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**(1984) 10 BOM CK 0022**  
**In the Bombay High Court**  
**Case No : Second Appeal No. 168 of 1982**

Bajirao Tukaram Manav

APPELLANT

Vs

Administrative Officer and Another

RESPONDENT

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**Date of Decision :** 30-10-1984

**Acts Referred:**

Bombay Primary Education Act, 1947 — Section 62  
Bombay Provincial Municipal Corporations Act, 1949 — Section 4, 487, 5

**Citation :** (1985) 1 BomCR 587

**Hon'ble Judges :** S.J. Deshpande, J

**Bench :** Single Bench

**Advocate :** B.P. Apte, for the Appellant; A.C. Agarwal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.J. Deshpande, J.—The appellant was the original plaintiff in Regular Civil Suit No. 284 of 1969 instituted by him in the Court of Civil Judge, (Senior Division), Pune. Respondents were the original defendants. Respondent No. 1 is described as "Administrative Officer (Education Officer) Municipal School Board, Pune Municipal Corporation Pune", and respondent No. 2 has been described as "The Pune Municipal Corporation by its Commissioner, Pune Municipal Corporation, Pune".

2. The appellant-plaintiff was a trained primary teacher selected by the Competent Authorities. He was in the service of the Pune Municipal School Board. It was alleged by the plaintiff in his plaint that on the basis of the reports made by respondent No. 1 an inquiry held against him on certain complaints which terminated in his dismissal order, was vitiated for want of following proper procedure and following rules of Bombay Civil Services Rules. Plaintiff was dismissed from the service by a letter dated 11/12 September, 1968 informing him that from 16th September, 1968 his services stand terminated. After giving notice u/s 80 of the Code of Civil Procedure, the plaintiff has challenged this dismissal order in a suit and prayed for declaration that order of his dismissal

from service is illegal, wrongful and it is not binding on him.

3. Both the defendants filed their written statement denying that the suit is not maintainable in law as defendant No. 1 is not sued as a proper party to suit and it was also contended that defendant No. 2 who is Municipal Corporation is not liable to be sued at all for want of a proper notice. It was further contended in the defence that there is no proper person sued in due capacity to answer the claim. The plea that was taken in the defence was that a notice u/s 62 of the Bombay Primary Education Act, 1947 was also not given by the plaintiff before filing of the suit. The plaintiff has only given notice u/s 80 of the CPC and u/s 487 of the Bombay Provincial Municipal Corporation Act, 1949. However, these notices are irrelevant, according to the defendants and, therefore, the suit of the plaintiff is liable to be dismissed for want of proper notice. The defendants have stated that the departmental enquiry was properly conducted and the plaintiff is not entitled to get any relief and on this count the plaintiff's suit is liable to be dismissed.

4. The trial Court passed a decree in favour of the plaintiff inter alia on the finding that the enquiry was vitiated by not following proper procedure. It also held that the notice given to the first defendant-Administrative Officer and notice given to the second defendant-Municipal Corporation although served on the Commissioner are the valid notices and it ultimately found that the order of dismissal of the plaintiff is illegal and not binding on him. The trial Court, therefore, granted declaration as prayed by the plaintiff. The trial Court also granted a declaration that the plaintiff continues to be in service of defendant No. 1 and also made a decree for costs. This decree was passed on December 12, 1970 by the Civil Judge, (Senior Division, Pune).

5. The defendants-respondents filed an appeal against the said decree before the District Court, Pune and challenged the said decree in Civil Appeal No. 235 of 1971. This appeal was heard by the learned Extra Assistant Judge, Pune, who reversed the decree of the trial Court allowing the appeal of the defendants. The learned Appellate Judge confirmed the findings made in regard to the merits of the case that the enquiry was not properly conducted and proper procedure was not followed and also the factual merits of the case were not challenged in the appeal at all. The learned Judge on facts found that the decree as passed by the trial Court deserves to be confirmed on the facts as stated in his judgment in para 9. However, the learned Appellate Judge disagreed with the view taken by the learned trial Judge in regard to the point of notices served on the defendants and he held that the notice through served on the Municipal Corporation through the Commissioner, which is at Ex. 24, is not a proper notice to the Corporation at all and the suit is liable to be dismissed on that point. He also held that defendant No. 1 could not be sued merely by designation and the notice to the Municipal Commissioner is not a notice to the Municipal Corporation and he is not a proper party sued as such liable to answer the claim. In the result, the suit as framed is held not maintainable for want of notices and was dismissed end the

