

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**ORIGINAL APPLICATION NO.770 OF 2017****(Subject : Transfer)****District: Nashik**

Shri Sunil Mahadu Saundane,)
 Working as Tahasildar,)
 Baglan, District Nashik)
 R/o. Yeshwant Bungalow, Nampur Road, Satana,)
 Tal- Baglan, District Nashik)

.. Applicant**Versus**

1. The State of Maharashtra,)
 Through Additional Chief Secretary (Revenue))
 Revenue & Forest Department,)
 Having office at Mantralaya,)
 Mumbai 400 032.)
2. The Divisional Commissioner,)
 Nashik Division,)
 Office at Nashik.)

.. Respondents

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

Smt. K.S. Gaikwad, the learned Presenting Officer for Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATED : 09.11.2017.

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for Respondents.

2. By this Original Application Applicant has challenged two orders, copy of first order dated 08.08.2017 is seen at Exhibit-A, page 23 of O.A. paper book and second order dated 10.08.2017 is seen at Exhibit-N, page 66 of O.A. paper book.

3. Illegality and validity of order dated 10.08.2017 (page 66) is contingent upon legality of order dated 08.08.2017 (page 23).

4. After hearing at length on various issues and points what have transpired are as follows :-

(a) Though various grounds of challenge are raised, challenge which goes to the root of case is :-

As to whether approval of Civil Services Board was taken by the Transferring Authority before taking decision to decide to transfer the Applicant.

(b) The aspect of Civil Services Board as agitated in paragraph 6.22 reads follows :-

"6.22 That the Petitioner has reason to believe that his case for transfer was not placed before the Civil Services Board at the State Level as per the G.R. dated 31.1.2014 issued by the State of Maharashtra through the General Administration Department and / or any separate subsequent Circular issued in that behalf issued by the Respondent No.1. This is a mandatory requirement and therefore, non compliance thereof is fatal to the validity of the impugned order."

(Quoted from page 13, paragraph 6.22 of O.A. paper book.)

(c) Averments contained in paragraph 6.22 have been replied by the State in paragraph 24 and which reads as follows :-

"24 I say and respectfully submit that it is admitted that meeting of civil service board was not held at government level regarding transfer of the petitioner."

(Quoted from page 91, paragraph 24 of O.A. paper book)

5. Thus the case proceeds in the admitted position that decision to transfer is taken at the Government level as is reflected from the impugned order. It shall be useful to refer to relevant portion contained in impugned order :-

“१.

२. सबब महाराष्ट्र शासकीय कर्मचा—यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्य पार पाडताना होणा—या विलंबन प्रतिबंध अधिनियम २००५ मधील नियम ४(४) मधील तरतुदीनुसार श्री. सौंदणे, तहसीलदार यांचा तहसिल बागलाण, जि. नाशिक या पदावरून नासिक विभागात नाशिक जिल्हा वगळून इतर जिल्हामध्ये अकार्यकारी पदावर बदली करण्याबाबतच निर्णय घेण्यात आला आहे. त्यानुसार श्री. सौंदणे, तहसीलदार यांची पदस्थापना करण्याबाबत विभागीय आयुक्त, नाशिक विभाग, नाशिक यांना प्राधिकृत करण्यात येत आहे.”

(Quoted below relevant portion with underline from page 23 of O.A. paper book)

6. It is seen that after the decision to transfer was taken by the Government and it was communicated to the Divisional Commissioner, he has undertaken the exercise of placing the matter before the Civil Services Board at his level. In fact the Civil Services Board at the level of Divisional Commissioner hardly had “Decisive Authority and Power”, since “decision” to transfer was already taken by the Government.

7. Government’s decision to transfer the applicant is on a very face of it and openly in defiance of judgment of Hon’ble Supreme Court in case of **Writ Petitions (C) No.82 of 2011 with No.234 of 2011, T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 reported in (2013) 15 SCC 732**. Moreover for observance of the said judgment, Government had to issue circular dated 31.01.2014 which is placed on record at Exhibit-R, page 75.

8. Thus, present case is a citation of patent / blatant disobedience and disregard of binding precedent laid down by Hon’ble Supreme Court in case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013** by a democratic Government under the Constitution. What has shocked further is that the officers of the rank of Secretary have failed in their constitutional obligation to bring to the illegality committed by the Government to the notice of the Government to show that the stance of the Government amounts to open disobedience of the judgment of Hon’ble Supreme Court in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013** apart from it being in grave departure of policy declared by the State Government.

9. It is likely that the Government may not be able to keep in mind all time the provisions of law and the judgments of courts. However, Secretary of the Department who is a very senior bureaucrat ought to keep track of observance and obedience of law unless he himself wants to mutely witness defiance of binding precedent of Hon'ble Supreme Court.

10. Therefore, Secretary of the Revenue Department ought to have advised the Government about gross contempt which the Government was committing, by failing to adhere to precedent as had emerged through the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013.**

11. In the background that impugned Transfer is ordered in open and gross defiance of the judgment in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013**, present Original Application succeeds. Impugned order, Exhibit-A, page 23 is quashed and set aside. The order passed by Divisional Commissioner dated 10.08.2017 which is based on the impugned order dated 08.08.2017 has to die a natural death.

12. In the peculiar facts and circumstances and considering that the Applicant's case was being considered by the Government for transfer on account of some complaint, and in case the facts leading to complaint are supported by some material, it shall be open for the Government to consider those facts for deciding applicant's case for transfer de-novo and on its own merits in accordance with law.

13. It is clarified that this Tribunal has not adjudicated factual merit of transfer and all issues in that regard are kept open. Hence, it would still be open for the Government to consider need of transfer adhering to the provisions of law.

14. In order that the observance of dictate contained in the case of **T.S.R. Subramanian and Others case supra** is meticulously followed and the incident of side tracking or ignoring the direction contained in the judgment of Hon'ble Supreme Court does not recur, it is necessary to issue certain directions to the Chief Secretary of Government of Maharashtra, which are issued in operative part of this judgment.

15. Hence, following order is passed :-

- (A) The Chief Secretary of Government of Maharashtra is directed as follows:-
- (i) Chief Secretary should submit a note to the Hon'ble the Chief Minister and remind and apprise the Hon'ble the Chief Minister about binding nature and directions contained in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013.**
 - (ii) Chief Secretary should suggest and request Hon'ble the Chief Minister to issue an advisory to all Hon'ble Ministers for due observance of the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013.**
 - (iii) Chief Secretary should cause an advisory to be issued to the Secretarial Staff of the Hon'ble the Chief Minister and other Hon'ble Ministers' offices to be vigilant in observance of the mandate contained in the judgment in **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013.**
 - (iv) Place before this Tribunal a report of action taken on this judgment.
- (B) Original Application is allowed in terms of foregoing paragraphs 11 to 13.
- (C) The costs be the cost in the cause.

SD/-

(A.H. Joshi, J.)
Chairman

prk