

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 649 OF 2016**

|                                 |   |                    |
|---------------------------------|---|--------------------|
| <b>Smt. Aruna K. Savla</b>      | } | <b>Petitioner</b>  |
| <b>versus</b>                   |   |                    |
| <b>Municipal Corporation of</b> | } |                    |
| <b>Greater Mumbai and Ors.</b>  | } | <b>Respondents</b> |

Mr. E. P. Bharucha – Senior Advocate with  
Ms. Madhavi Tavanandi, Mr. Aditya  
Chitale and Mr. Avinash Belge i/b. M/s.  
MNSQ Legal for the petitioner.

Mr. Jaquim Reis – Senior Advocate with  
Mr. Kevic Setalvad – Senior Advocate and  
Mr. H. C. Pimple for the respondents.

**CORAM :- S. C. DHARMADHIKARI &  
B. P. COLABAWALLA, JJ.**

**DATED :- NOVEMBER 18, 2016**

**P.C. :-**

1. This writ petition under Article 226 of the Constitution of India challenges a show cause notice dated 28<sup>th</sup> December, 2015 Annexure 'B' to the petition and an order of suspension dated 11<sup>th</sup> February, 2016.

2. The challenge is raised in the following circumstances:-

3. The petitioner is presently serving the Respondent No. 1 Corporation as Deputy Law Officer. The Municipal Corporation of

Greater Mumbai has its in-house legal set up (Legal Department). The Municipal Commissioner is the Administrative Head and there are other officers in administration, but the petitioner has conceded that she is holding a post, which is senior enough in the hierarchy of the Legal Department. It is the petitioner's claim that she is not required to attend the day to day court matters on regular basis. There is a practice and procedure. The Assistant Law Officers and other junior advocates attend the courts. As a Deputy Law Officer, High Court (Writ Section), the petitioner's duties, by settled practice, are giving opinion in various matters related to High Court, attending meetings with Municipal Commissioner, Additional Municipal Commissioner and other Department Heads or Committee Heads. There are also conferences convened by the senior counsel in important matters, which she has to attend. This being the nature of her work, she has stated that the order of suspension proceeds on the footing that the petitioner neglected her duties and did not attend the court or did not instruct the Corporation's advocates in particular writ petitions, details of which are provided in paras 10 and 11 of this writ petition. The system followed by the respondents regarding entrusting of any brief/matter to an empaneled counsel is that in most of the cases, the concerned officer of the Department of the Corporation, to which the case

pertains, instructs the Law Officer or the Joint Law Officer or the Deputy Law Officer to entrust the matter to an empaneled counsel. In addition to the above, the concerned Assistant Law Officer appearing in the matter also informs his/her senior about entrusting of the concerned matter to any empaneled counsel. The petitioner has pointed out that the decision about entrusting the matters to any empaneled counsel is dependant upon the issue involved in the matter. Therefore, an explanation is provided that in the writ petitions, in which certain order was passed by this court, the petitioner was not at fault. The petitioner had no occasion to attend the three petitions or to entrust the matters to any senior counsel on the panel of the respondents. With regard to the merits of the allegations in the show cause notice, the petitioner, while challenging the show cause notice and the order of suspension, has averred that they proceed on a presumption that she was aware of the filing of or service of the three writ petitions. She was never aware of the filing of these petitions. She became aware of an ad-interim order passed therein only on 28<sup>th</sup> December, 2015. She was never informed about the case or the issue involved therein. Then, it is stated in the grounds that had the matter been brought to her knowledge by the concerned persons, she surely would have approached either the Law Officer or the Joint Law Officer for

dealing with the same effectively to protect the interest of the Corporation. Her entire tenure in the Corporation of 22 years would indicate as to how she rendered selfless service.

4. The order of suspension, copy of which is to be found in the writ petition memo is dated 11<sup>th</sup> February, 2016. Preceding thereto is a show cause notice. The show cause notice alleges that certain petitions came to be filed in this court and an order was passed on the same. The three petitioners moved this court on 21<sup>st</sup> December, 2015 challenging the show cause notice issued to them. They intimated the Corporation about moving the petitions on 21<sup>st</sup> December, 2015. The Legal Department telephoned the concerned department of the Corporation to depute an officer. Accordingly, an engineer was deputed to attend the court. There were no instructions given to the advocate appearing on behalf of the corporation. The matter was, therefore, kept on 22<sup>nd</sup> December, 2015. The allegation in the show cause notice is that the petitioner did not send the matter to the counsel nor did she personally attend the court as Joint Law Officer (High Court) was on leave. That resulted in some adverse order against the Corporation. Had the requisite steps been taken, possibly, this could have been avoided. The show cause notice alleges negligence on the part of the petitioner.

