

(1983) 12 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 2169 of 1983

Chandrashekhar Shankarrao Zade and others

APPELLANT

Vs

Additional Collector, Nagpur and another

RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Land Revenue Code, 1966 — Section 13, 7

Citation : (1984) MhLj 821

Hon'ble Judges : H.W. Dhabe, J; A.A. Ginwala, J

Bench : Division Bench

Advocate : D.K. Deshmukh, for the Appellant; A.A. Desai, Asstt. Govt. Pleader for Respondent No. 1 and U.P. Deopujari, for the Respondent

Judgement

A.A. Ginwala, J.—By this writ petition the petitioners, who had been appointed as primary teachers and peons by the second respondent Municipal Council, question the validity of the orders passed by the first respondent, Additional Collector, on 7-9-1983 and the consequential order passed by the Municipal Council on 13-9-1983 cancelling their appointments. The facts leading to the present petition briefly stated are as follows.

2. An administrator has been appointed under sub-section (1) of section 48-A of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as "the Act") to manage the affairs of the respondent No. 2 Municipal Council. By virtue of sub-section (2) of section 48-A, he is entrusted with all the powers and duties of the Council and its various authorities under the Act or any other law for the time being in force. On 4-7-1983 the Administrator issued advertisement for recruiting teachers for Marathi and Urdu Primary Schools run by the Municipal Council and also for peons. The advertisement stated that the candidates must have registered their names with the Employment Exchange and that Scheduled Caste and Backward Classes candidates would be given preference. The petitioners, along with others, in pursuance of this advertisement, applied for these posts. By

his orders passed on 29-7-1983, the Administrator appointed petitioners Nos. 1 to 7 as teachers and by further orders passed on 1-8-1983, he appointed petitioners Nos. 8 to 13 as peons. These appointments were purely temporary and were liable to be terminated without any notice.

3. Some citizens of Narkhed by their application dated 18-8-1983, moved the Collector at Nagpur to suspend the orders of the appointment of the petitioners. Their grievance was that these appointments were made in contravention of the rules and arbitrarily. The first respondent, i.e. the Additional Collector, Nagpur took cognizance of this complaint, purporting to act u/s 308 of the Act. By his communication dated 30-8-1983 he called upon the Administrator to submit the relevant record pertaining to the appointments and further directed him to stay the implementation, operation and effect of the orders of appointment and restore the status quo until the said complaint was finally disposed of. In pursuance of this direction from the Additional Collector, staying the "operation and effect" of the orders of appointment of the petitioners, the Administrator stayed the operation of the orders of appointment. The Additional Collector recorded his order on the said complaint on 7-9-1983 and thereby cancelled the appointments of the petitioners. In doing so, the Additional Collector held that petitioners Nos. 1 to 7 had been appointed as Teachers without any posts of Assistant Teachers being created and that interviewing and appointing candidates other than those sponsored by the Employment Exchange was unjustifiable and was in contravention of the Government Resolution dated 7-10-1980 which applied to the local self Government also. The Additional Collector further held that although there was backlog in the posts reserved for backward classes, the appointments of candidates from other classes had been made thus contravening another Government Order.

4. In view of the said order passed by the Additional Collector, the Administrator by his order passed on 13-9-1983 purported to cancel the appointments of the petitioners. As stated above, the petitioners have invoked extraordinary writ jurisdiction of this Court under Article 226 of the Constitution to challenge the order passed by the Additional Collector on 7-9-1983 and the orders passed by the Administrator in respect of each of the petitioners on 13-9-1983.

5. Mr. D.K. Deshmukh, the learned counsel for the petitioners, in support of the challenge to these orders, advances three-fold argument. He firstly contended that the power conferred u/s 308 of the Act can be exercised only by the Collector and not by the Additional Collector. He, therefore, submits that the impugned order passed by the Additional Collector is without any jurisdiction or authority. He secondly contends that the orders of appointment passed by the Administrator in respect of each of the petitioners cannot come within the mischief of sub-section (1) of section 308 of the Act, as according to Mr. Deshmukh, this section contemplates an order which is capable of being executed at the time when action is taken under that sub-section by the Collector. According to Mr. Deshmukh, the orders of appointments once having

taken effect by the petitioners taking over as teachers or peons as the case may be and having started their work, served their purpose and were not capable of execution and could not be suspended at the time when the Additional Collector passed his order on 7-9-1983. Lastly Mr. Deshmukh submitted that at any rate the Additional Collector was not right in passing the impugned order without giving an opportunity to the petitioner of being heard, as his order would have an adverse effect on their interest and employment.

