
(2014) 10 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 2438 of 1997

Dinesh Wamanrao Dhawale

APPELLANT

Vs

Collector, Amravati

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 BOM CK 0022

Hon'ble Judges : P.R. Bora, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.A. Naik, S. Sanyal, Advocate for the Appellant; Mohan Sudame, Advocate and AGP, Advocate for the Respondent

Judgement

P.R. Bora, J.

1. The order dated 23-12-1996 passed by the Collector, Amravati i.e. respondent no. 1 herein and the orders passed consequent thereto i.e. the order dated 27-12-1996 passed by the Chief Officer, Municipal Council, Chandur Bazar i.e. respondent no. 2 herein and the order dated 22-04-1997 passed by the Additional Commissioner, Amravati Division i.e. respondent no. 3 herein are questioned in the present Writ Petition.

2. The facts which are relevant for deciding the present petition can be stated thus : The Municipal Council, Chandur Bazar i.e. respondent no. 2 published an advertisement thereby inviting the applications for filling in the posts of Coolie, Chowkidar and Chaprasi (Peon). Two such advertisements were published. One was for the post to be filled in the Municipal Council whereas other was for the post to be filled in the School run by the Municipal Council. The petitioners applied for the respective posts. They were interviewed by the Selection Committee constituted for the purpose on 24-02-1996. In the meeting of the Standing Committee of respondent no. 2 held on 22-03-1996 a resolution was passed for appointment of the petitioners to their respective posts. On 04-05-1996 the appointment orders were issued under the signature of

respondent no. 2, in pursuance of which the petitioners resumed to their respective posts. The petitioner no. 1 was appointed as Coolie, petitioner nos. 2 to 4 were appointed as peons (Chaprasis). The petitioner nos. 1 and 2 were given appointment in the Municipal Council whereas the petitioner nos. 3 and 4 were appointed in the school run by the Municipal Council. On 22-07-1996, the then Chief Officer of Municipal Council, Chandur Bazar forwarded a letter to respondent no. 1 making a grievance in regard to the appointments of the petitioners and requested the respondent no. 1 to take necessary action and pass necessary order by invoking Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 [for short, "the said Act"] whereupon the respondent no. 1 passed an order on 23-12-1996 thereby suspending the implementation of the resolution nos. 2 and 3 passed in the meeting of the Standing Committee of respondent no. 2 held on 22-03-1996. Pursuant to the order so passed by the respondent no. 1, respondent no. 2 issued letters dated 27-12-1996 to the petitioners relieving them from their respective posts with effect from the said date. Being aggrieved by the said action of respondent no. 2 the petitioners submitted the revision applications before the respondent no. 3 with a prayer to set aside the order passed by respondent no. 1 on 23-12-1996 on the strength of which they were relieved from their jobs by respondent no. 2. The revision petition so filed by the petitioners was rejected by respondent no. 3 vide order passed by him on 22-04-1997. Aggrieved by the petitioners filed the present Writ Petition.

3. Shri A.A. Naik, the learned Counsel for the petitioners has assailed the aforesaid orders to be illegal, arbitrary and unsustainable. Shri A.A. Naik, the learned Counsel submitted that the appointments of the petitioners are perfectly legal and valid and were made after following the due procedure of law. The learned Counsel further submitted that there was absolutely no reason for the then Chief Officer of the respondent no. 2 Municipal Council to make a reference to the Collector and to pray for an action under Section 308 of the said Act. The learned Counsel further submitted that respondent no. 1 also without any application of mind and without giving opportunity to the petitioners suspended the execution of resolution no. 2 passed in the meeting of the Standing Committee of respondent no. 2 held on 22-03-1996 whereby a decision was taken for the appointments of the petitioners. The learned Counsel further submitted that the resolution passed in the meeting dated 22-03-1996 was in fact implemented on 04-05-1996. According to the learned Counsel the resolution which was already executed could not have been suspended by respondent no. 2. The learned Counsel further submitted that since the petitioners were to be adversely affected, before passing any order the respondent no. 1 must have heard the petitioners and also the Municipal Council. The learned Counsel further submitted that on erroneous interpretation of the Code of Conduct the respondent no. 1 has suspended the execution of resolution nos. 2 and 3 passed in the meeting of the Standing Committee of respondent no. 2 held on 23-02-1996. The learned Counsel submitted that the appointment of

