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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1797 OF 2011

1. Ambarish Rangshahi Patnigere,
Aged 45 years, Occup: Service,
R/o Abhishek, 101, Plot No. B-72/2,
Sector No.23, Nerul, Navi Mumbai.
2. Namdeo Narayan Alhat,
Aged 55 years, Occup: Service,
R/o H/1/2/3, Paradise Society,
Sector No.7, Sanpada,
Navi Mumbai.
3. Divakar Nandkumar Samel,
Aged 49 years, Occup: Service,
R/o Madhusmita Plaza,
MCM Society, Old Panvel Road,
Navi Mumbai.
4. Jaywant Parbat Dalvi,
Aged 53 years, Occup: Service,
R/o 11, Twins Heritage,
Plot No.79, A/B, Sector-19,
Nerul, Navi Mumbai.
5. Prakash Laxman Kamble,
Aged 48 years, Occup: Service,
R/o 306, Manas C.H.S., Sector 6,
Airoli, Navi Mumbai.

... PETITIONERS

VERSUS

1. State of Maharashtra
[Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908].
 2. Urban Development Department
Through Secretary,
State of Maharashtra
Mantralaya,
Mumbai 400 032.
 3. The Secretary,
Urban Development Department
State of Maharashtra
Mantralaya,
Mumbai 400 032.
 4. The Municipal Corporation of
Navi Mumbai.
 5. The Commissioner,
Navi Mumbai Municipal Corporation,
Navi Mumbai.
- ... RESPONDENTS

Mr. A.V.Anturkar i/b Mr. Sugandh Deshmukh for the Petitioners.

Mr. V.D.Patil, Government Pleader for Respondent Nos.1 to 3/State.

Mr. A.A.Garge for Respondent Nos.4 and 5.

**CORAM : CHIEF JUSTICE &
ABHAY S.OKA &
SMT. R.S.DALVI, JJ.**

DATE ON WHICH SUBMISSIONS ARE HEARD : 28th September, 2011.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 22nd December, 2011.

JUDGMENT:

1 A Division Bench of this Court by order dated 8th April, 2011 ordered that this petition shall be placed before a Larger Bench. The order dated 8th April, 2011 passed by the Division Bench reads thus:

“Having heard the learned counsel for the petitioners, learned Government Pleader and the learned counsel for Municipal Corporation, we are of the view that the decision of the Division Bench of this Court in Sudhir R. Bhatankar v. State of Maharashtra and others, 1999 (Supp.) Bom. C.R. 910 : 2000(1) Mh.L.J. 519. in so far it holds that the provisions of section 56(1)(b) of the B.P.M.C. Act will not apply where suspension is for holding an enquiry in the charges levelled against an officer requires reconsideration. The matter shall accordingly, be placed before the Larger Bench.”

2 By this Writ Petition under Article 226 of the Constitution of India, the Petitioners who are the officers of the Municipal Corporation of the city of Navi Mumbai (for short “the said Corporation”) have challenged the order of suspension. The said Corporation has been constituted under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as “the said Act of 1949”). The Petition has been filed for challenging the orders of suspension passed by the Commissioner of the said Corporation on 10th September, 2009. The Petitioner Nos.1 and 2 are the Deputy Commissioners of the said Corporation. The Petitioner No.3 is the Assistant Commissioner of the said Corporation. The Respondent No. 4 is the Chief Accountant and Finance Officer of the said Corporation and the Petitioner No.5 is the Assistant Accounts Officer of the said Corporation.

3 The said Corporation has been entrusting the work of removal of the encroachments to a private contractor. For the period of 2003-09, the said work was assigned to M/s. H.B. Bhise and

Company. On the basis of the allegation that there were certain irregularities in the payments made to the said contractor, the Commissioner of the said Corporation conducted a special audit. On the basis of the said special audit, the Commissioner directed that a complaint be filed against M/s. H.B. Bhise and Company. Accordingly, an Assistant Commissioner of the said Corporation lodged a complaint against the said contractor on 16th May, 2009 with CBD- Belapur Police Station, Belapur, Navi Mumbai. On the basis of the said complaint, FIR was registered on 17th May, 2009 alleging commission of the offences punishable under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code.