5. The petitioner, after receipt of this show cause notice, sought time to furnish a reply. Accordingly, the request was considered and she was intimated on 30<sup>th</sup> December, 2015 that time to furnish a reply to the show cause notice cannot be extended as prayed. The petitioner, on 31<sup>st</sup> December, 2015, submitted her reply on the merits of these allegations. She pointed out her version and which we have already noted in some details hereinabove. Not having been satisfied with this explanation, the Corporation has proposed to hold an inquiry. Pending that inquiry, the petitioner's services have been suspended by the suspension order, copy of which is to be found at page 47 of the paper book. That order reads thus:-

“BRIHANMUMBAI MAHANAGARPALIKA

No. CHOE/HO/SBS/C-1597

Date

SUSPENSION ORDER

As per Hon'ble M.C.'s order under No. MGC/F/9044 dated 2.2.2016, Smt. Aruna K. Savla, Deputy Law officer (High Court-Original Side-Writ) is hereby suspended from the Municipal Services from the next working date of service of this Suspension Order upon her, pending departmental enquiry into her alleged misconduct as follows:-

“M/s. R. E. Infra Pvt. Ltd., M/s. Omkar Engineers & Contractors and Anr. and Shri Dalichand Shah have filed Writ Petition (Lodging) No. 3593 of 2015, 3567 of 2015 and 3565 of 2015 respectively, challenging the Show Cause Notice dated 10.12.2015 issued by the E.E.(I/c) M.&R. The above said three Petitioners moved the Hon'ble Court on Monday 21.12.2015 by giving notice to the Legal

Department. The Legal Department telephoned the M.&R. Department to depute the concerned officer. Assistant Engineer Shri Vaibhav Borkar was deputed on 21.12.2015 to the Hon'ble High Court. There were no instructions given to the Advocate appearing on behalf of the corporation Smt. Shobha Ajitkumar. The matter was therefore kept on 22.12.2015.

On 21.12.2015, Smt. Aruna K. Savla, Deputy Law Officer (High Court-Original Side-Writ) did not send the matter to the Counsel, did not personally attend the court, as Joint Law Officer (High Court) was on leave which resulted into the Corporation's order of blacklisting declared as illegal and no consequential action can be taken on the basis of the said order. If Smt. Aruna K. Savla, Deputy Law Officer (High Court-Original Side-Writ) would have sent the brief to the Counsel, the order would not have been passed against the Corporation on 22.12.2015.

It is also seen that, Smt. Aruna K. Savla, Deputy Law Officer (High Court-Original Side-Writ) did not inform to Law Officer or to D.M.C./A.M.C. About the court directions in this matter and that the outcome was known only from the newspaper."

The above act of commission and omission on the part of Smt. Aruna K. Savla, Deputy Law Officer (High Court-Original Side-Writ) amounts to gross misconduct.

Smt. Aruna K. Savla, Deputy Law Officer (High Court-Original Side-Writ) is hereby also informed that, during the period of suspension, it is not permissible for her to accept private employment or to do business or to draw any allowance, other than that from the Corporation. In case she is found to have accepted private employment or doing business or to have drawn any allowance, other than that from the Corporation, she will be guilty of misconduct and will be subject to further disciplinary action on this point.

During the period of suspension, she will be paid Subsistence Allowance, as permissible under the rules in force.

As per Circular No. MOM/7044 dated 29.10.2001, Smt. Aruna K. Savla, Deputy Law Officer (High Court-Original Side-Writ) is hereby directed to submit her original Identity Card to the undersigned.

Law Officer (I/c)  
11/2/16"

6. Mr. Bharucha, learned senior counsel appearing for the petitioner would submit that the impugned show cause notice and the suspension order are issued arbitrarily and without application of mind. He would submit that bearing in mind the position of the petitioner in the hierarchy and the settled practice and procedure, it is not expected of her to attend the court personally. It was for the concerned Assistant Law Officer to have attended the court and made submissions. If the said Assistant Law Officer had any difficulty, the petitioner would have definitely assisted the legal team and which she has been doing for all these years. If the petitioner is not aware of the filing or institution of the writ petitions and their pendency, until a copy of the order was brought to her notice, then, she cannot be faulted.

