

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.406 OF 2013

Haribhau K. Kedar	..Petitioner
Vs.	
Mr. Sanjay Khandare	..Respondent

Mr. Sanjay Thokade, for the Petitioner.

Mr. R. S. Apte, Senior Counsel i/b Mr. Vaibhav P. Patankar,
for the Respondent.

CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.
DATE :- MARCH 1, 2017.

P. C.:

This is a Petition alleging civil contempt by the
Commissioner of Nasik Municipal Corporation, Nasik.

2 The Petitioner states that he was appointed in the
year 1978 by the then Nasik Municipal Council. He was
deputed to serve as a Managing Director of one Lokshahir
Annabhau Sathe Vikas Mahamandal. That was by order
dated 18th January, 1996. As per the terms and conditions of

the deputation, particularly condition 14, if any enquiry is to be initiated against the Petitioner, he must be sent back to the original department, namely, the Nasik Municipal Corporation. By order dated 9th February, 2000, the State Government passed an order sending the Petitioner back to his original department, namely, the Nasik Municipal Corporation. That order was implemented and on 16th January, 2004, the Petitioner was sent back / repatriated to the Corporation. The Standing Committee of Nasik Municipal Corporation, in a meeting passed Resolution that the order of suspension of Petitioner and holding enquiry against him by State is contrary to legal provisions and terms of his deputation and hence not binding on the Municipal Corporation. However, the Corporation resolved that since the decisions till date are taken by the State, even the further steps may be taken by the State Government.

3 In 2004, a Writ Petition being Writ Petition No.8238 of 2004 was filed by the Petitioner on own showing for a relief that he should be directed to be taken back in the

services of the Municipal Corporation, he be paid arrears of subsistence allowance as also other amounts. That Writ Petition was heard on 7th February, 2005. It was disposed off by holding that it is the Nasik Municipal Corporation which possess the power to decide upon an enquiry and take a decision as far as Petitioner is concerned.

4 Acting in terms of this decision, Nasik Municipal Corporation considered an application of the Petitioner. It resolved on 1st June, 2005 vide Resolution No.179 that the Petitioner's suspension as per previous resolution should be cancelled and the Petitioner be taken back in its service. The powers to implement this decision was conferred in the Municipal Commissioner. The Municipal Commissioner, according to the Petitioner, did not obey and abide by this decision of the Municipal Corporation. He was not ready to take back the Petitioner in service. The tussle and conflict between the Petitioner and the Commissioner thus continued in the sense that when the Municipal Corporation stood by the Petitioner, the grievance is that the Commissioner

opposed him and defeated the decisions of the Municipal Corporation which in law he was not empowered to do. The first Contempt Petition filed by the Petitioner being Contempt Petition No.342 of 2005 alleges civil contempt of an order passed on 7th February, 2005. During the pendency of the Contempt Petition, the Commissioner passed an order on 9th June, 2006 dismissing the Petitioner from service. That is why the Contempt Petition was disposed off with liberty to the Petitioner to challenge that order. The Petitioner then challenged the order of the Municipal Commissioner. That Writ Petition No.7034 of 2006 was admitted. The Petitioner as a part of an interim direction was permitted to avail of a statutory remedy of an Appeal to the Appellate Authority against the order dated 9th June, 2006 of the Municipal Commissioner. Accordingly, that Appeal was preferred. The Appellate Authority did not accept the stand of the Commissioner. The Petitioner's Appeal was accepted and allowed by the Appellate Authority, namely, the Standing Committee on 8th May, 2008. Instead of abiding by the order of the Standing Committee, the Commissioner, this time

approached the State Government. The Commissioner invoked the powers under section 451 of the Maharashtra Provincial Municipal Corporation Act. It is in relation to this dispute and how the Commissioner could have approached the State Government which forms subject matter of another round of litigation. Apart therefrom, the allegation is that the State Government when passed an order on 5th March, 2010 suspending the Resolution of the Municipal Corporation, the orders suspending the Resolution continued beyond statutory period without any justification. Hence, another Writ Petition was preferred by the Petitioner being Writ Petition No.1600 of 2012. An order was passed therein on 12th June, 2012. The State Government did not obey that direction of this Court. Once again, on 29th June, 2012, the Petitioner approached the State Government this time and to act in terms of this Court's order. It is clear that the Petitioner complains that the State Government took a decision but had granted no opportunity of hearing to the Petitioner as also the Municipal Corporation. The decision was also not communicated. The Petitioner came to know for the first time

of such a decision and which is dated 22nd October, 2012. A copy of this decision is at Annexure-H to this Contempt Petition (page 33).

