REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2643 OF 2022
[Arising out of SLP(C) No. 6885 of 2021]

KALYAN DOMBIVALI MUNICIPAL CORPORATION **...APPELLANT(S)**

VERSUS

SANJAY GAJANAN GHARAT AND ANOTHER **...RESPONDENT(S)**

WITH

CIVIL APPEAL NO. 2644 OF 2022
[Arising out of SLP(C) No. 6968 of 2021]

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted in both the Special Leave Petitions.

2. Kalyan Dombivali Municipal Corporation (hereinafter referred to as the "KDM Corporation") and the State of

Maharashtra, by way of the present appeals, challenge the correctness of the judgment dated 6th April 2021, passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition (ST.) No. 3599 of 2020, thereby holding that the KDM Corporation was not the competent authority to suspend respondent No.1-Sanjay Gajanan Gharat. By the impugned judgment, the High Court had also quashed the departmental inquiry initiated against the respondent No.1 and directed the KDM Corporation to reinstate him forthwith to the post of Additional Municipal Commissioner (hereinafter referred to as "AMC") of the KDM Corporation.

3. The facts are not in dispute. The respondent No.1 was initially appointed as an Assistant Municipal Commissioner of the KDM Corporation in the year 1995. The said appointment was approved by the State Government on 1st February 1997 under Section 45 of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as "the MMC Act"). The KDM Corporation thereafter recommended the respondent No.1 to be promoted as Deputy Municipal Commissioner of the KDM

Corporation on 9th May 2003. This was done after the Departmental Promotion Committee of the KDM Corporation found respondent No.1 suitable for such promotion. The General Body of the KDM Corporation also approved the said recommendation in its meeting held on 18th July 2003. The State Government, vide notification dated 23rd July 2005, granted approval to the promotion of respondent No.1 as Deputy Municipal Commissioner with effect from 9th May 2003.

4. Vide Maharashtra Act No.32 of 2011, which came into effect from 25th September 2011, various amendments were effected into the MMC Act. Vide the said amendment, Section 39A was brought in the statute, which provided for creation of one or more posts of AMCs and appointment of suitable persons on such posts.

5. In pursuance of the amendment effected in the year 2011, the State Government issued a Government Resolution (hereinafter referred to as "G.R.") on 11th November 2011. Vide the said G.R., one post of AMC was created for the KDM Corporation. Consequent to the upgradation of the KDM

Corporation from Class 'D' to Class 'C', one additional post of AMC came to be created vide G.R. dated 6th January 2015. The said G.R. also laid down the procedure for carrying out the selection process for the post of AMCs. Undisputedly, the Selection Committee, which considered the proposal of the Commissioner of the KDM Corporation, for a suitable person to be appointed as AMC, in its meeting held on 5th May 2015, found respondent No.1 most suitable for the same and accordingly, his name came to be recommended by the Selection Committee to the State of Maharashtra for appointment to the post of AMC of the KDM Corporation. The respondent No.1 came to be appointed as AMC of the KDM Corporation by the State of Maharashtra on 2nd June 2015. Pursuant to his appointment, the respondent No.1 joined his service as AMC of the KDM Corporation in the same month.

6. On 14th June 2018, an FIR No.34 of 2018 came to be registered against the respondent No.1 for the offences punishable under Sections 7, 8, 13(1)(d) along with Section 13(2) of the Prevention of Corruption Act, 1988. The

respondent No.1 was arrested on the same date and continued to be in custody till 17th June 2018, on which date, he was released on bail.

7. The Commissioner of the KDM Corporation purportedly, in exercise of the powers under Section 56(1)(b) of the MMC Act and Rule 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as "MCS Rules"), on 18th June 2018, issued an order suspending respondent No.1 from service. The General Body of the KDM Corporation, in its meeting held on 7th July 2018, ratified the suspension of respondent No.1. On 20th June 2019, the General Body of the KDM Corporation also accorded sanction to hold departmental inquiry against respondent No.1. Accordingly, the Commissioner of the KDM Corporation issued a notice dated 7th August 2019 to respondent No.1 with regard to holding of departmental inquiry against him and called upon him to appear before the Inquiry Officer appointed by the KDM Corporation. The respondent No.1, vide his letter dated 16th August 2019 addressed to the Commissioner, KDM

Corporation, objected to the said departmental inquiry on the ground of jurisdiction.

