

(1996) 02 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 4751 of 1995

Chandrakant Vallabhadas Gujarathi

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Bombay General Clauses Act, 1904 — Section 16
Constitution of India, 1950 — Article 226
Maharashtra Municipalities Act, 1965 — Section 308, 79

Citation : (1996) 3 BomCR 249 : (1996) 1 MhLj 838

Hon'ble Judges : V.K. Barde, J;N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : R.G. Karmarkar, for the Appellant; P.B. Varale, for the Respondent
No. 1, S.D. Kulkarni, for Respondent Nos. 2 and 4, V.S. Bedre and Renuka Palve,
for the Respondent

Judgement

N. P. Chapalgaonker, J.—Rule. Taken up for hearing forthwith by consent of the parties.

2. The petitioner is working as a Deputy Chief Officer, the post which is also known as an Administrative Officer, since 1978. The promotion was confirmed by the State Selection Board some time in the year 1982. It appears that the Municipal Council intends to hold domestic enquiry against petitioner and on 22nd July, 1995, he was suspended by an order, which was signed by the President, Municipal Council, Ahmednagar and along with him, the Chief Officer and the Head of the Establishment Department. But the order specifies that the order is passed as per the order passed by the President of the Municipal Council.

3. On 17-7-1995, the Standing Committee of the Municipal Council, Ahmednagar had considered the motion as an item brought in with permission of the Chairman and it passed a resolution granting sanction to immediately suspend the petitioner u/s 79(1)(vi), which was later on confirmed by the Municipal Council. By the very resolution, one Shri T.S. Alagh was appointed as an Enquiry

Officer. This resolution was challenged before the Collector, Ahmednagar and in exercise of her power u/s 308, the Collector was pleased to suspend this resolution dated 17-7-1995. We have been told at the Bar that the Municipal Council, Ahmednagar has approached to the Commissioner, Nashik Division under sub-section (4) of section 308. He has heard the parties and the matter has not yet been disposed of. The petitioner challenges his suspension by this writ petition.

4. We have heard Shri R.G. Karmarkar for the petitioner, Shri P.B. Varale, learned A.G.P. for the State, Shri S.D. Kulkarni for respondent Nos. 2 and 4 and Shri V.S. Bedre for respondent No. 3.

5. The power to suspend must either flow from the contract of the employment or from statutory provisions, which govern such contract. Section 79 of the Maharashtra Municipalities Act, 1965 deal with the incidents of suspension and the power to effect it. The scheme of the Act shows that in some cases, the suspension is a punishment and in some cases, it is a mere administrative action not amounting to punishment. Section 79(1) gives list of punishments, which may be imposed upon any officer or servant of the Council and item No. (vi) in the said list mentions suspension. Any of these penalties mentioned in this sub-section may be imposed on any officer or the servant of the Council by the authority competent to make appointment of the officer or servant. The power to impose minor penalties mentioned at clauses (i), (ii), (iv), (v) and (vi) of sub-section (1) of section 79 has been given to the Chief Officer and the Standing Committee or if the Council so decides, the President is empowered to impose the penalties mentioned in clauses (iii), (vii) and (viii) in respect of the Municipal servants holding Class IV posts and if the person holds a post above Class IV, then the penalty is to be imposed by the Council or by the Standing Committee, if the Council has delegated that power to it. The order of removal or dismissal of any person holding the rank above Class IV post, is subject to prior approval of the Collector.

6. Admittedly, the enquiry against petitioner is still pending and, therefore, there is no question of exercise the power to impose suspension as a penalty. The following proviso has been substituted for existing proviso by the Amending Act of 1993 below sub-section (2) of section 79 :---

Section 79(2) proviso

"Provided that, any officer or servant appointed by the Council may be suspended by the Chief Officer pending an order of the Council and every such suspension with the reasons therefore shall forthwith be reported by the Chief Officer to the Council and such suspension shall come to an end unless confirmed by the Council within a period of six months from the date of such suspension; and such suspension of an officer or servant pending inquiry against such officer or servant shall not be deemed to be a penalty :

Provided further that the Chief Officer may, for good and sufficient reasons,

impose on any officer or servant of the Council, any minor penalty or penalties specified in Clauses (i), (ii), (iv), (v) and (vi) of sub-section (1)."