4 According to the case of the Petitioners, they were called on 8th September, 2009 by the Investigating Officer. Some of the officers working in the Encroachment Department were also called on the same day. On 8th September, 2009, when the Petitioners reported to the Investigating Officer, they were arrested. It is the case of the Petitioners that the officers who were called for investigation, but did

not remain present before the Investigating Officer were not arrested. The bail application filed by the Petitioners was not decided immediately and therefore, the Petitioners continued to be in the custody for a period of 48 hours. Subsequently, the Petitioners were enlarged on bail.

5 On 10th September, 2009, the Respondent No.5 (Commissioner of the said Corporation) passed separate orders of suspension against the Petitioners. In the said orders, the Respondent No.5 stated that the Petitioners were detained in the custody for a period exceeding 48 hours. In the order, it was stated that the same was issued in accordance with Sub-Rule (2) (a) of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as "the Civil Services Rules") in exercise of powers conferred by clause (b) of Sub-Section (1) of Section 56 of the Bombay Provincial Municipal Corporation Act, 1949. It was stated in the orders that the Petitioners shall be deemed to have been suspended from 8th September, 2009 when they were taken into

custody and they shall remain under suspension till further orders.

6 The Petitioners made a representation on 25th May, 2010 to the Respondent No.5 i.e. the Commissioner of the said Corporation praying for revocation of the order of suspension. Reliance has been placed on further representations dated 7th August, 2010 and 23rd September, 2010 made by the Petitioners for the same purpose. On 8th October, 2010, the Petitioners submitted a representation to the Secretary of the Urban Development Department of the Government of Maharashtra praying for revocation of the suspension.

7 The first contention raised in the petition is that Rule 4 (2) (a) of the Civil Services Rules provides that the Petitioners shall be deemed to have been placed under suspension by an order of Appointing Authority. It is submitted that as far as the Petitioners are concerned, the Appointing Authority is the said Corporation i.e. the General Body of the said Corporation. It is contended that in view of clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949, the

order of suspension ought to have been confirmed by the Corporation within a period of six months from the date of suspension and therefore, on expiry of a period of six months from 8th September, 2009, the suspension has automatically come to an end. It is contended in the petition that the officers of the said Corporation, who did not remain present before the Investigating Officer on 8th September, 2009 were not arrested and were not placed under suspension.

8 The Respondent Nos.4 and 5 filed a reply dated 5th April, 2011. It is contended that as the Petitioners were suspended pending an enquiry, the suspension shall not be by way of penalty. It was contended that the provision under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 regarding automatic termination of the suspension, if not confirmed by the Corporation within a period of six months from the date of the suspension, is not applicable to the present case. In the affidavit-in-reply, a reliance was placed on the decision of the Division Bench of this Court in the case of **Sudhir R.**

Bhatankar Vs. State of Maharashtra & others [2000 (1) Mh.L.J.

519]. It was stated that vide letter dated 16th October, 2010, the said Corporation has sought clarification from the Urban Development Department of the Government of Maharashtra. It is stated that the proposal for giving sanction for prosecution will be placed before the General Body Meeting of the said Corporation. There is further affidavit dated 3rd July, 2011 filed by the Deputy Commissioner (Administration) of the said Corporation stating that the approval was granted by the General Body of the said Corporation in its meeting dated 18th March, 2011 for filing a charge-sheet against the Petitioners.

9 The learned counsel for the Petitioners submitted that the Petitioner Nos.1 to 3 have been appointed by the Municipal Corporation in exercise of powers under Section 45 of the said Act of 1949. He pointed out that the other two Petitioners have been appointed by the Corporation under Section 53 (1) of the said Act of 1949. His submission is that only power of suspension which can be exercised against the said Petitioners is under clause (b) of Sub-

Section (1) of Section 56 of the said Act of 1949. After exercising of the said power, the Commissioner is forthwith required to report the suspension to the Corporation and if the same is not confirmed by the Corporation within a period of six months from the date of the suspension, the same will come to an end automatically. He pointed out that in the present case, the affidavit-in-reply filed by the Municipal Corporation shows that though the proposal for suspension was forwarded to the General Body of the Corporation on 6th March, 2010 for its approval, the same was withdrawn on 16th July, 2010. He submitted that the proviso to clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 clearly provides that suspension under clause (b) pending an enquiry into the allegations against the officer or servant shall not be deemed to be a penalty. He submitted that the powers under clause (b) can be exercised by the Commissioner pending an enquiry. He invited attention of the Court to what is held by the Division Bench of this Court in paragraph Nos.11 and 12 of the decision in the case of Sudhir R. Bhatankar (supra). He submitted that

