

(1965) 09 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 685 of 1964

Abdul Gani

APPELLANT

Vs

Commissioner, Nagpur Division, Nagpur and Others

RESPONDENT

Date of Decision : 28-09-1965

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 25(1), 25(5), 34

Citation : AIR 1967 Bom 327 : (1966) 68 BOMLR 822 : (1966) ILR (Bom) 1056 : (1967) 2 LLJ 475

Hon'ble Judges : Padhye, J; Abhyankar, J

Bench : Division Bench

Advocate : C.S. Dharmadhikari, for the Appellant; G.R. Mudholkar, Addl. Govt. Pleader and B.A. Masodkar, for the Respondent

Judgement

Abhyankar, J.

(1) By this petition under Articles 226 and 227 of the Constitution, the petitioner desires that the order passed by respondent No.1. Commissioner of Nagpur Division, according sanction to the suspension of the petitioner pending enquiry and discharging the petitioner as per resolution of respondent No. 3 Municipal Committee, Pulgaon, discharging the services of the petitioner on accepting the report of an Enquiry Officer should be quashed. A few facts are necessary to understand the contentions raised by the petitioner.

(2) Respondent No. 3 is a Municipal Committee incorporated for the town of Pulgaon under the C. P. and Berar Municipalities Act, 1922. The petitioner was appointed on probation for a period of three years as a Secretary of respondent No. 3 Committee on 1st January 1962. This appointment was subsequently approved by the State Government, A meeting of the Municipal Committee was held on 3rd of September 1963. At the relevant time the office of President of the Municipal committee was held by a lady who was not must educated. It is alleged that the meeting had become unruly and police had to be called. At the subsequent stage of the meeting there was a pandemonium. The proceedings of

the meeting were it appears, being recorded by the petitioner as a Secretary of the Municipal committee. We have not been shown any byelaw or a rule under which the Secretary is required or empowered to record the proceedings of a meeting of the Committee. While recording the proceedings of the meeting, the petitioner alleges, that the President directed him to record the speeches only of one side and not the other. According to the petitioner, he was unable to carry out this direction as it would be improper and illegal to do so. After some time, the President and her supporters left the meeting. Though the President left the meeting, the remaining members continued the meeting which went on upto 5-30 P. M. according to the averments in the petition. At about that time, the petitioner received a telegraphic notice under the signature of the President of the Municipal Committee suspending the petitioner from office for gross misbehaviour and act of indiscipline. This was followed by an order of suspension passed by the President of the Municipal Committee on 4th of September 1963. Suspension of the petitioner was subsequently ratified at a meeting of the General Body of the Municipal Committee later on. The President also asked for sanction being accorded by the Commissioner, Nagpur Division, to the suspension of the petitioner.

(3) The Municipal Committee thereafter not only ratified the action of the President but also appointed the Vice-President as an officer to hold enquiry against the conduct of the petitioner. The Vice-President held an enquiry and submitted his report on 27th of November 1963. The Municipal Committee, at its meeting held on 16-12-1963, considered this report of the Enquiry Officer and action proposed by the Enquiry Officer was approved to be taken by the Municipal Committee. That action was to discharge the petitioner from his service. The resolution according sanction and taking this decision also decided that sanction of the higher authorities should be obtained for this decision. Further steps were taken by the Municipal Committee on the next day, that is, 17-12-63 by forwarding papers for obtaining sanction from the requisite authorities to the Collector of the district.

(4) The petitioner had filed an appeal before the Collector against the order of his suspension pending enquiry. That appeal was rejected by the Collector. on 30th of January 1964. The Collector took the view that the petitioner was a probationer and he had no right of appeal against the order impugned by the petitioner. Against this appellate order, the petitioner filed a revision before respondent No. 1 challenging the view of the Collector that his appeal was not tenable.

(5) In the meanwhile, it appears, fresh elections were held and a new body had come into office in this Municipal Committee in March 1964.

(6) The Commissioner issued a show-cause notice to the petitioner against the sanction asked for by the Municipal Committee in pursuance of its resolution dated 16-12-1963. This notice was received by the petitioner on 16-6-1964 or there about. Soon thereafter the new body of the Municipal Committee passed a

resolution on 22-6-1964 again considering the subject regarding the action taken against the petitioner. A long resolution was passed on that date a copy of which has been filed as Annexure D to the petition. By that resolution the Committee resolved that the action to remove the petitioner from the post of the Secretary has been taken purposefully, that there is, at present, no suitable person to execute the work of the Municipal Committee, that there was pending work regarding collection of quarterly tax conservancy matters, current years' budget etc and that, therefore, it was necessary to make an appointment to the post of the Secretary. It also observed that the Committee considers that the petitioner be taken back on the post of the Secretary from 23-6-1964 and the person appointed as Secretary, namely, Mr. Mudholkar should be relieved of his charge from that date. They also resolved that the action of the previous body taken by its resolution dated 16-12-1963 may be proposed to be dropped and the Commissioner may be requested to sanction payment of salary to Mr. Khan for the period of suspension.