7. Reliance is placed on a judgment of the Hon'ble Supreme Court of India in the case of *Union of India vs. Ashok Kumar Aggarwal*<sup>1</sup>.

8. Mr. Bharucha heavily relied upon the observations and *prima facie* reasons assigned in an order passed by a Division Bench of this court on 16<sup>th</sup> February, 2016 in this petition to submit that this court was persuaded to stay the suspension order. The Division Bench order is fairly detailed and running

---

<sup>1</sup> (2013) 16 SCC 147

into 10 pages. Therefore, we should entertain the writ petition and continue that order.

9. On instructions, it is stated by Mr. Bharucha that the petitioner is not averse to facing an inquiry. She would attend the inquiry proceedings and render all co-operation and assistance for expeditious conclusion of the same. However, given the *prima facie* findings of this court, we should continue the ad-interim order.

10. On the other hand, Mr. Reis, learned senior counsel appearing for the Corporation submitted that this is a writ petition challenging the show cause notice and an order of suspension. There is no reason for this court to enter into merits of the charges and the allegations at this stage. This court cannot, only on the version of the petitioner, reach a conclusion that the impugned show cause notice and the order of suspension are malafide or arbitrary and discriminatory. Rather, the Corporation has a definite version of the matter. The Corporation does not intend to cause any prejudice to the petitioner by fully disclosing it for it would then be argued that the employer is biased and prejudiced against the petitioner employee. The petitioner will have full opportunity to prove her innocence in the inquiry. Considering the gravity of the allegations in the show

cause notice, seriousness of the matter pertaining to three contractors, against whom the Municipal Corporation intended to initiate proceedings for blacklisting them, this is not a fit case where this court should interfere in writ jurisdiction. The parameters of interference are well settled and this is not a case akin to the facts and circumstances, in which the judgment of the Hon'ble Supreme Court of India is delivered. For all these reasons, he would submit that the ad-interim order does not bind us, particularly when the affidavit in reply of the Corporation and the rejoinder is on record. The writ petition is placed for admission today and that is why we must apply our independent mind and hold whether the petition deserves to be admitted or not. He would, therefore, submit that the writ petition be dismissed.

11. With the assistance of the learned senior counsel appearing for both sides, we have perused the writ petition and the subsequent pleadings, namely, the affidavit in reply and rejoinder together with the annexures. At this stage, we refrain from expressing any opinion on the allegations in the show cause notice. The show cause notice alleges that the petitioner, who is a senior level officer in the Law Department, was, at the relevant time, made aware of filing of the writ petitions by three municipal

contractors. These three writ petitioners moved this court by giving advance notice to the Legal Department. The Legal Department telephoned the concerned department to depute an officer. Accordingly, an Assistant Engineer was deputed to attend the court. There was no assistance given to the advocate appearing in the court. The matter was, therefore, adjourned by a day. The allegation is that the petitioner did not send the matter to the counsel nor did she personally attend the court as the Joint Law Officer (High Court) was on leave. That resulted in an order of blacklisting being interfered with.

12. We do not think that at this stage we are required to render any definite opinion or conclusion as to whether on account of the alleged non attendance or non placing of a version of the Corporation that an order was passed and allegedly adverse to the interest of the Municipal Corporation. Whether the order passed by this court was adverse to the interest of the Corporation, was passed on the correct factual position or whether such factual position was held back from this court, either deliberately or otherwise, is not our concern. The petitioner can prove that she had absolutely no role to play and there was no requirement to attend the court or take any decision to engage an independent counsel to argue the case on behalf of the Corporation.

13. In the reply to the show cause notice dated 28<sup>th</sup> December, 2015 the petitioner asserts that she is working as Deputy Law Officer. She is assigned with the work of looking after High Court-Original Side Writ Section. During her tenure, she has worked with complete honesty and integrity. The charges levelled against her in the show cause notice are that the papers in the writ petitions were not sent to the counsel and that she did not attend the court on the concerned and relevant date. That resulted in the order of this court declaring the blacklisting as illegal. She has pointed out in this detailed reply as to what system is followed with regard to the court proceedings by the municipal corporation and particularly the Legal Department. That version appearing from paras 4 of the reply to the show cause notice and running into about three pages need not be considered. The petitioner has stated that it is improper on the part of the Law Officer to blame her for the order passed by this court on the ground that had the brief been sent to the counsel, the order would not have been passed. She has stated that whether the order could still have been passed or not is a matter of conjecture and surmises. She has denied the allegation of negligence.