8. Again, the KDM Corporation issued a notice dated 5th December 2019, to respondent No.1 calling upon him to remain present for the preliminary inquiry to be held on 26th December 2019. However, the respondent No.1 chose not to participate in the departmental inquiry and filed a writ petition being Writ Petition (ST.) No.3599 of 2020 before the High Court of Judicature at Bombay on 21st February 2020. In the said writ petition, he sought the following reliefs:

> "a) This Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ in the nature of Mandamus or any other appropriate Direction or Order thereby directing Respondent No.1 Corporation and its Municipal Commissioner to forthwith withdraw and/or cancel -
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> I) the impugned Suspension Order dated 18th June, 2018, being Exhibit-U hereto;
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> II) the impugned General Body Resolution dated 7th July, 2018, being Exhibit-V hereto;
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> III) the Impugned General Body Resolution No.6 dated 20th June, 2019 being Exhibit-Y hereto; and

IV) the Impugned Notice of Departmental inquiry dated 7th August, 2019 being Exhibit-Z to this petition;

b) This Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ in the nature of Certiorari or any other appropriate Direction or Order thereby quashing and/or setting aside –

I) the Impugned Suspension Order dated 18th June, 2018, passed by the Municipal Commissioner of Respondent No.1 being Exhibit -U hereto;

II) the Impugned General Body Resolution dated 7th July, 2018 of Respondent No.1, being Exhibit-V hereto;

III) the Impugned General Body Resolution No.6 dated 20th June, 2019 or Respondent No.1, being Exhibit -Y hereto; and

IV) the Impugned Notice of 193 Departmental Inquiry dated 7th August 2019 issued by the commissioner of Respondent No.1 being Exhibit-Z to this petition;

c) This Hon'ble Court may be pleased to Issue Writ of Mandamus or any other appropriate Writ in the nature of Mandamus or any other appropriate Direction or Order thereby directing Respondent No.1 Corporation and its Municipal Commissioner to forthwith re-Instate the Petitioner in the post of Additional Municipal Commissioner of the 1st Respondent Corporations;"

9. By the impugned judgment dated 6th April 2021, the writ petition filed by the respondent No.1 came to be allowed in terms of the prayers (a) to (c), which are reproduced hereinabove. Being aggrieved thereby, both, the KDM Corporation and the State of Maharashtra have approached this Court.

10. We have heard Shri P.S. Patwalia, learned Senior Counsel appearing on behalf of the KDM Corporation, Shri Rahul Chitnis, learned counsel appearing on behalf of the State and Shri Anupam Lal Das, learned Senior Counsel appearing on behalf of respondent No.1.

11. Shri Patwalia submitted that the High Court has grossly erred in holding that the respondent No.1 was an employee of the State Government and therefore, it was only the State Government, who had powers to suspend him. He submitted that though under Section 39A of the MMC Act, the State Government was an authority competent to create a post and appoint a suitable person on that post, such a post was created

specifically for the KDM Corporation and once a suitable person was appointed by the State Government on the said post, he became an employee of the KDM Corporation. He submitted that in view of the provisions of Section 56 of the MMC Act, it was only the KDM Corporation, which was competent to suspend such an employee on the grounds as are available under the said provision, and also to initiate departmental proceedings. He submitted that the High Court has grossly erred in not considering the said aspect and referring to Section 16 of the Maharashtra General Clauses Act, 1904 (hereinafter referred to as "GC Act"). He submitted that when there is a specific provision in the MMC Act, which empowers the Commissioner to suspend an employee and to initiate departmental proceedings against him, recourse to GC Act is not warranted. He submitted that since the respondent No.1 was arrested and was detained in custody for a period exceeding 48 hours, in view of sub-rule (2) of Rule 4 of the MCS Rules, his suspension was a deemed one. The learned Senior Counsel submitted that the impugned judgment has the effect

of leading to a consequence that the respondent No.1, who has been caught red-handed in a trap case, will be left scot-free.

12. The State Government has also supported the contentions as raised by the KDM Corporation. It is submitted that though the post was created by the State Government for the KDM Corporation and though the respondent No.1 was selected and appointed by the State Government in accordance with the procedure prescribed in the G.R. dated 6th January 2015, the appointment was, as an AMC of the KDM Corporation and as such, the KDM Corporation was well within its powers under Section 56 of the MMC Act to suspend him.