judgment and decree of the trial Court was reversed. This judgment was delivered by the learned Appellate Judge on March 1, 1980. The plaintiff has brought this second appeal against the said judgment and the only point, which was urged by the learned Counsel for the plaintiff is in regard to the validity of the notice to two respondents and the propriety of defendant No. 1 to be a proper party defendant to be sued in that capacity.

6. This being a second appeal governed by section 100 of the Code of Civil Procedure, the substantial point for consideration before us is as follows : (1) Whether defendant No. 1 sued as Administrative Officer is a competent party defendant to suit in that capacity or not ? The learned Counsel for the appellant-plaintiff contended that under provisions of the Bombay Provincial Municipal Corporations Act, 1949, the plaintiff is an employee of the Corporation i.e. defendant No. 2. This aspect of the matter whether the appellant-plaintiff is an employee or appointed by the School Board was not much in dispute before me. I proceed on the assumption and on the basis that the appellant is an employee either of defendant No. 2. Corporation or he is appointed by defendant No. 1 in the service of School Board which is governed by the Primary Education Act, 1947. It is not necessary for me to go into further investigation about the nature of the service held by the plaintiff-appellant with respondents.

7. The learned Counsel appearing for the plaintiff-appellant herein strongly contended before me that the view taken by the Appellate Court that the notice given by the plaintiff to the defendants before filing of the suit is bad is not correct and reliance placed by the Appellate Court on the judgment of this Court reported in *Nathubhai Dhulaji and Others Vs. The Municipal Corporation, Bombay and Others*, is also erroneous.

8. If the judgment *Nathubhai Dhulaji and Others Vs. The Municipal Corporation, Bombay and Others*, is a Division Bench judgment of this Court it is binding on me. This judgment clearly lays down that the notice given to the Commissioner is not a notice given to the Corporation at all. The provisions at present of section 487 of the Bombay Provincial Municipal Corporations Act, 1949 are identical to the provisions of section 527 (old) of the Bombay Municipal Corporation Act of 1888, which deal with the notices to be given and in that case the question was answered by the Division Bench of this Court that the notice given to an officer or servant of the Corporation is not valid notice to the Corporation and this Court came to the conclusion that the suit of the plaintiff was not maintainable as the notice given to the Municipal Commissioner u/s 527 of the old Municipal Corporation Act was not sufficient compliance with the provisions to the said section. The learned Judges of the Division Bench of this Court had relied on the decision of the Privy Council reported in AIR 1927 176 (Privy Council) The judgment was also relied on by the learned Appellate Judge in support of his conclusion that the notice given to the Commissioner in this case was not a proper notice and cannot be construed to be the notice to the Corporation.

9. The learned Counsel appearing for the plaintiff-appellant pointed out that this

judgment in Nathubhai Dhulaji and Others Vs. The Municipal Corporation, Bombay and Others, cannot be said to be the binding precedent and required three considerations in view of the observations made in the subsequent judgment of the Division Bench of this Court. This judgment is reported in Mrs. Khairunnise v. The Municipal Corporation, Bombay, 67 Bom.L.R. 903. The learned Counsel appearing for the appellant relied on those observation made by this Court at page 908 in the above quoted case that : "With respect, it would appear that Nathubhai case may require reconsideration". Relying on this observation, the learned Counsel appearing for the appellant contended that the judgment relied on by the learned Appellate Judge in not binding authority.