(7) Hearing regarding the show cause notice, as well as the revision filed at the instance of the petitioner before the Commissioner came up on 2nd of September 1964. On that date the petitioner filed an application before the Commissioner withdrawing his revision against the appellate order of the Collector rejecting his appeal against the order of suspension. The Commissioner permitted the petitioner to withdraw that revision application. On the same date the Municipal Committee filed an application before the Commissioner bringing to his notice that the Committee had passed a resolution dated 22-6-1964 that the Commissioner should be requested to cancel the enquiry and the proceedings regarding the resolution of 16-12-1963. The Commissioner seems to have heard and counsel for the petitioner regarding the show cause notice and thereafter passed an order on 11th of September 1964 which is challenged in these proceedings.

(8) In paragraph 3 of the impugned order, respondent No.1 has observed that he went through the enquiry papers and also heard Mr. Khan on 2-9-1964. The contentions raised before the Commissioner on behalf of the petitioner are then reproduced. The findings of the Commissioner regarding the contentions are found in the following observations in this paragraph:

"It is a fact that most of the charges levelled against him as based on the inspection note drawn by the Assistant Commissioner (General) dated 31-3-1963 on the working of the Municipal Committee, Pulgaon. It is noticed that the irregularities and lapses pointed out in the last inspection notices were allowed to continue even during the regime of Shri Khan for which he cannot be spared as he is the Chief Executive Officer of the Municipal Committee. Similarly, his behaviour in the meeting held on 3-9-1963 was rather strange and insulting and could hardly be tolerated, if dignity of the office and discipline are to be maintained. On perusal of enquiry papers it appears that Shri Khan was given due opportunity to cross-examine the witnesses."

In Paragraph 4 the learned Commissioner has found that it was clearly proved that the petitioner had disobeyed the orders of his superiors and behaved in an indisciplinary manner. He, therefore, held that on the basis of the enquiry report the Municipal Committee had rightly come to the conclusion that Mr. Khan should be discharged from service. The Commissioner therefore accorded his sanction to discharge Mr. Khan from service and approved the resolution of the Committee dated 16-12-1963 but in view of the young age of the petitioner the Commissioner took care to add that he took a lenient view of the matter and ordered that the discharge will not disqualify the petitioner from future employment, more so, because the faults committed by him do not involve any moral turpitude.

(9) The petitioner challenges this order on the ground that subsequent to the passing of the original resolution dated 16-12-1963 the Municipal Committee had passed an entirely contrary resolution on 22nd of June 1964 by which it not only rescinded the previous resolution proposing to take action against the petitioner, but has also decided to re-employ or reinstate the petitioner in the post of the Secretary and in view of this later resolution the Commissioner had no power to accord sanction to the previous resolution. In other words, the power of the Commissioner to accord sanction under the proviso to Section 25(1) of the Municipalities Act, could not be exercised as the Municipal Committee had already taken a different view of the matter and withdraw the previous resolution dated 16-12-1963 by their subsequent resolution dated 22-6-1964. The Commissioner was thus acting without jurisdiction in entertaining or adjudicating on the application for sanction when the Committee had itself decided not to proceed with the matter by its decision.

(10) We are not in a position to accept this contention as well founded. Section 25 of the Municipalities Act is as follows:

"25 (1) A Committee may employ such officers and servants as may be necessary and proper for the efficient discharge of its duties and may make byelaws providing for the delegation of powers, duties and functions to such officers and servants and regulating their procedure, appointment, pay, leave, leave allowances and other conditions of services:

Provided that-

(i) in the case of the secretary, health officer or any other officer who may be specified by the Provincial Government by rules made under this Act,. no post shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the Provincial Government, and every appointment to and dismissal from such post, except a temporary or officiating appointment for a period not exceeding six months, shall be subject to a like approval:

(ii) no order of suspension for a period exceeding one month shall be passed against any such officer and no resignation tendered by such officer shall be

accepted without the previous approval of the Provincial Government;

(iii) Any appointment to a municipal post carrying a salary of not more than forty rupees a month shall be made by the President in accordance with rules made by the Provincial Government and he shall report every such appointment to the Committee when it meets next after such appointment.