13. Shri Anupam Lal Das, learned Senior Counsel appearing for the respondent No.1, on the contrary, would submit that the respondent No.1 was appointed by the State Government under Section 39A of the MMC Act and the post of AMC is *pari materia* with that of the Commissioner, who is appointed under Section 36 of the MMC Act. He submitted that under Section 39A(2) of the MMC Act, an AMC is subject to the same

liabilities, restrictions and terms and conditions of service, to which the Commissioner is subjected to as per the provisions of the MMC Act. He further submitted that the posts of the Commissioner and the AMC find place in Chapter II of the MMC Act, whereas Section 56 finds place in Chapter IV of the MMC Act. He submitted that various other sections in Chapter IV of the MMC Act provide for appointment of various municipal officers and servants other than AMC and Commissioner and therefore, the term "competent authority" will have to be construed to be only such authorities, who were competent to make appointments to the posts found in Chapter IV of the MMC Act. He submitted that in any case, in view of the judgment of this Court in the case of ***Ajay Kumar Choudhary v. Union of India through its Secretary and Another***[1], continued suspension of respondent No.1 was not warranted. He submitted that even the charge-sheet was not submitted within 90 days and as such, there is no reason to interfere with the impugned judgment.

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1 **(2015) 7 SCC 291**

14. The High Court, in the impugned judgment, has held that since the appointment of respondent No.1 was made by the State Government in view of Section 36 of the MMC Act, it is only the State Government, who was competent to suspend and initiate departmental inquiry against him. It was, therefore, held that the suspension order issued by the Commissioner and ratified by the KDM Corporation, and the departmental inquiry initiated by the Commissioner with the approval of the KDM Corporation was beyond their powers. We will have to examine the correctness of these findings.

15. Section 39A of the MMC Act reads thus:

> "**39A. Appointment of Additional Municipal Commissioners**.—(1) The State Government may create one or more posts of Additional Municipal Commissioners in the Corporation and appoint suitable persons on such posts, who shall, subject to the control of the Commissioner, exercise all or any of the powers and perform all or any of the duties and functions of the Commissioner.
>
> (2) Every person so appointed as the Additional Municipal Commissioner shall be subject to the same liabilities, restrictions and terms and conditions of service, to which the Commissioner is subjected to as per the provisions of this Act.

16. The perusal of sub-section (1) of Section 39A of the MMC Act would reveal that the State Government is empowered to create one or more posts of AMCs. However, such a post is created in the particular Corporation. The State Government is also entitled to appoint suitable persons on such posts. It is further clear that the AMCs so appointed, though shall exercise all or any of the powers and perform all or any of the duties and functions of the Commissioner, the same shall be subject to the control of the Commissioner. Sub-section (2) of Section 39A of the MMC Act provides that every person so appointed as the AMC shall be subject to the same liabilities, restrictions and terms and conditions of service, to which the Commissioner is subjected to as per the provisions of MMC Act.

17. It is not in dispute that vide G.R. dated 6th January 2015, for the KDM Corporation, which was promoted from Class 'D' to Class 'C', one new post of AMC was created. It is also not in dispute that there was already one post of AMC existing in the KDM Corporation. The perusal of the said G.R. would reveal

that one post of AMC, which was newly created, was to be filled in from the officers of the State Cadre in the KDM Corporation. It would further reveal that the second post of the AMC was to be filled in from the officers working in the respective Corporation by way of selection. It further clarified that in the event, the suitable person is not available for selection to the said post, the same shall be filled in from the officers of the State Government Cadre.

18. From the perusal of the record, it could be seen that the State Government had called for the names of suitable candidates from the Commissioner of the KDM Corporatoin. The Commissioner, vide his communication dated 4th April 2015, proposed three names. The said names were considered by a Committee consisting of the following authorities:

(i) Commissioner/Director, Directorate of Municipal Administration;

(ii) Additional Commissioner, Mumbai Municipal Corporation;

(iii) Commissioner, KDM Corporation;

(iv) Deputy Secretary, Govt. of Maharashtra; and

(v) Under Secretary, Govt. of Maharashtra.

19. A perusal of the Minutes of the said Meeting would reveal that though the Commissioner of the KDM Corporation stated that none of the candidates including the respondent No.1 were eligible for the post of AMC, the Committee, in its meeting held on 5th May 2015, after considering the confidential reports of the three candidates, resolved to recommend respondent No.1 for appointment to the post of AMC of the KDM Corporation. The said recommendation was approved by the State Government and accordingly, respondent No.1 came to be appointed as AMC of the KDM Corporation vide G.R. dated 2nd June 2015. The said G.R. would clearly reveal that respondent No.1 had been appointed specifically as AMC of the KDM Corporation. It could thus clearly be seen from the record that though the respondent No.1 was selected and appointed by the

State Government, his appointment was specifically for the KDM Corporation.

