009 and registered as TA No. 150/2009.

5. The Tribunal allowed the aforesaid TA vide order dated 12.10.2009 primarily on the ground that the revocation order which had been passed by the competent authority without taking into consideration that there was no progress in initiating departmental proceedings against the respondent and the CBI also had exonerated her. It has been submitted that the order suspending the respondent again is also *de horse* the rules which prescribes time frame for reviewing the order of suspension. Even otherwise, there were no grounds for passing the second suspension order. In the written submissions filed by the respondent, it has been prayed that even if any directions are given upholding the order of suspension, the petitioners be directed to complete the disciplinary proceedings in a time bound schedule.

6. The relevant paragraphs of the order dated 12.10.2009 passed by the Tribunal are reproduced hereunder:-

“13. Perusal of the records show that initially Applicant was put under suspension vide order dated 3.12.2007 after discussing the facts of the case and returning a finding that it is a case of gross misconduct, therefore, major penalty proceedings should be initiated against all the officers involved in the dealing of Shahnai Banquet Hall and matter be referred to the CBI. This suspension order was issued in terms of Regulation 5 of the DMC Service (Control & Appeal) Regulations, 1959 and cannot be stated to be illegal. However, this suspension was revoked by the competent authority on 18.2.2008 after considering Applicant's representation by observing that she should be posted in a non-sensitive post on reinstatement. It is stated that after the joining of the new Commissioner MCD, the Applicant was placed again under suspension. The question arises, when the Applicant was reinstated on 18.2.2008, what made the authorities to again suspend the Applicant on 29.2.2008. We have perused the records. From the records it transpired that the Applicant was resuspended on the request of the Additional Commissioner (R) in the meeting convened on 29.2.2008. The reasons given by the Additional Commissioner (R) for

resuspension are not germane to the question of suspension and are wholly irrelevant. More so, in view of the subsequent notings thereafter which show that the file has not been routed through the Additional Commissioner while taking sanction from the Commissioner. The Commissioner of MCD, the Competent Authority, has approved the proposal submitted by Director of Vigilance and concurred by Chief Vigilance Officer. He has not made any objective analysis to express his subjective satisfaction in suspending the Applicant. This, in our considered view, non-application of mind and procedural infirmity.

14. Further, the reasoning, according to us, is not valid for putting a person under suspension. Of course, if respondents had given a valid reason looking at the gravity of the charges against the Applicant or other circumstances which suggested that it would not be in the interest of the organization to keep the Applicant in service as she would be able to influence the witnesses or is likely to tamper with the evidence, the respondents could have suspended her but strangely enough the circumstances relating to her charges were not even looked into. We are satisfied since Applicant has been without application of mind by the authorities to the facts of the case, the order of suspension dated 29.2.2008 cannot be sustained.

15. It has also been argued that the suspension was reviewed by the Competent Authority on 2.12.2008. A perusal of the record shows that the suspension of the Applicant was reviewed on the said date and was continued without any reason."

7. We have heard the parties and have also perused the written submissions filed on behalf of both the sides. The learned counsel for the petitioner has submitted that the respondent was involved in a serious vigilance case and the vigilance department was well aware of the seriousness of the allegations against the officer and all the surrounding facts necessary for deciding the issue at hand, these included:

- "a) the fact that the matter involved disposal of municipal property contrary to law and procedure without authority (Shehnai Banquet Hall and Cup and Saucer Restaurant)

- b) the fact that the matter involved unauthorized approval given for mortgage of that very municipal property to make payments to the MCD.
- c) the fact that the case had been investigated departmentally and detailed documents prepared by the concerned officers.
- d) The fact that it had itself opined regarding the seriousness of the allegations when the first suspension took place and CBI investigation had been ordered by the competent authority.
- e) The fact that as borne out from the record some files of the case were missing."

8. It is however a matter of record that none of the aforesaid concerns of the Department were reflected in the note prepared by the Deputy Commissioner for recalling the suspension order of the respondent. In fact, neither the Vigilance Department nor the Law Department was consulted before directing reinstatement of the respondent.

9. It has been brought to our notice by the counsel for the petitioner that the department has filed objections to the report furnished by the CBI which reveals that the respondent had a role. Some of the observations made in the report is highlighted for the sake of reference:-

"Investigation has revealed that licence can be extended for further 5 years as per the decision of corporation vide resolution no. 1317 dtd. 23.03.1987. The extension of the licence can be approved by the Commissioner, MCD. There is no delegation of power in this regard. Therefore, Smt.Sangeeta Bansal, Addl. Dy. Commissioner had no power as such to approve the extention of the licence period."

10. At this stage, we may also observe that the Hon'ble Supreme Court in the case of U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. Vs. Sanjiv Rajan, (supra) while dealing with the issue of second suspension order has been pleased to lay down:-

"5..... There is no restriction on the authority to pass a suspension order second time. The first order might be withdrawn by the authority on the ground that at that

stage, the evidence appearing against the delinquent employee is not sufficient or for some reason, which is not connected with the merits of the case.”

11. This Court has also dealt with the similar issue in the case of Government of National Capital Territory of Delhi through its Chief Secretary and Deputy Commissioner Vs. Mrs. Beena Mehra, (supra).

The relevant paragraph is reproduced hereunder:-

“14. Even otherwise, we are of the opinion that no hard and fast rule can be laid down for deciding when an employee, whose suspension is revoked, can be placed under suspension for a second time. There is no doubt that such a decision should be taken with circumspection, but the justification for the second suspension would depend on the facts of each case. Rule 10(6) and 10(7) of the CCS(CCA) Rules do not create any procedural or substantive bar for a second suspension, as suggested by the Tribunal.”

12. Taking into consideration the aforesaid legal position and applying the same to the facts of this case, we are satisfied that the order passed by the Tribunal dated 12.10.2009 is not sustainable in law and accordingly, the said order is set aside and the order dated 29.02.2008 is upheld. However, the petitioners are directed to expedite the departmental enquiry and to complete the same preferably within a period of six months.

13. No costs.

C.M.No.10733/2010

The application stands disposed of.

MOOL CHAND GARG, J.

AUGUST 18, 2010/dc

PRADEEP NANDRAJOG, J.