the suspension made under clause (b) will stand revoked if not confirmed within a period of six months from the date of the suspension. He pointed out that the suspension contemplated by clause (f) of Sub-Section (2) of Section 56 of the said Act of 1949, is a suspension by way of penalty. He pointed out that proviso to clause (b) makes it very clear that the suspension made in exercise of powers conferred by clause (b) will not amount to penalty. He, therefore, submitted that the law laid down by the Division Bench of this Court in the case of Sudhir R. Bhatankar (supra) requires reconsideration. His submission is that though the order of suspension makes a reference to the Rule 4 (2)(a) of the Civil Services Rules, the provisions of the said Act of 1949 will prevail. His submission is that on expiry of a period of six months from the date of the suspension, the revocation of the suspension is automatic, if the proposal is not approved by the Corporation. He, therefore, submitted that continuation of suspension of the Petitioners on expiry of period of six months is illegal.

the State Government pointed out that the order of suspension is passed both under Rule 4 (2)(a) of the Civil Services Rules and Section 56 (1)(b) of the said Act of 1949. He submitted that the powers under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 can be exercised by the Commissioner for suspending an officer or servant pending the disciplinary enquiry. He submitted that the Civil Services Rules has been adopted by the said Corporation. He submitted that in the present case there is no overt act on the part of the Commissioner and hence, clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 will have no application and such automatic suspension will not require ratification by the general body.

11 The learned counsel appearing for the Municipal Corporation and the Commissioner submitted that the suspension under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 is itself a penalty. He submitted that as the suspension under clause (b) is penalty, the law requires the Commissioner to record reasons for passing an order of suspension. He submitted that in the

present case, the suspension is under Rule 4 (2)(a) of the Civil Services Rules. He submitted that the said provision contemplates automatic suspension after the detention of the officer in custody for a period exceeding 48 hours and no specific order is required to be passed for suspending the officer. He submitted that when the suspension is under Rule 4 (2)(a) of the Civil Services Rules, the period of six months provided in clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 will not apply. He submitted that unless the suspension is specifically revoked by the Municipal Corporation, the suspension of the Petitioners will continue. He placed reliance on a decision of the Division Bench of this Court in the case of **State of Maharashtra and others Vs. Subhashchandra Bapusaheb Patankar [2006 (4) Mh.L.J. 751]**. He relied upon certain decisions of the Apex Court to which reference has been made in the subsequent part of the judgment.

12 The learned counsel appearing for the Petitioners submitted that for passing the impugned orders of suspension, power

under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 has been invoked. He submitted that the Appointing Authority of the Petitioners being the Municipal Corporation, the order of suspension passed by the Commissioner is made subject to confirmation by the General Body. He submitted that even the order of suspension in exercise of powers under Rule 4 (2)(a) of the Civil Services Rules, is subject to revocation and/or review. He relied upon a decision of the Division Bench of this Court in the case of Dr.Suresh Annappa Dhotre Vs. State of Maharashtra & Ors (Writ Petition No. 8944 of 2010 dated 10th December, 2010) in that behalf.

13 We have given careful consideration to the submissions. It will be necessary to make a reference to Rule 4 of the Civil Services Rules.

“4. Suspension.--- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under Suspension- (a) where a disciplinary proceeding against him 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 lower than the appointing authority, the circumstances in which the order was made.

2. 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 charges 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 hours 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.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under Suspension is set aside in appeal or on Review under these rules, and the case is remitted for further inquiry or action or with any other directions, the order of his Suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered

void in consequence of, or by, a decision of a Court of Law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under Suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under Suspension until further orders. Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(5) (a) An order of Suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. (b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that Suspension, the authority competent to place him under Suspension may, for reason to be recorded by it in writing, direct that the Government servant shall continue to be under Suspension until the termination of all or any of such proceeding. (c) An order of Suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority to which that authority is subordinate.”