14. The suspension order and passed after this explanation in writing of the petitioner was received by the corporation proceeds on the footing that the petitioner ought to have been vigilant and if she had sent the files to the counsel, then, possibly, the order would not have been passed and adverse to the Corporation's interest. The suspension order states that the Deputy Law Officer, namely, the petitioner did not inform the Law Officer or the Deputy Municipal Commissioner or the Assistant Municipal Commissioner about the court directives in the matter and that the outcome was known only from the newspapers. The above acts of omission and commission on her part amount to gross misconduct. The order, therefore proposed to suspend her from the service. During the period of suspension, she would be paid subsistence allowance.

15. Now a detailed reply is filed by the Municipal Corporation and in which even the procedure followed in the Department is set out together with the seriousness and the gravity of the issue involved in the writ petitions, to which the petitioner has filed a rejoinder. What one has to consider is whether this is a fit case for interference in our writ jurisdiction, particularly after a detailed affidavit in reply is filed as directed by this court in its order dated 16<sup>th</sup> February, 2016. In the affidavit in reply filed on

28/29<sup>th</sup> March, 2016, Respondent No. 1 Corporation has stated as follows:-

“.....

b) The Petitioner as more particularly stated hereinafter was duty bound to diligently personally attend to matters assigned to the Petitioner. This was more so in the case of important and high profile matters. The Petitioner in the present Writ Petition has sought to absolve herself of her duties and responsibilities by blaming her subordinates and falling back on an alleged practice and procedure as per which, according to the Petitioner, she was not required to personally attend all the matters (despite the same being specifically assigned to her) to cover up for her negligence and her failure to carry out her duties. It is denied that there was any practice as sought to be relied upon by the Petitioner.

c) I say that the Petitioner herein is an employee of Respondent MCGM and is working as Dy. Law Officer and at the material time was assigned the work of High Court Original Side Section as per the office order no. 111 dated 31.07.2015. I say that as per the said office order the Petitioner was required to *personally* attend the court matters on behalf of MCGM, to ensure that replies in the matter in High Court (OC) and appeals as required before Supreme Court were filed upto date. The Petitioner was also required to submit compliance report from time to time and to opine in the matter on issues arising from Court matters and any other work that may be assigned by the Jt. Law Officer/Law Officer. Further, the Petitioner was also required to attend conferences with the counsels and brief counsels in the matter along with Law Officers. Also the Petitioner was required to opine on the issues related to Disaster Management, IT, CFO & Deonar Abattoir. The Petitioner was also appointed as a Public Information Officer, under RTI Act, in respect of applications related to High Court (OS). Hereto annexed and marked **Exhibit 1** is the copy of the office order no. 111 dated 31.07.2015.

d) I say that as per the Duty List of the Law Officers of the Legal Department of MCGM the Dy. Law Officer is the Head of the section and is required to work under the guidance and Supervision of the concerned Jt. Law Officer. They Dy. Law Officer is required to attend personally the

important matters in the court and personally to prepare and do the drafting and court related drafting in the important matters. The Dy. Law Officer is also supposed to personally attend conferences with Counsel in important matters and to guide the Asst. Law Officers, Asst. Law Officers (grade-2), Jr. Law Officers and the subordinate staff under them. Also a Dy. Law Officer is required to personally supervise the court work and attend meetings with Municipal Commissioner, Additional Municipal Commissioner, Dy. Municipal Commissioner and Head of the Departments. Hereto annexed and marked **Exhibit 2** is the copy of the said Duty List.

e) I say that to point out the gravity of the misconduct and negligence on the part of the Petitioner it is necessary to bring on record certain facts in respect of the Writ Petitions which were filed before this Hon'ble Court namely W. P. No. 3593 of 2015, 3567 of 2015 and 3565 of 2015.