the petitioners cannot be held illegal or unlawful on the grounds that before making said appointments the Municipal Council had not called for the list of the eligible candidates from the Employment Exchange and that the appointment letters were issued while Code of Conduct was in force. The learned Counsel submitted that the appointment of the petitioners were made by following due process of law and by open competition on merits. The learned Counsel further submitted that since the entire selection process was carried out before coming in to force of the Code of Conduct and merely a ministerial act of issuing appointment orders was done while Code of Conduct was in force, the resolution making such appointment cannot be suspended on this ground. The learned Counsel therefore prayed for setting aside the impugned orders.

4. Shri Mohan Sudame, the learned Counsel appearing for respondent no. 2 and the learned Assistant Government Pleader appearing for respondent nos. 1 and 3 have supported the impugned orders. They have submitted that respondent no. 1 has rightly invoked the powers under Section 308 of the said Act since the resolution making appointments of the petitioners was passed while the Code of Conduct was in force. The learned Counsel for the petitioners and the learned Assistant Government Pleader submitted that since there were clear directions for notifying the vacancies to the respective Employment Exchange office and to fill in the posts by inviting the list of the candidates enrolled with the respective Employment Exchange the Municipal Council should not have deviated from the said directions. According to them, the appointments made in violation of the said directions were illegal and as such the action taken by respondent no. 1 under Section 308 of the said Act cannot be faulted with.

5. Shri S. Sanyal, the learned Counsel appearing for the intervenors also supported the submissions made on behalf of the learned Counsel for respondent no. 2 and the learned Assistant Government Pleader. It has to be stated that the application for intervention was filed on 15-10-1997 by three intervenors. The intervenors raised a grievance that they were appointed in the respondent no. 2 Municipal Council after following the due procedure of law. However, their services came to be terminated for the reason that the present petitioners were granted interim relief by this Court and hence were to be reinstated in the Municipal Council. The intervenors have pleaded that since they have been adversely affected by the interim order passed by this Court they are necessary party to the present Writ Petition. The record shows that the intervenors were heard by this Court on 17-08-1998, however, no relief was granted to them at the relevant time. On 17-08-1998 the Court has passed an order that the application for intervention to be considered at the time of final hearing. Shri S. Sanyal, the learned Counsel appearing for the intervenors invited our attention to the documents filed on record by the intervenors. The intervenors have filed on record their appointment orders as well as their termination orders. The learned Counsel for the intervenors submitted that the intervenors were appointed after following open competitive process and as such their appointment were perfectly legal and valid. According to the learned Counsel the respondent no. 2 would not

have terminated the services of the intervenors so as to comply the order dated 07-10-1998 passed by this Court in favour of the petitioners. The learned Counsel submitted that the order terminating the services of the intervenors being patently illegal be set aside and the intervenors be directed to be reinstated.

6. The legality of the reference made by respondent no. 2 to respondent no. 1 in respect of resolution no. 2 whereby the appointments of the petitioners came to be made vide his letter dated 22-07-1996 and the order passed thereon by respondent no. 1 on 23-12-1996 is questioned in the present petition. It is not in dispute that the meeting of the Standing Committee of respondent no. 2 Municipal Council was held on 22-03-1996 and vide resolution no. 2 passed in the said meeting the appointments of the petitioners were directed to be made. There is further no dispute that in pursuance of the said resolution the appointments were issued in favour of the petitioners on 04-05-1996. The Code of Conduct was admittedly in force in the period between 19-03-1996 to 22-05-1996. Perusal of the order passed by respondent no. 1 on 23-12-1996 reveals that on following two grounds the respondent no. 2 suspended the execution of resolution nos. 2 and 3 passed in the meeting of the Standing Committee held on 22-03-1996. The first ground was that while making the special appointment the Municipal Council had not called for the list of the eligible candidates from the office of the Employment Exchange as well as the office of the Social Welfare Department and the second ground is that the decision to make the appointments of the petitioners was taken in the meeting dated 22-03-1996 and consequently the appointment letters were issued on 04-05-1996 while the Code of Conduct was in force. The impugned order reveals that respondent no. 2 had invited the say of the President of the Municipal Council before passing said order which was accordingly filed and was considered by respondent no. 2 while passing the impugned order. Now the question before us is whether the aforesaid grounds are sufficient to suspend the concerned resolutions passed in the meeting of the Standing Committee.