20. Therefore, the question that we will have to consider is as to whether the respondent No.1 though an employee of the KDM Corporation, can neither be suspended nor any departmental proceedings can be initiated against him by the KDM Corporation, since his selection and appointment was done by the State Government.

21. For considering the rival submissions, it will be relevant to refer to some of the provisions of the MMC Act. We have already reproduced Section 39A of the MMC Act hereinabove. The other two provisions that require consideration are sub-section (9) of Section 2 and Section 56 of the MMC Act, which read thus:

> "**2. Definitions.-**
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> .....
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> (9) "the Commissioner" means the Municipal Commissioner for the City appointed under Section 36 and includes an acting Commissioner appointed under Section 39;

.....

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 holding the post equivalent to or higher in rank than the post of the Assistant Commissioner shall be dismissed by the Commissioner without the previous approval of the Corporation.

[*(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 therefor, 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.]"

22. It could thus be seen that under Section 39A of the MMC Act, though the AMC will exercise all or any of the powers and perform all or any of the duties and functions of the Commissioner, the same shall be subject to the control of the Commissioner. No doubt, that the AMC would be subject to the same liabilities, restrictions and terms and conditions of service, to which the Commissioner of the Corporation is subjected. However, the legislative intent is clear that the powers to be exercised by AMCs would be subject to the control of the Commissioner.

23. The legislative intent would also be gathered from sub-section (9) of Section 2 of the MMC Act. It could be seen that in the definition of the "Commissioner", though an acting Commissioner appointed under Section 39 of the MMC Act has been included, an AMC appointed under Section 39A of the

MMC Act has not been included. We are, therefore, unable to accept the contention of respondent No.1 that the post of AMC is *pari materia* with that of the Commissioner. The legislative intent is clear that though the AMC exercises all or any of the powers and performs all or any of the duties and functions of the Commissioner, he would be subject to the control of the Commissioner, and as such, subordinate to him.

24. Under sub-section (1) of Section 56 of the MMC Act, a competent authority, subject to the provisions of the said Act, is entitled to impose any of the penalties specified in sub-section (2) of Section 56 of the MMC Act on a municipal officer or servant if such authority is satisfied that such officer or servant is guilty of breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent. Clause (a) of the proviso to sub-section (1) of Section 56 of the MMC Act, however, provides that no municipal officer or servant holding the post equivalent to or higher in rank than the post of the Assistant Commissioner,

shall be dismissed by the Commissioner without the previous approval of the Corporation. It can be seen that the words used are "post equivalent to or higher in rank than the post of the Assistant Commissioner". It will also be relevant to note that Section 56 of the MMC Act has also been amended by the same Amending Act i.e. Maharashtra Act No. 32 of 2011, by which Section 39A was brought in the statute. Earlier, the words used in clause (a) of sub-section (1) of Section 56 were "whose monthly salary, exclusive of allowances exceeds one thousand rupees". The said words were substituted by the words "holding the post equivalent to or higher in rank than the post of the Assistant Commissioner". It can thus be seen that though the "competent authority" is entitled to impose the penalty as specified in sub-section (2) of Section 56 of the MMC Act on a municipal officer or servant; in case of an officer, who is equivalent to or higher in rank than the post of Assistant Commissioner, the power of dismissal can be exercised by the "Commissioner" only with the previous approval of the Corporation.

25. It can further be seen that clause (b) of the proviso to sub-section (1) of Section 56 of the MMC Act enables the Commissioner to suspend any officer or servant, whether appointed by the Corporation or any other competent authority, except Transport Manager being a Government Officer on deputation, pending an order of the Corporation. It further provides that when the officer suspended is a Transport Manager or an officer appointed under Section 45 of the MMC Act, such suspension with reasons thereof, shall, forthwith be reported by the Commissioner to the Corporation. It further provides that such a suspension shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension.

26. It is thus clear that whereas, the Commissioner is empowered to suspend any officer or servant, whether appointed by the Corporation or any other competent authority, in case of a Transport Manager being a Government Officer on deputation or any officer appointed under Section 45 of the

MMC Act, the Commissioner is required to report such a suspension with reasons thereof, to the Corporation. It further provides that 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.

27. A conjoint reading of the aforesaid provisions of the MMC Act would reveal that though a competent authority may impose any of the penalties on a municipal officer or servant, no municipal officer or servant holding the post equivalent to or higher in rank than the post of an Assistant Commissioner, shall be dismissed by the Commissioner without the previous approval of the Corporation.

