IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

Writ Petition No. 6273 of 2015
[Ashok Mahadeorao Parlikar and ors. Vs. The Divisional Commissioner, Amravati Division, Amravati and ors.]
with
Writ Petition No. 6696 of 2015
[Badasaheb Ramnath Gulve Vs. The Divisional Commissioner, Amravati Division, Amravati and ors.]
with
Writ Petition No. 6697 of 2015
[Prabhakar Ganpatrao Khodke Vs. The Divisional Commissioner, Amravati Division, Amravati and ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

Shri M. P. Khajanchi, Advocate for the petitioners in WP 6273/15
Shri A. I. Sheikh, Advocate for the petitioners in WP 6696 & 6697 of 2015
Shri M. I. Dhatrak, Advocate for the respondent no. 3
Shri P. V. Bhoyar, AGP for the respondent nos. 1 and 2

CORAM : Prasanna B. Varale, J.

DATE : 9-2-2016.

As these writ petitions involved an identical challenge to the order passed by the Divisional Commissioner, Amravati, these petitions are taken up and heard together.

The petitioners are either Councillors or employees of the Municipal Council, Mangrulpir, District Washim. In a Public Interest Litigation filed before this Court, a submission was made that there were certain irregularities committed by the office bearers of the Municipal Council, Mangrulpir and no steps were taken against the erring office bearers. This Court by considering the affidavit filed on behalf of the Divisional Commissioner, Amravati that he will take necessary steps as per the provisions of Section 11 of the Bombay Local Fund Audit Act, 1930, disposed of the Public Interest Litigation treating the statement of the Divisional Commissioner as an undertaking to this Court.

The Divisional Commissioner by communication dated 16-9-2015 directed the Collector, District Washim and the Chief Officer of the Municipal Council, Mangrulpir referring to the order of this Court in PIL No. 54/2013 that the office of the Divisional Commissioner is in receipt of the special audit inquiry report and the inquiry committee found that there was loss caused to the Council to the tune of Rs. 9,59,526/- and the committee fixed the responsibility for this loss on the office bearers, officer and employees. The Divisional Commissioner further directed that notices be issued to such erring office bearers, officers and the employees and orders be passed to recover the amount immediately. Accordingly, notices were issued to the office bearers, officers and the employees of the Municipal Council. These notices are placed on record along with Writ Petition No. 6273/2015 at Annexure P-4 collectively. The perusal of the notices shows that the inquiry committee submitted its final report fixing the responsibility of recovery of amount and in the notice to each of the noticees, amount recoverable is referred. The notice further states that the noticee to deposit the amount within 15 days in the office of the Municipal Council.

The submission of learned counsel appearing for the petitioners revolves around the failure of compliance of principles of natural justice. It is submitted by the learned counsel appearing for the petitioners that in the communication of the Divisional Commissioner and in turn, the notices issued to these petitioners referred to the order of this Court in public interest litigation and report of the inquiry committee, there is no opportunity granted to these petitioners of hearing. The notice only indicates that certain amount is recoverable and without offering any opportunity to submit any explanation or reply to the notice, the noticee straightway imposed recovery within a stipulated period of 15 days.

Learned counsel Shri Khajanchi and Shri Sheikh, counsel for the petitioners submitted that this Court in order dated 10-12-2014 in PIL No. 54/2013 accepted the statement of the Divisional Commissioner as an undertaking to this Court. The statement itself was to the effect that the Divisional Commissioner will comply with the provisions of the Bombay Local Fund Audit Act, 1930 and the Divisional Commissioner would complete the action within period of six months from the date of the order. Perusal of the order of this Court in PIL No. 54/2013 shows that the Divisional Commissioner, Amravati stated in the affidavit that he will take necessary steps as per the provisions of Section 11 of the Bombay Local Fund Audit Act, 1930. The relevant provision reads thus :

> ***11.*** *(1) The Commissioner may, after considering the [recommendation of the Chief Auditor under sub-section (3) of section 10, or the head of the department, or other officer, under the first proviso to that sub-section] as the case may be, <u>and after taking the explanation of the person concerned, or making such further inquiry</u>, as he may consider necessary, disallow any item which appears to him to be contrary to law and surcharge the same on the person making, or authorising the making of, the illegal payment; and may charge against any person responsible therefor the amount of any deficiency or loss caused by the gross negligence or misconduct of that person, or, any sum received which ought to have been but is not brought into account by that person; and shall, in every such case, certify the amount due from such person :*
>
> *Provided that no order of surcharge or charge shall be made under this Act in respect of any item included, or, which ought to have been included in, but was omitted from, any accounts [for any period-*
>
> *(i) in the case of a local authority in the Bombay area of the State, prior to the 1st April 1930 ;*
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> *(ii) in the case of any local authority in the Vidarbha region, prior to the 8th October 1932; and*
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> *(iii) in the case of any other local authority prior to the 1st April 1960] :*
>
> *[Provided further that in making an order of such surcharge or charge in respect of any expenditure incurred by any Zilla Parishad [or any Panchayat Samiti] on any*

> *item which appears to the Commissioner to be contrary to law, the Commissioner shall not question the propriety of the expenditure incurred by the Zilla Parishad [or any Panchayat Samiti] or any of its officers in the exercise of the powers purported to be conferred on it or him under such law.]*
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> *(2).......*
>
> *(3).......*
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> *(4).......* *(emphasis supplied)*

Sum and substance of submissions of the learned counsel appearing for the petitioners is that the order passed by this Court is misreading by the authorities and as no opportunity is granted, the communication issued by the Divisional Commissioner seeking recovery of the amount is unsustainable.

The learned Assistant Government Pleader supports the order passed by the Divisional Commissioner.

With the assistance of the learned counsel appearing for the petitioners and learned Assistant Government Pleader, I have gone through the material placed on record. The order passed by this Court in PIL No. 54/2013 clearly shows that a statement was made before this Court that the Divisional Commissioner is taking necessary steps as per Section 11 of the Bombay Local Fund Audit Act, 1930 and the assurance was given to this Court that the Commissioner will comply with the said provisions within a stipulated period. Relevant provision as referred to above clearly speaks of opportunity of hearing in the words “after taking the explanation of the person concerned”. Thus, the requirement of the provisions is to give an opportunity to the person concerned of submitting explanation and the corresponding officer to consider the said explanation. The perusal of the material placed on record clearly shows that the Divisional Commissioner by communication dated 16-9-2015 informed the Collector, District Washim and Chief Officer, Municipal Council, Mangrulpir to issue notices to the erring office bearers, officers and the employees and orders be passed to recover the amount immediately. Notices issued to these petitioners also referred to fixing of the liability of the amount and recovery of the amount within stipulated period. The exercise of the office of the Commissioner and in turn, the office of the Municipal Council, Mangrulpir clearly shows that no opportunity of hearing is granted to the petitioners as referred to above. Even the provisions of the Act provides the opportunity of hearing. Thus, considering all the above referred facts, the communication issued by the office of the Divisional Commissioner dated 16-9-2015 and in turn, notices issued to the petitioners impugned in the present petitions need to set aside.

The Commissioner is at liberty to initiate the action in compliance with the provisions of the Bombay Local Fund Audit Act, 1930 by giving an opportunity of hearing to the petitioners. Needless to state that the Commissioner, by offering the opportunity, may pass suitable orders as early as possible and preferably within a period of three months from today.

The writ petitions are disposed of in above terms.

JUDGE

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