



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1796 of 2023

- | | | | |
|----|------------------------------------|---|------------------|
| 1. | Sagar Hanumanta Daunde |] | |
| | Age: 30 years, Occu: Self-Employed |] | |
| | Having Address at Room No. 707 |] | |
| | Hare Krishna Building A-1, |] | |
| | L.B.S. Marg, Ghatkopar (W), |] | |
| | Mumbai – 400086. |] | |
| 2. | Nanasaheb Anandrao Patil |] | |
| | Age: 36 years, Occu: Self-employed |] | |
| | Having address at Nityanandnagar |] | |
| | Ghatkopar (W), Mumbai – 400086 |] | ... Petitioners. |

V/s.

- | | | | |
|----|---|---|------------------|
| 1. | Municipal Corporation of Greater Mumbai |] | |
| | A body corporate having its registered |] | |
| | Office at: Mahapalika Bhavan, |] | |
| | Mahapalika Marg, Fort, |] | |
| | Mumbai 400001. |] | |
| 2. | Deputy Chief Engineer (Roads) |] | |
| | Eastern Suburbs |] | |
| | Mumbai Municipal Corporation |] | |
| | 4 th Floor, Municipal Garage building, |] | |
| | BEST Colony, Pantnagar, Ghatkopar (East), |] | |
| | Mumbai 400075. |] | ... Respondents. |

Mr. Aniesh S. Jadhav, a/w Mr. Rushikesh S. Kekane and Mr. Nikhil Adkine,
for the Petitioners.

Smt. Smita Tondwalkar, i/by Smt. Komal Punjabi for Respondent Nos.1 & 2-
BMC.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.

RESERVED ON: 13th November, 2024.
PRONOUNCED ON: 3rd December, 2024.

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Judgment (Per Kamal Khata, J.):

1) This Petition seeks quashing and setting aside the Circular dated 6th October, 2021 approved by the Municipal Commissioner vide impugned communication dated 2nd December, 2021. The impugned Circular is extracted below for ready reference as under:

***“MUNICIPAL CORPORATION OF GREATER MUMBAI
No.Dy.Ch.E/Roads/3736/E.S.dated 06 OCT 2021***

Sub:- Numerous complaints made by habitual complainants on regular basis to the office by Dy. Ch. Eng. Roads (ES) Office.

Ref:- 1) Ch. E (Roads & Traffic)/17/Confidential dtd. 07/06/2021.

2) Dy. Ch. E/Roads/3736/E.S. Dated 26/07/2021.

In continuation with this office earlier proposal under no. Dy.Ch.E/Roads/1898/E.S. Dated 27/05/2021 in above subject matter at Page N-1 to N-9 and E.E.(P) to DMC (Infra) i/c remarks there upon at pg. N/9. “As directed, the proposal shall be put up on the same line as past approvals (C/385 to C/392).”

Accordingly, the proposal is put up herewith as under.

In the last 3 months this office has received the following numbers of complaints:-

<i>Sr. No.</i>	<i>Name of Complainant</i>	<i>Complaints filed with Dy.Ch.E. (Roads) ES in 2021</i>	<i>Same Complaints filed with other authorities in 2021</i>	<i>Remarks</i>
1)	Shri. Namdeo Ahire	6	26	List of Complaints

2)	<i>Shri. Navnath Chaughule</i>	18	0	<i>& copy of complaints at pg.no. C-5 to C-384</i>
3)	<i>Shri. Sagar Daunde</i>	12	3	
4)	<i>Shri. Nanasaheb Patil</i>	3	8	

On going through the above complaints following observations are made:

- 1) The complaints/their aids, first obtains the relevant information in the RTI and if not satisfied with the RTI, then started complaining various authorities like Hon'ble C.M., Hon'ble Dy.C.M., Hon'ble M.C. AMC, DMC (Infra), Director (ES &P), Jt. M.C. (Vig.), Ch.E (Roads & Traffic), ACB, Police Commissioner.*
- 2) The complaints are made, stereo types complaints with photographs/ videos of ongoing works/completed works or other photos of work, not related to subject work, to increase the gravity of complaints. The nature of complaints is almost similar such as payment of bogus bills, use of inferior quality of material etc.*
- 3) The complaints are made by these complainants are of repetitive nature and the contents are irrelevant, most of the time.*
- 4) Most of the time these complainants are not having locus standi in any of these tender work codes, as such said complaints make it point that complaints are made with malafide intentions & complainants are dealing it as a profession.*
- 5) In almost all the complaint letters, the officers name is mentioned, and baseless allegations are found made on the staff of this office & targeting the officers at personal levels.*
- 6) Then the complainant proceeds with filing a Public grievance with any or more than one public*

grievance platforms alleging that, 'since there is corruption and malafide in the work being carried out by these dept and the complaint is not replied or reply is not satisfactory'.

- 7) *Then also file number of RTI applications simultaneously & after receiving RTI reply, the complainants again approach various forum alleging that the officers of this office are hand-in-glove with the contractors and there is alleged malice and gross corruption in the work.*
- 8) *Even though receiving timely reply under RTI, apply to first appellate authority for seeking interventions claiming false allegations and unnecessarily creating disputes in first appeal also and tries to pressurize staff by applying to second appellate authority/state information commissioner. These second appeal with malafide interest not only waste time of the concern staff but may lead to mental harassment.*
- 9) *Again the same complaints are submitted to ACB, Mantralaya, Government of Maharashtra etc.*
- 10) *These complainants well aware of the facts and they frequently approach the office of ES Road department in person with a reason of redressal of their complaints even though the reply is already given and forcibly try to have arguments with the staff of this office, which is highly objectionable and unacceptable.*

All the above complaints are made with some malafide interest and discourage the motives of the staff by mentioning names of staff/officers in the complaint. No doubt, it is fundamental right of every citizen to ask the information about the project but not to harass the Public Servant with some malafide interest and if not complied, then they start complaining in the name of staff showing the Larger Public Interest.

