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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12290 OF 2017

Shri. G. Vishweshwar Rao

... Petitioner

Vs.

State of Maharashtra and Ors.

... Respondents

Mr. A.V. Anturkar, Senior Advocate a/w Mr. Amol Gatne for the Petitioner.

Mr. Y.S. Khochare, AGP for the Respondent Nos.1 and 2.

Mr. Sandeep V. Marne for the Respondent Nos.3 and 4.

CORAM : A.S.OKA AND
SANDEEP K. SHINDE, JJ.

DATE : 14th DECEMBER 2018.

ORAL JUDGMENT (Per A.S.Oka, J.)

1 We had heard the submissions of the learned counsel appearing for the parties on 11th December 2018. With a view to appreciate the submissions made across the Bar, few factual details will have to be noted. The petitioner is an officer working on the establishment of the Navi Mumbai Municipal Corporation (for short “the said Corporation”) which is a Municipal Corporation constituted under the provisions of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act”). A departmental enquiry was initiated against the petitioner by the said Corporation. We may note here that a resolution was passed by the General Body of the said Municipal Corporation on 20th

August 1997 by which the provisions of the Maharashtra Civil Services Rules were made applicable to the employees of the said Municipal Corporation. On 17th December 2016, the enquiry officer submitted a report. On the basis of the said report, a show cause notice was served upon the petitioner calling upon the petitioner to show cause as to why penalty of removal from municipal service which does not disqualify him from future employment as provided in clause (g) of sub-section (2) of section 56 should not be imposed. The petitioner replied to the show cause notice. A docket was prepared at the instance of the Municipal Commissioner proposing the said penalty which was placed before the General Body meeting of the said Municipal Corporation on 17th March 2017. Vide Resolution No.1552, the General Body by a majority rejected the proposal of the Municipal Commissioner of imposing penalty under clause (g) of sub-section (2) of section 56. It appears that the Municipal Commissioner moved the State Government with a proposal to rescind the said Resolution No.1552. By the order dated 20th July 2017, the State Government suspended the said resolution. By the order dated 25th October 2017 in exercise of powers under section 451 of the said Act, the State Government proceeded to rescind the said resolution in larger public interest. On the basis of the said decision of the State Government, on 30th October 2017, an order was made by the Municipal Commissioner of imposing the proposed penalty upon the petitioner. By this petition under Article 226 of the Constitution of India, the challenge is to the order dated 25th October 2017 passed by the State Government and also to the consequential order dated 30th October 2017 passed by the Municipal Commissioner.

2 Before we record the submissions made by the learned counsel appearing for the parties, it is necessary to make a reference to the affidavit of Shri Kiranraj Prataprao Yadav, the Deputy Municipal Commissioner (Administration). In paragraph 8, a clear stand has been taken that the Municipal Commissioner is not empowered to impose a penalty under clause (g) of sub-section (2) of section 56 of the said Act and therefore, the Municipal Commissioner placed the proposal for imposition of penalty under the said provision before the General Body of the said Corporation. Thus, even according to the case of the said Municipal Corporation, the penalty provided in clause (g) of sub-section (2) of section 56 can be imposed by the competent authority which in this case is the Municipal Corporation (the General Body of the Municipal Corporation).

3 The submission of the learned senior counsel appearing for the petitioner is firstly that in the light of the law laid down by the Division Bench of this Court in the case of *Prabhakar Shrirang Jagdale Vs. Kalyan Dombivali Municipal Corporation and Anr.*¹, as the Municipal Corporation is the competent authority within the meaning of section 56, even the disciplinary proceedings could have been initiated only by the Municipal Corporation and not by the Municipal Commissioner. He submitted that in the light of the law laid down by the Division Bench, disciplinary proceedings have been vitiated.

1. 2003 (4) Mh.L.J. 423

4 The learned senior counsel appearing for the petitioner has invited our attention to section 451 of the said Act. He submitted that the only order passed by the State Government is of rescinding the Resolution No.1552 passed by the General Body and there is no further order passed by the State Government directing the Municipal Corporation to grant approval for imposing penalty on the petitioner as proposed. He would, therefore, submit that at highest, even assuming that the order passed by the State Government of rescinding the resolution of the Municipal Corporation is valid, it will have effect of only setting aside the resolution but it will not amount to imposing proposed penalty.

5 The learned counsel appearing for the Municipal Corporation invited our attention to the earlier writ petition filed by the petitioner being Writ Petition No.13332 of 2016. He pointed out that the said petition was filed after service of charge sheet for setting aside the disciplinary proceedings and the charge sheet. He submitted that in the said petition, a contention was raised that the disciplinary enquiry initiated by the Municipal Commissioner on the basis of charge sheet is completely illegal on the ground that as held in the case of Prabhakar Jagdale (supra), initiation of proceedings shall be only by the Municipal Corporation which is the competent authority. He submitted that the said writ petition was withdrawn by the petitioner under the order dated 18th January 2017 which specifically records that after the Division Bench showed inclination not to grant any relief, the petition was unconditionally withdrawn. He also pointed out the subsequent order

dated 12th June 2018 by which the same Division Bench rejected the prayer for clarification of the order dated 18th January 2017. He would, therefore, submit that the first contention is not available to the petitioner.