10. Before going into the merits of the contention advanced by the learned Counsel for the appellant, I propose to dispose of this point in regard to the binding character of the judgment of this Court reported in Bhagchand v. Secretary of State, (supra). It is true that the observation of this Court as quoted above in 67 Bom.L.R. 903 is very clear but then it requires to be noticed that this observation is obiter not by mere implication but by the expressed observation of the learned Judges themselves. Kindly see at page 907 of the judgment in 67 Bom L.R. 903 wherein the learned Judges have said "In view of what we have said above, it is not really necessary to consider the other contentions raised on behalf of the appellants". The learned Judges also referred some Division Bench judgments in their judgment, which the learned Counsel for the appellant had pointed out. There the question which was answered in favour of the appellant related to the maintainability of an application for compensation filed before the Motor Accidents Claims Tribunal u/s 110 of the Motor Vehicles Act. As no notice was given by the appellant u/s 527 of the Bombay Municipal Corporation Act of 1888 to the Corporation. This application u/s 110 of the M.V. Act as contended by the appellant in that case was not a suit and it is in that connection that the notice u/s 527 of the Bombay Municipal Corporation Act was not given. Rejecting this contention of the appellant, the application was held incompetent by the Tribunal. The High Court held in that case that the application for compensation is not a suit at all u/s 527 of the Bombay Municipal Corporation Act and, therefore, there was no impediment in the appellant-applicant's way in proceeding with the same. It is against this background that the learned Judges further had an occasion to interpret the word "suit" and to consider the provisions of section 527 of the Bombay Municipal Corporation Act and after having said that it is not necessary to consider other contentions raised before them, the learned Judges have made the observations that "With respect it would appear that Nathubhai's case may require reconsideration", which according to me are obiter and they are not at all binding. Therefore, the decision Nathubhai Dhulaji and Others Vs. The Municipal Corporation, Bombay and Others, is still binding precedent on the Single Judge of this Court.

11. It is also well settled that no case is an authority for any proposition which may even occur in a particular case, because every such judgment containing such expression of opinions which are found therein has to be read as being

applicable only to the particular facts of a particular case. Kindly see (1940) 8 ITR 635 (Privy Council) wherein it is observed as follows :

"Every judgement must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found."

In the said case, a reliance was placed on the well known case reported in *Quinu v. Leatham*, (1901) A.C. 495 on both the grounds that the observations are obiter and even if such expressions are found in any judgment, the generality of the expression being qualified by the particular facts of the case cannot constitute a binding precedent for the Court. In my opinion, therefore, the contention raised by the learned Counsel for the appellant in this case that the binding effect of the judgment *Nathubhai Dhulaji and Others Vs. The Municipal Corporation, Bombay and Others*, is taken away by the observations of the subsequent judgment of the Division Bench in 67 Bom.L.R. 203 is not correct and is rejected.

12. On merits, the contention which was advanced by the learned Counsel for appellant was that the Municipal Commissioner who is an authority under the Act is vested with the powers to defend the suit. The learned Counsel for the appellant invited my attention to the provisions of section 68 of the Bombay Provincial Municipal Corporations Act, 1949, which says as under :

"68(1) Any powers, duties and functions conferred or imposed upon or vested in the Corporation by any other law for the time being in force shall, subject to the provisions of such law and to such restrictions, limitations and conditions as the Corporation may impose, be exercised, performed or discharged by the Commissioner."

As the Commissioner is an authority who is empowered under the other Acts, in this case it said that he was discharging the functions, exercising the powers and performing the duties within the meaning of the provisions of the Bombay Primary Education Act, 1947, which is the other law as provided by section 68 of the Bombay Provincial Municipal Corporation Act, 1949. Then a reference also was made by the learned Counsel for the appellant specifically to the provisions of section 481 sub-section (1) Clause (g) of the Bombay Provincial Municipal Corporations Act, which says as follows :

"481(1) The Commissioner may---

(a) ... .. to (f) ... ..

(g) defend any suit or other legal proceedings brought against the Corporation or against the Commissioner or a Municipal Officer or servant in respect of any thing done or omitted to be done by them, respectively, in their official capacity."

The other clauses or sub-sections are not relevant for the purpose of this judgment.

