

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.507 OF 2015

(Subject : Suspension)

DISTRICT : MUMBAI

Shri Prakash Govind Tari,)
In the office of Deputy Collector (Encroachment Removal),)
Chembur, Mumbai, R/at. Hari Complex, Sector -7,)
Ghansoli, Navi Mumbai.)

Address for service of Notice :)

Shri B.A. Bandiwadekar, Advocate)
Having office at 9, "Ram-Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai 400 016)

.... Applicant.

Versus

1. The District Collector,)
Mumbai Suburban District,)
Having office at Administrative Building,)
10th floor, Government Colony,)
Bandra (E), Mumbai 51)

2. The Divisional Commissioner,)
Konkan Division, having office at Konkan Bhawan,)
1st floor, Navi Mumbai 400 614)

....Respondents.

Shri B.A. Bandiwadekar, the learned Advocate for the Applicant.

Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 21.09.2016.

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

2. In this O.A. Applicant has challenged the order of suspension.

3. The copy of order of suspension is at page 26, exhibit-A. The reasons and ground on which suspension is ordered is eloquently stated in the said order. The relevant text reads as follows :

“त्या अर्थी, मी जिल्हाधिकारी, मुंबई उपनगर जिल्हा, महाराष्ट्र शासन, सामान्य प्रशासन विभागाकडील शासन निर्णय क्र.अभियो-१३१२/प्र.क्र.३०/पुर्नबांधित-१/११अ, दि. १२ फेब्रुवारी, २०१३ व महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ मधील नियम ४ चे पोटनियम (१) अन्वये प्रदान केलेल्या शक्तीचा वापर करून या आदेशान्वये श्री. प्रमाश गोविंद तारी, अवल कारकून, उपजिल्हाधिकारी (अति/निष्का) मुलुंड सेवावर्गाने उपजिल्हाधिकारी (अति/निष्का) चेंबूर यांचे कार्यालय यांना महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ चे नियम ४(२)(अ) मधील तरतूदीनुसार अटक झाल्याच्या दिनांकापासून शासन निलंबित करित आहे.”

(Quoted from page 26, Exhibit-A of the O.A. paper book)

4. By way of grounds of challenge, Applicant has averred in paragraph 6.28 as follows :-

“6.28] That the aforesaid position is borne out from the documentary evidence in the form of the order dated 27.2.2015 passed by the Learned Special Judge, Mumbai in Bail Application No.11 of 2015 in R.A.No.11 of 2015, when the Learned Judge ordered the release of the Petitioner on cash bail of Rs.15,000/- which the Petitioner paid on the same day and thus he came to be released on the same day. Thus within less than 24 hours of arrest, that the Petitioner came to be released on bail.”

(Quoted from page 18 of the O.A. paper book.)

5. In support of the Applicant's plea that the Applicant was not in detention for more than 24 hours, Applicant has placed reliance of following documents :-

- (a) Copy of application for remand.
- (b) Copy of order passed on remand application.

These documents are at page 34 and 35 of the paper book.

6. The remand application shows following details :-

- (a) Applicant was arrested on 27.02.2015 at 5.00 p.m.
- (b) Applicant was produced before the court on 27.02.2015.
- (c) The Applicant filed application for bail on the same day i.e. 27.02.2015.
- (d) The bail application and remand application were heard together on 27.02.2015 and order of Applicant's release was passed on the same day.

7. The said order reads as follows :-

"Reced Rs.15,000/- (Rupees Fifteen Thousand only) from Accused viz. Prakash Govind Tari, towards cash bail, vide Receipt No.198030 dt. 27/2/2015.

*Sd/-
27/2/2015
Superintendent
Sessions Department
City Session Court,
Greater Bombay"
(Quoted from page 38 of the paper book.)*

Applicant has shown that he has deposited money towards bond on the same day.

8. Applicant's claim contained in paragraph 6.28 is opposed by the Respondents in its detailed affidavit-in-reply which reads as follows :-

"31. With reference to para 6.28, I say that contention of the petitioner is denied. Matter is subjudice in criminal court. Order of suspension issued u/s 4(2)(A) of the M.C.S. (Discipline and Appeal) 1975 by following due procedure of law. Since matter is subjudice in the Hon'ble Court the issue raised in the para to be decided by the Hon'ble High Court."

(Quoted from page 78, paragraph 31 of the paper book.)

9. It is shocking and surprising that the reply is given in an evasive manner. Crucial question to be answered is as to whether the applicant was under detention for more than 48 years is not at all dealt with in the reply.

10. Learned Advocate Shri B.A. Bandiwadekar for the Applicant has placed reliance on two judgments namely :-

- (a) The judgment of Hon'ble High Court in the case of the State of Maharashtra & Ors. V/s. Dr. V.N. Shinde, in Writ Petition No.2815 of 2011 dated 07.09.2011.
- (b) The judgment of this Tribunal referred in O.A.No.13 of 2009 filed by Dr. Vasant Nagorao Shinde Versus The State of Maharashtra, dated 07.07.2010.

11. Respondents have proudly and boldly denied that impugned order is passed without authority. It is not disputed by the State that Rule 4(2)(a) provides for deemed suspension. In the event the Government servant is in custody where on criminal charges or otherwise have exceeded 48 hours. Relevant text reads as follow :-

"Suspension

4 (1) *The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension –*

- (a) *where a disciplinary proceeding against him is contemplated or is pending, or*
- (b) *where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or*
- (c) *where a case against him in respect of any criminal offence is under investigation, inquiry or trial;*

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.

(1) *A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –*

- (a) *with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours.*
- (b) *With effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*

Explanation –

The period of forty eight house referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account."

(Quoted from page 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.)

12. It is thus evident that applicant's suspension was ordered by competent authority i.e. Collector, Mumbai, Suburban District in gross non-application of mind. Mostly without even reading the text of the order and without even reading the text of Rule 4 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

13. In the result the suspension order deserves to set aside and is accordingly set aside. In the facts and circumstances the order are passed by the authority without bothering to read the rules and without respecting the right of Government servant to have an order passed in accordance with rules, applicant deserves award exemplary costs from the Respondents.

14. Parties were called to address as to how much amount of costs be ordered.

15. Learned Advocate for the Applicant that the costs be quantified to Rs.10,000/- as the token amount. The request of learned Advocate for the Applicant is opposed by learned P.O.. The request of costs is most reasonable. In the background that money has lost its value the amount of Rs.10,000/- may hardly compensate outgoing expenses from filing to conclusion of the case considering dearer costs of travel and other outgoing expenses.

16. Respondent shall pay the arrears of difference of pay and subsistence allowance, the amount of costs as well within 4 months from today.

(A.H. Joshi, J.)
Chairman

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