

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2602 OF 2021

PRAKASH KAMLAKAR PATHAK
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE MINISTER AND
OTHERS

Mr.A.N.Irpatgire, Advocate for the petitioner.
Mrs.M.A.Deshpande, Advocate for respondent Nos. 1 and 2.
Mr.V.D.Hon, Sr.Counsel i/b Mr.A.V.Hon, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE AND
S.G. DIGE, JJ.)

DATE : APRIL 28, 2022

PER COURT :

1. By this petition, the petitioner / a Sitting Corporator with the Latur City Municipal Corporation, has put forth prayer clauses B, C and D as under :-

"B. The respondent No.2 may kindly be directed to take appropriate action on the inquiry report dated 26.12.2019 submitted by the five members committee and against the erring concerned officers within a period of one month from the date of receipt of order, by issuing writ of mandamus of any other appropriate writ, in the nature of writ of mandamus.

C. The respondent No.1 may kindly be directed to take

disciplinary action for dereliction of duties by respondent No.2 by issuing writ of mandamus or any other appropriate writ in the nature of writ of mandamus.

D. Pending hearing and final disposal of this writ petition the respondents may kindly be directed to initiate disciplinary action against the concerned erring officer of respondent No.3 in pursuance of the findings recorded in the inquiry report dated 26.12.2019 and further be directed to submit report to the registry of this Court."

2. We have considered the extensive submissions of the learned Advocate for the petitioner, the learned AGP on behalf of respondent Nos. 1 and 2 and the learned Senior Advocate alongwith learned Advocate Mr.A.V.Hon on behalf of respondent No.3 / Municipal Corporation. With their assistance, we have gone through the record made available before us.

3. Considering the material before us and the pleadings of the parties, that we are passing an order specifically interpreting the scope and ambit of Section 451 of the Maharashtra Municipal Corporations Act.

4. The petitioner herein had filed an application u/s 451 on 27.09.2017, addressed to the Hon'ble Minister of Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai, contending that the order / agreement dated 08.09.2017 issued by the Commissioner of the Corporation on 14.09.2017 bearing No.8601/2017-2018, in favour of the President / Jan Aadhar Sevabhavi Sanstha, Latur be suspended or rescinded. It is an extensive application running into 21 pages. As no action was being initiated on the said application, the petitioner approached this Court in WP No.13050/2018. By an order dated 16.01.2019, this petition was disposed off directing the Hon'ble Minister to decide the complaint / application of the petitioner dated 27.09.2017 in accordance with Law and the policy applicable.

5. There is no dispute between the learned Advocates that Section 451 of the Maharashtra Municipal Corporations Act is applicable to the case in hands. For ready reference, Section 451 is reproduced as under :-

"(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 of 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 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 interest of the public 4[or is likely to be against the financial interest 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 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 a expedient, having regard to all the circumstance 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 subsection (3), it shall be the duty of every Councillor and the

Corporation and any other authority or officer concerned to comply with such order."

6. It is thus obvious that the State Government can form an opinion on the basis of the material before it 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 is in excess of the powers conferred by or under this Act or any other law for the time being force, or is likely to cause breach of peace or 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 the municipal funds.

7. The petitioner, being a Corporator, who has come forward, would not fall within the class of persons or body of persons. He would surely fall within 'Public'. He, thus, raised an issue about the purported order/contract in favour of an entity and brought it to the notice of the Hon'ble Minister.

8. What intrigues us is that a meeting (बैठक) was arranged in the

chamber of the Hon'ble Minister for State (Urban Development) on 09.07.2019 at 2.00 p.m. The Assistant Commissioner, Latur Municipal Corporation, the Desk Officer, Urban Development Department, Mantralaya alongwith the petitioner were present in the said meeting. A joint decision was taken to refer the matter to the Divisional Commissioner, Aurangabad since it was projected before the Hon'ble Minister that the Authority, which is to take action on the said order of the Commissioner, is the Divisional Commissioner, Aurangabad Division Aurangabad. At this stage, the State has faltered. The Divisional Commissioner, Aurangabad was directed to go through the entire record and form an opinion. This is contrary to Section 451(1) of CPC. The State Government is to form an opinion, which is an interim opinion on the basis of which, the resolution / order at issue can be suspended or the Corporation can be prohibited from doing any such act for a particular period, which would amount to staying the execution. Such an order has to be transmitted by the State Government "forthwith" to the Corporation and to the Commissioner or the Transport Manager.

9. Sub Section (2) of Section 451 enables the Corporation or the

Commissioner to make a representation to the State Government against the order, within 30 days of the receipt of such order passed by the State Government. Sub Section (3) prescribes that, upon receiving a representation, the State Government can either cancel or modify or confirm it's order made under sub section (1) and take such other action in respect of the matter as in it's opinion would be just and expedient. If the order passed under Sub Section (1) is confirmed by the State Government, it may direct that the resolution or order of the Corporation shall be deemed to be rescinded.

10. What has actually happened is that the matter was referred to the Divisional Commissioner, Aurangabad, which is not permitted by Section 451. The contesting parties before us are not aware of any such provision, by which the State Government could bypass the prescribed process and send the matter to the Divisional Commissioner. The Divisional Commissioner then formed a 5 members committee and directed them to enquire into the matter and submit a report. No provision under any statute has been pointed out to us by any of the Learned Advocates, which would sanction the formation of such a committee.

11. It is contended by the learned Advocate for the petitioner that when the conduct of the Commissioner himself was being enquired into, the State Government could not have called for any report from the Commissioner. Therefore, the State Government may have thought of seeking assistance of the Divisional Commissioner. What we find from the minutes of the meeting dated 09.07.2019 is that the Desk Officer and the Hon'ble Minister formed a view that the Office, which was empowered to take action, was the Divisional Commissioner, Aurangabad. This is an erroneous view. There is no reason for the State to call for a report from the same Corporation. It has to form a prima facie opinion u/s. 451(1) and it has the liberty to call for the file from the Corporation for studying the case as the State cannot solely rely upon the complaint of the petitioner.

12. If the conduct of the Commissioner himself was to be enquired into, the State Government had no reason to call for any report from the Divisional Commissioner. The file of the matter at issue, could have been called for, for perusal and based on the same, the prima facie view could have been formed u/s 451(1).

13. The issue before us is that, firstly, there is no provision under the Municipal Corporations Act that in such circumstances, the matter can be referred to the Divisional Commissioner. Secondly, there is no provision for the Divisional Commissioner to form a 5 members committee so as to tender a report. The petitioner seeks implementation of such report which is submitted by such Committee, which has no legal foundation. In the absence of a legal sanction, the report is non-est.

14. In view of the above, the request of the petitioner that the report tendered by this 5 members committee be acted upon, cannot be entertained as in our view this Committee could not have been constituted under Law. If the committee has not been constituted in accordance with Law, further action on the basis of the Committee's report would be impermissible. The report, therefore, is insignificant and would have no legal sanctity. We are of the view that the State Minister should have called for the file from the Municipal Corporation for being apprised of what has actually transpired, which would emerge from the record and thereafter form a view u/s 451(1). We, therefore, discard the said report of the Committee.

15. As such, this petition is disposed off. Needless to state, the State, through the Hon'ble Minister, Urban Development Department shall consider the application of the petitioner u/s 451(1) by following a procedure as is acceptable under Law and take a decision u/s 451(1), on or before 30.06.2022. Thereafter, the State would follow the procedure as is prescribed under sub sections 2 and 3 u/s 451.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)