13. Relying on these provisions, the learned Counsel for the appellant, contended that the notice given to the Commissioner is quite good and it cannot be said to be the notice given to the Corporation. He also elaborated in arguments by pointing out that the purpose of the notice under the Act is only to inform the public authorities and corporate of the intended legal proceedings and suit which is to be filed by a particular plaintiff. The learned Counsel for the appellant strongly relied on, in this connection, the observation of the Chief Justice Beaumont in this case reported in *Chandulal Vadllal v. Government of the Provinces of Bombay* 45 Bom.L.R. 197, wherein a suit was filed by the plaintiff challenging the illegal assessment made by the Collector and the notice was served u/s 80 of the CPC and the observations of this Court on which specific reliance was placed by the learned Counsel for the appellant were as follows :

".....One must construe the section with some regard to common sense, and to the object with which it appear to have been passed. That object, as has been pointed out in a good many cases, is to give to the public officer concerned notice of the claim which is going to be made against him, and to give him reasonable time in which to consider his reactions. In construing the section one must remember that suit cannot be brought for two months after the date of the notice."

14. It is true that these observations were made by this Court in the above case but in my opinion these observations do not advance the case of the appellant at all it must be stated that these observations are of general character and they were made in a case where it was found by the Court that the notice had strictly complied with the requirements of section 80 of the CPC as the learned Judges have observed at page 200 in further paragraph as under :

"But in this case it is not really necessary to go as far as that because, in my opinion, the notice complied strictly with the requirements of section 80. The suit in respect of which a notice is to be served is a suit against a public officer in respect of any act purporting to be done by such public officer in his official capacity."

In view of these observations, I think that the Court was not called upon to consider the true merit of the section. I may also hesitantly this that the learned Judges might have been oblivious of the act of the observation of the Privy Council in regard to the statutory provisions which find place in section 80 of the Code of Civil Procedure. These observations made by the Privy Council in the case of *Bhagchand v. Secretary of State* (supra) wherein the Privy Council said that "section 80 is express, explicit and mandatory, and it admits of no implications or expectations". It requires also to be noticed that issue of notice to a competent authority or officer mentioned in the section is quite distinct from the construction of a particular notice containing reference to certain officer

discharging his duty under certain provisions of the Act. Where the challenge is purely based on the letter of section and the statute is very clear as in this section 487 of the Bombay Provincial Municipal Corporation Act, 1949 is quite clear no aid can be sought on the basis of arguments going to the objects behind the Act or the purpose for which the provisions are made.

15. A bare glance at section 487 of the Bombay Provincial Municipal Corporation Act, 1949 makes it clear that the notice contemplated by that section must be a specific and definite notice which must comply with the provisions of that section. Section 487 of the said Act is as under :

"487(1) No suit shall be instituted against the Corporation or against the Commissioner, or the Transport Manager, or against municipal officer or servant in respect of any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act....."

The rest of this section is not to be recited for the purpose of argument. This section has named and designated "the Corporation, Commissioner, Transport Manager and any other Municipal Officer". When the section itself enumerates these authorities as distinct entities, it is difficult to accept the argument that the notice to one of them, in this case notice to the Commissioner, will be sufficient notice to the Corporation. The learned Counsel for the respondents herein pointed out and in my opinion rightly that section 4 of the Bombay Provincial Municipal Corporations Act, 1949 itself gives guidance to appreciate the distinct character of the various authorities. Section 4 finds place in Chapter 11, which deals with constitution-Municipal authorities. Section 4 is as follows :

"4(1) The municipal authorities charged with carrying out the provisions of this Act for each City :---

- (a) Corporation;
- (b) a Standing Committee;
- (c) a Municipal Commissioner;

and in the event of the Corporation establishing or acquiring a Transport Undertaking;

- (d) a Transport Committee;
- (e) a Transport Manager.

All these sub-clause from (A) to (E) provide that the distinct authorities are charged with carrying out the provisions of the Act. It is not necessary to refer to various sections which deal different functions of the authorities. The Corporation u/s 5 of the Act is itself a body corporate and have perpetual succession and a common seal and by such name may sue and be sued and by such a name. If sections 4 and 5 of the said Act are read together and bearing in mind the

distinct authorities constituted u/s 4 of the Act, it is not possible to accept the contention that the notice to the Commissioner can also said to be the notice to the Corporation within the meaning of section 487 of the Act.