28. It could be seen that the legislature has created two classes of the municipal officers and servants. One class is of the municipal officers and servants, other than the ones holding the post equivalent to or higher in rank than the post of an Assistant Commissioner. In this category, a competent authority may impose the penalties as provided under the

provisions of the MMC Act. The other class of municipal officers is of the persons holding the post equivalent to or higher in rank than the post of Assistant Commissioner. The officers in such a class can be dismissed only by the Commissioner and that too with the previous approval of the Corporation.

29. As already discussed hereinabove, clause (a) of the proviso to sub-section (1) of Section 56 of the MMC Act has been amended simultaneously by an amendment, which brought Section 39A into the statute. As such, we are of the view that the term "post equivalent to or higher in rank than the post of Assistant Commissioner" cannot be construed in a narrow compass. We are therefore of the view that clause (a) of sub-section (1) of Section 56 of the MMC Act would also include the post of AMC. As such, the Commissioner would be a "competent authority" insofar as the post of AMC is concerned. Likewise, though the powers of the Commissioner to suspend any officer or servant except a Transport Manager being a

Government Officer on deputation or the officers appointed under Section 45 of the MMC Act are without any restriction, when such suspension is with regard to a Transport Manager or an officer appointed under Section 45 of the MMC Act, though the Commissioner is empowered to suspend them, such a suspension has to be reported to the Corporation along with the reasons thereof. Such a suspension shall come to an end, if not confirmed by the Corporation within a period of six months from the date of such suspension.

30. For appreciation of the rival contentions, it will be apposite to seek certain guidance from some precedents of this Court.

31. In the case of ***Philips India Ltd. v. Labour Court, Madras and Others***[2], this Court had an occasion to decide the rate of overtime wages as mentioned in Section 31 of the Tamil Nadu Shops and Establishments Act, 1947. This Court found that for finding the minimum rate of overtime wages as mentioned in Section 31 of the said Act, it will have to be

2 **(1985) 3 SCC 103**

interpreted in the light of the provisions contained in Section 14(1) read with proviso to Section 31 of the said Act. Coming to this conclusion, this Court observed thus:

> "**15.** No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as "elementary rule" (see *Attorney General* v. *Bastow* [(1957) 1 All ER 497]) and as a "settled rule" (see *Poppatlal Shah* v. *State of Madras* [AIR 1953 SC 274 : 1953 SCR 667]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: "it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers" (Quoted with approval in *Punjab Beverages Pvt. Ltd.* v. *Suresh Chand* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370])."

32. It could thus be seen that this Court has held that the Statute must be read as a whole. It has been held that this rule of statutory construction is so firmly established that it is variously styled as "elementary rule". It has been held that for

finding out the true meaning of one part of a statute, a reference will have to be made to another part of the statute and that will best express meaning of the makers.

33. In the case of ***Sultana Begum v. Prem Chand Jain***[3], this Court was considering the question regarding the conflict between Section 47 of the Code of Civil Procedure, 1908 and Order XXI Rule 2 thereof. This Court held that applying the rule of harmonious construction, the so-called conflict between the said two provisions had been dispelled. Observing so, this Court reiterated the following well-settled principles of interpretation of statutes:

> "**15.** On a conspectus of the case-law indicated above, the following principles are clearly discernible:
>
> (1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.
>
> (2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its

3 **(1997) 1 SCC 373**

efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. *This is the essence of the rule of "harmonious construction".*

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

34. It can thus be seen that this Court has held that it is the duty of the court to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them. It has further been held that the provisions of one section of a statute cannot be used to defeat the other provisions unless the court finds the reconciliation between them impossible. It has further been held that when two conflicting provisions in an Act cannot be reconciled with each

other, they should be so interpreted that, if possible, effect should be given to both. It has further been held that an interpretation, which reduces one of the provisions as a "dead letter" or "useless lumber", should be avoided.

35. This Court, in the case of ***Jagdish Singh v. Lt. Governor, Delhi and Others***[4]**,** while considering the conflict between Rules 25(2) and 28 of the Delhi Cooperative Societies Rules, 1973, observed thus:

> "**7.** … It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being

4 **(1997) 4 SCC 435**

destroyed and consequently court should avoid such a construction……."