7. The fact that the Municipal Council has published an advertisement and has invited applications from the eligible candidates for filling the respective posts is not in dispute. It has also not been denied or disputed that in the advertisement so published by the Municipal Council it was specifically mentioned that the aspiring candidates should bring with them the original documents showing their educational qualifications and should also bring along with them the Employment Exchange Card evidencing that they are enrolled at the office of the Sub-Regional Employment Exchange at Amravati. The petitioners have categorically averred in the petition that each of them was holding the valid Employment Exchange Card and each of them had submitted the same with respondent no. 2 Municipal Council at the time of their interviews. This fact has not been denied or disputed by the respondents. Admittedly the petitioners are holding the requisite educational qualifications prescribed for the respective posts. The fact that the interviews of the aspiring candidates were held on

24-02-1996 by the Selection Committee constituted for the said purpose in undisputed. There is no dispute that the date of interview was mentioned in the advertisement published by respondent no. 2 Municipal Council. It has also not been disputed that accordingly the interviews were held on 24-02-1996 and the petitioners were selected to be appointed on the respective posts in the interviews so held. Admittedly, the appointment orders were issued on 04-05-1996 in pursuance of which the petitioners immediately resumed to their duties. Thus, the decision passed in the meeting of the Standing Committee held on 22-03-1996 was executed. It was therefore the contention of the learned Counsel for the petitioners that the resolution which was executed in its entirety could not have been suspended by respondent no. 1 vide order passed by him on 23-12-1996. It was further argued by Shri A.A. Naik, the learned Counsel that before passing any such order the petitioners must have been heard since they were going to be adversely affected by the said order. However, both the aforesaid grounds raised by the learned Counsel for the petitioners in exception to the order passed by respondent no. 1 cannot sustain in view of the decision of the Full Bench of this Court in the case of Sanjay Govind Sapkal and Others Vs. Collector of Dhule and Others, . The Full Bench has overruled the judgment of the Division Bench in the case of Chandrashekhar Shankarrao Zade and others Vs. Additional Collector, Nagpur and another, , wherein the Division Bench had taken a view that the provisions of Section 308(1) cannot be resorted to suspend an order which has been already executed. In the case of Prakash Kutik Choudhary Vs The Collector of Dhule and others, reported in 1989 I CLR 374 it was held by the Division Bench of this Court that the person likely to be adversely affected was entitled to prior intimation before passing any order under Section 308(1) of the said Act. However, the view so taken by the Division Bench has also been disapproved by the Full Bench in the case of Sanjay Sapkal cited supra. In view of the Full Bench judgment the learned Counsel also did not much press the aforesaid two grounds. His emphasis was on the tenability of the two grounds mentioned in the order dated 23-12-1996 passed by respondent no. 1. First that the names of the candidates were not invited from the office of Employment Exchange and the other that the appointments were made while Code of Conduct for parliamentary elections was in force.

8. We have carefully gone through the contents of the letter dated 22-07-1996 written by the then Chief Officer to the Collector seeking his intervention and requesting him to invoke the powers under Section 308 of the Act. By the time the Chief Officer wrote the said letter to the Collector, admittedly the period of more than two months has elapsed. The Chief Officer has not raised any grievance in the said letter that somebody has objected to the concerned resolution passed on 22-03-1996 or to the appointments of the petitioners pursuant to the said resolution on any ground much less the grounds raised by him. It is not the case that at the relevant time there were no vacancies in the respondent no. 2 Municipal Council. It is also not the case that there were already excess employees appointed on the establishment of the Municipal

