

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12576 OF 2016

Mr. Anil V. Pradhan and ors.

.... Petitioners

vs

Bhivandi Nizampur Municipal
Corporation and ors.

.... Respondents

Mr.R.S. Apte, Senior Advocate with Mr. S.C. Wakankar for the
petitioners

Mr. N. R. Bubna for respondents 1 and 2.

Mr. C. P. Yadav, AGP for respondents 3 to 6-State.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.****DATE : October 27, 2016****ORDER:**

Not on board. In view of urgency, taken on board.

2 Heard Mr. Apte, learned senior counsel for the Petitioners,
Mr. Bubna, learned counsel for Respondents 1 and 2 and Mr. Yadav,
learned AGP for Respondent/State.

3 The Petitioners, who are employees of Respondent No.1-
Bhivandi Nizampur Municipal Corporation, have filed this Petition,

being aggrieved by the communication dated 24 October 2016 which is addressed by the Under Secretary, Urban Development Department to the Commissioner of Respondent No.1-Corporation. By the impugned communication, the Municipal Commissioner has been informed that a Committee was appointed by the State Government headed by the Divisional Commissioner, Konkan Division, to examine the complaint addressed by one Mr. Santosh Janu Chavan to the Hon'ble Lokayukta. In the report submitted by the said Committee, it was revealed that certain appointments/promotions were granted contrary to the Rules, as also the appointees were not qualified under the Recruitment Rules. The impugned communication, therefore, recommends that action be taken in accordance with recommendations as contained in the annexure to the said communication and the report of the Divisional Commissioner, Konkan Division, and a compliance thereof be forwarded to the State Government within 15 days.

4 Mr. Apte, learned senior counsel for the Petitioners submits that the apprehension of the Petitioner is that Respondent No.1-Corporation may directly initiate action of demoting the Petitioners

who are holding the posts in question for substantial period. Mr. Apte, learned counsel for the Petitioner, submits that in taking such action, what is expected is that the basic principles of natural justice are required to be observed and thus it is necessary that before any action is taken, a show cause notice ought to be issued to the Petitioners which would be appropriately replied by the Petitioners and thereafter a decision can be taken.

5 Mr. Yadav, learned AGP, in opposing the Petition would submit that the State Government has forwarded an exhaustive report of the Divisional Commissioner, Konkan Division pointing out all the irregularities which have happened in the appointments/promotions of the Petitioners and that the Corporation is required to take immediate steps to rectify the anomalies and submit a report. Mr. Yadav would submit that there is nothing improper if the course of action as suggested in the impugned letter is adopted and an appropriate report is submitted to the State Government. It is submitted that if the appointment/promotions are in the teeth of the rules, the same are per se illegal and void ab initio and no plea of breach of principles of natural justice can be urged.

6 Be that as it may, after we have heard the learned counsel appearing for the parties and considering the facts of the case, we are of the opinion that the submission of Mr. Apte that a show cause notice is required to be issued before any action is taken needs to be accepted. Thus, it would be in the fitness of things that a show cause notice is issued to the Petitioners and on the replies filed by the respective Petitioners, the Petitioners are heard before any action is taken on the basis of the findings of the Divisional Commissioner.

7 We accordingly propose to dispose of the Petition by directing the Respondent-Corporation to issue a show cause notice to the Petitioners within a period of four weeks from today as also supply to the Petitioners all the material on the basis of which proposed action would be taken against the Petitioners. The Petitioners shall submit their respective replies within a period of two weeks thereafter. The Petitioners thereafter be heard on these show cause notices and a final order be passed by the Municipal Corporation on the basis of the material which would be available in adjudication of the show cause notices. The final order be passed within a period of six weeks from

the receipt of the replies of the Petitioners.

8 Mr. Yadav, learned AGP states that the State Government would forward the necessary report of the Divisional Commissioner, Konkan Division, to the Municipal Corporation, within a period of one week from today, though it is stated that it is already forwarded.

9 As the above course of action is fairly accepted by the learned senior counsel appearing for the Petitioners and the learned counsel appearing for the Respondents, we do not examine the merits of the rival claims. All contentions of the parties on the merits of the matter are thus kept open to be agitated in deciding the show cause notice.

10 The writ petition is disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)