

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 2219 of 2021

Varshatai w/o Sanjay Bagade

Vs.

Divisional Commissioner, Amravati Division and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M. Tirukh, Advocate for the petitioner
Ms. T.H. Khan, learned A.G.P for the respondents No.1 and 2
Mr. R.L. Khapre, Senior Advocate with Mr. A.S. Shukla, Advocate for the
respondents No.4 to 15

Issuance of notice to respondent No.3 – Municipal Council is dispensed
with in view of the fact that respondents No.4 to 15 being Members of
the Municipal Council, Patur are already represented through counsel
before this Court.

CORAM : MANISH PITALE, J.

RESERVED ON : 28.06.2021

PRONOUNCED ON: 30.06.2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. An elected Member of the Municipal Council, Patur, District Akola, is the petitioner before this Court, challenging an order passed by the respondent No.1 – Divisional Commissioner, Amravati on 30/04/2021, whereby an appeal filed by the contesting respondents, also Members of the Municipal Council, stood allowed and an order passed by the respondent No.2 – Collector was set aside. The crux of

the controversy raised in the present Petition is that a Resolution dated 14/02/2020, passed by the contesting respondents as Members of the Municipal Council, Patur by majority was, according to the petitioners, illegal and non-est. By the said Resolution, the Municipal Council by majority had decided that the name of the Municipal Council on a board affixed on the newly constructed building of the Municipal Council would be written in Marathi and below that in Urdu language. In fact, it was decided that the old board stating the name of the Municipal Council in both the languages would be repainted and affixed on the new building.

3. The petitioner invoked jurisdiction of the respondent No.2 – Collector under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, challenging the said Resolution on the ground that it was in the teeth of certain Government Resolutions, whereby it was directed that all communications and writings on boards would be necessarily carried out in Marathi language.

4. The respondent No.2 - Collector passed order dated 15/12/2020, that Marathi language be used in terms of the relevant Government Resolutions and clarificatory circular dated 12/07/2019.

5. Aggrieved by the same, the contesting respondents filed a Revision Application before the

respondent No.1 under Section 318 of the aforesaid Act.

6. By the impugned order, the respondent No.1 – Divisional Commissioner partly allowed the Revision Application / Appeal filed by the contesting respondents and directed that name on the board affixed on the new building of the Municipal Council shall be first written in the State language i.e. Marathi and thereafter below such writing in Marathi language, the same would be written in Urdu language, which is a language included in the VIIIth schedule to the Constitution of India.

7. The petitioner is aggrieved by the order passed by the respondent No.1 – Divisional Commissioner. It is contended by Mr. A.M. Tirukh, learned Counsel appearing for the petitioner that the order of the respondent No.2 was in consonance with the Government Resolutions and clarificatory circular, which indicated that all such writings on boards on official buildings have to be in Marathi language and that, therefore, the respondent No.1 - Divisional Commissioner committed a grave error in passing the impugned order.

8. Mr. R.L. Khapre, learned Senior Counsel appearing with Mr. Shukla, learned Counsel, on caveat for respondents No.4 to 15 submitted that on merits the order of the Divisional Commissioner was based on proper interpretation of the material on record, but, an

aspect of law concerning the provisions of the said Act would demonstrate that the initial proceeding filed by the petitioner under Section 308 of the aforesaid Act itself was still-born. By referring to the amended Section 308 of the said Act, the learned Senior Counsel submitted that it was the responsibility of the Chief Officer of the Municipal Council to seek suspension of execution of any Resolution of the Municipal Council, if it was contrary to any provisions of the Act, any other law or Rules or bye-laws or Government directions. It was submitted that since the proceeding was initiated by the petitioner as Member of the Municipal Council, the Collector had no power to proceed in the matter and consequently, there was no substance in the contentions raised on behalf of the petitioner.

9. Ms. T.H. Khan, learned A.G.P. appeared on behalf of respondents No.1 and 2 and submitted that the contention raised on behalf of the respondents No.4 to 15, is based on a position of law after amendment of Section 308 of the said Act and that, therefore, the same cannot be disputed.