36. In the case of ***Commissioner of Income Tax v. Hindustan Bulk Carriers***[5], though in Sections 245-D(4) and 245-D(6) of the Income Tax Act, 1961, the terminus point for charging interest was not specifically provided, this Court, applying the principle of harmonious and contextual construction, held that they have to be charged in the spirit of Sections 234-A, 234-B and 234-C of the said Act. Holding this, this Court observed thus:

> "**16.** The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See *Salmon* v. *Duncombe* [*Salmon* v. *Duncombe*, (1886) LR 11 AC 627 (PC) : 55 LJPC 69 : 55 LT 446] , AC at. 634, *Curtis* v. *Stovin* [*Curtis* v. *Stovin*, (1889) LR 22 QBD 513 (CA) : 58 LJQB 174 : 60 LT 772] referred to in *S. Teja Singh case* [*CIT* v. *S. Teja Singh*, AIR 1959 SC 352 : (1959) 35 ITR 408] .)
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> **17.** If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to

5 **(2003) 3 SCC 57**

futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes* v. *Doncaster Amalgamated Collieries Ltd.* [*Nokes* v. *Doncaster Amalgamated Collieries Ltd.*, 1940 AC 1014 : (1940) 3 All ER 549 (HL) : 109 LJKB 865 : 163 LT 343] referred to in *Pye* v. *Minister for Lands for New South Wales* [*Pye* v. *Minister for Lands for New South Wales*, (1954) 1 WLR 1410 : (1954) 3 All ER 514 (PC)] .) The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania* v. *Union of India* [*Mohan Kumar Singhania* v. *Union of India*, 1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See *R.S. Raghunath* v. *State of Karnataka* [*R.S. Raghunath* v. *State of Karnataka*, (1992) 1 SCC 335 : 1992 SCC (L&S) 286] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See *Sultana Begum* v. *Prem Chand Jain* [*Sultana Begum* v. *Prem Chand Jain*, (1997) 1 SCC 373] .)

> **20.** Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.
>
> **21.** The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy."

37. It could thus be seen that it is more than well-settled that the court has to avoid the interpretation which will result in head-on clash between two sections of the Act. When one section of an Act is not in a position to bring out the legislative intent, recourse will have to be made to other sections of the statute for gathering the legislative intent. An attempt should be made to see to it that the effect must be given to parts of the statute even if they may, on first blush, appear to be conflicting. One provision of the Act has to be construed with reference to other provisions in the Act, so as to make a consistent enactment of the whole statute. An attempt should

be made of avoiding any inconsistency or repugnancy either within a section or between two different sections.

38. It has further been held that if the court has a choice between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, such an interpretation will have to be avoided. The court should avoid a construction which would reduce the legislation to futility. A broader interpretation which would bring about an effective result, will have to be preferred. Applying this principle, we are of the considered view that sub-section (9) of Section 2, Sections 39A and 56 of the MMC Act will have to be read in reference to each other. They cannot be read in isolation.

39. Therefore, we are of the view that the finding of the High Court that in view of Section 39A of the MMC Act, the Commissioner or the Corporation will not have power to suspend or initiate departmental inquiry against the AMC, is in ignorance of the provisions of Section 56 and sub-section (9) of Section 2 of the MMC Act.

40. We find that the view taken by the High Court is also not acceptable in view of another principle of statutory interpretation. In the case of ***Mahadeo Prasad Bais (Dead) v. Income-Tax Officer 'A' Ward, Gorakhpur and Another***[6], this Court held that an interpretation, which will result in anomaly or absurdity, should be avoided. It has been held that at times, the circumstances justify a slight straining of the language of the clause so as to avoid a meaningless anomaly.

41. It will further be relevant to refer to the following observations of this Court in the case of ***K.P. Varghese v. Income Tax Officer, Ernakulam and Another***[7]:

> "**6.** .....We must therefore eschew literalness in the interpretation of Section 52 sub-section (2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the

6 **(1991) 4 SCC 560**
7 **(1981) 4 SCC 173**

legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide *Luke* v. *Inland Revenue Commissioner* [(1963) AC 557]). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision ....."

42. It will be apposite to refer to the following paragraphs from the judgment of this Court in the case of ***State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.***[8]:

"**16.** Lord Denning, in *Seaford Court Estates* v. *Asher* [(1949) 2 All ER 155, 164] said thus:

> "... when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as

8 **(1986) 3 SCC 91**

> they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."
>
> **17.** The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eve "some" violence to language is permissible. (See *K.P. Varghese* v. *ITO* [(1981) 4 SCC 173, 180-82 : 1981 SCC (Tax) 293, 300-302 : (1981) 131 ITR 597, 604-606] and *Luke* v. *Inland Revenue Commissioner* [(1964) 54 ITR 692 (HL)] .)"

