

(1968) 11 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 3278 of 1968

Appasaheb Annappa Sirguppi

APPELLANT

Vs

Town Municipal Council, Ramdurg

RESPONDENT

Date of Decision : 21-11-1968

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 306, 306 (1), 306 (2)

Citation : AIR 1970 Kar 70 : (1969) ILR (Kar) 286 : (1969) 1 MysLJ 290

Hon'ble Judges : K.R. Gopivallabha Iyengar, J;B. Venkataswami, J

Bench : Division Bench

Advocate : V. Tarakaram, for the Appellant; S.G. Bhat, for the Respondent

Judgement

1. The petitioner was appointed as Secretary of the respondent-Municipality on 10-6-1959 and he had been acting as such till 31-10-1967, when the respondent-Municipality passed a resolution dismissing the petitioner as such Secretary, giving him a month's notice. The petitioner preferred a petition u/s 305 (1) of the Mysore Municipalities Act, 1964 (hereinafter referred to as the Act) before the Deputy Commissioner, Belgaum, praying that the execution of the resolution passed by the Municipality may be suspended. The Deputy Commissioner passed orders on 21-2-1968, a copy of which is marked C, allowing the petitioner's application, in exercise of the powers vested in him u/s 306 of the Act and ordering that the execution of the impugned resolution No. 130 of 31-10-67 be suspended. He also directed further action being taken in accordance with the provisions of Section 306(2) of the Act. The petitioner received accordingly an endorsement from the Office of the Deputy Commissioner, which is dated 11-3-1968 and marked Exhibit D. It may be mentioned that during the pendency of his petition before the Deputy Commissioner, he made an application for stay of implementation of the resolution passed by the Municipality, pending disposal of his petition before the Deputy Commissioner. The Deputy Commissioner made an order on 8-11-1967 staying the resolution and directing that the status quo should be maintained. Thereafter the petitioner appears to have reported for

duty on 19-12-1967 but the respondent declined to allow him to work. After the final disposal of the matter on 21-2-1968, the petitioner reported to duty to the President of the respondent's counsel, asking him to take him on duty in accordance with the order of the Deputy Commissioner. The respondent refused to take him on duty as can be seen from the communication marked Exhibit F. The petitioner then sent a letter and a telegram to the respondent complaining that the refusal to take him on duty is illegal and in breach of the order passed by the Deputy Commissioner u/s 306 of the Act. The respondent issued a further endorsement on 26th March, 1968, refusing to take him on duty. It was further mentioned in that endorsement that the petitioner was not a Secretary-cum-Chief Officer as he claimed to be. Further it was mentioned that the point at issue i. e., the question of his dismissal was under final consideration before the Government as per Section 306 (2) of the Act. This has obviously a reference to the action taken by the Deputy Commissioner under the provisions of Section 306, forwarding to Government a copy of the order made by him with a statement of the reasons for making it. In these circumstances the petitioner being aggrieved by the act of the respondent to take him on duty even though the Deputy Commissioner has suspended the execution of the respondent's resolution, has filed this Writ petition. He prays that a direction in the nature of mandamus be issued as against the respondent directing it to take the petitioner back to service as Chief Officer of the respondent-Municipality and further directing respondent to pay the petitioner the arrears of salary and other emoluments and benefits as Chief Officer from 19-4-1967 and to treat him as in continuous service without any break since that date.

2. Sri V. Tarakaram, the learned Counsel for the petitioner says that the petitioner was acting as Secretary of the respondent-Municipality and also as Chief Officer of the Municipality since 1-4-1965. This fact is disputed by the respondent. What is admitted by the respondent is that the petitioner was the Secretary of the Municipal Council. It should, however, be noted that the resolution passed by the Municipal Council on 31-10-1967 is to dismiss the petitioner, who was the Secretary of the Municipal Council. Sri Tarakaram makes it clear that the question as to whether he was acting as Chief Officer is a matter that need not be considered for the present, but his claim to be allowed to rejoin service as Secretary of the Municipal Council requires to be considered. Under Exhibit C the order passed by the Deputy Commissioner, Belgaum, the execution of the resolution passed by the Municipal Council on 31-10-67 was suspended. The contention of Sri Tarakaram is that if the execution of the resolution dismissing the petitioner is suspended by the Deputy Commissioner, it implies that he is entitled to report himself to duty and to work as Secretary of the Municipal Council.