10. The aspect of law brought to the notice of this Court is to be first considered, because it goes to the root of the matter. Section 308 of the aforesaid Act upon amendment reads as follows :

“308. Powers to suspend execution of orders and resolution of Council on certain grounds -

(1) If the Council or any Committee resolves contrary to provisions of this Act or any other law, or rules, bye-laws, or the Government directions, then it shall be the responsibility of the Chief Officer to send it to the Collector for suspension of execution of such a resolution or prohibition of doing thereof, within the period of three days from the receipt of the said resolution. The Collector shall decide on such proposal within the period of thirty days from the date of receipt of such proposal. If it remains undecided within the said period, then the Collector shall submit the report thereof to the Director within ten days and the decision of the Director thereon shall be final. In such case, appeal against the order of the Director shall lie to the State Government.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, along with a copy of such order.

(3) Within 1[thirty days] from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.

(4) On receipt of such report from the Collector and the Council's statement referred to in sub-section (3), if any, the Director may 2[within a period of six months, from the receipt of such report or within such period beyond six months as may, on the request of the Director, be extended by the State Government,] rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or

without modifications:

Provided that, the Director shall take into account the statement of a Council, if received, before such an order is made by him.”

11. Prior to the amendment of sub-Section (1) of the aforesaid provision, it was stated that if the Collector was of the opinion that execution of any order or resolution of any Council was likely to cause injury or annoyance to public or to lead to breach of peace or is unlawful, he could suspend the execution or prohibit the doing thereof. This indicates that the Collector could exercise *suo motu* power and in a given case if a situation / resolution was brought to his notice he could exercise such power. But, after amendment of sub-Section (1) of Section 308 of the Act, it specifically provided that the Collector can exercise power under the said provision only after the Chief Officer of the Municipal Council sends such Resolution by moving a proposal before the Collector for its suspension or prohibition of doing anything as per the Resolution. The Collector is then required to decide such proposal within a period of 30 days from the date of receipt of said proposal.

12. The learned Senior Counsel is justified in relying upon judgments of this Court in the cases of **Al-Waffi Agro Food Company, Balapur, Dist. Akola Vs. State of Maharashtra and others 2019 (3) Mh.L.J. 899** and **K.I.PL. Vistacore Infra Projects J.V. Vs. Ichalkarnjee Municipal Council and others 2021 (3) Mh.L.J. 503.**

13. In the case of **Al-Waffi Agro Food Company, Balapur, Dist. Akola Vs. State of Maharashtra and others** (supra), a learned Single Judge of this Court held in terms that after amendment of sub-Section (1) of Section 308 of the aforesaid Act, it becomes clear that a private person cannot approach the Collector to challenge any resolution of the Municipal Council and that it is only the Chief Officer, who can point out to the Collector that any resolution passed by the Municipal Council is contrary to the provisions of the Act or any other law, bye-laws or Government directions.

14. In the case of **K.I.PL. Vistacore Infra Projects J.V. Vs. Ichalkarnjee Municipal Council and others** (supra), a Division Bench of this Court specifically held that Government Circular dated 12/07/2019, being an execution instruction, would clearly not prevail over Section 308(1) of the aforesaid Act and that such circular sought to directly or indirectly modify the said provision, which could not be permitted. It is relevant that in the present case, the petitioner has relied upon the said Government Circular dated 12/07/2019, which is in the teeth of the said Judgment of the Division Bench of this Court.

15. Therefore, the learned Senior Counsel appearing for respondents No.4 to 15 is justified in contending that the proceeding initiated by the petitioner before the respondent No.2 - Collector under

Section 308(1) was itself still-born and that the Collector could not have entertained the same. This indicates that present petition is devoid of merits, considering the said settled position of law.

16. Even on facts, this Court is not at all impressed with the contentions sought to be raised on behalf of the petitioner. It is obvious that the Government Resolution / circulars being executive instructions would not prevail over statutory provisions. Even otherwise, resolution of the Municipal Council was passed by majority and it is still in force. The resolution specifically states that the writing on the board on the new building of Municipal Council would be in Marathi at the top and below that in Urdu language. There cannot be any dispute about the fact that as per entry No.22 of the VIIIth Schedule of the Constitution of India, Urdu is very much included in the list of languages. Thus, this Court sees no reason to entertain the contentions raised on behalf of the petitioner. Accordingly, the Writ Petition is dismissed.

JUDGE