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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 349 OF 2018**

Shreedhar S. Ghodekar
and Others

..Petitioners

Versus

Municipal Corporation of
Greater Mumbai and Others

..Respondents

Mr. Atul Damle, Senior Counsel alongwith Mr. Subhodh Joshi I/by
Satyadev R. Pandey for the Petitioners.

Mr. Anil Sakhare, Senior Counsel alongwith Mr. R.R. Shetty, Ms.
Aruna Savla, Ms. Vidya Gharpure, Mr. S.M. Modle, Mr. Sagar Patil,
Ms. Pooja Yadav for Respondent Nos. 1 to 3.

Mr. Ajoy Mehta, Municipal Commissioner, MCGM, present.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ.**

DATE: 8th March, 2019

P.C.:-

1] In pursuance to the order passed by this Court dated 5/3/2019,
Mr. Ajoy Mehta, Municipal Commissioner, MCGM is personally
present in Court.

2] At the outset, we may state that this Court derives no pleasure
in directing Senior Officers of the State or Instrumentalities of the
State to remain present in Court. This Court is equally aware that

their presence requires elsewhere, so that they can discharge their duties to the citizens. Only as a last resort when the Court fails to reason out with the authorities or counsel appearing for them, the Court has no other alternative but to summon the higher Officers to remain present in Court.

3] The present case is not a case, which could have been defended. The facts clearly show that in the earlier Writ Petition filed by the present Petitioners being Writ Petition No. 2746 of 2015, the Court had passed an interim order initially staying the recruitment of all the Junior Engineers. However, subsequently, on the Notice of Motion being filed by the Corporation, the same was modified and liberty was granted to the Corporation to fill up rest of the posts of Junior Engineers except 25 posts, which the Petitioners were claiming. During pendency of the said Petition, a Note was moved in the Corporation and the Additional Municipal Commissioner (Western Suburbs) endorsed the Note that the Petitioners would be granted promotions to the posts of Junior Engineers, who are otherwise eligible in spite of they not possessing AICTE recognized diploma,

subject to they withdrawing the said Petition. On the basis of the said approval by the Additional Municipal Commissioner, the Administrative Officer (II) City Engineer issued a Circular calling upon the Petitioners to withdraw the said Petition, if they were interested in getting the promotions.

4] It may not be out of place to mention here that an employee who is not on equal bargaining position with the strong employer, would readily accept such proposal, since he would be more happy in getting the promotion than fighting in Court with his top bosses. Relying on the said promise, Petitioners withdrew the said Writ Petition. After withdrawal of the Petition, Corporation changed its stand and held that Petitioners were not entitled to be promoted as Junior Engineers. In the affidavit in reply, the part of which, we have reproduced in our order dated 5/3/2019, it has been admitted that the Corporation had also given promotions to 15 similarly circumstanced persons. However, the stand taken was that merely because the Corporation had committed illegality in their case, it was not necessary to continue the same illegality in respect of the

Petitioners also.

5] In our order dated 5/3/2019, we had observed that, no doubt, an illegality committed in the case of some persons does not create a right in favour of others. However, we had observed that, in the present case, the principle involved was that of promissory estoppel. We had clearly observed that when a party gives a promise to other party and makes other party changes its position to its detriment, then the party giving promise cannot resile from its promise. We may note that though on 25/02/2019, we had amply made it clear that the said stand of the Corporation was not sustainable in law and not justified and were on the verge of passing certain directions against the Corporation, the learned Counsel appearing on behalf of the Corporation took time, so as to take instructions from the authorities, as to whether the authorities would like to mend their ways. We had therefore adjourned the matter with the hope, that better counsel would prevail upon the Corporation and the Corporation would decide to correct the error committed by it. However, when the matter was listed on 15/3/2019, the learned Counsel appearing on

behalf of the Corporation vehemently supported its stand and tried to justify the same. Faced with this situation, we found that the conduct of the Corporation was nothing else but an interference with the administration of justice and thereby committing contempt of Court. We had, therefore, directed the presence of the Commissioner of the Corporation in this Court.

6] We had clearly observed that, had the Corporation not given promise to the Petitioners and Petitioners not withdrawn their Petition, the Court would have very well decided the lis on merits and as such, the conduct of the Corporation amounted to nothing else but interference with the administration of justice by preventing the Court from deciding the lis on merit and thereby committing contempt of Court.

7] Today Mr. Ajoy Mehta, Commissioner of the Corporation is present in Court. Mr. Sakhare, learned Senior Counsel, appearing on behalf of the Corporation has brought to our notice the endorsement by the learned Commissioner in the concerned file. He has written in

the Note that immediate steps would be taken to correct the mistake. Mr. Sakhare further assures that after complying with the necessary formalities, the Petitioners, in effect, would take their charge as Junior Engineers from 01/04/2019.

8] We may further note that Division Bench of this Court to which one of us (Gavai, J.) was a Member, was required to summon the presence of the learned Commissioner on earlier occasion while hearing the Original Side Writ Petition (L) No.885 of 2017 vide order dated 1/9/2017, since we had noticed that the Court was not getting proper assistance from the Counsels of the Corporation and thereby increasing unnecessary pendency. Mr Ajoy Mehta, who was also the then Commissioner of the Corporation, had appeared in the Court and assured the Court that necessary steps would be taken to streamline the Legal Department of the Corporation by appointing Panel Counsels etc. However, during the period of last year i.e. from the date of presence of the Commissioner in this Court till today, there is not much of a difference in the functioning of Legal Department of the Corporation atleast in this Court. At times, we see

that when orders are unjustifiable, still the attempt is made to justify the same. For instance, in the present case, had the facts been brought to the notice of the learned Commissioner between 25/02/2019 till 05/03/2019, we are sure that the Commissioner would not have given us the occasion to pass the order that we have passed on 05/03/2019. However, it appears that neither the Counsels for the Corporation nor the Senior Officers of the Corporation for the reasons best known to them, found it appropriate to appraise the Commissioner of the factual position and obtain the necessary orders. Mr. Ajoy Mehta, the learned Commissioner, assures us that he will hold a Seminar of all Senior Officers and take necessary steps to ensure that similar instances are avoided hereinafter.

9] Mr. Ajoy Mehta, the learned Commissioner of MCGM, however, submitted that after the orders were passed by this Court on 8/09/2017 in the Original Side Writ Petition No.301 of 2015 alongwith companion Writ Petitions, the functioning of the Legal Department of the Corporation has, in fact, improved and not only the

pendency of the litigation has come down but the financial burden on the exchequer of the Corporation has also substantially reduced. If it is so, we would appreciate the move by the learned Commissioner, which has resulted in reduction in pendency of litigation and also the burden on the exchequer of the Corporation.

10] Insofar as the present matter is concerned, since there is a specific assurance by Mr. Sakhare, the learned Senior Counsel for the Corporation in the presence of the learned Commissioner that the Petitioners would be, in fact, working as Junior Engineers with effect from 01/04/2019 and would be given deemed date as per the orders passed by the Additional Municipal Commissioner (Western Suburbs) on the basis of which the Petitioners had withdrawn their Writ Petition No. 2746 of 2015, nothing survives for adjudication in the present Petition. Notice issued to the Commissioner of MCGM stands discharged. Petition is disposed of by taking on record the aforesaid statement.

(N. J. JAMADAR, J.)

(B. R. GAVAI, J.)