6. Mr. A.A. Desai, the learned Assistant Government Pleader appearing for the Additional Collector, tried to support the orders. He submitted that in allowing the petitioners to continue in their posts after their appointment amounted to extracting work from them in pursuance of the orders of appointment which were under challenge before the Additional Collector and viewed in this light this was an act which was being done by the Council which could be suspended by the Additional Collector u/s 308 of the Act. He further submitted that the appointment of the petitioners without adhering to the rules and regulations in respect of recruitment to Municipal employment, had given rise to resentment on the part of the citizens of Narkhed as reflected by the complaint made by several of them to the Collector, and since this act was tantamount to causing injury or annoyance to the public or being against public interest, the Collector could very well intervene by exercising his power u/s 308 of the Act. With regard to the power of the Additional Collector to act u/s 308 of the Act, Mr. Desai has produced for our perusal a resolution of the State Government made on 30-4-1982 under which, post of Additional Collector for Nagpur has been created, and office order passed by the Collector of Nagpur on 30-6-1982, under which he has distributed the work between himself and the Additional Collector. With regard to the third submission of Mr. Deshmukh, it was submitted by Mr. Desai that the order which is passed by the Collector u/s 308 of the Act is not final and is subject to the confirmation by the Director of Municipal Administration and that if the petitioners felt aggrieved by the impugned order of the Additional Collector, they could approach the Director and point out to him how the said order suffers from any infirmity and in that case if the Director is satisfied, he could not confirm the order of the Additional Collector but would on the contrary rescind it. Lastly, Mr. Desai submitted that in view of the fact that the impugned order passed by the Additional Collector was not final, this Court should not interfere with it, and the petitioners cannot make any grievance till the Director confirms the order passed by the Collector.

7. In so far as the first contention of Mr. Deshmukh is concerned, the power u/s 308 of the Act, on the language of that section, has to be exercised by the Collector. The word "Collector" is not defined in the Act and hence we have to fall back on the definition of that word in the Bombay General Clauses Act, 1904, which defines it to mean, in the City of Bombay, the Collector of Bombay and elsewhere the Chief Officer in charge of the revenue administration of a district. It would appear that this definition does not include an Additional Collector. The Act itself does not speak anywhere of Additional Collector. Sub-section (3) of

section 74 of the Act, in so far as it is relevant for our purpose, lays down that each Assistant and Deputy Collector, shall within his respective jurisdiction be competent to exercise any of the powers and to perform any of the duties conferred and imposed upon, or delegated to the Collector. Here again we find that the Legislature does not speak about Additional Collector.

8. Under sub-section (2) of section 7 of the Maharashtra Land Revenue Code (hereinafter referred to as "the Code") the State Government has the power to appoint one or more Additional Collectors. Section 13 of the Code defines the powers and duties of various revenue officers. Subsection (3) thereof, in so far as we are concerned with it, reads as follows:

.....the Additional Collector.....shall.....exercise within his jurisdiction or part thereof such powers and discharge such duties and functions of.....the Collector.....under the provisions of this Code or under any law for the time being in force, as the State Government may, by notification in the Official Gazette, direct in this behalf.

The language of this sub-section would indicate that by his mere appointment, Additional Collector is not invested with all the powers of the Collector and he can exercise only such powers of the Collector either under the Code or under any other law which the State Government specifies by notification to be published in the Official Gazette. In other words, therefore, an Additional Collector would not be in a position to exercise the powers of the Collector and discharge his duties and functions unless and until the State Government gives a direction in that behalf under a notification. No such notification has been brought to our notice by either of the respondents.

9. As said above, Mr. Desai has produced Government Resolution dated 30-4-1982 under which post of Additional Collector with ancillary staff has been created for the District of Nagpur. Para 7 of this resolution says that distribution of the work between the Collector and the Additional Collector should be on the lines indicated in the annexure to it. Reference to the annexure would show that matters connected with "municipalities" are to be dealt with by the Collector. Para 7 of this resolution further says that though the distribution of work is intended to ensure as much independent working of the Additional Collector as possible, it is open to the Collector to deal with any specific case pertaining to the Additional Collector's compilation that he may consider necessary and to devise arrangements to exercise a general supervision over the Additional Collector's work. It would appear that the Collector has been authorised to deal with "any specific case" which normally would be dealt with by the Additional Collector, but not to take generally all his cases. If one were to go by this resolution it would be the Collector who would exercise power and discharge functions relating to municipalities. However, on 30-6-1982 the Collector of Nagpur has passed order to which statement is annexed, detailing the subjects which would be dealt with by himself and the Additional Collector. In this statement the subject "Municipalities" is included in the list of the matters to be

dealt with by the Additional Collector. It would, therefore, appear that even though under the resolution dated 30-4-1982 the State Government had allotted the work relating to Municipalities to the Collector, the latter, under his own order, has made over this work to the Additional Collector.