The other provision, which requires consideration is Section 56 of the said Act of 1949, which reads thus:

“56. Imposition of penalties on municipal officers and servants.- (1) A competent authority may subject to the provisions of this Act impose any of the penalties specified in sub-section (2) on a municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent:

Provided that-

- (a) no municipal officer or servant whose monthly salary, exclusive of allowances, exceeds one thousand rupees shall be dismissed by the Commissioner without the previous approval of the Standing Committee;
- (b) any officer or servant, whether appointed by the Corporation or any other competent authority, except Transport Manager being a Government Officer on deputation, may be suspended by the Commissioner pending an order of the Corporation and when the officer so suspended is the Transport Manager or an officer appointed under section 45, **such suspension** with reasons herefor, shall, forthwith be reported by the Commissioner to the corporation, and **such suspension** shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension;

Provided that, **such suspension** of an officer or servant pending inquiry into the allegations against **such officer or servant** shall not be deemed to be a penalty.

- (c) the Commissioner may impose any of the penalties as specified in clause (a), (b), (d), (e) and (f) of sub-section (2) on any officer appointed by the Corporation other than the Transport Manager if he is a Government Officer on deputation ;
- (d) the Municipal Chief Auditor and the Municipal Secretary may impose any of the penalties

specified in clauses (a), (b), (c), (d) and (e) of sub-section (2) on any officer or servant immediately subordinate to them subject to a right of appeal to the Standing Committee and the Standing Committee may impose any other penalty on any other penalty on any such officer or servant and may also impose, any penalty on any other officer or servant immediately subordinate to the Municipal Chief Auditor or the Municipal Secretary ;

(2) The penalties which may be imposed under this section are the following namely:-

- (a) censure;
- (b) withholding of increments or promotion, including stoppage at an efficiency bar ;
- (c) reduction to a lower post or time-scale, or to a lower stage in a time-scale ;
- (d) fine;
- (e) recovery from salary of the whole or part of any pecuniary loss caused to the corporation;
- (f) suspension;
- (g) removal from municipal service which does not disqualify from future employment ;
- (h) dismissal from municipal service which ordinarily disqualifies from future employment.”

(Emphasis added)

Under Section 45 (2) of the said Act of 1949, the power of appointing Deputy Municipal Commissioner or Assistant Municipal Commissioner vests in the Corporation. The Corporation is defined under clause (10) of Section 2 of the said Act of 1949, which reads

thus:

“(10) “Corporation” means the Municipal Corporation constituted or deemed to have been constituted for a larger urban area known as City;”

Under Section 5 (2) of the said Act of 1949, a Corporation consists of elected councillors elected at ward elections and nominated councillors. Thus, the reference to the Corporation under the said Act of 1949 is a reference to General Body of the Corporation consisting of elected and nominated councillors. The Petitioner Nos.1 to 3 have been appointed by the Corporation under Sub-Section (2) of Section 45. Even under Section 53 (1), powers of appointing Municipal Officer whose minimum monthly salary inclusive of allowances is or exceeds Rs.4,000/- vests in the Corporation. In other cases, the power of appointment vests in the Commissioner or Municipal Chief Auditor or Municipal Secretary as provided in Sub-Section (2) and Sub-Section (3) of Section 53. The Petitioner Nos.4 and 5 have been admittedly appointed by the Corporation in exercise of powers under Sub-Section (1) of Section 53. Under clause (b) of

Sub-Section (1) of Section 56 of the said Act of 1949, any officer or servant whether appointed by the Corporation or by any Authority (except Transport Manager being a Government Officer on Deputation) can be suspended by the Commissioner pending an order of the Corporation. Thus, even in case of officers, who are appointed in exercise of powers under Sub-Section (2) or Sub-Section (3) of Section 53 of the said Act of 1949, the Commissioner has powers to suspend an officer or servant pending an order of the Corporation. Clause (b) of Sub-Section (1) of Section 56 mandates that if an officer appointed under Section 45 is to be suspended, the Commissioner must record reasons. The Commissioner is under an obligation to report the suspension to the Corporation and if the suspension is not confirmed by the Corporation within a period of six months from the date of such suspension, the same automatically comes to an end. Thus, if the order of suspension passed under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 is not confirmed by the Corporation within a period of six months from the date of the