Council and in circumstances the appointment of the present petitioners had resulted in additional financial burden on the exchequer of the Municipal Council. It is further not the case that the petitioners were not holding the requisite qualifications to be appointed to the respective posts or were otherwise not eligible to be appointed to the said posts. It is also not the case that any prejudice was caused to any other aspiring candidate who was higher in the waiting list maintained at Employment Exchange and that his candidature was not considered. It is also not the case that the appointments were made with some malafide intention or that the petitioners were unduly favoured by the Municipal Council while making such appointments. In such circumstances, failure on part of the Municipal Council to call for the list of the eligible candidates from the Employment Exchange or Social Welfare Department, which has not been shown to have resulted in causing any prejudice, was not sufficient to hold the appointments of the petitioners illegal on the said ground. In fact, as was submitted by the learned Counsel for the petitioners, by advertising the vacancies by publishing advertisement in the newspaper a more broad-base was provided for the aspiring candidates. Moreover, the requirement to have the name registered at Employment Exchange was also not dispensed with, on the contrary it was made mandatory. As such, in our opinion, the execution of the impugned resolution could not have been suspended on this ground.

9. The second ground which has been pressed into service is that the appointments were made while Code of Conduct was in force. As stated earlier the Code of Conduct was undisputedly in force in the relevant period. The meeting of the Standing Committee was held on 22-03-1996 and the appointments were issued on 04-05-1996, both these events occurred while the Code of Conduct was in force.

10. After hearing the arguments on this point we find that there are some misconceptions in regard to the activities "to be done" and "not to be done" while Code of Conduct is in force. Application of "Code of Conduct" no way means to standstill the administration. No doubt, to have free and fair elections no such act is permitted to be done which may have potentials to unduly influence the voters and which is being done with the sole said intention. Appointments made of the petitioners, if viewed with this angle or scrutinized on the aforementioned test, do not in any way appear to be violative of the Code of Conduct. As has come on record the selection process had commenced in February 1996 and the interview were conducted on 24-02-1996 when Code of Conduct was admittedly not made applicable. It came to be made applicable almost one month thereafter i.e. from 19-03-1996. True it is that the result of the interview held on 24-02-1996 was given finality in the meeting of the Standing Committee held on 23-02-1996, pursuant to which the appointments were issued in favour of the petitioner. However, this was only the ministerial act for giving finality to the process of selection which had admittedly commenced and practically completed before coming into force of the "Code of Conduct". It is significant to note that the appointment orders were issued after the date of voting in the parliamentary

election. Moreover, throughout, none of the respondents, not even the intervenors have come out with any such case that the alleged appointments were made with the election point of view or have attributed any malafides on part of the members of the Standing Committee in making such appointments. In such circumstances, there was no reason for suspending the impugned resolution by respondent no. 1. It appears that without considering these aspects and fact and circumstances involved in the matter, respondent no. 1 has without proper application of mind passed the order dated 23-12-1996. There was absolutely no propriety in invoking jurisdiction under section 308(1) of the Act that too after the period of more than nine months of passing of the concerned resolution and when the alleged action was not attributed with any malafides. Powers to suspend execution of orders and resolution of the Council can be exercised by the Collector under Section 308(1) of the Act in the following four contingencies-

That execution of the resolution is

- (i) Causing or is likely to cause injury or annoyance to the public
- (ii) against the public interest
- (iii) likely to result in breach of peace
- (iv) unlawful.

Respondents have not brought on record the existence of any of the above grounds-requiring the Collector to invoke the powers under Section 308(1) of the Act. The order dated 23-12-1996 passed by respondent no. 1, therefore, cannot be sustained. We, therefore, set aside the same. Needless to state that consequently the order dated 27-12-1996 passed by respondent no. 2 and the order passed on 22-04-1997 by respondent no. 3 also stand quashed.

11. Insofar as the case of the intervenors is concerned their appointments were of temporary nature. Intervenors came to be appointed on 04-10-1997 and were terminated on 09-10-1997 i.e. within a period of a week. Secondly, nothing has been brought on record by the intervenors to show that in making their appointments the due selection process was followed and that they were selected in open competition on merits. Thus, no right can be said to have accrued in favour of the intervenors. Therefore, there seems no reason to allow their intervention in the instant Writ Petition. Intervention Application, thus, stands rejected.

12. Insofar as other prayers made by the petitioners that of the salary of the intervening period and regularization etc. are concerned, we leave these aspects to be considered by respondent no. 2 in accordance with law.

13. Petition stands allowed in above terms. Rule made absolute. No costs.