3. It is contended by Sri S. G. Bhat, the learned Counsel appearing for the respondent, that the order made by the Deputy Commissioner is not a final order and therefore the prayer of the petitioner cannot be granted. He submits that the report made by the Deputy Commissioner under the provisions of Section 306

(2) of the Act is now pending before the Government and under the provisions of Section 306 (2) the Government has the power to rescind the order of the Deputy Commissioner or to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit. To consider the respective contentions of the parties it is necessary to set out the provisions of Section 306 of the Act:--

"306. Deputy Commissioner's power of suspending execution of orders, etc., of municipal councils.-

(1) If, in the opinion of the Deputy Commissioner, the execution of any order of resolution of a town municipal council, or the doing of anything which is about to be done or is being done by or on behalf of a town municipal council is unlawful or is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of the peace, he may, by order in writing under his signature, suspend the execution or prohibit the doing thereof.

(2) When a Deputy Commissioner makes any order under this section, he shall forthwith forward to Government and to the Commissioner and to the Municipal Council affected thereby a copy of the order, with a statement of the reasons for asking it; and it shall be in the discretion of the Government to rescind the order, or to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit:

Provided that no order of the Deputy Commissioner passed under this section shall be confirmed, revised or modified by the Government without giving the municipal council, a reasonable opportunity of showing cause against the said order." Sri V. Tarakaram invites our attention to a decision of the Supreme Court reported in *Subhas Chandra and Others Vs. Municipal Corporation of Delhi and Another*, where the Supreme Court considered the provisions of Sections 232 and 235 of the Punjab Municipal Act (3 of 1911). The provisions of Sections 232 and 235 considered in the said decision read as follows:--

"232. Power to suspend action of committee. -- The Commissioner or Deputy Commissioner may by order in writing suspend, within the division or district respectively, the execution of any resolution or order of a committee or joint committee, or prohibit the doing of any act within the said limits which is about to be done, or is being done, in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under the Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution order or the doing of the act, is likely to lead to a breach of the peace, or to cause injury or annoyance to the public or to say class or body of persons."

"235. Action of Deputy Commissioner or Commissioner to be immediately reported. --When the Deputy Commissioner makes any order u/s 232, Section 233 or Section 234, he shall forthwith forward to the Commissioner, and, when, the Commissioner makes any order u/s 232, or Section 234, he shall forthwith

forward to the Local Government, a copy thereof, with a statement of the reasons for making it, and with such explanation, if any, as the committee may wish to offer; and the Commissioner or the Local Government, as the case may be, may thereupon confirm, modify or rescind the order." The provisions of Section 306 of the Act are substantially similar to those of Sections 232 and 235 of the Punjab Municipal Act. While considering the effect of an order passed u/s 232 of the Punjab Municipal Act, which corresponds to the order passed by the Deputy Commissioner, Belgaum, in exercise of his powers u/s 306 (1) of the Act, the Supreme Court observes as follows:--

"It has to be borne in mind that an order u/s 232 takes effect immediately and its operation is not made dependent upon the action contemplated u/s 235. Where an order is made there under by an authority, other than the State Government that authority has to report to the State Government, But, though such authority is bound to make a report its order [is not inoperative or inchoate. It has to be given effect to by the Committee.] It is true that till the procedure set out in Section 235 is complied with it cannot be regarded as final. But want of finality does not vitiate the order u/s 232. The order is, unless modified or annulled by the State Government, [legally effective and binding on the Committee.]"

(Square Bracketing is ours).