suspension, the said order automatically stands revoked. The proviso makes it very clear that when the order of suspension is passed under clause (b) pending an enquiry into the allegations against the officer or servant, the same shall not be deemed to be a penalty. Thus, the proviso itself makes it clear that power to suspend under clause (b) can be exercised by the Commissioner pending a disciplinary enquiry. Sub-Section (2) of Section 56 of the said Act of 1949 provides for various categories of penalties, which can be imposed on the officer or servant after holding an enquiry. Under clause (f) of Sub-Section (2), one of the penalties is of suspension. Clause (b) of Sub-Section (1) of Section 56 read with the proviso makes it very clear that the power of suspension under the said clause can be exercised by the Commissioner pending a disciplinary enquiry and the suspension made under the said provision will not be by way of penalty. Only an order of suspension under clause (f) of Sub-Section (2) of Section 56 is by way of penalty.

14 In this context, it will be necessary to make a reference to

the judgment of the Division Bench of this Court in the case of Sudhir R. Bhatankar (supra). Paragraph Nos.11 and 12, the Division Bench has observed thus:

“11. It will be evident from the above provisions that the Commissioner is empowered under section 56 to suspend any officer or servant pending an order of the Corporation. In such a suspension order, he has to give reasons and then approach the Corporation for confirmation. The time limit of 6 months is prescribed in the said section to get the order of suspension confirmed by the Corporation. If the Corporation does not confirm the said order, the said order will come to an end. It is clear from this provision that this clause provides for suspension or by way of penalty for the reasons recorded by the commissioner till the said suspension order is confirmed or vacated by the Corporation. The said suspension order may be for any purpose, depending upon the administrative exigency or expediency. The proviso to the said section is most relevant for our purpose. It says that if an officer or servant is suspended pending an enquiry into the allegations, such suspension shall not be deemed to be a penalty. It is, therefore, crystal clear that the Commissioner has exercised his powers under Rule 4 of the M.C.S. Rules to suspend the petitioner, pending enquiry into the allegations. The suspension is not by way of imposing any penalty as such but is a suspension pending an enquiry into the allegations levelled against the petitioner. **It further means that if the suspension is followed by allegations and enquiry, it is not covered under the main part of section 56(1)(b) and it cannot amount to any penalty by itself. It further can be seen that the question of suspension by way of penalty preceded by an enquiry is definitely not**

covered by the main part of the provision, as the legislature could not have contemplated any limitation for completion of any enquiry within 6 months as is suggested in the main part of the provision. The suspension by way of penalty after holding an enquiry, is therefore, charged out from the main part of the section 56(1)(b). The purport of the main part to empower the Commissioner to suspend a municipal servant or officer is to meet an urgent or emergent situation and it is also intended that such suspension, if not for any charges or allegations to be enquired into or even if it is by way of penalty, it cannot continue for a long period and in any case not beyond a period of 6 months.

12. **In the present case, since the suspension is for holding an enquiry for the charges levelled against the petitioner, the provisions of section 56(1)(b) will not apply,** and therefore, it appears that the resolution of the Corporation was an ill-advised step taken by the coporators collectively. It is unfortunate that in spite of the seriousness of the event and without trying to find out the guilty person, the Corporation have rushed to pass a resolution to revoke the order of suspension and to direct reinstatement of the petitioner, who is still facing departmental enquiry. According to us, they could not have passed such a resolution purporting to act under section 56(1)(b) of the Act which had no application to the facts of the case. The learned Counsel for the petitioner has vehemently argued that since the Corporation itself has passed the resolution to reinstate the petitioner under section 56(1)(b) of the Act, we need not consider any other aspect of the matter. We do not agree with the said submission. If the provision itself is not applicable and if the corporators were not informed that section 56(1)(b) was not attracted and that the suspension was under Rule 4 of the M.C.S. Rules, we hold that the said resolution was ultra vires the

powers of the Corporation and hence null and void and the same was rightly rescinded by the State Government. Further, it is significant to note that the said resolution was not moved by the Municipal Commissioner but was at the instance of “the personnel” of the Corporation, who had put up the note for confirmation of the suspension. The Commissioner did not and could not have gone to the House as he had not acted under section 56(1)(b) of the Act. According to us, the resolution can not fall under section 56(1)(b) and therefore, it is of no consequence. It was null and void.”

