

(2013) 12 KAR CK 0162

In the Karnataka High Court

Case No : Writ Petition No. 41458 of 2013 (S-TR)

Sri B.T. Mohan Krishna

APPELLANT

Vs

Bruhuth Bangalore Mahanagar Palike

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 1 AKR 389 : (2014) ILR (Kar) 1214 : (2014) 1 KCCR 636

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : M.S. Bhagwat, for the Appellant; Lohith S.R., Sri K.N. Putte Gowda, Advocates for R1 and R2 and Sri Subramanya Jois for Sri K.C. Shantakumar, Advocate for R3, for the Respondent

Final Decision : Allowed

Judgement

H.G. Ramesh, J.—Heard. In this writ petition, the petitioner who is an Executive Engineer in the Bruhath Bangalore Mahanagara Palike ("the BBMP" for shorts) is challenging the order of internal transfer dtd. 06.09.2013, transferring him from his present post of Deputy Director (Town Planning-South), Bangalore to the office of the Chief Engineer (Lakes), Bangalore. The case of the petitioner is that the impugned order of internal transfer is passed only to favour respondent No. 3 to give a place of posting of his choice. The BBMP in its statement of objections has stated that the impugned order of transfer was passed as respondent No. 3 did not report for duty to the office to which he was posted and he insisted for posting to a particular office. It is relevant to refer to para 7 of the statement of objections filed by the BBMP:

7. It is submitted that these respondents had passed the impugned order in the interest of the smooth functioning of the administration of BBMP and also in the interest of the public at large and the petitioner cannot question the powers of these respondents relating to the transfer, since the third respondent after his transfer from the post of Deputy Director, Town Planning (North) had not reported to the said post and insisted on getting himself posted to the office of

the Deputy Director, Town Planning (North) and in this regard, it is to be mentioned that he had preferred a Writ Petition questioning the transfer Order. Hence, these respondents have transferred him to the post of Deputy Director, Town Planning (South) where the petitioner was working.

2. This Court had directed the learned counsel for the BBMP to place the original file relating to the transfer in question before this Court. Accordingly, the counsel placed the original file before this Court for perusal.

3. Learned counsel for the BBMP submits that the impugned order of transfer is passed pursuant to the directions issued by the Chief Minister and the Transport Minister vide their letters dtd. 24.07.2013 and 25.07.2013 respectively. It is relevant to refer to the aforesaid two letters which read as follows:

4. As could be seen from the above, the Chief Minister has directed transfer of respondent No. 3 from Mahadevapura Zonal Office of BBMP, Bangalore to the post of Deputy Director, Town Planning (South), BBMP, Bangalore, which is the place to which he is now posted as per the impugned order. To the same effect is the letter written by the Minister for Transport and District in-charge Minister, Bangalore to the Chief Minister.

5. It is also relevant to state that the petitioner is no less powerful than respondent No. 3. He also got a letter dtd. 09.08.2013 from the Chief Minister directing the Commissioner, BBMP to continue the petitioner as Deputy Director, Town Planning (South), BBMP, Bangalore. The said letter of the Chief Minister reads as follows:

6. It is rightly stated by the learned counsel appearing for the BBMP that under S. 69 of the Karnataka Municipal Corporations Act, 1976 ("the Act" for short), it is only the Commissioner or his delegatee who has power to give internal postings to the employees and Officers of the BBMP. In my opinion, under the Act, neither the Chief Minister nor any Minister has any power to interfere with the statutory power of the Commissioner under S. 69 of the Act to make internal transfers of the employees or Officers of the Municipal Corporation. However, the State Government has power under S. 91A of the Act to transfer any officer or servant of a Municipal Corporation to another Corporation or a local Authority. It is a settled position in law that an authority empowered to exercise a power cannot abdicate its functions by acting at the dictates of another authority, howsoever high it may be. Postings or transfers within the BBMP could be made only by the Competent Authority i.e. the Commissioner or his delegatee who has to apply his mind and to make the order. He cannot abdicate his statutory power at the dictation of another, who is not conferred with the power to dictate. The Commissioner would be failing in his statutory duty, if he acts at the dictation of any Minister including the Chief Minister in the matter of internal transfers within the BBMP.

7. The above referred letters would show the kind of interference by the Chief Minister even in the internal postings within the BBMP. The sooner this kind of

interference is stopped, better it is for the administration and the people of this State. The impugned order of transfer dtd. 06.09.2013 which is admittedly passed at the dictation of the Chief Minister is unsustainable in law. It is liable to be set aside and it is accordingly set aside. All internal transfers made in the BBMP at the dictation of the Chief Minister or any other Minister are unsustainable in law. The Commissioner shall cancel all such transfers and give appropriate postings to the concerned Officers and employees having regard to their ability, honesty and integrity to bring efficient administration in the BBMP. This shall be done expeditiously, and in any event, within two months from the date of receipt of a copy of this order. The Commissioner shall also take steps to review all postings in the BBMP and to make appropriate internal transfers to increase the efficiency of the administration in the BBMP. I may add that I have come across several writ petitions filed by residents of Bangalore only for a direction to the BBMP to consider their applications which are kept pending for months and years. This only reflects the functioning of the BBMP. This must change at the earliest. The sooner, the better.

Petition allowed.