In view of this decision the contention of Sri V. Tarakaram, the learned Counsel for the petitioner that the respondent must give effect to the order passed by the Deputy Commissioner, Belgaum, is well founded. It is no doubt true, that u/s 306 (2), as contended by Sri Section G. Bhat, the order can be set aside by the State Government and in this case, the order can be set aside only after notifying the Municipal Council as provided by the proviso to Section 306 (2) of the Act. The contention of Sri Bhat is that the Supreme Court has observed that even the procedure set out in Section 232 is complied with the order cannot be regarded as final. His further contention is that the provisions of Section 806 (1) and (2) should be read together and if that is done, the result would be that there could be only one effective final order which could be given effect to, and that we cannot bifurcate the order made by the Deputy Commissioner u/s 306 (1) and the order to be made by the Government u/s 306 (2), We are unable to accept this contention as it is opposed to the observations of the Supreme Court extracted above. Therefore the respondent's counsel is bound to give effect to the order passed by the Deputy Commissioner on 21-2-1968.

4. Sri S. G. Bhat further contends that if eventually the Government should set aside the order of the Deputy Commissioner, the result would be that the petitioner would have no legal right to ask for the implementation of the order passed by the Deputy Commissioner. It may happen that if the Government should set aside the order of the Deputy Commissioner, the petitioner's position then will be that he is bound by the resolution passed by the Municipal Council. This factor cannot render the order of the Deputy Commissioner passed under

the provisions of Section 306 (1) ineffective or inchoate. Whether the order of the Deputy Commissioner will be modified is a contingent factor which cannot affect the present right of the petitioner. Sri Bhat contended that the petitioner had no specific or clear right to be taken into service as required by him. He submitted that in view of the provisions of Section 306 (2), the right of the petitioner to seek relief is of a doubtful character. As mentioned already, the doubt arises only on account of the contingency of an order adverse to him being passed by the Government under the provisions of Section 306 (2). This cannot affect, as mentioned already, the present right of the petitioner. Sri S. G. Bhat, in this connection, invited our attention to the decision in *The Karnal Kaithal Co-operative Transport Society, Ltd. Vs. The State of Punjab and Another*, In view of what we have stated above, the said decision cannot apply to the facts of this case. The decision in *U Well Lyngdoh and Others Vs. B.M. Roy and Others*, also does not apply to this case, in view of the fact that the order which came for consideration in the said case was not an executable order and in particular the resolution passed by the Executive Committee of the District Council in that case was specifically made subject to a final order to be passed by the District Council -- the Assam High Court took the view that the petition before them was premature. But, the facts in this case are quite different. The decision in *Nukala Seeta Ramaiah and Another Vs. State of Andhra Pradesh and Others*, is not of any use to the respondent in view of the fact that the petitioner has at present a right, though it is subject to the final decision which the Government may take under the provisions of Section 306 (2). As circumstances stand at present, we are of the view that the petitioner is entitled to require the respondent to take him back to service as a consequence of the order passed by the Deputy Commissioner on 21-2-1968 under Exhibit C, suspending the execution of the resolution of the Municipal Council, dated 81-10-1967.

5. Therefore, we allow this writ petition and issue a direction to the respondent by a writ of Mandamus to treat the petitioner as in service.

6. The next claim of the petitioner is that we should direct the respondent to pay him the arrears of salary and other emoluments and benefits as Chief Officer from 19-4-1967. In view of the fact that we have given him relief directing the respondent to treat him in service as Secretary of the Municipal Council, he is entitled to the pay and emoluments as such Secretary. In paragraph 4 of the affidavit filed by the petitioner in support of his writ petition he has averred that it is only on 19-12-1967 that he reported himself to duty on the expiry of his sick leave and the respondent declined to take him to service as he was not appointed as Chief Officer. From the affidavits filed and the correspondence in this case, it is clear that the respondent refused to take him into service even as Secretary which the respondent was bound to do. In view of the fact that the petitioner did not report himself to duty till 19-12-1967 according to his own admission, we cannot direct the respondent to pay him the emoluments as Secretary of the respondent-Municipal Council from 19-4-1967 as claimed by him. We direct the respondent to pay him the pay and emoluments as Secretary

of the Municipal Council from 19-12-1967.

7. We have already mentioned that the order passed by the Deputy Commissioner, Belgaum is subject to any order that the Government may pass under the provisions of Section 306 (2) of the Act. If any order adverse to the petitioner should come to be passed by the Government it is bound to be implemented in accordance with law.

8. In the result, the petition is allowed. Each party shall bear his own costs.

9. Petition allowed.