
(2013) 10 BOM CK 0055

In the Bombay High Court

Case No : Criminal Writ Petition No. 500 of 2013 and Criminal Application (Apl) No. 330 of 2012

Rajesh Santosh Thombre

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-10-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4383

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Advocate : Anil S. Mardikar, for the Appellant; K.S. Joshi, APP for Respondents 1, 3 and 4 in Cri. W.P. No. 500 of 2013 and for Respondents 1 and 2 in Cri. Application No. 330 of 2012 and Mr. S.M. Puranik, in W.P. No. 500/2013, for the Respondent

Judgement

Z.A. Haq, J.—Heard Shri Anil S. Mardikar, the learned counsel for the petitioner/applicant, Mrs. K.S. Joshi, the learned Additional Public Prosecutor for the State and Shri S.M. Puranik, the learned counsel for the Municipal Corporation. Rule. Rule is made returnable forthwith.

2. The petitioner has filed Criminal Application No. 330/2012 praying that the First Information Report bearing Crime No. 3068/2003 for the offences punishable u/s 13(i)(e) and 13(H) of the Prevention of corruption Act read with Section 109 of the Indian Penal Code registered by the Police Station Officer, Police Station, Koradi against the petitioner be quashed.

3. The Criminal Writ Petition No. 500/2013 is filed by the petitioner praying that the resolution dated 18th May, 2013 under Subject No. 82 by which sanction is granted by the Commissioner, Nagpur Municipal Corporation to prosecute the petitioner be quashed and it be held that the Commissioner, Nagpur Municipal Corporation has no authority to grant sanction. The petitioner has prayed that it be held that the Commissioner, Nagpur Municipal Corporation has no power to review the earlier decision dated 20th August, 2007 by which the sanction to

prosecute the petitioner was refused.

4. According to the petitioner, the F.I.R. was registered for the offences punishable u/s 13(i)(e) and 13(ii) of the Prevention of Corruption Act read with Section 109 of the Indian Penal Code. The petitioner was put under suspension on 28th October, 2003 on the ground that he was being prosecuted for the above referred offences. As the petitioner is an employee of the Nagpur Municipal Corporation and as the provisions of Section 19 of the Prevention of Corruption Act, 1988 requires previous sanction of the Authority competent to remove the employee or to prosecute the employee, the Investigating Agency had sought the sanction of the Nagpur Municipal Corporation. The Nagpur Municipal Corporation by its resolution No. 47 dated 20th August, 2007 refused to grant sanction for prosecuting the petitioner.

5. According to the respondent No. 2 - the Commissioner, Nagpur Municipal Corporation, the then Municipal Commissioner had not agreed with the decision of the Nagpur Municipal Corporation in not granting sanction for the prosecution of the petitioner and he had referred the matter to the State Government u/s 407 of the City of Nagpur Corporation Act, 1948 (for short "Act of 1948") on 13th August, 2009. According to the respondent No. 2 - the Commissioner, the State Government by the communication dated 15th March, 2013 had informed the respondent No. 2 - the Commissioner to take action in the matter at his level.

6. In the meantime, there is an amendment to the Act of 1948 and Section 53A is inserted which gives power to grant sanction for the prosecution of any officer or servant of the Corporation to the Commissioner. The Commissioner of the Nagpur Municipal Corporation, by the order dated 19th March, 2013 has accorded sanction for the prosecution of the petitioner/applicant. The petitioner has filed this writ petition under Article 226 of the Constitution of India praying that the resolution No. 82 dated 18th May, 2013 passed in the meeting of the General Body of the Nagpur Municipal Corporation approving the order of the respondent No. 2 - the Commissioner, Nagpur Municipal Corporation granting sanction to prosecute the petitioner be quashed.

7. Shri Mardikar, the learned counsel for the petitioner, has submitted that the General Body of the Nagpur Municipal Corporation by the resolution No. 47 dated 20th August, 2007 had refused to grant sanction for prosecuting the petitioner for the offences punishable under Sections 13(i)(e) and 13(ii) of the Prevention of Corruption Act read with Section 109 of the Indian Penal Code and therefore, now the respondent No. 2 - the Commissioner of Nagpur Municipal Corporation has no power and authority to review that decision and accord sanction for the prosecution of the petitioner. Shri Mardikar, the learned counsel for the petitioner, has submitted that the respondent No. 2 - the Commissioner, Nagpur Municipal Corporation has not pointed out that there was any additional material which is considered by him while granting sanction for the prosecution of the petitioner by reviewing the earlier decision of the General Body of the Nagpur Municipal Corporation. Therefore, according to the learned counsel for the petitioner, the

impugned order of the respondent No. 2 - Commissioner, Nagpur Municipal Corporation is illegal and unsustainable in law.

8. Shri Puranik, the learned counsel for the Municipal Corporation, has submitted that the resolution No. 47 dated 20th August, 2007 passed by the General Body of the Nagpur Municipal Corporation was not proper and legal and therefore, the then Commissioner, Municipal Corporation had referred it to the State Government, u/s 407 of the Act of 1948. The learned counsel has further submitted that the State Government by the communication dated 15th March, 2013 had informed the Commissioner, Municipal Corporation to take action against the petitioner at his level and the powers to consider the grant of sanction for the prosecution of the employee of the Nagpur Municipal Corporation at that time were conferred on the Municipal Commissioner and the respondent No. 2 - Commissioner by the order dated 19th March, 2013 has granted sanction for the prosecution of the petitioner. Shri Puranik, the learned counsel for the Municipal Corporation, has submitted that there is ample material against the petitioner for the offences for which he is to be prosecuted and therefore, the order granting sanction for his prosecution is valid and proper and in exercise of the powers and authority conferred on the Commissioner, Nagpur Municipal Corporation.