16. A reference made by the learned Counsel for the appellant to the provisions of section 481(1)(g) of the Act as giving authority to the Commissioner to defend any legal suit or other legal proceedings who is an administrative entity has no bearing on the point in issue. The Commissioner being the Chief Executive, head of the Corporation is certainly highest Municipal authority under the Act and if he performs various functions in that capacity as distinct authority created under the Act as stated above, the Corporation is itself a distinct entity and itself distinct authority under the Act. As provided u/s 4 Standing Committee is also one of the authorities and the Commissioner is one of such authority. The intentment of the Legislature expressed by these specifications is very clear and when the letter of law is very clear, any argument on the object of the Act and intention behind the Act to be performed after following certain mandatory formalities, will not be relevant to construe the provisions of section 487 of the said Act and section 4 as quoted above of the Act are in my opinion quite clear to express the intention of the Legislature, it is not possible to accept the contention that the notice given to the Commissioner should be treated as sufficient compliance of section 487 of the Bombay Provincial Municipal Corporation Act. In this view of the matter, I do not accept the contention of the learned Counsel for the appellant that the notice given to the Commissioner is a valid notice and the judgment of the appellate Court is erroneous in that behalf.

17. The other contention raised by the learned Counsel for the appellant was relating to the capacity of respondent No. 1. Administrative Officer to be sued in his capacity as such. In this connection, the learned Counsel for the appellant relied on the provisions of Order 1, Rule 3 of the CPC to emphasise the fact that the persons mentioned in Order 1, Rule 3 also include some public officers and it is not necessary that all such persons must be corporation sole as held by the learned a Judge of the Appellate Court. In this case, the learned Judge has held that defendant No. 1- Administrative Officer, Municipal School Board is not corporation sole and therefore the suit against him is not maintainable. The learned Counsel for the appellant also referred to the provisions of the General Clauses Act, 1897 wherein the person shall include corporate bodies. The reference, which I am giving, to these provisions is only in fairness to the argument advanced before me by the learned Counsel for the appellant. However, in my opinion, the provisions which at all relevant are to be found in Order 7, Rule (1) Clause (c) of the Code of Civil Procedure. In fact, in this connection I may usefully refer to the judgment of the Calcutta High Court, which has been referred to by the learned appellate Judge, which according to me, lays down the true law in that behalf and I propose to follow the said judgment. The said judgment is reported in P.B. Shah and Co. and Others Vs. Chief Executive Officer and Others, , wherein the above point has been specifically dealt with, which refers to the provisions or Order 7, Rule 1(c) of the

CPC which says, in what situation a public officer can be sued in corporate name. In my opinion, the view taken by the Calcutta High Court in this case is justified by the provisions of Order 7, Rule 1(c) of the CPC which clearly shows that when the public officer is sued his name must be mentioned and mere designation of the officer will not be sufficient to make him liable to answer any claim as will be obvious from the provisions of Order 7, Rule 1(c) of the Code. Order 7, Rule 1 of the Code deals with the provisions of particulars to be contained in the plaint. This order mentions of Rule 1(c) as under "

"(c) the name, description and place of residence of the defendant so far as they can be ascertained."

It may be that this perhaps is an amendment of Karnataka. However, it is obvious that when this order provides in the first place at Rule 1(b) the name, description and place of residence of the plaintiff. It is inherent that the name description and place of residence of the defendant must be mentioned in the plaint.

18. In this connection, I may also refer to the case of the Privy Council reported in *The Sheriff of Bombay v. Hakmaji Motaji & Co.* 29 Bom.L.R. 1071, which clearly supports the contention of the respondents that a notice in such a case requires to be given not in a general way describing the office as defendant and if such description is given of the defendant in the plaint, the suit against such a defendant becomes incompetent by the reasons of the fact that such an officer cannot be defined within the meaning of an ordinary expression. In this case, the Privy Council had an occasion to consider the claim made against the Sheriff of Bombay and it was held that Sheriff of Bombay was not a corporation sole within the ordinary meaning of the expression; that though a suit could be brought against a public officer in respect of acts done by him in his official capacity it did not follow from sections 2 and 79 of the CPC as then was that the office could be sued by his official name, viz. the Sheriff of Bombay and in the present case the Administrative Officer, Municipal School Board. Following the ratio of the judgment of the Privy Council, I think that the contention raised on behalf of the appellant is not well founded and defendant No. 1 who is mentioned and described in the plaint as "Administrative Officer, Municipal School Board" cannot be made liable to answer the claim in his capacity either as employee of the School Board or in the capacity of the School Board itself.

