

(1971) 07 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 1073 of 1969

Appasaheb Annappa Siruguppi

APPELLANT

Vs

The Town Municipal Council, Ramdurg

RESPONDENT

Date of Decision : 07-07-1971

Acts Referred:

Central Civil Service Rules — Rule 151

Karnataka Municipalities Act, 1964 — Section 323, 323 (2) (g), 324

Citation : AIR 1972 Kar 33 : (1971) 2 MysLJ 219

Hon'ble Judges : A. Narayana Pai, C.J.; M.S. Nesargi, J

Bench : Division Bench

Advocate : V. Tarakaram, for the Appellant; K.A. Swamy, for the Respondent

Judgement

Narayana Pai, C.J.—The petitioner Appasaheb Siruguppi was appointed several years ago Secretary of the Town Municipal Council of Ramdurg. He was once dismissed from service by the Municipality, but the resolution was suspended by the Deputy Commissioner which suspension was confirmed by the State Government, with the result that he continued in service or got restored to service. Shortly after such restoration-he was served with an order of suspension dated the 27th of February 1969 reading:--

"In pursuance of General Board Resolution No. 147 dated 27-2-1969. Sri A. A. Siruguppi Secretary Town Municipal Council Ramdurg, is hereby suspended until enquiry by the Sub Committee and final decision by the Municipality."

2. The petitioner impugns this order as one made without jurisdiction or any legal authority.

3. During the pendency of this writ petition, the Mysore Municipal Administrative Service contemplated u/s 365 of the Mysore Municipalities Act, 1964, was constituted and a notification was also issued regarding the fact that the petitioner has got absorbed into the said administrative service as a Chief Officer Grade IV of Municipalities. Certain further contentions are raised on the strength

of or in the light of these subsequent-events to which we shall make a reference later.

4. The first question is whether the Municipality did or did not have the power to suspend the petitioner pending a contemplated disciplinary enquiry. On behalf of the Municipality, reliance is placed on Rules 164 and 166 framed by the said municipality under Clause (e) of of Section 46 of the Bombay District Municipal Act, 1901. Whereas Mr. Swamy for the Municipality contends that the said rules continue in force by virtue of the proviso appended to Section 382 (1) of the Mysore Municipalities Act, 1964. and that under the said rules, there is clear power to suspend municipal servants pending disciplinary enquiries, Mr. Tarakaram for the petitioner contends that Clause (e) of Section 46 of the Bombay District Municipal Act, relied upon as the source of the rule making power, does not itself contemplate any power to suspend a person in that way and that even otherwise the 1st proviso to Section 382(1) of the Mysore Municipalities Act does not save the operation or continued operation of the rules made under the Bombay Act.

5. The ambit of the rule making power under the Bombay Act may conveniently be considered first. u/s 46 every Municipality is required as soon as conveniently may be after its constitution, to make rules for its administration not inconsistent with the Act. One of the topics on which rules could or should be made is the one set out in Clause (e), which reads:--

"Subject to the provisions of Section 148, determining the mode and conditions of appointing, punishing or dismissing any officer or servant, and delegating to officers designated in the rules the power to appoint, fine, reduce, suspend or dismiss any officer or servant."

6. The argument is that the rules could determine only the mode and conditions of appointing, punishing or dismissing an officer and that, therefore, the reference to the power to suspend in the second portion dealing with delegation of powers to designated officer could only mean suspension by way of punishment and not suspension pending on enquiry.

7. It appears to us that this is too narrow a view to take of the natural meaning of the language employed in the clause. One thing that is clear is that the clause expressly deals with the appointment and control of staff of the Municipality. The power to suspend both by way of punishment and pending an enquiry is a power well-known in relation to the control exercised by an employer over his employees. It is also not in every set of rules dealing with every type of servants or employees that suspension is provided as one of the modes of punishment. Hence it appears to us that when the word "suspend" is used without any qualifications the more reasonable view to take is that it refers to or comprehends both types of suspensions viz.. suspension by way of punishment and suspension pending a disciplinary enquiry.

8. The rules which are of relevance are Rules 164 and 169. They read:--

"164. No officer or servant shall, in any 12 consecutive months be fined to a larger amount than two months' pay or suspended for any one offence for a period longer than three months.

"169. Power to fine, reduce, promote or suspend the Secretary shall vest to the Municipality".

Provided that where an officer or a servant is suspended pending a departmental enquiry or pending a decision on his trial by a criminal court on a charge of corruption or any other cognisable offence or offences the Municipality may suspend him for such period as may be necessary."

The first rule proceeds upon the interpretation of Section 46(e) which we have already given, viz., that the power to suspend mentioned in the section comprehends both types of suspension. Rule 169 expressly confers the exercise of such power on the Municipality alone and does not delegate it to any other officer.

