
(1994) 09 GUJ CK 0026
In the Gujarat High Court

Bachubhai Ramkrishna Trivedi	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 26-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 258, 258(1), 47

Citation : (1995) 1 GLR 566

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—The petitioner was working as Chief Officer in Junagadh Municipality in the month of May 1994. While the elected body in the municipality of Junagadh was functioning within its tenure a resolution was passed extending the services of the petitioner for the period on and from 1st August 1994 to 31st January 1995. On 18th July 1994, a show cause notice was given to the petitioner by the Municipal Administrator as to why the order granting extension for the period aforesaid should not be withdrawn and the Collector, Junagadh also gave show cause notice to the petitioner on 29th July 1994 as to why the order granting extension should not be revoked. It was submitted by the learned Counsel for the petitioner that he had filed Civil Suit against the show cause notice issued by the Administrator of the Municipality and in that Civil Suit the interim order was passed to the effect that respondent authorities would not pass any order to the prejudice of the petitioner before 4th August 1994. The petitioner also preferred Special Civil Application No. 5698 of 1994 before this Hon'ble Court under Article 226 of the Constitution of India but this Special Civil Application was also rejected on 3rd August 1994 on the ground that the final order had yet to be passed and only the show cause notice had been issued to the petitioner. The petitioner also preferred Letters Patent Appeal and in the Letters Patent Appeal the Division Bench kept it open for the petitioner to challenge the final orders as and when the same are passed. In the meanwhile the petitioner had already withdrawn the Civil Suit filed by him on or about

2-8-1994 as stated by the learned Counsel for the petitioner. It is also the case of the petitioner that the Municipality, Junagadh passed an order on 3rd August 1994 relieving the petitioner from the services with reference to the Government's order dated 3rd August 1994. The order dated 3rd August 1994 was issued under the signature of the Under Secretary to Government of Gujarat which shows that the said order has been passed u/s 47 of the Gujarat Municipalities Act appointing Respondent No. 3 (who was Mamlatdar at Junagadh) as Chief Officer of the Junagadh Municipality by way of giving additional charge. It has been urged by the learned Counsel for the petitioner that the order of extension had already come into effect on 1-8-1994 on the strength of the interim order which had been passed by the Civil Court and according to Section 258(1) since the order had already come into force on 1st August 1994 no order could be passed revoking the order of extension and it has also been argued that the State Government could not have passed the order because u/s 47 the Government can pass the order with prospective effect and it cannot pass any order giving retrospective effect. Learned Counsel for the petitioner has placed reliance on the amendment dated 29th July 1994 and has submitted that in the case at hand there was already the existing Chief Officer, i.e., the petitioner and therefore, the Government could not have appointed anybody else as the Chief Officer on 3rd August 1994. This argument is not tenable for the simple reason that the extension which had been granted to the petitioner-under the earlier resolution passed by the Municipality was proposed to be reconsidered and only for that matter the show cause notice had been given to the petitioner by the Administrator of the Municipality as well as the Collector and merely because an interim order had been passed by the Civil Court that the order revoking the extension granted to the petitioner was not to be passed before 4th August 1994, it could not impinge upon the authority of the Government to give additional charge of the post of the Chief Officer to any other officer of its choice when the suit in which the injunction order had been passed, had been withdrawn on 2-8-1994. The order dated 3rd August 1994 passed by the Government shows that this order has been passed under Sub-sections (1) and (2) of Section 47 of the Act and respondent No. 3 has been given the additional charge of the post of the Chief Officer and strictly speaking it is not even a fullfledged appointment under Sub-sections (1) and (2) of Section 47 but is only an order giving additional charge of the post of the Chief Officer to Respondent No. 3 and therefore, Respondent No. 3 has to function as the Chief Officer holding charge of the post of the Chief Officer in addition to his own duties as Mamlatdar and no exception whatsoever can be taken against the Government for passing order such as the one dated 3rd August 1994 and no interference with the said order is warranted.

2. The interim order passed by the Civil Court came to an end when the suit was withdrawn on 2nd August 1994 as has been stated by the learned Counsel for the petitioner and therefore, even if it is mentioned in the office order dated 3rd August 1994 by the Administrator of the Municipality that the petitioner was

relieved of the charge of the post of the Chief Officer I do not find any infirmity in this order dated 3rd August 1994 passed by the Administrator of the Municipality, Junagadh, and therefore, the petitioner cannot raise any legitimate grievance on any of the counts urged before me.

3. However, learned Counsel for the petitioner as well as learned Counsel for respondent No. 4 submit that no order has been passed for the purpose of revoking the extension which was already granted earlier. Be that as it may the position is clear that since the Municipality had passed the resolution, its Administrator who has stepped into the shoes of the earlier body had the power to withdraw the order passed on the basis of the resolution or to withdraw the resolution and similarly the Collector also has power u/s 258 to pass appropriate orders. In this view of the matter, while taking notice of the fact that the final orders have not been passed either by the Municipality or by the Collector as to whether the extension granted stands revoked or not, it is left open for the Municipality as well as the Collector to pass appropriate orders in this regard after considering the replies to the show cause notices which may have been given by the petitioner or which may be given by the petitioner even now within a period of fifteen days from today and the respondents may pass appropriate orders in this regard within a period of two weeks thereafter from the date on which the petitioner may give any reply to the show cause notices and those orders would then govern the rights of the petitioner with regard to extension or otherwise.

4. However, it is made clear that it will not at all be obligatory for the respondents to take any work from the petitioner on the post of Chief Officer during this period. In case the orders are ultimately passed in favour of the petitioner then only he will be entitled to be treated to be continuing in service for the purpose of extension granted to him and in case the orders are passed against him by the Municipality or the Collector, no benefit whatsoever would yield in favour of the petitioner for any day falling during the period of extension in question, that is, from 1st August 1994 to 31st January 1995. Learned Counsel for the petitioner submits that he has already been paid salary upto 3rd August 1994, if it be so, the salary for these three days will not be recovered from the petitioner even if the orders are passed against him. In case the orders are passed against the petitioner, it is always open for him to invoke appropriate remedy before the appropriate forum in accordance with law. On the request of the learned Assistant Government Pleader since he is appearing in this case on behalf of respondents Nos. 1 and 2 under the orders of the Court, the registry is directed to supply a copy of this order to the learned Assistant Government Pleader. A copy of this order may also be given to the learned Counsel for respondent No. 4.

5. In the result, the Special Civil Application is dismissed with the directions and observations as aforesaid. No order as to costs. Direct service is permitted.