19. There is another aspect which requires to be considered in this case while dealing with this argument, The Administrative Officer, who is described as defendant No. 1 is, in fact, an appointed under the Primary Education Act, who has been entrusted with the different powers. Under the Bombay Primary Education Act, "School Board" means a Municipal School Board constituted u/s 3 of the Primary Education Act, which says that for each area of an authorised municipality there shall be a municipal school board. "Authorised Municipality" is defined in sub-section (6) of section 2 of the Bombay Primary Education Act, the definition of which is as under :

"2(6) : "Authorised Municipality" means a municipality which is authorised by the State Government under sub-section (1) of section 16 to control all approved schools within its area."

In this case, as to who is the appointing authority of defendant No. 1, Administrative Officer is not at all disclosed and perhaps it was not necessary also. However, it is quite clear that the Administrative Officer is a public officer, who has got certain powers under the Bombay Primary Education Act itself and the appellant, who is primary school teacher in this case claims to have been appointed by him. However, it must be deemed that u/s 23 of the Bombay Primary Education Act, the Administrative Officer has only communicated the plaintiff-appellant his appointment made by the Selection Board as provided by section 23 of the Act. If that is so, it will have to be concluded that it is authorised municipality u/s 20 of the Bombay Primary Education Act, which is responsible for maintaining particular staff, which includes the primary teachers. In short the presence of defendant No. 1 in the capacity as the "Administrative Officer" must further involve a conclusion that he was either representing the municipal school board or the selection committee or perhaps authorised municipality i.e corporation. In any event, mere description of the first defendant as Administrative Officer in this particular case as found in the plaint is quite insufficient and inadequate to answer the claim of the plaintiff.

20. In my opinion, the learned Appellate Judge was right in following the judgment of the Privy Council to which I have made a reference and that strictly in my opinion certainly applies to the facts of the present case also. The description given by the plaintiff of the first defendant is "Administrative Officer, Municipal School Board, Pune". There may be many Administrative Officers as such and they might have succeeded also at the time of filing of the suit. In the absence of any particular name of a particular officer as defendant it would be difficult to say that he is proper defendant before the Court and in this view of the matter, the contention of the learned Counsel for the appellant that the suit against defendant No. 1 is maintainable is not acceptable to me.

21. I may also refer to a situation which was noticed by me in this particular case. It is very sad and unfortunate that a primary school teacher against whom an enquiry was held and it was found to be otherwise not proper is placed in very unfortunate situation. His suit which is filed in the Court was held to be not maintainable for want of proper notice. The provisions of the law which I had to construe with the aid of the authorities which are cited above, were very clear and it was not possible for me at any cost to arrive at any other conclusions on the strict interpretation of the letter of law. Under the Bombay Primary Education Act itself if a teacher, is dismissed, there are elaborate provisions to challenge those orders. As I am impressed by the finding of facts in this case, I think that if the suit in this case is not held to be maintainable, the period which was spent by the plaintiff-appellant in pursuing his remedy in a wrong Court, could be validly considered and could be condoned under the provisions of section 14 of the

Indian Limitation Act. It will be open for the plaintiff-appellant to file an appeal as provided by the provisions of the Bombay Primary Education Act before the competent authorities subject to consideration of the above ground and objection of the other side if so advised, as the plaintiff's suit is dismissed on a very technical ground for want of notice although it was well founded on factual grounds.

22. There was another point which was raised before me by the learned Counsel for the respondents that the suit otherwise was not maintainable for want of further relief which is not being claimed within the provisions as provided by section 34 of the Specific Relief Act. But as this point was not raised earlier although it finds place in the judgment of the Appellate Judge. I have not chosen to give any finding on that point. Therefore, the finding of the learned Appellate Judge will have to be confirmed.

23. In the result, this appeal is dismissed with no order as to costs.