43. It could thus be seen that this Court has held that the court should not always cling to literal interpretation and should endeavor to avoid an unjust or absurd result. The court

should not permit a mockery of legislation. It has been held that to make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye, 'some' violence to language is also permissible.

44. If the interpretation as placed by the High Court is accepted, it will lead to an absurd and anomalous situation wherein on one hand, the respondent No.1, who was selected and appointed by the State Government for the KDM Corporation, though would be an employee of the KDM Corporation, the KDM Corporation would not be in a position to initiate departmental proceedings against him, even if he is found to have indulged into serious misconduct. On the other hand, since the respondent No.1 is not an employee of the State Government, the State Government also would not be in a position to initiate any departmental proceedings against him.

45. We have no hesitation in holding that the intention of the legislature would not have been to lead to such an absurd and anomalous situation. A legislative intent cannot be to leave an

employee scot-free though he has indulged into serious misconduct. We are therefore of the considered view that on a harmonious construction of sub-section (9) of Section 2, Sections 39A and 56 of the MMC Act, the Commissioner of the Municipal Corporation will have the power to suspend or initiate departmental proceedings against an AMC, who is an officer, superior in rank to the Assistant Commissioner. However, in case of suspension of such an officer, the only requirement would be to report to the Corporation, with reasons thereof, and if such a suspension is not confirmed by the Corporation within a period of six months from the date of such suspension, the same shall come to an end. In our considered view, any other interpretation would lead to absurdity and anomaly, and therefore will have to be avoided.

46. We find that the appeals deserve to be allowed on another rule of interpretation, that the statute has to be interpreted in such a manner that it preserves its workability. Recently, this Court, in the case of ***Sanjay Ramdas Patil v. Sanjay and***

Others[9], has referred to the earlier judgments of this Court and observed thus:

> "**36.** .....It will be relevant to refer to the observations of this Court in *State of T.N.* v. *M.K. Kandaswami* [*State of T.N.* v. *M.K. Kandaswami*, (1975) 4 SCC 745 : 1975 SCC (Tax) 402] : (SCC p. 751, para 26)
>
> > "*26*. ... If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile."
>
> **37.** This Court in *CIT* v. *Hindustan Bulk Carriers* [*CIT* v. *Hindustan Bulk Carriers*, (2003) 3 SCC 57] has observed thus : (SCC p. 73, para 15)
>
> > "*15*. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See *Whitney* v. *IRC* [*Whitney* v. *IRC*, 1926 AC 37 : 10 Tax Cas 88 (HL) : 95 LJKB 165 : 134 LT 98] , AC at p. 52 referred to in *CIT* v. *S. Teja Singh* [*CIT* v. *S. Teja Singh*, AIR 1959 SC 352 : (1959) 35 ITR 408] and *Gursahai Saigal* v. *CIT* [*Gursahai Saigal* v. *CIT*, AIR 1963 SC 1062 : (1963) 48 ITR 1] .)"

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9 **(2021) 10 SCC 306**

38. In *Balram Kumawat* v. *Union of India* [*Balram Kumawat* v. *Union of India*, (2003) 7 SCC 628] , this Court observed thus : (SCC pp. 636-37, paras 25-26)

> "*25*. A statute must be construed as a workable instrument. *Ut res magis valeat quam pereat* is a well-known principle of law. In *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* [*Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam*, (1989) 3 SCC 709] this Court stated the law thus : (SCC p. 754, paras 118-20)
>
> > '*118*. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "*ut res magis valeat quam pereat*". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the

legislature intended for it. In *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* [*Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, (1900) 2 Ch 352 : 69 LJCh 850 : 83 LT 274] Farwell, J. said: (Ch pp. 360-61)

> "Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning, and not to declare them void for uncertainty."

119. In *Fawcett Properties Ltd.* v. *Buckingham County Council* [*Fawcett Properties Ltd.* v. *Buckingham County Council*, (1960) 3 WLR 831 : (1960) 3 All ER 503 (HL)] Lord Denning approving the dictum of Farwell, J., said: (WLR p. 849 : All ER p. 516)

> "But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute is to bear, rather than reject it as a nullity."

120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable. In *Whitney* v. *IRC* [*Whitney* v. *IRC*, 1926 AC 37 : 10 Tax Cas 88 (HL) : 95 LJKB 165 : 134 LT 98] Lord Dunedin said : (AC p. 52)

> "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." '

26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See *Salmon* v. *Duncombe* [*Salmon* v. *Dun combe*, (1886) LR 11 AC 627 (PC) : 55 LJPC 69 : 55 LT 446] (AC at p. 634).] Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result."