5 We have carefully perused that part of the order passed by the State Government which says that the Nasik Municipal Corporation's Standing Committee Resolution No.1432 dated 8th May, 2008 under which the Petitioner was directed to be reinstated in the Corporation's service, is set aside. The word used “*विखंडित करण्यात येत आहे* ” was understood by the Petitioner as a refusal to accept the Standing Committee Resolution and that is why aggrieved by the same, the Petitioner filed a Writ Petition No.4491 of 2013.

6 On that Writ Petition, the Vacation Bench of this Court on 23rd May, 2013 passed the following order:-

“Rule, returnable on 5th August, 2013.

2. Learned advocate has prayed for hearing on interim relief.
3. Learned advocate for the petitioner has stated that the Municipal Corporation of Nashik has failed to appear in spite of notice.
4. Impugned order discloses that it is passed under Section 451 of the Bombay Provincial Municipal Corporation Act, 1949 and it is not disclosed that it is passed after giving any hearing.

5. Petitioner's grievance is that the State Government did not hear the petitioner before passing order which prejudices him.
6. Learned panel counsel for the State was given a chance to take instructions on the point as to whether State would give hearing. He has not received instructions so far.
7. Learned APP argues that personal hearing is not contemplated by section 451 of the B.P.M.C. Act.
8. Learned Advocate for the petitioner has relied upon reported judgment in case of Pramod Vishwasrao Ghatge -vs- State through Department of Urban Development (1998 BCR 5-420) scope of under Section 451 of the B.P.M.C. Act, was considered by this Court while deciding said case and the Division Bench of this Court has taken a view that hearing the person who would be prejudiced before passing order under Section 451 is imperative.
9. In view of this aspect involved in matter, we are satisfied that the petitioner is entitled for interim relief in terms of prayer clause (c) and we accordingly grant it.
10. It is clarified that this order does not in any manner preclude the State Government from reconsidering its own order or recalling the same and/or giving fresh hearing to the petitioner if it so desires."

7 Mr. Thokade appearing in support of this Contempt Petition would submit that once this Court granted an interim order in terms of prayer clause (c) of the Writ Petition, then, that is a positive direction to the Municipal Corporation to reinstate the Petitioner in Municipal services. If that positive direction flows from the order passed by this Court and reproduced above, then, this Petition alleges a civil contempt by terming the non-implementation and enforcement of the said order as a civil contempt. It is a willful disobedience to a order or direction of this Court and

that is why this Contempt Petition is maintainable.

8 Mr. Thokade would rely upon several judgments of the Hon'ble Supreme Court of India which would denote that a final as also interim order, willful disobedience of which, can amount to civil contempt and the Court can take action under the Contempt of Courts Act, 1971. Once the order is clear, not containing any vague or ambiguous direction so also it is not susceptible to more than one interpretation then, the civil contempt is apparent. This Court, therefore, must not accept any explanation of the Municipal Corporation.

9 Mr. Thokade would submit that if the Municipal Corporation is allowed in answer to a Contempt Petition to plead that the order was unclear or ambiguous that would make a mockery of rule of law. None can tinker with the orders of the Court. Under these circumstances, Mr. Thokade would submit that though the Petitioner in the meanwhile has retired by attaining the age of superannuation, in contempt jurisdiction we can issue

consequential orders and directions in addition to holding the Petitioner guilty of civil contempt.

10 Mr. Apte, learned Senior Counsel for the Municipal Commissioner after inviting our attention to the affidavit-in-reply filed by the Municipal Commissioner would submit that there is no substance in this Contempt Petition. The order passed was interim in nature. Subsequently, the Writ Petition was placed before another Division Bench of this Court and it came to be disposed off without in any manner issuing a direction for reinstatement of the Petitioner in Municipal services. Inviting our attention to the order dated 15th October, 2013, copy of which is at pages 48 to 50 of the paper book, Mr. Apte would submit that in that order as well the request of the Petitioner and made earlier that he should be forthwith reinstated in the services of the Municipal Corporation on the strength of the Standing Committee's order was noted and considered. The Petitioner having attained the age of superannuation would retire shortly, was also mentioned before the Court and noted. However, the

Court relied upon an earlier order dated 23rd May, 2010. That clarified that the order does not in any manner preclude the State Government from reconsidering its own order or recalling the same and/or giving a fresh hearing to the Petitioner, if he so desire. Therefore, Mr. Apte would submit that the matter went back to the State Government.