(1-A) In any case in which the previous approval of the Provincial Government is required under the proviso to sub-section (1) and has not been obtained, the Provincial Government may in special circumstances, ratify the action of the committee if it is satisfied that no substantial injury will thereby be caused to anyone affected by the action of the committee or that the action of the committee was in the public interest.

2. A committee may make byelaws-

(a) x x x x x

(b) for granting them pensions, or for subscribing on their behalf for pension, or gratuity under any general or special orders of the Provincial Government for the time being in force.

(c) for purchasing for them, from the Government or otherwise, annuities, at any time after their retirement;

(d) for establishing and maintaining a compassionate fund and regulating the conditions subject to which pensions or gratuities from such fund may be given:

Provided that in the case of any person in the employment of a committee at the time when this Act comes into force the arrangement existing at such time in respect of the annuity or pension of such person shall not be altered without the previous sanction of the Provincial Government.

3. In the case of an officer lent by the Central or any Provincial Government, the Committee may contribute to any leave allowance, gratuity, annuity or pension, to which he may become entitled in accordance with the conditions of his service under the Crown.

4. With the sanction of the Provincial Government a committee may give an extra ordinary pension or gratuity-

(a) to any officer or servant injured in execution of his duty;

(b) to the family of any officer or servant who is killed in the execution of his duty or whose death is due to devotion to duty;

(c) from the compassionate fund established and maintained under clause (d) of sub-section (2), to the family of any officer or servant left in indigent circumstances through the premature death of such officer or servant.

5. If in the opinion of the Provincial Government any officer of the classes

specified in or under the first proviso to sub-section (1) or a vaccinator is incompetent to perform his duties or his suspension is desirable on grounds of public interest or policy the committee shall, on the requirement of the Provincial Government dismiss such officer or suspend him for such period as the Provincial Government may direct or transfer him to any other office approved by the Provincial Government.

6. The Provincial Government may prescribe the classes or grades of officers and servants who shall have the right of appeal except in the case of dismissal under sub-section (5) from any decision of the Committee inflicting any departmental punishment other than censure.

7. The Provincial Government may make rules under this Act-

(i) Prescribing the departmental punishments which may be inflicted by the President or a committee on its officers and servants and the procedure to be followed in inflicting them; and

(ii) for establishing and maintaining by a committee of a provident or annuity fund on behalf of its own officers and servants and for compelling any or every such officer or servant to contribute thereto and for supplementing such contributions out of the municipal fund.

8. The authority hearing an appeal made under sub-section (6) shall have power to set aside or vary but not to enhance the punishment against which the appeal is preferred.

9. The Provincial Government may make rules under this Act prescribing the qualifications of candidates for employment as officers and servants under sub-section (1)."

It will be seen that the power of a Municipal Committee to employ officers and servants of the Committee mentioned in sub-clause (i) of the proviso, namely, the Secretary, the Health Officer or any other officer who may be specified by the State Government is not absolute. It is subject to the sanction of the State Government not only in the matter of creation and abolition of the posts or alteration in the emoluments of the posts of any of these officers, but also in the matter of every appointment to and dismissal from such post. We may particularly invite attention to the overriding power vesting in the State Government or the Commissioner to whom powers are delegated mentioned in sub-section (5) of section 25. Under that section, if in the opinion of the Provincial Government any officer of the Classes specified in or under the first proviso to sub-section (1) or a vaccinator is incompetent to perform his duties or his suspension is desirable on grounds of public interest or policy, the committee shall, on the requirement of the Provincial Government dismiss such officer or suspend him for such period as the Provincial Government may direct or transfer him to any other office approved by the Provincial Government. These provisions amply indicate that the control that vests in a superior authority like the State

Government or the Commissioner is required to be exercised both by way of protection of the officer concerned and for safeguarding the interest of the public in the administration of the local authority so far as its exercise in the employment of a specified officer is concerned. Once a Municipal Committee takes a deliberative decision regarding a particular officer and solemnly comes to the conclusion that the particular officer should not be retained and submits papers for sanction of the requisite authority, we do not think it is open to the Municipal Committee either to vary or resile from that decision until the sanctioning authority has an opportunity to apply its mind and decide whether to withhold or accord sanction. It appears that the scheme of section 25 has limited the power of the Municipal Committee in the matter of appointment and dismissal or discharge from service of the specified class of officers against whom action, in the first place, cannot be taken lightly and once action is proposed to be taken, then the decision which has been taken can only be implemented or further consideration on that matter can be determined only after the superior authority which is empowered to give or withhold sanction has applied its mind and disposed of the question of sanction after issuing notice to the parties concerned. It was not, therefore, permissible for the Municipal Committee in this case merely because there was a change in the complexion of that body to reconsider the matter regarding employment or reinstatement of the petitioner because that body thought it proper to do so as long as the matter was pending before the Commissioner.