In the above circumstances, this office has found the

name of such complainants namely 1) Shri. Namdeo Ahire, 2) Shri Navnath Chaughule, 3) Shri. Sagar Daunde, 4) Nanasaheb Patil, in continuation of earlier proposal submitted at Pg no.N-1 to N-9 and summarised point at N-11 to N-12, Ch. E. (Roads & Traffic)/DMC (Infra)/ AMC (P)/Hon'ble M.C's approval is requested for the following:

- 1) Declare 1) Shri. Namdeo Ahire 2) Shri. Navnath Chaughule 3) Shri. Sagar Daunde 4) Nanasaheb Patil as "**Persona Non-grata**" and not to entertain repeated complaints from them on same subject once they replied suitably.*
- 2) Not to reply to the complainant's repeated complaints on same subject matter thereafter and record/filed the same.*
- 3) All important MCGM & government references will be replied separately for the closure of the same without replying to these complaints.*

After receipt of approval, the name of above complainants will be circulated to the MCGM's concerned departments, not to entertain the complaints in future."

- 2) Mr. Jadhav, the learned Counsel appearing for the Petitioners, contends that he represents individuals listed as numbers two and three among the four named persons in the Circular. He argues that the Circular is *ultra vires* the provisions of BMC Act and infringes upon the fundamental rights guaranteed under the Constitution of India. He asserts that such Circular lacks any legislative sanction, was issued without granting the Petitioners a hearing and is thus a clear violation of the principles of natural justice. Furthermore, such Circular undermines the statutory rights protected by the Constitution. Finally, he contends that the BMC does not

have the authority to designate any individual as '*Persona Non-grata*' and claims that the Circular is discriminatory and unreasonable.

2.1) Upon being informed about the Circular, the Petitioners submitted a representation on 12th September 2022. However, he was neither granted a hearing nor received a response. Thus the representation remains undecided.

2.2) He submits that, the Petitioners like all citizens, are entitled to transparent, efficient, and timely public services, which the BMC has failed to provide. He argues that the BMC is duty-bound to uphold these principles and the Circular promotes dereliction of duty. He further contends that the Circular is arbitrary, conspicuous and illegal, standing contrary to the spirit of the law. Therefore he urges that the Circular be withdrawn, as its enforcement would constitute a mala fide act causing grave harm to the Petitioners.

3) Having heard Mr. Jadhav, learned Counsel for the Petitioners, we find no necessity of a reply. The Circular is self-explanatory. A closer examination reveals that the four individuals named therein will be declared '*Persona Non-grata*' only after their complaints on the same subject are suitably addressed. The Circular merely permits ignoring repeated complaints on identical issues while excluding important references from BMC and Government, which will be addressed separately before closure of the repeated complaints.

4) In our view, this Circular does not prejudice the Petitioners in any manner. Nothing in the circular infringes on their fundamental right or is derogatory. It simply allows the departments to avoid responding to repetitive complaints, on the same subject matter once truly and faithfully replied, in accordance with law, disguised as Public Interest issues. We find the Circular neither discriminatory nor unreasonable. the reasoning set out in paragraphs 1 to 10 of the Circular provides a clear basis for its issuance. The Petition, based on assumptions, is ill-founded, as the Petitioners' constitutional rights remain protected.

5) Further, we affirm that no individual has a fundamental right to harass the public officers performing lawful duty by repeatedly filing complaints and appeals on the same subject matter or casting personal aspersions against them when dissatisfied with their responses. In our view, such threats hinder the smooth functioning of any public office. If the Circular is set aside, it would render it nearly impossible for public office staff to perform their duties without fear.

6) We do not, in any way, seek to defend public servants who fail to fulfill their duties. However, we strongly oppose any actions that hamper the work of officers and staff who are unfairly targeted with malafide intention. We find the decision in question to be conscious and well-considered. We see no reason to set it aside.

7) Our observations herein should not be construed as dismissing

the merit of the Petitioners complaints or implying that the Respondent Corporation is justified in failing to respond truly, faithfully and in accordance with law.

8) We clarify that the authorities/officers cannot refuse to entertain fresh complaints of the Petitioners, even on the same subject matter, if made after a reasonable period or so, based on this Circular. As narrated in the Petition, the complaints are regarding the inferior quality of road construction work or reckless cutting of trees - someone must. As a matter of fact, the roads are in a bad condition. Possibly it has led to a series of complaints. The High Court too by Order dated 20th May, 2015 in the case of *High Court on its own Motion, High Court of Judicature at Bombay Vs. State of Maharashtra & Ors (2015 SCC OnLine Bom 3379 : (2015) 4 AIR Bom R 119)* has taken Suo-motu cognisance of the same and passed directions against the BMC. Nonetheless, we see no justification for encouraging repeated complaints on the same subject matter once an appropriate response has been provided as required by law.

9) Needless to say that the Right to information Act also provides a mechanism for appeal under section 12.

9.1) Moreover, the Municipal Commissioner retains the authority to investigate the Officers against whom complaints are made and take appropriate action if they are found guilty. If still aggrieved, they may approach the Court.

9.2) Conversely, the Petitioners cannot claim a right to demand action against staff or officers when allegations remain unsubstantiated. However, in our view, no public servant is expected to work under constant threats and pressure from habitual complainants.

10) For these reasons, we find no merit in the Petition and is accordingly dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)