

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6395 OF 2015

RAJKUMAR TANAJIRAO SHRIRAMWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Hanmant V. Patil & Mr. A. N. Patale.
AGP for Respondent Nos.1 to 3 : Mrs. S.G. Chincholkar.

CORAM : S.S. SHINDE & A.M. BADAR,JJ.

DATE : 1st October,2015.

PER COURT:

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] This petition takes exception to the order dated 15th May, 2015 issued by the respondent No.3, District Commandant of Home Guards and Additional Superintendent of Police, Nanded, thereby temporarily suspending the petitioner.

3] Learned counsel for the petitioner invited our attention to the Bombay Homeguards Act, 1997, and in particular, provisions of sub-section (2) of Section 6B of the said Act and submits that without hearing the petitioner and without adhering to the procedure stated in sub-section (2) of Section 6B, the impugned order should not have been passed by the respondents. He also invited our attention to the pleadings in the petition, grounds taken therein and annexures thereto and submits that the petition deserves to be allowed.

4] On the other hand, learned AGP invited our attention to the averments in the affidavit in reply and submits that remedy of appeal is available to the petitioner before the State Government. Therefore, petition may not be entertained. It is submitted that the order of suspension of the petitioner is issued on 15th May, 2015 and hence, Crime No. 87/2011 for the offence punishable under Section 384, 385, 504 and 506 of IPC was registered with Bhagya Nagar Police Station, Nanded against the petitioner, and hence, the petitioner has rightly been suspended and as such, the petition may not be entertained.

5] We have considered the submissions of the counsel for the petitioner, AGP for respondents. With their able assistance perused the petition, annexures thereto, the affidavit in reply filed by respondent Nos.2 to 4 and the provisions of The Bombay Home Guards Act, 1947, and particularly, sub-section (2) of Section 6-B thereof, which reads thus :-

“6-B. Punishment of members for neglect of duty, etc:-

(1)

(2) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (1), he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.”

6] If the material placed on record and in particular, submissions in affidavit in reply filed by respondent Nos. 2 to 4 is considered, nothing has been stated that the procedure which is enumerated in sub-section (2) of Section 6B of the said Act, was followed before passing the impugned order. On this ground alone, petition deserves to be allowed.

7] Accordingly, writ petition is allowed in terms of prayer clause (B). Petition is disposed of. However, we make it clear that allowing this petition shall not give an impression that the respondents are precluded from passing further orders in adherence to the procedure prescribed under the said Act.

[A.M. BADAR, J]

[S.S. SHINDE, J]

grt/-