11. There is yet another infirmity in the action taken by the Municipal Committee in passing the resolution on 22-6-1964 and that flows from the following provisions of S. 34-A of the Municipalities Act.

"No subject once finally disposed of by a committee shall be reconsidered by it within six months unless the recorded consent of not less than three-fourths of its members has been obtained thereto, or unless the Provincial Government has directed its reconsideration." It is urged on behalf of the petitioner that so far as this provision is concerned the Municipal Committee could be said to have finally disposed of the matter because it finally decided at its meeting on 16-12-1963 that the petitioner should be discharged subject to obtaining of the sanction from the Commissioner. The argument, therefore, is that the Committee was free to reconsider the matter afresh after lapse of the period of six months. In our opinion, this construction of section 34-A is not warranted. A matter cannot be said to be finally disposed of by a Committee until sanction to the action proposed to be taken which is itself made subject to the accord or withholding of sanction by an extraneous superior authority is given or not given. A subject cannot be said to have been finally disposed of merely by passing a resolution on 16-12-1963 by the Committee because the resolution was merely in the nature of a proposal of discharge. The proviso to sub-section (1) of section 25 says that previous sanction of the Provincial Government is required to be taken in the matter of dismissal of an employee of the classes mentioned in sub-section (1). The proper interpretation to be put on the resolution of the Municipal Committee

dated 16-12-1963 therefore would be that it was in the nature of a proposal. That proposal was subject to the sanction of the Commissioner. Until the Commissioner took the decision one way or the other, the Municipal Committee could not be said to have finally disposed of the matter and before the subject was finally disposed of the Municipal Committee was precluded from reconsidering the matter until the matter was so finally disposed of. It is not as if section 34-A merely required an interregnum of more than six months between one resolution and another on the same subject. What the law requires is interregnum of not less than six months between the final disposal of the subject by the Committee and its reconsideration. The Committee cannot be said to have finally disposed of the question of employment of the petitioner until its proposal to discharge which was mooted by the resolution dated 16-12-1963 was accepted or was not accepted by exercise of his powers by the Commissioner under the proviso to section 25(1). Until that power was exercised by the Commissioner, the matter could not be said to be finally disposed of by the Committee. Even after that, the Committee would be required to apply its mind to act according to the sanction refused or accorded. The Committee could finally dispose of the matter which was subject of the resolution dated 16-12-1963 only after receipt of the sanction or decision from the Commissioner. We are, therefore unable to accept the contention that the Committee was free to pass the subsequent resolution dated 22-6-1964. In our opinion, it had no such power and the mere fact that this resolution was passed in favour of the petitioner cannot give him any right to agitate against the validity of the sanction given by the Commissioner.

12. It is not therefore necessary to discuss, and the question has not been raised in that form, whether the Commissioner ought not to have given sanction to the subsequent resolution dated 22-6-1964. The petitioner has not placed before us the requisite papers in which such a sanction was asked for. There is indirect reference made on behalf of the Committee before the Commissioner on 2-9-1964 that some papers were sent to the patina. As the matter is not placed before us on that footing, we do not think it necessary to decide that question. On the material that was placed before the Commissioner, the Commissioner was fully empowered and also justified in applying his mind to the resolution of 16-12-1963 and to decide whether to accord sanction or not to accord sanction.

13. It was also argued that the Commissioner has not taken into consideration the grievance made on behalf of the petitioner as to the manner of the enquiry held by enquiry officer. We do not think that this grievance has also any basis. The Commissioner has observed that proper opportunity to cross-examine the witnesses was afforded and given to him. It did not appear that there was any flaw which vitiated the enquiry before the enquiry officer. The petitioner is not entitled to ask this Court to go into the merits of this decision because that was entirely in the discretion of the Municipal Committee and the Commissioner.

14. Thus the result is that there is no case for interference. The petition fails and

is dismissed with costs.

(15) Petition dismissed.