(Emphasis added)

15 The petition before the Division Bench was filed by a Deputy Commissioner of a Municipal Corporation who was suspended by the Municipal Commissioner in exercise of powers under Rule 4 (1) of the Civil Services Rules. The order of suspension was passed on 14th November, 1998. The Corporation passed a unanimous resolution on 3rd July, 1999 by which the Corporation declined to confirm the order of suspension and resolved to reinstate the Petitioner before this Court. By exercising plenary powers under Section 451 of the said Act of 1949, the State Government rescinded the resolution of the Corporation and therefore, the challenge in the writ petition was to the said order of the Government.

16 The Division Bench held that the Commissioner while issuing order of suspension had acted under Rule 4 of the Civil Services Rules and he had not acted under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949. Therefore, the Division Bench held that the resolution passed by the General Body of the Corporation was null and void. The finding that the resolution of revocation of suspension was null and void has been rendered in the facts of the case.

17 On plain reading of Section 56 and especially Sub-Sections (1) and (2) thereof, clause (b) of Sub-Section (1) vests a power in the Commissioner to suspend any officer or servant of the Corporation whether appointed by the Corporation or any other Competent Authority except Transport Manager being a government officer on deputation. As pointed out earlier, the power to appoint City Engineer, Medical Officer, Municipal Chief Auditor, Municipal Secretary, Assistant Commissioner and Deputy Commissioner vests in

the Municipal Corporation and not with the Commissioner. That is the reason why the order of suspension issued by the Commissioner in exercise of the power conferred by clause (b) of Sub-Section (1) is made subject to the ratification or confirmation by the Corporation. The Transport Manager is excluded only when he is a Government Officer on deputation. However, the Transport Manager, who is not a Government Officer on deputation can be suspended under clause (b). When the Transport Manager or an officer appointed under Section 45 is suspended, the Commissioner is duty bound to forthwith report the suspension to the Corporation with reasons for the suspension. Such order of suspension passed by the Commissioner is required to be immediately placed before the General Body of the Municipal Corporation. The ratification of such order of suspension under clause (b) has to be made within a period of six months from the date of the suspension failing which on expiry of a period of six months from the date of the suspension, there will be automatic revocation of the order of the suspension. The proviso to clause (b) clearly indicates

that powers under clause (b) can be exercised by the Commissioner pending the disciplinary enquiry against the municipal officer or the servant concerned.

18 Emergent situations arise requiring immediate suspension of an officer or servant of the Municipal Corporation. The meeting of the General Body of the Municipal Corporation may not be held frequently. To meet such exigencies, a power has been conferred on the Commissioner to issue the order of suspension pending an order of the Corporation which requires ratification by the Corporation within a period of six months from the date of the suspension. It is true that some of the observations made in paragraph No.11 of the Division Bench in the case of Sudhir R. Bhatankar (supra) may indicate that the powers under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 cannot be exercised by the Commissioner pending a disciplinary enquiry. In our view, the said observations are contrary to the plain language of clause (b). We reiterate that the powers under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 can

be exercised by the Commissioner pending a disciplinary enquiry or when a disciplinary enquiry is proposed to be held against a municipal officer or servant. If power of suspension is exercised by the Commissioner under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 pending a disciplinary inquiry or in contemplation of the disciplinary inquiry, the order of the suspension shall stand revoked if it is not ratified by the General Body within a period of six months.

19 The other issue, which requires consideration is based on the submission that the impugned orders of suspension have been passed only under Rule 4 (2)(a) of the Civil Services Rules. On plain reading of the orders of suspension dated 10th September, 2009, it is apparent that the powers are invoked by the Commissioner both under Rule 4 (2) and under Section 56 (1)(b).

20 As far as the suspension under Rule 4 (2)(a) is concerned, it will be necessary to make a reference to a judgment of the Division

Bench of this Court in the case of Dr.Suresh Annappa Dhotre Vs. State of Maharashtra & Ors (Writ Petition No.8944 of 2010 dated 10th December, 2010). Reference will have to be made to paragraph Nos.3 and 4 of the said judgment, which read thus:

“3. The petitioner has been suspended by an order dated 5.3.10 but retrospectively on account of his arrest on 24.12.2009 in connection with CR No.262/06 registered with the City Kotwali police station at Amravati. He was released on bail on 12.2.2010 and was served with the order of suspension by invoking the powers under Rule 4(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as “the Rules”).