9. The argument, therefore, of lack of power under the rules as vitiating or rendering ineffective the impugned order of suspension, fails.

10. Rule 166 also provided that:—"Subsistence allowance to officer and servants under suspension shall be granted according to the provisions of Bombay Civil Service Rule 151 as amended from time to time—" We are informed that some payment was being made to the petitioner during the period of suspension although neither counsel is able to tell us on the material now available with them whether the same has been properly calculated under the service regulation referred to in Rule 166. We therefore leave that matter for determination by discussion between the parties out of court.

11. We may now take up the second argument whether the rules framed by the Bombay Municipalities u/s 46 of the Bombay District Municipal Act continued in force after coming into force of the Mysore Municipalities Act, 1964. The said Bombay Act is one of the Acts repealed by Section 382 of the Mysore Act. One of the provisos to Sub-section (1) of the said section reads:--

"Provided further that subject to the preceding proviso anything done or any action taken (including any appointment or delegation made, tax, fee or cases imposed, notification, order, instrument, or direction issued, rule, regulation, form, bye-law or scheme framed, certificate obtained, permit or licence granted or registration effected) under the said laws shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act."

12. According to Mr. Swami, the expression "action taken" includes according to the clause included within the brackets, any rule framed under the Bombay Act. There is no difficulty in accepting this contention because that is the plain meaning of the proviso. The only point on which the two counsel are at variance

is whether there is any provision in the new Act which can be regarded as a provision corresponding to Section 46(e) of the Bombay Act-13. Now under the Mysore Act Section 323 deals with the rule making power of the State Government and Section 324 the power of the Municipalities to make bye-laws. u/s 324 various topics are set out as proper ones in respect of which bye-laws could be made. None of them expressly refers to any bye-laws dealing with the recruitment and control of staff. But, the last Clause (hh) authorizes the making of bye-laws generally for the regulation of all matters relating to municipal administration. One of the topics enumerated in Section 323 on which the Government could make laws set out in Clause (g) of and sub-section, is:

"for regulating "the recruitment and conditions of service of officers and servants"

14. It is seen from the said two provisions of the new Act that the topic of staff regulations is dealt with expressly in Section 323 (2) (g) and may reasonably be said to be implied in Section 324 (1) (hh). Prima facie, therefore, there is no difficulty in regarding one or other or both of them as a provision corresponding to Section 46(e) of the Bombay Act if regard be had to the topic dealt with by it. But the correspondence according to the argument of Mr. Tarakaram, must be complete not only in regard to the authority which could make rules in respect of that power. We do not think it is necessary to take such a view as a matter of interpretation. On the contrary, if one bears in mind the principle that a consolidating and repealing statute does not ordinarily bring about a void and always makes an attempt to see that there is no break in the administration, there can be no difficulty in realising the necessity of taking the view that the topic of staff regulations is dealt with in the new Act in the provisions mentioned above, which should, therefore, be regarded as corresponding provisions.

15. We, therefore, hold that the provisions mentioned above must be regarded as those corresponding to Section 46 (e) of the Bombay Act and that, therefore, the proviso to Section 382 (1) of the Mysore Act which we have extracted above, does operate to keep alive the rules made by the Bombay Municipalities under the said provisions under the repealed Bombay Act.

16. The second argument based upon the constitution or establishment of the Mysore Municipal Administrative Service from about September 1970 and the absorption of the petitioner therein as a fourth grade chief officer, need not make such difference to the disposal of this writ petition because even in the case of such officers, the municipal council is not prevented from holding a disciplinary enquiry. Under Sub-section (3) of Section 365, however, it cannot itself impose the punishment, but can only recommend to the Government the taking of such disciplinary action as may be necessary. The recommendation has to be made by means of a resolution, and no such resolution containing the recommendation could be, with reason, made except on the formulation of an opinion based upon the result of an enquiry preceding the same.

17. However, it is unnecessary to express any opinion finally thereon because it is open to the petitioner, when the enquiry is taken up to press the said matter for consideration and if dissatisfied with the opinion of the Municipality, get it rectified by moving the Deputy Commissioner and the Government under the appropriate provisions of the statute.

18. We, however, think that the petitioner is entitled to one relief in the circumstances of this case. Although the petitioner had, prayed for an interim order staying the holding of an enquiry, no such order was made by this court and the Municipality, therefore was free to proceed with the enquiry and conclude the same expeditiously. It has however, not done so apparently influenced by apprehensions flowing from the pendency of the writ petition.

19. We, therefore, direct that the disciplinary enquiry, if contemplated by the Municipality, must be concluded by the making of an order or recommendation as the case may be on or before the 30th of September 1971.