6 He invited our attention to the provisions of section 451 and in particular sub-section (3). He submitted that there is a power vesting in the State Government not only to rescind a resolution but also to issue a direction to the Municipal Corporation to take a particular action. Inviting our attention to the notings prepared by the State Government officers on the proposal of the Municipal Commissioner for invoking section 451 of the said Act, he submitted that it is specifically recorded therein that all four allegations/charges against the petitioner have been duly established after giving an opportunity of being heard and that the penalty proposed by the Commissioner was proper. He pointed out that it is specifically recorded that such a resolution disapproving the penalty proposed by the Commissioner is contrary to the policy of the State Government of providing transparent administration which is free of corruption. He would, therefore, submit that what was proposed was to approve the proposal of the Municipal Commissioner of imposing penalty and therefore, the approval granted by the Hon'ble the Chief Minister who is the Cabinet Minister of the Department of the Urban Development will have to be read as the exercise of power of directing the Municipal Corporation to approve the proposal submitted by the Municipal Commissioner. He submitted that considering the seriousness of charges against the petitioner which were duly proved and after finding that there is nothing wrong with the disciplinary enquiry, the State Government

came to the aforesaid conclusion. He submitted that, therefore, the Municipal Commissioner has passed the second impugned order which is merely a consequential order imposing punishment.

7 The learned senior counsel appearing for the petitioner relied upon certain decisions including the decisions of the Apex Court in the case of *Sethi Auto Service Station and Anr. Vs. Delhi Development Authority and Ors.*² and the State of Bihar and Ors. Vs. *Kripalu Shankar and Ors.*³ He would urge that notings prepared by the officers of the State on the file are not the orders. He would submit that the ultimate order is the one passed by the Hon'ble the Chief Minister. He submitted that as the notings cannot be read as an order, the submission made by the learned counsel appearing for the Municipal Corporation cannot be accepted.

8 We have carefully considered the submissions. As far as the first submission of the learned senior counsel appearing for the petitioner is concerned, we have perused Writ Petition No.13332 of 2016 filed by the petitioner seeking to quash the disciplinary proceedings and the charge sheet. We find that the contention that the first respondent therein (the Municipal Commissioner) had no authority to issue charge sheet has been specifically raised in ground A of the said petition by contending that the Municipal Commissioner was neither the appointing authority nor the disciplinary authority. The order dated 18th January 2017 passed on the said writ petition reads thus :-

“After the arguments were heard for some time and we are not inclined to grant any relief, leave is sought to withdraw the

2 (2009) 1 SCC 180

3 (1987) 3 SCC 34

Writ Petition. Leave granted. Writ Petition is disposed off, as withdrawn.”

9 As stated earlier, a clarification/ modification was sought of the said order. The said prayer was rejected by order dated 12th June 2018 by the same Division Bench. In view of the specific observation made in the order dated 18th January 2017, we cannot permit the petitioner to raise the first contention. Writ jurisdiction is always discretionary and considering the nature of the order dated 18th January 2017, we propose to exercise our discretion by rejecting the first submission.

10 Now, we come to the second submission. Section 451 of the said Act reads thus :-

“451. Power of State Government to suspend or rescind any resolution or order, etc. of Corporation or other authority in certain cases. - (1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or any other authority or that the doing of any act which is about to be done or is being done by or on behalf of the Corporation or such authority is in contravention of or in excess of the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or any class or body of persons, or is likely to lead to abuse or misuse of or to cause waste of municipal funds against the interests of the public or is likely to be against the financial interests of the Corporation or against larger public interest the State Government may, by order in writing suspend the execution of such resolution or order or prohibit the doing of any such act, for such period or periods as it may specify therein. A copy of such order shall be sent forthwith by the State Government to the Corporation and to the Commissioner or the Transport Manager.

- (2) On receipt of a copy of the order as aforesaid, the Corporation or Commissioner or Transport Manager may, if it or he thinks fit, make a representation to the State Government against the said order.
- (3) The State Government may, after considering any representation received from the Corporation or Commissioner or Transport Manager and where no such representation is received within a period of thirty days, either cancel, modify or confirm the order made by it under sub-section (1) or take such other action in respect of the matter as may in its opinion be just or expedient, having regard to all the circumstances of the case. Where any order made under sub-section (1) is confirmed the State Government may direct that the resolution or order of the Corporation or its authority in respect of which suspension order was made under sub-section (1), shall be deemed to be rescinded.
- (4) Where any order is made by the State Government under sub-section (3), it shall be the duty of every Councillor and the Corporation and any other authority or officer concerned to comply with such order.”

11 Under sub-section (1) of section 451, it is provided that the State Government has power to suspend execution of a resolution passed by the Municipal Corporation. Sub-section (3) confers power on the State to modify or confirm the order made under sub-section (1) of section 451 or take such other action in respect of the matter as may in its opinion be just and expedient having regard to all the circumstances of the case. It is further provided in sub-section (3) that where any order made under sub-section (1) is confirmed, the State Government may direct that the resolution in respect of which suspension order was made under sub-section (1), shall be deemed to

be rescinded.