4. The Tribunal referred to the scheme of Rule 4(5) of the Rules and held that it does not vest any right in favour of the suspended employee to pray for revocation of the order of suspension and had relied upon the Government Resolution dated 20.7.2010 so as to hold that when the government employee is suspended pending criminal case against him the order of suspension cannot be revoked till the trial is completed.”

In paragraph No.5 of the judgment, the Division Bench made a reference to Sub-Rule (5) of Rule 4 and held thus:

“Thus the Scheme of Rule 4(5) of the Rules does not state that an order of suspension of an employee who is facing a criminal investigation/trial cannot be revoked till the trial is concluded and it is

well settled that the Rules framed by exercising powers under Article 309 of the Constitution cannot be substituted or amended by a Government Resolution.”

(Emphasis added)

21 It will be necessary to make a reference to another decision of the Division Bench of this Court in the case of this Court in the case of **State of Maharashtra Vs. Shivram Sambhajirao Sadawarte (2001 (3) Mh.L.J. 249]**. In paragraph No.1 of the said decision, the Division Bench observed thus:

“(1) THIS petition has been moved before us for the sole purpose to settle the position in law so far as this Court is concerned, in the matter of Suspension of a Government employee under Rule 4 (1)(c) or 4 (2) of the Maharashtra Civil Services (Discipline and Appeal Rules 1979 (for short the Rules).”

Thereafter, the Division Bench made a reference to Rule 4 and various government resolutions regarding revocation of suspension. In paragraph No.12, the Division Bench held thus:

“(12) ON perusal of the provisions of Rule 4 it is clear that the State Government has the powers to place an employee under Suspension in the cases set out therein and **even in the cases of Suspension falling under Clause (c) of sub-Rule 1 or sub-rule (2), the**

Suspension can be continued till the completion of enquiry or trial as the case may be depending upon the facts and circumstances of a given case. The Suspension need not be continued till the completion of the trial or investigation in every case. The facts of each case will have to be considered on their own merits. If the Suspension is continued for a reasonably longer period, may be beyond a period of one year or so, the delinquent employee has a legal right to approach the Government by way of a representation praying for revoking or withdrawing the Suspension order and such a request will have to be considered by taking into consideration the progress in the investigation, the nature of the charges, the causes for delay in such investigation/trial and other attending circumstances. In a given case the employee may be justified in approaching under sub-rule (5) of Rule 4 of the Rules immediately on receipt of the Suspension order without waiting for six months or nine months, as the case may be. The representation of the delinquent employee, so made, should be heard and decided within a reasonable period and this reasonable period could be about two to three months. The delinquent employees direct approach to the Tribunal or to a Court of law challenging the suspension order should not be ordinarily entertained unless he has approached the competent authority by invoking the provisions of Rule 4(5) of the Rules. We may also state that the State Government or the competent authority is obliged to pass a speaking order while either allowing or rejecting the representation so made and such an order will be subject to a judicial Review by the Tribunal or by this Court.”

(Emphasis added)

In paragraph No.14, the Division Bench held thus:

“(14) IN the premises, we hold as under:

(a) The order of suspension issued under Rule 4 of the Rules can be sought to be reviewed or revoked by the suspended employee by way of a representation under sub-rule (5) thereof.

(b) Such a representation can be filed at any time and rejection of a representation may not operate as a bar in filing a subsequent representation for review/revocation.

(c) The representation so filed ought to be decided within a reasonable period of two to three months and by taking into considerations the nature of charges, progress in enquiry, investigations/trial as the case may be including the reasons for delay and other attending circumstances in each case as well a the policy decision of the State Government.

(d) Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/court directly unless the remedy as provided under Rule 4 (5) is exhausted by the delinquent employee.

(e) if the representation filed by the delinquent employee under Rule 4 (5) of the Rules is not decided within a period of two to three months or if the same is rejected, the employee has the right to approach the Tribunal and the order of the Government is subject to the judicial review.

(f) an order of suspension issued pending enquiry, investigation or trial, as the case may be, shall continue to operate till such enquiry, investigation and/or trial is completed and the suspension order cannot be quashed and set aside by the Tribunal on the basis of the circular dated 18-9-1974 or the resolutions dated 14-12-1995 and

14-6-1996. The order of suspension is subject to a judicial review by the Tribunal depending upon the facts and merits of each case,

(g) the State Government/competent authority ought to review the pending suspension cases every quarter and take the requisite steps to conclude the enquiry, investigation/trial as early as possible.”

