

(1970) 01 MAD CK 0044
In the Madras High Court

K.S. Ramaswami

APPELLANT

Vs

The Inspector of Municipalities and Others

RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:

Citation : (1971) 1 MLJ 1

Hon'ble Judges : R. Sadasivam, J

Bench : Division Bench

Judgement

R. Sadasivam, J.—These writ appeals have been preferred by the State of Madras and one K.S. Ramaswami against the order of Kailasam, J. allowing the W.P. Nos. 538 and 539 of 1968 filed by one P. Murugaiyan, setting aside the order of the Inspector of Municipalities, appointing K.S. Ramaswami as the Manager of Erode Municipality and restoring that of the appointment of committee appointing P. Murugaiyan for the said post.

2. u/s 73 of the Madras District Municipalities Act, hereinafter referred to as the Act, the appointments to all posts under the Municipal Council, other than those specified in Sections 12-C and 72 of the Act, the pay or the maximum pay of which exceeds Rs. 50 per mensem, shall be made by a committee consisting of the chairman, the Commissioner and one member elected by the Council, subject to any rules, including the rules for the representation of the different communities which the State Government may make in this behalf. Under Rule 7-B of the Rules relating to establishments under the Municipal Council, the post of manager shall be a selection post and promotion to the selection post shall be made on grounds of qualification and merit, seniority being considered only where the qualifications and merit are approximately equal. u/s 73 of the Act, the appointment committee considered the claims of P. Murugaiyan and K.S. Ramaswami and by resolution No. 29, dated 4th August, 1967, appointed P. Murugaiyan as the manager. K.S. Ramaswami preferred an appeal to the Inspector of Municipal Councils, who allowed the appeal by his order, dated 16th November, 1967 and issued a show cause notice to P. Murugaiyan, and after

hearing his representations made in the form of a petition, rejected the same and directed the Commissioner to appoint K.S. Ramaswami as the manager with immediate effect. In doing so, he has evidently relied on Rule 7B(5) of the rules relating to establishment under Municipal Councils which runs as follows:

The Government or the Inspector of Municipal Councils and Local Boards may call for the records relating to the appointments of manager, accountant, upper division clerks, clerk dealing with electrical licensee's accounts or accountant in the electrical department and revenue officer and pass such orders as he may deem fit. The orders passed by the Inspector of Municipal Councils and Local Boards shall be carried out by the appointing authority.

3. We may at once state that there is no provision in the rules enabling a person aggrieved by the order of the appointment committee to prefer an appeal to the Inspector of Municipal Councils. But the above rule clearly empowers the Inspector of Municipal Councils and Local Boards to call for the records relating to the appointment of manager and pass such orders as he may deem fit and the order passed by him shall be carried out by the appointing authority. Thus the Inspector of Municipal Councils has jurisdiction to revise the order of appointment of Manager made by the appointing authority, and, in exercising such jurisdiction he could act either suo motu or at the instance of a third party who could very well be an aggrieved party who has no right of appeal. It is true the Inspector of Municipal Councils could in his discretion refuse to interfere with the order of the appointing authority and the aggrieved party may have no right to compel him to exercise his powers, of revision. Kailasam, J. held that the rule-making power u/s 73 of the Act would not enable the Government to invest the Inspector of Municipal Councils with power to revise the order of appointment of the appointment committee. Hence the main question for consideration in these writ appeals is whether Rule 7-B(5) of the rules is ultra vires.

4. The history of Indian Administration shows that the municipal administration commenced in the three Presidency towns of Calcutta, Madras and Bombay even in the days of the East India Company. So far back as 1687, the Court of Directors ordered that a corporation should be formed at Madras. So far as the Presidency towns are concerned, there was a uniform system of municipal administration till the passing of the Councils Act in 1861 and thereafter there was divergence in the Acts passed for the cities of Madras, Calcutta and Bombay. In the earlier decades of this century, the control of the local Government over the Madras Corporation was far more stringent than in the other Presidency towns. If we leave out of consideration the municipal-administration of the Presidency towns of Calcutta, Madras and Bombay, there was practically no attempt at Municipal legislation as regards the mofussil areas before the year 1842. It was only in 1870 that real progress was made when. Lord Mayo's Government in the famous resolution introducing the system of provincial finance referred to the necessity of taking further steps to bring local interest and supervision to bear on the management of funds devoted to education,

sanitation, medical charge and local public works. The advance in local self-Government was largely stimulated by the memorable resolution of 1882 on the subject issued by the Government of Lord Ripon, which laid down some common principles for the guidance of the local Governments in the matter. It is not necessary to refer in detail the progress of municipalities in the districts. Thus, on account of historical reasons, there were different legislative enactments, one dealing with City Municipal Corporations, and the other with the District Municipalities. But the common feature is that the State Government retained some ultimate control over both types of institutions.

