

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2613 OF 2018

The District Collector	
Mumbai Suburban District & Anr.	...Petitioners
Versus	
Prakash Govind Tari	...Respondent

Mr. O. M. Kulkarni – AAGP for Petitioners.
Mr. Manoj Patil for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 10 APRIL 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 21st September 2016 made by the MAT in Original Application No. 507 of 2015 instituted by the respondent.

4] The respondent, by instituting OA No. 507 of 2015 had challenged the suspension order dated 1st April 2015. The MAT, by the impugned judgment and order, has set aside this suspension order by holding that Rule 4(2)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (said Rules) was incorrectly invoked by the petitioner – State since, in the present case, the respondent, cannot be said to have been detained in police or judicial custody for a period exceeding 48 hours.

5] Mr. Kulkarni, the learned AAGP for the State - petitioners concedes that invocation of Rule 4(2)(a) of the said Rules may not have been justified, since, the record in the present case, does indicate that the respondent's detention was not for a period exceeding 48 hours. However, he submits that the suspension order dated 1st April 2015 makes specific reference to the GR dated 12th February 2013, which provides that where any case is registered against an employee under the Prevention of Corruption Act, 1998, the State, has to place such an employee under suspension forthwith. He submits that even

in the reply filed by the petitioners – State before the MAT, there was specific reference made to this GR dated 12th February 2013, as being source of power for issuing the suspension order dated 1st April 2015. He submits that the MAT, has not even adverted, much less, considered the impact of GR dated 12th February 2013. For these reasons, he submits that the impugned judgment and order is liable to be set aside or in the alternate, the matter be remanded to the MAT for examination of the suspension order dated 1st April 2015 in the light of the GR dated 12th February 2013.

6] Mr. Patil, the learned counsel for the respondent submits that the suspension order dated 1st April 2015 makes specific reference only to Rule 4(2)(a) of the said Rules. He submits that merely because the GR dated 12th February 2013 is referred to in the title, that by itself, does not indicate exercise of power under the said GR. He submits that since the power was expressly exercised under Rule 4(2)(a) of the said Rules and since, such exercise of power, was found to be *ultra vires*, the MAT, has quite rightly, interfered with the order of suspension dated 1st

April 2015. Mr. Patil therefore submits that there is absolutely no error in the impugned judgment and order so as to warrant any interference.

7] The rival contentions now fall for our determination.

8] There is absolutely no error in the view taken by the MAT that suspension, in the facts and circumstances of the present case, was not competent under Rule 4(2)(a) of the said Rules. This is because, on the basis of the material on record, it cannot be said that the respondent was placed under detention for a period exceeding 48 hours. To that extent therefore, there is no case made out to interfere with the impugned judgment and order.

9] However, the suspension order dated 1st April 2015, does make reference to the GR dated 12th February 2013. Even the reply filed by the petitioners – State before the MAT had referred to the GR dated 12th February 2013 and the further stated that it is this GR which empowered the petitioners – State to suspend the respondent. The MAT, perhaps, relying upon the operative portion of the

suspension order dated 1st April 2015, has neither adverted to and consequently not considered the effect of the GR dated 12th February 2013. It is settled position in law that the non-quotation or even a misquotation of a provision of law does not render the exercise of power void or voidable, provided, the authority which exercises such power, otherwise, has the power to take action which may have been challenged before a court of law or a tribunal.

10] In the case of ***Ram Sunder Ram vs. Union of India & Ors. (2007) 13 SCC 255***, the Hon'ble Supreme Court has held that if an authority has power under the law, then, merely because while exercising that power, the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself, does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

11] In ***Union of India & Anr. vs. Tulsiram Patel (1985) 3 SCC 398***, the Hon'ble Supreme Court has held that it is also well settled that where a source of power exists, the exercise of such power is referable only to that

source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both these provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate the order where the source of such power exists.

12] In this case therefore, the MAT, was required to consider the issue as to whether the suspension order dated 1st April 2015 could have been made by the petitioners under the GR dated 12th February 2013. Since, the GR dated 12th February 2013 has not at all been adverted to, much less, its impact considered, we are of the view that the impugned judgment and order will have to be set aside and the matter remanded to the MAT for fresh adjudication in accordance with law.

13] Accordingly, we set aside the judgment and order and remand OA No. 507 of 2015 to the MAT for fresh adjudication in accordance with law. At the request of the respondent however, we too request the MAT to dispose of OA No. 507 of 2015 as expeditiously as possible and in any case, within a period of six months from the date of production of authenticated copy of this order.

14] The parties are directed to appear before the MAT on 2nd May 2018 at 10.30 a.m. and produce authenticated copy of this order.

15] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)