11 Thus, Mr. Apte would submit that there could be fetters as alleged on the powers of the Municipal Commissioner but the executive administration of the Municipal Corporation vested in him and subject to the provision of the Act and in accordance with findings therein that power is exercised by him. He has clarified that he had approached the State Government when the Standing Committee's Resolution was brought to his notice. The State Government on the earlier occasion considered the matter but did not issue any positive direction to him to reinstate the Petitioner back in service. Given the checkered history of the litigation or serious allegations against the Petitioner, bonafide, the Municipal Corporation believed that he is not

directed to be reinstated in the Municipal services. Eventually, the interim order which stays the effect of a decision of the State Government dated 22nd October, 2012 would not mean that the Petitioner comes back to the services automatically. The Writ Petition was pending. It was being seriously opposed. In such circumstances, there is no question of willful disobedience to the order of this Court. A case of civil contempt is not made out, according to Mr. Apte.

12 We have with the assistance of Mr. Thokade and Mr. Apte perused the Contempt Petition, the affidavits-in-reply thereto and the order of this Court of which contempt is complained of and reproduced above.

13 We are bound by the salutary principles enunciated in the judgments of the Hon'ble Supreme Court of India. It is only when the order is capable of more than one interpretation, then, its non-implementation or disobedience, is not civil contempt. So long as the order is clear,

unambiguous and binding it must be implemented, whether it is interim or final. However, the facts and circumstances in each case would be relevant for applying these salutary principles.

14 We have a case before us, where the Petitioner in the services of the Municipal Corporation was sent on deputation to the State Government. The State Government appointed him on its own Corporation. However, there were certain allegations and stated to be serious one of misconduct. These acts of omission and commission are committed during the course of such services rendered on deputation but the authority was of the opinion that the disciplinary proceedings have to be initiated and concluded by the Nasik Municipal Corporation on whose establishment, the Petitioner was substantively appointed. That is how for the purpose of taking action his services were made over to that Corporation. Later on the Municipal Corporation decided not to hold enquiry but bring him back in services. That decision was not acceptable to the Municipal Commissioner. We are

not concerned with this aspect of the matter for it would be for a competent authority, Tribunal or a Court to resolve it by applying the correct legal principles. We are only on the plea that the Petitioner faults the Commissioner's decision of not abiding by the decision of the General Body, later-on the Standing Committee but taking the matter to the State Government and seeking its intervention. The Petitioner is aware that the State's intervention resulted in an order passed on 22nd October, 2012 which he had to challenge by filing a Writ Petition in this Court. Prior to that also, on several occasions it is the Petitioner who had to approach this Court. The history of this litigation is checkered. We are of the opinion that given the wording of prayer clause (c) of the Writ Petition No.4491 of 2013, in terms of which the order was made and of which contempt is alleged, does not oblige the Commissioner to reinstate the Petitioner in the services of the Municipal Corporation. That order stays the execution and operation of the decision dated 22nd October, 2012 of the State Government pending the disposal of the Writ Petition. Though the interim prayer may be worded widely to mean

that there is a direction therein to implement Resolution No.1432 of the Standing Committee of the Municipal Corporation and that would mean that an interim order in terms of such a prayer denotes that the Petitioner goes back in the services of the Municipal Corporation automatically but that is how the Petitioner reads and interprets the order. The understanding of the Petitioner is once the Standing Committee Resolution is directed to be implemented pending disposal of the Writ Petition by staying the State Government's order, he had to be reinstated in Municipal services. The Municipal Commissioner has stated that given the nature of the prayer, the pendency of the Writ Petition, serious allegations against the Petitioner and the contest that was open, he sought legal advice. That legal advice was sought so as to obtain an opinion as to whether this interim direction means the State Government's order has to be ignored and the Standing Committee's Resolution has to be implemented. The Petitioner may understand this to be delaying tactics or lack of bonafides on the part of the Municipal Corporation, we do not attribute this to him for the

simple reason that *prima facie* he understood that in law if the State Government's decision is kept in abeyance but not quashed and set aside, the Writ Petition pending on the file of this Court, this order and direction though interim, does not amount to the Petitioner's reinstatement in the Municipal services and automatically. The affidavit filed in reply to this Contempt Petition, therefore, clearly proceeds on this footing as to how legal advice was obtained, eventually he abides by the same and to contest the proceedings, namely, Writ Petition No.4491 of 2013 which was pending.

15 For the reasons that we have assigned above and finding that the order of this Court was interim in nature, the wording of the prayer was reason enough to entertain a doubt as to whether the reinstatement follows automatically at an interim stage, no case for civil contempt is made out. The Contempt Petition is entirely misconceived. It is dismissed. No costs.

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