

(2016) 09 KAR CK 0040
In the Karnataka High Court
Case No : Criminal Petition No. 7060 of 2015

Dr. Vedavati B.J.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 439, 441
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2016) 4 AirKarR 615 : (2016) 4 Crimes 288

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Smt. Poonam Patil for Smt. Vedanayaki Kiran D, Advocates, for the Petitioner Nos. 1 to 5 & 7 to 9; Shri K.B. Omkara, Advocate, for the Petitioner No. 6; Shri Cehtan Desai, Government Pleader, for the Respondent No. 1; Shri V.J. Benjamine, Advocate, for th

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—; Heard the learned counsel for the petitioner and the learned Government Pleader.

Shri N.K. Ramesh, learned counsel appearing for the Rajiv Gandhi University of Health Sciences, Karnataka, was called upon to clarify the position as to whether a certificate course known as MPH course was a post-graduate course.

2. Shri N.K. Ramesh who has entered appearance would now state that the eligibility for obtaining the MPH course is an M.B.B.S. degree or higher and that without an M.B.B.S. degree, a person would not be able to undertake the course. MPH course is described as a Master in Public Health. The said clarification was required, in the background that the present petitioners are facing criminal proceedings for offences punishable under Sections 439 and 441 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as 'the KMC Act', for brevity) read with Sections 409 and 420 of the Indian Penal Code, 1860.

3. It is alleged that the petitioners had produced a MPH course certificate claiming that it was a post-graduate course and the petitioners were thus receiving benefits of having received a post-graduate degree, from the Bruhat Bangalore Mahanagara Palike (BBMP). It is further alleged that the petitioners were fully aware that the MPH was a health course and not a postgraduate health course and in spite of it, have relied on the same to receive the benefit. The petitioners are working as Medical officers of health and it is a promotional cadre and the criteria of promotion is an Assistant Surgeon of the Bangalore City Corporation who has put in service of not less than five years as an Assistant Surgeon in the BBMP and who possesses a degree in Medicine and Post-graduate degree in Public health, would be the criteria for promotion.

As per the notification issued by the Government, a masters of Public Health were to be considered as a post-graduate course for the purpose of promotion, as per the notification issued by the State Government dated 5.11.1984.

It is also pointed out by the petitioners that notwithstanding that the Additional Commissioner (Administration) had obtained clarification from the Rajiv Gandhi University of Health Sciences, Karnataka as to whether a Diploma in Public Health (DPH) was a post-graduate course, it was clarified that MPH was also a course which could be considered for promotion. This is vide the clarification dated 18.10.2012, which is also produced by the petitioners. Notwithstanding the same, the complaint having been lodged by the Bangalore Metropolitan Task Force (BMTF), the petitioners are before this court.

4. The learned counsel would point out that the Government, in proceedings dated 2.2.2013, has clarified and has cleared the air as to the confusion prevailing with regard to the jurisdiction and scope of the powers of the BMTF and in the wake of realisation that investigations in cases being conducted under the Indian Penal Code by the BMTF, and while recalling its earlier Government order dated 19.03.1996, the powers under the relevant provisions of the IPC were entrusted for effective empowerment pertaining to urban governance and the Government order creating the BMTF was to ensure that the said Task Force worked for the better protection of public properties in Bangalore Metropolitan area and that it took special measures to protect Government lands, lakes, tanks and tank-beds in Bangalore Metropolitan area. Therefore, the BMTF taking cases under the provisions of the Indian Penal Code, 1860 for forgery, was like grabbing the powers of the local jurisdiction police station. BM TF was a specialised force which was created to protect Government property and it ought not to enter into other areas. All other Government orders and notifications were thus superseded by the notification dated 2.2.2013, clarifying that the BMTF can register a case and proceed with the investigation of the case if the facts contained in the complaint disclosed offences under the Special Acts mentioned therein and in the Government order dated 19.03.1996, with or without those relevant under the IPC and the Karnataka Police Act.

The learned Government Pleader would point out that the said notification has

been further supplemented by yet another notification dated 6.2.2013, where other special enactments have also been incorporated under which the BMTF could take action.

5. Even from a perusal of the subsequent notification dated 6.2.2013, it is evident that the provisions of the IPC could only be invoked in support of the main offence or to prosecute the main offence and not independently.

In the present case on hand, from a reading of Section 439 of the KMC Act, which is reproduced herein for ready reference:

"439. Penalty for not giving information or giving false information.-If any person who is required by the provisions of this Act or by any notice or other proceedings issued under this Act to furnish any information-

(a) omits to furnish it, or

(b) knowingly, or negligently furnishes false information, such person shall, on conviction, be punished with fine not exceeding one hundred rupees."

The section which is found under Chapter-XX provides for penalties and it is a general provision which prescribes a penalty to be imposed on any person who provides false information knowingly or negligently or omits to furnish the information.

Section 441 is again a provision which is 25-31, October, 2016 reproduced hereunder for ready reference:

"441. Penalty for unauthorized use of Corporation property. - Whoever dishonestly misappropriates or converts to his own use any Corporation property or puts into improper or unauthorized use such property shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both?"

The said provision having been invoked against the petitioner, is again inexplicable for the property of the corporation.

Section 174 under Chapter-XII pertaining to property and contracts and reads as follows:

174. Corporation property. - (1) All property of the nature herein specified, and not being specially reserved by Government, shall be vested in and belong to the corporation and shall, together with all other property or whatsoever nature or kind not being specially reserved by Government, which may become vested in the corporation, be under its direction, management and control and shall be held and applied by it as trustee, subject to the provisions and for the purposes of this Act, that is to say,-

(a) all public parks, playgrounds, and open spaces reserved for ventilation;

(b) all public lamps, lamp posts and apparatus connected therewith or

appertaining thereto;

(c) all gates, markets, slaughter houses, manure and refuse depots and public buildings of every description.

(2) The corporation may accept trusts relating exclusively to the furtherance of purposes to which the corporation funds may be applied."

Therefore, it is not clear that Section 441 would be attracted with reference to Corporation property as considered under the provisions of the KMC Act.

6. On the face of it, if the petitioners have been availing the benefit by virtue of their claiming the MPH course as being equivalent to a post-graduate course, the said question cannot be decided in criminal proceedings. In the absence of determination of any such equivalence, the BMTF seeking to proceed on the basis that the petitioners should not be entitled to claim eligibility for promotion on that ground, would be premature and on a presumption which is not available. Consequently, the BMTF would not have jurisdiction to initiate prosecution while invoking Section 439 and 441 of the KMC Act against the petitioners.

7. The clarifications issued by the State Government would also make it clear that the BMTF has no such power to prosecute the petitioners. Consequently, the petitions are allowed. The proceedings are quashed. The controversy as to whether or not the MPH course is equivalent to a post-graduate course, is left open.