10. As we have seen above, the Additional Collector has to exercise those powers and has to discharge those duties and functions of the Collector under the Code or any other law, which the State Government specifies in the notification published in the Official Gazette. As said above, no such notification has been brought to our notice. However, even if it is assumed that the resolution dated 30-4-1982 is such a notification, the power to deal with the matters relating to Municipalities is reserved for the Collector and has not been given to the Additional Collector. The action of the Collector under his order dated 30-6-1982 in transferring this work to the Additional Collector, particularly in face of the Government Resolution dated 30-4-1982 and what has been stated in para 7 thereof, is without any authority and consequently it does not confer any power on the Additional Collector to deal with the cases pertaining to Municipalities.

11. The up-shot of the whole discussion is that the Additional Collector of Nagpur, respondent No, 1 herein, has no power or authority to act u/s 308 of the Act. There is, therefore, no difficulty in holding that the order passed by him on 7-9-1983 is without any power or authority and is, therefore, null and void.

12. In so far as the second contention of Mr. Deshmukh is concerned, proper reading of sub-section (1) of section 308 would indicate that the Collector can suspend, (a) the execution of any order or resolution of a council, or (b) the doing of anything which is about to be done or is being done by or on behalf of a Council. The Collector can exercise this power of suspension if the order, resolution or the act stated above is (a) likely to cause injury or annoyance to the public (b) against public interest, (c) is likely to lead to breach of peace or (d) is unlawful. The words, "the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council", occurring in the opening part of sub-section (1) of section 308, suggest that the power under that sub-section is given to the Collector to prevent any imminent act on the part of the Council which is likely to give rise to one of the four situations stated above. In this connection it may be stated that sections 308 and 309 are part of the same scheme. While section 308 is designed to present in emergency an order, resolution or act of the Council which is likely to lead to serious consequence, section 309 invests the Collector with the power of execution of certain works in case of emergency. It would, therefore, be seen that sections 308 and 309 are, as it were, the negative and positive aspects of an action required to be taken in case of emergency or in emergent-situation by an extraneous authority like the Collector, when the Council is doing something which is likely and imminently to lead to serious consequence or to do an act which must be done by the Council immediately. Having regard to the language of sections 308 and 309, therefore, it is not possible to resort to sub-

section (1) of section 308 to suspend an order which has been already executed or the execution of which does not lead to any of the four consequences stated at the penultimate portion of this sub-section. Mr. Desai has tried to urge that the appointments of the petitioners in disregard of the rules and regulations were likely to cause injury or annoyance to the public or would be against public interest and hence the Additional Collector was within his powers to act under this sub-section. For this purpose he relies on the complaint which had been made to the Additional Collector against the appointments made by the Administrator. Now perusal of the order passed by the Additional Collector does not indicate that he resorted to exercise power under sub-section (1) of section 308 of the Act because he was apprehending any injury or annoyance in the public or that in his opinion it was against public interest or that it would lead to breach of the peace. As we have said above, the Additional Collector has deemed it fit to suspend the orders of appointment because, in his view, these appointments were made without creating posts, without selecting candidates sponsored by the Employment Exchange and without filling the back-log. It may be that the Administrator has overlooked all these things, but it is difficult to see how these irregularities in the matter of appointments of the petitioners would lead to any of the consequence contemplated by subsection (1) of section 308. Such appointment would not be unlawful as nothing is pointed out as to against which provision of law these appointments are made. We, therefore, find that the Additional Collector assumed that he had the power to act u/s 308 of the Act and exercised his power in a matter which did not fall within the purview of that section and hence also his order is void.

13. In the view we take on the two contentions urged by Mr. Deshmukh, it is not necessary for us to deal with his third contention. We also do not find much force in the contention of Mr. Desai that we should not exercise our extraordinary jurisdiction under Article 226 of the Constitution because the order passed by the Additional Collector is temporary and not final. As we have pointed out above, the Additional Collector has acted without any power or authority and *prima facie*, therefore, the order is null and void. Under these circumstances, we do not see how we could stay our hands in declaring it so, simply because the order happens to depend upon confirmation to be made by the Director.

14. In the result, therefore, the order passed by the Additional Collector on 7-9-1983 and the consequent orders passed by the second respondents are hereby quashed. In the circumstances of the case there shall be no order as to costs.