7. It, therefore, follows that apart from the suspension to be imposed as one of the penalties, the Statute recognises the another kind of suspension of any servant of the Municipal Council and the power to suspend has been given to the Chief Officer pending an order of the Council and every such suspension must be based on the reasons and should be reported to the Council. Such suspension shall come to an end unless confirmed by the Council within a period of six months from the date of such suspension. The clause following the first Proviso makes it clear that such suspension is to be resorted to only when there is a pending enquiry against such officer or the servant and it shall not be deemed to be a penalty. Therefore, the power given to the Executive Officer to suspend an employee of the Municipal Council pending enquiry, is a separate power distinct from the power to impose suspension as penalty. The words occurring in this Proviso "every such suspension with the reasons therefore shall forthwith be reported by the Chief Officer to the Council" indicate that the Chief Officer will have to record the reasons for putting any employee under suspension and then the Council has an option either to confirm it or rescind it and if it is not confirmed by the Council, it automatically comes to an end within a period of six months from the date of such suspension.

8. Whenever any authority in the hierarchy of the Statutory services is given power to suspend for the reasons to be recorded, and he decides to exercise it in a given case, then it pre-supposes that there are some reasons which are relevant for holding of domestic enquiry and the suspension is thought necessary for completing the enquiry without any hindrance expeditiously. It also pre-supposes an application of mind by the said officer to the facts and the record available to him and his subjective satisfaction on the basis of such application of mind. The Chief Officer appointed u/s 75 of the Act of 1965 is the principal executive of the Municipal Council who has to supervise the execution and administration of the Council and exercise such powers and perform such duties and functions as are conferred or imposed upon him or allotted to him by or under the Act of 1965. Therefore, the power given to the Chief Officer u/s 79 is, in a sense, duty cast upon him which is to be performed after his subjective satisfaction.

9. In the proceedings before the Collector u/s 308, the Chief Officer took a stand that the resolution dated 17-7-1995 of the Standing Committee to suspend the petitioner was beyond the jurisdiction of the Standing Committee and, therefore, he had not implemented it. However, since the President had given a written direction, he had obeyed it as provided u/s 77(1). This reply of the Chief Officer is at Exh. R-3 at page 91 of the compilation of this petition. It is, therefore, clear that the Chief Officer had neither passed the order nor had passed a reasoned order by application of mind and he merely complied with the directions of the President. It is true that the Standing Committee had passed a resolution

directing the suspension of the petitioner but we do not find any power entrusted either with the Council or with the Standing Committee to suspend an employee pending any enquiry, which does not amount to a penalty.

10. Shri S.D. Kulkarni and Shri V.S. Bedre, learned Counsels appearing on behalf of the respondents, contended that section 16 of the General Clauses Act gives power to suspend to the authority who has power to appoint. It reads as follows :---

"Section 16 :---

Where, by any Bombay Act or Maharashtra Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment, shall also have power to suspend or dismiss any person appointed by it in exercise of that power."

The provisions of the General Clauses Act are to be read as supplemental to the Statute which governs the subject matter and not in derogation to it. If the Statute is silent and the Rules framed under it do not provide for suspension, then the resort may be had to the General Clauses Act.

11. Here, we find that section 79 has elaborately dealt with the instances of suspension, both as a penalty and as exigency administrative order not amounting to penalty pending enquiry. Therefore, section 16 of the General Clauses Act has no application. Since there was no power in the Standing Committee or with President to suspend the petitioner, we have no other go than to set aside the said order and direct the Municipal Council to immediately restore the petitioner in service with full wages.

12. Shri Bedre, learned Counsel appearing for the Municipal Council, contended that the petitioner is a Deputy Chief Executive Officer and an Administrative Officer and if the enquiry against him is to continue while he is in office, it is likely that the evidence may not come as should be. He also apprehended that the servants of the Municipal Council working under him may not be able to depose against him, if he is actually in possession of the record and is doing his duties. An employer has got a right to withdraw any work from its employee but he cannot deny the benefits of service. Therefore, though we are setting aside the suspension, we leave the option to the Council open that they may entrust the regular work to the petitioner or they may not. But since the suspension will stand revoked, the Municipal Council will pay whole salary and all emoluments to the petitioner w.e.f. the date of his suspension. The petitioner will attend the office, will sign the muster if so required under the Rules and will not leave the town of Ahmednagar without giving an application for leave therefor, even if no work is entrusted to him.

13. We further direct that the enquiry pending against the petitioner should be completed within a period of three months from today. We also direct petitioner to co-operate with the enquiry. The arrears of salary be paid by the end of March

1996.

14. Rule made absolute to the above extent. No order as to costs.