12 Exhibit – L to the petition is the Government Resolution dated 25th October 2017 issued in the name of the Hon'ble Governor. The decision of the State Government recorded in the said resolution is that the resolution No.1552 has been rescinded in larger public interests as the same is inconsistent with the provisions of the said Act. There is no further direction issued by the State Government or there is no further action taken by the State Government directing the said Municipal Corporation to approve the proposal submitted by the Municipal Commissioner of imposing penalty on the petitioner.

13 We have perused the notings made by firstly the Section Officer who had stated that the resolution dated 17th March 2017 should be suspended which proposal was approved by the Hon'ble the Chief Minister. The second noting is prepared by the Additional Secretary on 11th September 2017 proposing action under sub-section (3) of section 451. It is true that the said noting records that there is nothing wrong with the disciplinary enquiry and the findings of the disciplinary authority and that the Municipal Corporation cannot be permitted to act upon the said resolution. If the notings are read in its entirety, it does appear that there was a proposal not only to rescind the said resolution but to take further action. However, the proposal which was produced before the Chief Minister was containing a noting/endorsement made on 13th September 2017 which provided for grant of permission to rescind the resolution. It is this

endorsement which appears to have been signed by the Hon'ble the Chief Minister. Even further noting prepared on the basis of the order of the Hon'ble the Chief Minister specifically states that he has approved the proposal to rescind the Resolution No.1552.

14 The law regarding efficacy of such notings on the files is well settled. It is held by the Apex Court in the case of *Sethi Auto Service Station and Anr. (supra)* and *the State of Bihar and Ors. Vs. Kripalu Shankar and others (supra)* that the notings are recommendations made by the officers which are placed before the competent authority which is empowered to take a decision. The notings are mere expression of opinion preceding the actual order. In the present case, the order passed by the Hon'ble Chief Minister is merely approving the action of rescinding the resolution. Thus, the only effect of the said order dated 25th October 2017 (Exhibit – L) is that the Resolution No.1552 by which the proposal of the Municipal Commissioner of imposing penalty on the petitioner was not approved stands rescinded. There is no further direction issued to the Municipal Corporation to grant the approval to the proposal of the Municipal Corporation. As a result of the order rescinding the said Resolution, the proposal of the Municipal Commissioner of imposing penalty stands revived. The order dated 30th October 2017 passed by the Municipal Commissioner proceeds on erroneous basis that the State Government has either approved the recommendation of the Commissioner or that the State Government has directed the Municipal Corporation to accept the recommendation of the

Municipal Commissioner. Therefore, the order dated 30th October 2017 passed by the Municipal Commissioner cannot be sustained.

15 The logical consequence of the order dated 25th October 2017 is that the proposal submitted by the Municipal Commissioner to impose penalty on the petitioner is revived and the said proposal will have to be considered by the General Body of the said Corporation. We, therefore, propose to direct that the said proposal shall be kept before the immediately next General Body meeting held after the judgment and order is uploaded. In the light of the order of the State Government dated 25th October 2017, the proposal will have to be reconsidered in accordance with law by the Municipal Corporation (the General Body of the Municipal Corporation). It is true that once the order dated 30th October 2017 is set aside, the petitioner will have to be reinstated. We must note here that there is no prayer made in this petition for grant of back wages. Apart from the fact that there is no prayer made in this petition for grant of back wages, there is no pleading that the petitioner remained unemployed from 30th November 2017. As indicated earlier, we propose to direct the General Body of the Municipal Corporation to immediately consider the proposal of the Municipal Commissioner. If the said proposal is accepted, it is obvious that there will be no question of allowing the petitioner to resume his duty. Only if the said proposal is rejected that the petitioner will have to be reinstated in the employment of the said Municipal Corporation with consequential benefits except the back wages.

16 Accordingly, we dispose of the petition by passing the following order :-

ORDER

- (i) We hereby set aside the order dated 30th October 2017 issued by the Municipal Commissioner (Exhibit – M to the petition);
- (ii) We direct that the proposal submitted by the Municipal Commissioner for imposing penalty on the petitioner as provided in clause (g) of sub-section (2) of section 56 shall be placed for consideration before the immediately next General Body meeting of the said Corporation held after the date on which this judgment and order is uploaded. We make it clear that General Body will have to take a decision on the said proposal of the Municipal Commissioner on one way or the other. If the General Body approves the proposal of the Municipal Commissioner, there will not be any question of reinstatement of the petitioner in service;
- (iii) If the General Body of the Municipal Corporation by a resolution disapproves the proposal of the Municipal Commissioner of imposing penalty as aforesaid, the said Municipal Corporation shall immediately reinstate the petitioner in the employment with all consequential benefits except back wages subject to the directions contained in the said Resolution;

- (iv) We also make it clear that if no decision is taken by the General Body of the Municipal Corporation on the proposal of the Municipal Commissioner, the State Government will be free to exercise its powers under the said Act for issuing necessary directions to the Municipal Corporation;
- (v) Rule is partly made absolute on above terms with no order as to costs.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)