> **39.** It could thus be seen that the Court will have to prefer an interpretation which makes the statute workable. The interpretation which gives effect to the intention of the legislature, will have to be preferred. The interpretation which brings about the effect of result, will have to be preferred than the one which defeats the purpose of the enactment……"

47. We are of the considered view that the legislature could not have intended a situation, wherein though the post of AMC is created by the State Government and a suitable person is appointed by it and though a person appointed on the said post becomes an employee of the Corporation, there would be no provision in the statute to initiate departmental proceedings against him. If such an interpretation is accepted, it would lead to absurdity and create a vacuum. In our opinion, in order to avoid such a situation, the interpretation as placed by us on the aforesaid provisions of the MMC Act will have to be preferred.

48. Insofar as the contention raised on behalf of respondent No.1 that the term "competent authority" as used in sub-

section (1) of Section 56 of the MMC Act will have to be read as a "competent authority" in respect of appointments to be made for the posts in Chapter IV is concerned, we are unable to accept the said contention. Such a restrictive meaning would render the legislation otiose. In any event, it is to be noted that though a Transport Manager is appointed under Section 40 of the MMC Act, which is a part of Chapter II, a Transport Manager is specifically referred to in clause (b) of sub-section (1) of Section 56 of the MMC Act which is a part of Chapter IV and empowers the Commissioner to suspend his services, however, with a requirement of reporting the same with reasons to the Corporation. It is thus clear that if the legislative intent was to give a narrower meaning to the term "competent authority", only to mean such authorities who were found in Chapter IV, then there would have been no reference in sub-section (1) of Section 56 of the MMC Act to Transport Manager, who is appointed under Chapter II of the MMC Act. We therefore find that the contention in that regard needs to be rejected.

49. We are therefore of the considered view that the High Court has totally erred in setting aside the suspension and the departmental proceedings initiated against respondent No.1. The effect of the impugned judgment is that the respondent No. 1, who has been, *prima facie*, found to be involved in a serious misconduct, has been left scot-free without requiring to face any departmental proceedings and directed to be reinstated in services.

50. Insofar as the prolonged suspension of the respondent No.1 is concerned, the respondent No.1 has relied on the judgments of this Court in the cases of ***Ajay Kumar Choudhary*** (supra) and ***State of Tamil Nadu represented by Secretary to Government (Home) v. Promod Kumar, IPS and Another***[10]. Insofar as the judgment of this Court in the case of ***Ajay Kumar Choudhary*** (supra) is concerned, though this Court has deprecated the protracted period of suspension and repeated renewal thereof, in the facts of the said case, this

10 **(2018) 17 SCC 677**

Court found that since the appellant therein was served with a charge-sheet, the direction issued in the said case may not be relevant to him any longer.

51. Insofar as the judgment of this Court in the case of ***Promod Kumar, IPS*** (supra) is concerned, this Court observed thus:

> "**24.** ....There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first respondent are serious in nature. However, the point is whether the continued suspension of the first respondent for a prolonged period is justified."

52. In the said case, the respondent No.1 therein was suspended for more than six years. This Court found that no useful purpose would be served by continuing the respondent No.1 therein under suspension any longer.

53. We find that in the present case, it is the respondent No.1 who, though called upon to participate in the departmental proceedings, has on his own, chosen not to participate therein.

It is the respondent No.1, who had objected to the initiation of the departmental proceedings by the Commissioner on the ground of jurisdiction and refused to participate in the departmental proceedings. We therefore find that the respondent No.1 cannot be permitted to take benefit of his own wrong. In any case, we find that the issue of prolonged suspension would be taken care of by directing the departmental proceedings to be completed within a stipulated period but the suspension of respondent No.1 would continue till then.

54. We find that the impugned judgment passed by the High Court is not sustainable in law.

55. In the result, the appeals are allowed in the following terms:

(i) The impugned judgment dated 6th April 2021, passed by the High Court of Judicature at Bombay in Writ Petition (ST.) No. 3599 of 2020 is quashed and set aside;

(ii) The Writ Petition (ST.) No. 3599 of 2020 filed by the respondent No.1 before the High Court of Judicature at Bombay is dismissed;

(iii) The departmental proceedings initiated against respondent No.1 are directed to be completed as expeditiously as possible and in any case, within a period of four months from the date of this judgment. The respondent No.1 would continue to be under suspension till the conclusion of the said departmental proceedings; and

(iv) Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

NEW DELHI;
MARCH 31, 2022.