f) I say that an enquiry was conducted by the MCGM in respect of 9 contracts out of 32 contracts of disilting of major nallahs by SWD Department, when it was prima facie found that there were serious lapses in the work done by the contractors and they have issued fraudulent bills for the same. Accordingly, an FIR was lodged against 3 Nallahs Safai contractors, one VTS contractor and 3 weigh bridge contractors initially and the said case was later on transferred to Economic Offence Wing by police authorities. Subsequently, a detailed enquiry was also initiated by the MCGM in respect of 32 contracts of disilting of major nallahs by SWD Department, when it was found that the 24 contractors of these 32 contracts have issued fraudulent bills and have played fraud of about Rs.38,13,69,708/- crores upon the Respondent Corporation by charging or issuing bills in respect of work which they had not done. Therefore, a case was lodged with the Economic Offence Wing against all 24 Nallah Safai Contractors. Besides Show Cause Notices have also been issued to all the 24 Nallah Safai contractors.

g) I say that the Petitioner herein was duty bound to look after and supervise the matters which were filed and moved before the Hon'ble High Court. In the present case the above-mentioned 3 Writ Petitions were moved before the Hon'ble Court on 21.12.2015 by giving notice to the legal department. At that time the concerned Asst. Law Officer Smt. Shobha Ajit Kumar on seeing the said Petitions instructed the office Superintendent to

immediately give telephonic message to the concerned officers to come to the court with instructions and also instructed the office superintendent to show the said matters to the Dy. Law Officer as the matters were of serious nature and instructed him to inform the Dy. Law Officer to appoint the counsel to appear on behalf of MCGM at the time of production at 4.30 p.m. and she went to the court.

h) I say that the office Superintendent accordingly personally visited the chamber of the Petitioner and informed the Petitioner about the instructions given by Asst. Law Officer Shobha Ajit Kumar. However, the Petitioner refused to look in to the matter and instructed the office Superintendent to call the concerned officer to attend the court and instruct the appearing advocate. I say that accordingly the office Superintendent gave a telephonic call to the concerned officer Shri Vaibhav Borkar. However, the concerned officer did not attend the court when the matter was called out. Thus, for want of instructions the appearing advocate of the Respondent requested the court to adjourn the matter to the next date.

i) I say that on 22.12.2015 Shri Vaibhav Borkar the Concerned officer attended the Legal Department at about 2.00 - 2.15 p.m. when the matter was discussed by the Asst. Law Officer Shobha Ajit Kumar along with the Petitioner and the said Vaibhav Borkar. At that time also the Petitioner was requested to refer the matter to the Sr. Counsel to plead on behalf of Respondent Corporation. However, the Petitioner refused to appoint a Sr. Counsel in the matter and directed Shri Vaibhav Borkar to go to the Court and brief the appearing advocate Shri Vinod Mahadik.

.....

l) I say that the gravity of the matter was known to the Petitioner as regularly there were information/reports being published about the nalla's scam in the local news papers so also the suspension of about 14 Officers/Engineers/Concerned Staff and 9 contractors being black listed was being published in the local news papers. Despite this and despite being aware of the said three Writ Petitions on 21/12/2015 and then again on 22/12/2015, the Petitioner very surprisingly despite the gravity of the matters failed to give the matters the required attention, and refused to appoint a Counsel in the

matter and also did not personally attend to the matters in the Court.

.....

n) I say that it is pertinent to note that the intention of the Respondent suspending the Petitioner pending inquiry was that the Petitioner would stay away from the office of the Legal Department where she has access to all the important papers, files, documents, material in relation to the present 3 Writ Petitions and there is a possibility that Petitioner would misuse her power and manipulate, destroy, destruct the records in respect of the said 3 Writ Petitions which are with the legal department & other concerned departments by misusing her power.

o) It is respectfully submitted that the suspension order against the Respondent was necessary. The fact that the Petitioner is likely to interfere with the inquiry not only against her, but also against the said contractors is borne out by the fact that, the Petitioner after obtaining the stay orders of this Hon'ble Court on 16<sup>th</sup> February, 2016 resumed the duties on 17.02.2016 and immediately on 18.02.2016 issued show cause notices to the 2 Asst. Law Officers namely Shobha Ait Kumar & Advocate Vinod Mahadik along with the office Superintendent Shri Rane and managing clerk Shri Deshpande which are titled as "memo". This clearly shows that after resuming duties the Petitioner has misused her power and has sought to pressurize the subordinate staff working under her. By issuing the said show cause notices the Petitioner is trying to create/gather evidence in her favour and interfere in the conduct of this inquiry. I say that thus the Respondent MCGM's administrative decision to suspend the Petitioner pending the inquiry was a correct decision and the same is clear as the Petitioner has misused powers as stated above by issuing show cause notice as referred above. Hereto annexed and marked **Exhibit - 4** colly are the copies of the Memos issued by the Petitioner to her subordinate staff.

