
(1986) 08 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 18870 of 1985

V.M. Gheevarghese

APPELLANT

Vs

Commissioner, Hubli-Dharwar Municipal Corporation

RESPONDENT

Date of Decision : 19-08-1986

Acts Referred:

Citation : (1987) ILR (Kar) 843

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : Suresh S. Joshi, for the Appellant; A.R. Koujalagi, for the Respondent

Judgement

K.A. Swami, J.—In this Petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 22-11-1985 passed by the respondent in No. HDC 95/JEA 2/85 placing the petitioner under suspension. The impugned order is produced as Annexure-B.

2. The reasons given in the impugned order for placing the petitioner under suspension are that on a raid conducted by the Vigilance Authorities an unexplained wealth is found in the possession of the petitioner which is alleged to be beyond the known source of income of the petitioner and a criminal case is also registered under the provisions of the Prevention of Corruption Act.

3. It is contended on behalf of the petitioner that he is an Assistant Executive Engineer appointed by the State Government under Rule 26 of the Karnataka Municipal Corporation Rules, 1977 (hereinafter referred to as the Rules), by the Order dated 10th September 1981 produced as Annexure-A, that as per Section 91 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the "Act"), no rules are framed by the State Government regarding the disciplinary proceedings and suspension of an official of the Corporation. Therefore the Commissioner being an authority subordinate to the State Government is not competent to place the petitioner under suspension. It appears to me that it is not possible to accept this contention.

4. No doubt no rules are framed by the State Government as per Section 91 of the Act, but there is no dispute that under the repealed enactment, namely, the Bombay provincial Municipal Corporation Act, 1949, Hubli-Dharwar Municipal Corporation Services (Control & Appeal) Regulations, 1975 had been framed. As per Section 507(1)(d) of the Act, the rules framed under the repealed enactment, namely, Bombay Provincial Municipal Corporation Act, 1947 which is one of the enactments repealed by the Act, shall be deemed to have been framed under the corresponding provisions of the Act and shall continue to be in force, unless and until superseded by the new rules framed under the Act. Thus until the new rules are framed, under the Act, Hubli-Dharwar Municipal Corporation Services (Control & Appeal) Regulations, 1975 (hereinafter referred to as the Regulations) continue to hold the field.

5. Under Regulation 8 of the Regulations, it is open to the authority who is subordinate to the Appointing Authority to place an official under suspension and immediately report the matter for approval to the Appointing Authority. It is also further provided that such order of suspension shall be deemed to be valid until it is reversed by the appointing authority. The relevant portion of Regulation 8 is as follows:

"8. (1) The Competent Authority may place a Mpl. Servant under suspension.

- a) where a disciplinary proceeding against him is contemplated or is pending ; or
- b) where a case against him in respect of any criminal offence is under investigation or trial ;

Provided that the order of suspension may be made by an officer subordinate to the Appointing Authority who shall forthwith report to the Appointing Authority the circumstances in which the order was made and such order shall be deemed to be valid until it is reversed by the appointing authority."

Thus it is clear that the Commissioner of the Hubli-Dharwar Municipal Corporation being an Officer subordinate to the appointing authority i.e., State Government, had the power to place the petitioner under suspension ; but he was required to forthwith report to the State Government as per the proviso to Regulation 8(1) of the Regulations. It is not brought to my notice that such report is made to the State Government by the Commissioner, Hubli-Dharwar Municipal Corporation. On receipt of such report it is open to the State Government either to approve or reverse the order of suspension. The order of suspension remains valid until it is reversed by the State Government. Having regard to the fact that the suspension has been necessitated on the revealing of un-explained wealth in the possession of the petitioner in the raid conducted by the Vigilance Commission, and a criminal case under the provisions of the Prevention of Corruption Act, is also registered, and the order of suspension is deemed to be valid until it is reversed by the State Government. I think it is just and proper instead of interfering with the order of suspension, to direct the Commissioner to report the matter to the State Government if he has not so far

reported, within a stated period.

6. For the reasons stated above, this Writ Petition is disposed of in the following terms :--

The Commissioner, if he has not so far reported to the State Government regarding placing the petitioner under suspension, is directed to report to the State Government within six weeks from the date of receipt of this order.