22 Therefore, the law is that an order of suspension passed under Rule 4 (2) including under clause (a) of Sub-Rule (2) of Rule 4 can be revoked or reviewed prior to the conclusion of the trial or the inquiry.

23 The power to suspend the Municipal servants and officers is governed by Section 56 of the said Act of 1949. Under clause (b) any order of suspension of Municipal servant and officer passed by the Commissioner requires ratification by the Corporation within a period of six months from the date of the suspension. Clause (b) provides for the consequence of failure of the Corporation to ratify the suspension within a period of six months from the date of the suspension. The legal effect of the failure to ratify the order of

suspension within a period of six months is the automatic revocation of the order of the suspension.

24 It is true that in the present case, in the impugned orders of suspension, there is a reference to Rule 4(2)(a) of the Civil Services Rules and to the fact that the Petitioners were in the custody for a period exceeding 48 hours. As stated earlier, perusal of the impugned orders of suspension show that the Commissioner has also specifically invoked powers under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949. The suspension under Rule 4(2)(b) is a deemed suspension by the appointing authority. In the present case, the appointing authority of the Petitioners is the Corporation. The appointing authority always has a power to review such order of suspension. The Commissioner who is not the appointing authority could not have passed the impugned orders otherwise than in exercise of the powers under clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949. Every such order requires ratification by the General Body within six months. Every such order of suspension must be

placed before the general body which can either continue the suspension by ratifying the same or can revoke the same. Therefore, in the present case, the order required ratification by the Municipal Corporation within six months. If it is not confirmed or ratified within the said period of six months, the legal consequence provided by clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 will follow.

25 In the present case, after expiry of a period of six months from 8th September, 2009, the suspension ceased to exist as the same was not confirmed by the Corporation. It was sought to be contended that as the Respondent – Corporation acting in terms of the judgment of this Court in the case of Sudhir R. Bhatankar (supra) did not consider the matter of ratification, the period of six months be computed from the date of the judgment of this Court to enable the Corporation to consider the suspension. It must be noted that it is not the case made out in either of the affidavits filed on behalf of the Corporation that only on the basis of said decision of the Division

Bench that the matter was not placed before the Corporation. In any case, the revocation of suspension in the present case is automatic on the expiry period of six months from the date of suspension. The learned counsel appearing for the Municipal Corporation relied upon the decision of this Court in the case of State of Maharashtra and others Vs. Subhashchandra Bapusaheb Patankar (supra). This decision will not help the Corporation as this Court in the facts of the case held that in case of an officer arrested for accepting the bribe, the exercise of power under Rule 4(1)(c) was warranted. In this decision, the Division Bench has not dealt with clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949.

26 It must be noted here that the Division Bench in its order dated 8th April, 2011 has not referred only a question for decision of the Large Bench. In fact the entire petition has been ordered to be placed before the Larger Bench and therefore, we are disposing of the petition in the light of the law laid down by us.

27 In view of the above discussion, the decision of this Court in the case of Sudhir R. Bhatankar (supra) can not be treated as laying down correct law regarding the scope and ambit of the powers of suspension conferred by clause (b) of Sub-Section (1) of Section 56 of the said Act of 1949 read with the proviso thereto.

28 We have neither gone into the merits of the allegations levelled against the Petitioners in the disciplinary inquiry or criminal prosecution against the Petitioners nor with the merits of the defences urged by the Petitioners in respect of the allegations. With this clarification, we allow the petition.

29 Hence, it is declared that the Petitioners' suspension under orders dated 10th September, 2009 passed by the Commissioner of the Navi Mumbai Municipal Corporation (Respondent No.5) shall be treated as having come to an end upon expiry of the period of six months from the date of suspension, on account of such suspension not having been confirmed by the Navi Mumbai Municipal

Corporation (Respondent No.4) during the said period of six months as provided under Section 56 (1) (b) of the Bombay Provincial Municipal Corporations Act, 1949. We, accordingly, direct the Respondent No.4 – Corporation to allow the Petitioners to resume the work.

30 Rule is accordingly made absolute with no order as to costs.

[CHIEF JUSTICE]

[ABHAY S.OKA, J]

[SMT. R.S.DALVI, J]