.....

u) I deny that Petitioner was never informed about the filing of the said Writ Petitions and deny that Petitioner was totally in dark about the happening of the above developments. The Petitioner's contentions in this regard are patently false and the as the Petition is based on such

false assertion, the same is liable to be rejected. I say that the contention of the Petitioner that decision is taken by the Law officer/Jt. Law Officer alone about the appointment/entrusting the matter to the counsel is incorrect. I say that once the Asst. Law officer or the subordinate staff brings to the notice of the Dy. Law Officer any important matter, the Dy. Law Officer is supposed to bring the said matter to the notice of the Jt. Law Officer and the law Officer. After consulting among themselves after going through the record and proceedings it is decided as to whether the matter has to be entrusted to the counsel or not.

.....

w) I say that the said act of the Petitioner amounts to gross negligence and misconduct on the part of the Petitioner and, it is in interest of justice that the Petitioner be suspended and is restrained from attending the legal department, pending the inquiry, so that the Petitioner is kept away from all the record and proceedings, files, documents etc., in relation to the above 3 matters. I say that it is apprehended that the Petitioner may misuse her powers and position and may influence the people and may manipulate the records, the files, documents etc., related to the present 3 matters or may destroy them.”

16. The petitioner has filed a rejoinder affidavit denying the allegations against her but neither are we called upon to go into the merits of these allegations nor are we inclined to go into the same at the stage of suspension.

17. The Hon'ble Supreme Court judgment was based on the case, which was brought by the Union of India. The Union of India was aggrieved by a judgment and order passed by the High Court of Delhi confirming the view taken by the Central Administrative Tribunal. The tribunal quashed the suspension order against the respondent. The respondent before the Hon'ble Supreme Court of

India belonged to Indian Revenue Service. He was put under suspension since 28<sup>th</sup> December, 1999 in view of pendency of two criminal cases against him, duly investigated by the Central Bureau of Investigation (CBI) and in which he was also arrested on two occasions. At the relevant time, the respondent was on deputation to the Enforcement Directorate and was working as Deputy Director (Enforcement). The details of the CBI case against the respondent are then set out in the judgment in paras 3 and 4 and then, it was observed that the CBI registered another case in respect of disproportionate assets possessed by the respondent amounting to more than 12 crores to his known sources of income during his service period of 14 years. Since the respondent was arrested, he was under deemed suspension. The suspension order was reviewed subsequently. Thereafter, the suspension order was directed to be continued. The sanction to prosecute the respondent was obtained from the competent authority under the Prevention of Corruption Act, 1988. The respondent challenged this order of suspension by filing OA No. 783 of 2000, which was allowed by the tribunal on 17<sup>th</sup> January, 2003 giving an opportunity to the appellant therein to pass an appropriate fresh order based on the facts of the case. The Union of India reconsidered the case of suspension, but passed another order on 25<sup>th</sup> April, 2003 continuing it.

18. The aggrieved respondent challenged that continuation by another OA, but that was dismissed on 9<sup>th</sup> May, 2003. Thereafter, that order was challenged by filing a writ petition before the Delhi High Court. That writ petition was subsequently withdrawn. Thereafter, the result of the criminal cases is noted and it was found that the departmental proceedings were initiated against the respondent based on CBI investigation report and the charge memorandum was issued, which was quashed by the tribunal on 24<sup>th</sup> February, 2010. The Union of India filed special leave petition to challenge that order. The Hon'ble Supreme Court confirmed the view taken by the tribunal that the charge-sheet was required to be approved by the disciplinary authority. The petition filed by the Union of India against the employee had not yet been decided. The review petition filed by the Union of India against the judgment and order dated 5<sup>th</sup> September, 2013, was pending. The Union of India was reviewing the order of suspension from time to time and in these circumstances, the respondent filed a third OA No. 2842 of 2010 before the tribunal for quashing of the suspension order and the same was disposed of by the tribunal directing the Union of India to convene a meeting of the Special Review Committee within a stipulated period to consider revocation or continuation of suspension order after taking into consideration various factors. Thereafter,

compliance was made with the tribunal's order. The competent authority considered the recommendations of the Special Review Committee and passed an order on 12<sup>th</sup> January, 2012 to the effect that the suspension of the respondent would continue. That is how the fourth OA was filed and the tribunal allowed it holding that the earlier direction has not been complied with and therefore, the suspension and continued suspension is vitiated.

