
(1985) 07 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 1 of 1985

Ajit Jilhewar

APPELLANT

Vs

Nanded Municipal Council

RESPONDENT

Date of Decision : 12-07-1985

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 75

Citation : (1986) 1 BomCR 520

Hon'ble Judges : R.A. Jahagirdar, J;G.M. Khandekar, J

Bench : Division Bench

Advocate : R.R. Jethalia, for the Appellant; A.G. Mukhedkar, for the Respondent

Final Decision : Allowed

Judgement

R.A. Jahagirdar, J.—The petitioner is a Municipal Engineer employed in the Nanded Municipal Council. Though in the petition and in the arguments before us for some time it was sought to be contended that the petitioner was appointed by the State Government and, therefore, is an employee of the State Government. On a proper interpretation of the relevant sections of the Maharashtra Municipalities Act of 1965 it is impossible to hold that the petitioner is a State Government employee. On the other hand, pursuant to a resolution passed on 18th of July, 1983 the petitioner was confirmed in the post of the Nanded City Municipal Engineer. This must, therefore, be taken to be the basis of the petitioner's position in the Nanded Municipal Council.

2. On 11th of November, 1984 the Administrator of the Nanded Municipal Council passed an order suspending the petitioner. He passed this order, to quote him, " in exercise of the powers vested in him by section 75-A(3) of the Maharashtra Municipalities Act, 1965 read with Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979." In the preamble to this order it has been mentioned by the Administrator that the Police Inspector of the Anti-Corruption Bureau of Nanded has brought to his notice that the petitioner has been trapped on 7th of November, 1984 while accepting a bribe of Rs. 10,000/- from a

contractor. The correctness or otherwise of the allegations of corruption is not the subject-matter of scrutiny by us at this stage. The petitioner has approached this Court under Article 226 of the Constitution for challenging the aforesaid order of suspension on the ground that the said order is without authority of law. If the Administrator has relied upon section 75-A(3) of the Maharashtra Municipalities Act for suspending the petitioner and if it can be demonstrated that the aforesaid provision does not invest the Administrator with power to suspend a Municipal employee, such as the petitioner, then obviously the order of suspension must be necessarily set aside. This is the main contention of Mr. Jethalia, appearing in support of this petition.

3. We must now, therefore, necessarily turn to the provisions contained in section 75-A and in particular sub-section (3) of the said section 75-A. The marginal note of section 75-A refers to the constitution of Maharashtra Municipal Services and provisions relating thereto. Sub-section (1) of section 75-A provides that if the State Government considers it necessary or expedient to bring about more efficient service of the officers of the Council, with uniform terms and conditions, then the State Government may constitute services of various classes of Municipal servants mentioned in sub-section (1) of section 75-A. The Municipal Engineer is one category of the Municipal servants in respect of which a Municipal service could be constituted under the said provision. Sub-section (3) of section 75-A says that all rules, regulations or orders as amended from time to time and for the time being in force in the State and applicable to officers in the relevant class of service of the State Government shall continue to apply to officers appointed to, or absorbed, in any such service, which necessarily means any service constituted under the provisions of section 75-A(1) of the Act. The admitted position before us is that the State Government has not constituted Municipal Engineer's Services, whereas it has constituted such a service for the Chief Officers of the Municipal Councils. This has been admitted by Mr. Mukhedkar, appearing for the Municipal Council. If this is so, we do not see how the Administrator could suspend the petitioner in the exercise of the power purportedly vested in him u/s 75-A(3) of the Act. If section 75-A(3) of the Act is not applicable at all to the service conditions of the petitioner, then obviously by virtue of the said provision the Maharashtra Civil Services (Discipline and Appeal) Rules of 1979 will also not apply.

4. Mr. Mukhedkar rightly points out that despite the wrong mention of the source of power by the Administrator, it is possible to sustain the order of suspension made in respect of the petitioner by reference to the correct legal provision. In this connection, he invited our attention to the provisions contained in section 79(2) of the Act. Section 79 provides for the different types of punishments that can be awarded to the Municipal officers and servants. Sub-section (2) of section 79 says, any of the penalties mentioned in sub-section (1) may be imposed on any officer or servant of the Council by the authority competent to make the appointment of the officer or servant of the Council by the Authority Competent to make the appointment of the officer or servant. It has, however, been

provided that the suspension of an officer or a servant pending inquiry into the allegations against such officer or servant shall not be deemed to be a penalty and shall be ordered only by the authority competent to make appointment to the post held by such officer or servant. It is this proviso which has been relied upon by Mr. Mukhedkar for contending that the Administrator, who is the authority competent to make appointment to the post held by the petitioner, can suspend the petitioner pending inquiry into the allegations against the petitioner. We are doubtful whether this proviso itself can legitimately be said to give power to the Administrator for suspending an employee. What it says is that if a suspension pending inquiry is ordered, then that suspension shall not be treated as a penalty. The power to suspend, however, has got to be found in some other provision, which however, has not been brought to our notice by Mr. Mukhedkar. In *The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal*, , the Supreme Court approvingly cited the following to be found in *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*,

"The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some Statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension....."

It has not been brought to our notice that the power of suspension is to be found in any rule or in any other statutory provision.

5. Even if we accept the argument of Mr. Mukhedkar that the power to suspend is to be found in the proviso mentioned above, then that power can be exercised against an officer or servant only pending inquiry into the allegations against such officer or servant. It has not been shown to us that any inquiry is pending or is contemplated against the petitioner by the Municipality. The enquiry which is mentioned in the said proviso must necessarily be an inquiry conducted by the master against the servant and not by some other person against the servant. In the instant case, the Administrator has based his decision to suspend the petitioner on the ground that the Police Inspector of the Anti-Corruption Bureau has informed him that the petitioner is involved in a bribery case. We do not see how this information can be the foundation of an order of suspension. It is conceivable that a statute or a rule or a bye-law governing the conditions of the service of the Municipal servants may provide that whenever there is a criminal case pending against a Municipal servant, that servant may be suspended. But it

is not shown to us that such a provision exists in the case of the Nanded Municipal Council. We are, therefore, satisfied that the order of suspension is not shown to be based upon any legal provision governing the conditions of service of the petitioner.

6. Before parting with this case, we may also make a brief reference to section 75 of the Act. It is provided in sub-section (2) of this section that a Municipal Council may, with the sanction of the Director, and if so required by the State Government, shall create all or any of the posts which include the post of a Municipal Engineer. This is the post held by the petitioner. Sub-section (3) is in the following terms:

"Subject to the provisions of section 75-A, the qualifications, pay, allowances and other conditions of service and the method of recruitment of the officers specified in sub-sections (1) and (2) shall be regulated by rules made by the State Government in this behalf."

The words "Subject to the provisions of section 75-A" will apply when a Municipal service of the Municipal Engineer is constituted. This has not been, in fact, done. Therefore, the qualifications, pay, allowances and other conditions of service for the class of Municipal Engineers are to be regulated by the rules made by the State Government in this behalf. We have made repeated efforts to elicit from Mr. Mukhedkar as to whether such rules have been made by the State Government in this behalf. He has frankly told us that no such rules have been made by the State Government. If this is so, one cannot escape the conclusion that the order of suspension passed against the petitioner is without the authority of law.

7. The petition must, therefore, be allowed. The order dated 11th of November, 1984 passed by the Administrator of the Nanded Municipal Council suspending the petitioner is set aside. In view of somewhat nebulous legal position, which we have noticed, there will be no order as to costs.