9. Mrs. Joshi, the learned Additional Public Prosecutor for State, has submitted that pursuant to the filing of the F.I.R. the investigation was made and sufficient material is found against the petitioner for which he is to be prosecuted. According to the learned APP the prosecution of the petitioner is not permissible without the sanction of the Nagpur Municipal Corporation and the issue of sanction was under consideration of the State Government after the matter was referred to it u/s 407 of the Act of 1948 and then the matter having been referred back to the Commissioner, Nagpur Municipal Corporation for taking appropriate decision, the impugned order of the then Commissioner, Nagpur Municipal Corporation is proper and should not be interfered with.

10. We have considered the submissions of the respective parties. The General Body of the Nagpur Municipal Corporation by the resolution No. 47 dated 20th August, 2007 had refused to grant sanction for the prosecution of the petitioner. We are of the view that this decision of the General Body of Nagpur Municipal Corporation taken on 20th August, 2007 was final. The then Commissioner had referred the matter to the State Government u/s 407 of the Act of 1948. Section 407 of the Act of 1948 at that time read as under:-

407. Power of State Government to suspend any resolution or order.

(1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or of any other authority or officer sub-ordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation, is not in conformity with law or with the rules or by-laws made thereunder, or is likely to lead to a breach of the peace or to cause injury

or annoyance to the public or to any class or body of persons, or is likely to cause waste of or damage to Municipal funds, the State Government may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) A copy of such order of the State Government shall be sent to the Corporation by the Government.

(3) On receipt of a copy of the order as aforesaid, the Corporation may, if it is of opinion that the resolution, order or act is not in contravention or excess of the powers conferred by any law for the time being in force, or the execution of the resolution or the doing of the act is not likely to cause waste of or damage to Municipal funds, make a representation to the State Government against the said order.

(4) The State Government may, after considering the said representation, either cancel, modify or confirm the order passed by it under sub-section (1) or take such order, action in respect of the matter as may in the opinion of the State Government be just or expedient having regard to all the circumstances of the case.

The resolution passed by the General Body of the Corporation falls for re-consideration of the State Government only in the following eventualities:

(i) when the doing of any act which is about to be done or is being done by or on behalf of the Corporation is not inconformity with law or with the Rules or bye-laws made thereunder;

(ii) when it is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons;

(iii) or is likely to cause waste of or damage to municipal funds.

11. The Commissioner, Municipal Corporation has not been able to point out as to how the provisions of Section 407 of the Act of 1948 could have been pressed into service for referring the resolution No. 47 dated 20th August, 2007 to the State Government. The learned counsel for the Municipal Corporation has not been able to justify the seeking of the intervention of the State Government in the matter. In our view the resolution No. 47 dated 20th August, 2007 could not have been referred to the State Government u/s 407 of the Act of 1948 inasmuch as none of the situations contemplated by the provisions of Section 407 of the Act of 1948 existed necessitating the intervention of the State Government in the matter. Moreover, while exercising the powers u/s 407 of the Act of 1948 the State Government may either suspend the execution of such resolution or order or prohibit the doing of any such act as referred to in Section 407 of the Act of 1948. It gives powers to the State Government to examine the legality and validity of the resolutions passed by the General Body of the Nagpur Municipal Corporation in cases of three situations discussed by us earlier. The resolution No. 47 dated 20th August, 2007 is not a resolution which falls in any

of the three categories referred above. Therefore, the reconsideration of the resolution No. 47 dated 20th August, 2007 by the State Government u/s 407 of the Act of 1948 itself was illegal and not permissible. Consequently, the communication of the State Government dated 15th March, 2013 referring the matter back to the respondent No. 2 - the Commissioner, Nagpur Municipal Corporation for taking decision at his level is unsustainable in law as the State Government could not have reopened the issue which had become final on 20th August, 2007 in view of the resolution No. 47 of the General Body meeting of the Nagpur Municipal Corporation. Consequently, the order passed by the respondent No. 2 - the Commissioner, Nagpur Municipal Corporation on 19th March, 2013 granting sanction for the prosecution of the petitioner is illegal.

12. Shri Mardikar, the learned counsel for the petitioner, has submitted that the impugned order dated 19th March, 2013 is not passed on the basis of any additional material or documents. The learned counsel for the petitioner has submitted that the review of the decision on the basis of the same material and the documents is not permissible. Shri Mardikar, the learned counsel for the petitioner has relied on the judgment in case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, in support of his submission that the order granting sanction for the prosecution of the petitioner by the respondent No. 2 - the Commissioner, Nagpur Municipal Corporation is not as per its own decision but it is in view of the communication dated 15th March, 2013 issued by the State Government by which he is asked to take decision in the matter. In our view this issue does not fall for consideration as according to us the resolution No. 47 dated 20th August, 2007 passed by the General Body of the Nagpur Municipal Corporation refusing to grant sanction for the prosecution of the petitioner had become final and could not have been referred further u/s 407 of the Act of 1948. As stated earlier, it is the case of the respondents that the resolution No. 47 dated 20th August, 2007 have been reconsidered under the exercise of powers u/s 407 of the Act of 1948, which according to us is not permissible.

13. Therefore, the impugned order dated 19th March, 2013 passed by the respondent No. 2 --the Commissioner of the Nagpur Municipal Corporation granting sanction for the prosecution of the petitioner for the offences punishable u/s 13(i)(e) and 13(ii) of the Prevention of Corruption Act read with Section 109 of the Indian Penal Code is quashed. Rule is made absolute in terms of prayer clause (i). In view of the judgment in Writ Petition No. 500/2013, nothing survives in the Criminal Application No. 330/2012 and it is dismissed accordingly.

In the circumstances, parties to bear their own costs.