19. It is in these circumstances that the Hon'ble Supreme Court of India referred to the settled principles and while reiterating the power of the employer to suspend, all that it then indicated was that such power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong *prima facie* case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority, or there is a strong *prima facie* case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to

hamper or frustrate the inquiry. The suspension order can be passed by the competent authority considering the gravity of the alleged misconduct, namely, serious act of omission or commission and the nature of evidence available. It cannot be actuated by *mala fides*, arbitrariness or for ulterior purpose. The facts of each case have to be taken into consideration and equally important is the element of public interest.

20. These are the guiding principles and which guide us as well.

21. However, we find that on 16<sup>th</sup> February, 2016, this court was persuaded to go into the merits of the three writ petitions filed against the corporation by the contractors. The order of this court proceeds to take note of the version of the petitioner. With greatest respect, this court was persuaded to take a view that there are no cogent reasons provided for passing the order of suspension. With greatest respect, the attention of this court was not invited to the fact that the order of suspension need not set out elaborate reasons nor is there a requirement of any justification. If the order of suspension is challenged in this court, then, it is incumbent upon the employee challenging such order to establish and prove by strong *prima facie* material that the suspension order is arbitrary or is vitiated by malafides or bias. That malafides or arbitrariness is writ large on the face of the

suspension order. It is not necessary for the employer to justify the suspension order by proving the allegations in the show cause notice. That is not an approach which this court can adopt in writ jurisdiction. Therefore, though this court, on 16<sup>th</sup> February, 2016 was persuaded to go into the merits of the allegations, with greatest respect, we feel that such a course cannot be adopted. We have before us now a detailed reply affidavit of the Municipal Corporation and in which it has come out with a version of a definite prejudice and loss to the public interest. Whether the corporation had a strong case against the three contractors or not does not bother us at this stage. It is in these circumstances, we are not persuaded to continue the order passed on 16<sup>th</sup> February, 2016. We vacate the same forthwith. We are of the opinion that the petitioner has full opportunity to defend herself at an inquiry. The order of suspension is not vitiated by arbitrariness and no material, which would enable us to apply the principles in the case of *Ashok Kumar Aggarwal* (supra), is brought before us in this case. There is no *prima facie* material to proceed on the footing that the order of the suspension is vitiated by arbitrariness or malafides.

22. Having noted the rival contentions and the only reliance placed on the order of this court dated 16<sup>th</sup> February, 2016, we

are of the clear view that the order of suspension, passed by the Municipal Corporation need not be interfered with. The petitioner was working as Deputy Law Officer. She is senior enough in the hierarchy. The matter pertains to certain acts of omission or commission on her part. It is entirely for the Municipal Corporation, therefore, to take a decision to keep her out of service during the pendency of the disciplinary proceedings. The matter being sensitive and the charges being grave and serious, the allegations are of misconduct involving a legal matter before the highest court in the State, given her position in the hierarchy if the Municipal Corporation feels that for a fair and impartial inquiry, to avoid tampering of vital evidence, the petitioner should be suspended, then, we do not wish to interfere in writ jurisdiction with such measures. That would not subserve larger public interest. The affidavit in reply points out as to how the petitioner purported to misuse her authority by entering the office, armed with the ad-interim order of this court and issued show cause notices to her subordinates. They may be cited as witnesses in the inquiry. The petitioner's presence in the office is likely to deter them from deposing freely at the inquiry.

23. As a result of the above discussion, the writ petition fails. It is dismissed. The ad-interim order is vacated forthwith.

24. At this stage, Mr. Bharucha prays for continuation of the ad-interim order dated 16<sup>th</sup> February, 2016. Mr. Reis opposes this request.

25. Once we have arrived at the above conclusion, then, there are no reasons for continuing the ad-interim order. We do not think that the said order can be continued. The request in that behalf is refused. However, we direct that the Municipal Corporation shall take prompt steps to appoint an inquiry officer, to hold the inquiry and thereafter conclude it as expeditiously as possible. That would subserve larger public interest. We grant the Municipal Corporation three month's time to conclude the inquiry.

(B.P.COLABAWALLA, J.)      (S.C.DHARMADHIKARI, J.)