5. Kailasam, J., has held that the municipalities are not departments of the Government that taking into account the scheme of the Act, it appears that the municipality is given a right to appoint its own officers, subject to the provision of Sections 12-C, 72 and 76-A of the Act. It is true that certain amount of autonomy is given to local bodies like municipalities, Corporations, etc. But it is clear from the provisions of the Act that the State Government could exercise effective control over the local administration by the municipalities. u/s 12-C, the right of appointment of the Commissioner, the most important executive officer of the Act, etc. But it is municipality, is vested in the State Government. u/s 72, the appointments of important officers, such as Health Officer, Engineer, Electrical Engineer and Assistant Electrical Engineer, made by the council are subject to the approval of the State Government. In fact, the State Government could itself appoint such officers under certain circumstances. u/s 76-A of the Act, powers are given to the State Government to appoint Health Officers and Municipal Engineers, notwithstanding anything contained in the other provisions of the Act. u/s 36 of the Act, the State Government has power to suspend or cancel resolutions, etc. made under the Act. u/s 73 of the Act, appointments to all posts other than those specified in Sections 12-C and 72 of the Act, in cases where the pay exceeds Rs. 50 per month shall be made by the appointment committee and all other posts carrying pay less than Rs. 50 by the executive authority, subject to any rules including the rules for the representation of different communities which the State Government may make in that behalf. Thus the scheme of the Act shows that in the case of important appointments, the Government either reserved for itself the right to appoint the incumbents or to have effective control by providing such appointments being made subject to the approval of the Government. In regard to the other employees of the Municipalities the effective control by the Government is secured by its framing rules by virtue of the specific provision contained in Section 73 of the Act and the power of superintendence exercised by appointing Inspector of Municipal Councils u/s 38(1) of the Act.

6. The main question for consideration in these writ appeals is whether the Act gives powers to the State Government to make the impugned Rule 7-B(5) of the rules, relating to establishment, in other words, rules providing for revising the order of appointment made by the appointment committee. Section 73 of the Act itself provides that appointments to all posts by the appointment committee as

contemplated in that section shall be subject to any rules which the State Government may make in this behalf. We see no justification for putting a narrow construction that the framing of rules contemplated by Section 73 could only relate to the manner in which the appointment committee could exercise its powers, and not as authorising the Government to frame rules giving to itself, or to the Inspector appointed by it, powers to revise the appointment made by the appointment committee. Part V of the Act deals with subsidiary legislation. Section 303(1) of the Act provides that the State Government may make rules to carry out all or any of the purposes of the Act not inconsistent therewith. Section 303(2)(r) of the Act provides that in particular and without prejudice to the generality of the foregoing power the State Government may make rules "as to the powers of auditors, inspecting and superintending officers and officers authorised to hold inquiries, to summon and examine witnesses and to compel the production of documents and all other matters connected with audit, inspection and superintendence". It cannot be disputed that the State Government has ample supervisory powers under the provisions of the Act and this is clear from Sections 34 and 41 of the Act. It is in order to effectively carry out the powers of supervision, Section 38(1) of the Act provides that the State Government may appoint such officers as may be required for the purpose of inspecting or superintending the operations of all or any of the municipal councils established under the Act. If the State Government has powers to appoint the Inspector of Municipal Councils, to inspect and supervise the working of the Municipality including the appointment committee, we fail to see how the relevant provisions referred to above do not give sufficient jurisdiction to the State Government to frame the impugned rule. The power of superintendence given to every High Court under Article 227 of the Constitution of India, corresponding to Section 107 of the Government of India Act, 1915 and Section 224 of the Government of India Act, 1935, over subordinate Courts, has been interpreted to include judicial, as well as administrative superintendence in all matters. It is clear from the definition of superintendence in the Law Lexicon of British India by Ramanatha Iyer that the word seems properly to imply the exercise of some authority or control over the person or things subjected to oversight. Thus the Inspector of Municipal Councils who has powers of superintendence is one who has the oversight and charge of something with power of direction. It could not be disputed that if the Inspector of Municipal Councils revised the order of the appointing authority by virtue of the impugned rule, he is superintending the work of the appointing authority. It could not be said that the impugned rule goes beyond the scope of Section 73 of the Act or that it is inconsistent with the reasonable interpretation of the relevant provisions of the Act.

7. Kailasam, J., has referred to Sections 85 to 96 of the City Municipal Corporation Act as containing elaborate provisions as to right of appeal, unlike Section 73 of the District Municipalities Act, and he has relied on this circumstance to find that in the absence of similar provisions in the District

Municipalities Act, Section 73 cannot be construed as empowering the State Government to make rules providing for revision of the order of the appointment committee by the Inspector of Municipal Councils. As regards the City Municipal Corporation Act, the provisions relating to establishment are no doubt different from those contained in the District Municipalities Act. But it can be accounted for on historical grounds and the existence of separate legislative enactments for the District Municipalities and the City Municipal Corporations for over several decades. But under both the Acts, the State Government has control in the matter of appointment of superior officers, like the Commissioner and certain important officers like Engineer, Health Officer, etc. But in spite of the difference in the mode of treatment of establishments in the District Municipalities Act and the City Municipal Corporation Act, it is not possible to infer that the District Municipalities Act did not contemplate the Government making rules for revising the orders of the appointment committee.

8. In *A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another*, , a Full Bench of this Court has held that Rule 8 of the Rules framed under the Madras Agriculturists Relief Act providing for appeals from the orders of the trial Courts is ultra vires the rule-making power u/s 28 of the Madras Agriculturists Relief Act. It is pointed out in the decision that an appeal does not lie as of right, but must be conferred by express enactment. The circumstances under which the case arose are as follows : An application was made u/s 19 of the Madras Agriculturists Relief Act to scale down the debt and it was dismissed by the Sub-Court. There was no provision in the Act for an appeal against that order. But subsequently the impugned Rule 8 was passed by the Provincial Government providing for an appeal against such an order. It is pointed out in the decision that the object of the Act is to grant relief to agriculturists by providing machinery for the scaling down of their debts and that if a case falls within the Act the Court must scale down the debt in accordance with the directions embodied in the Act. It has been held in that decision that Sub-section (2) of Section 28 enabling the Provincial Government to make rules in regard to any matter which is required to be prescribed by the Act and for removing any difficulty in giving effect to the provisions of the Act, will not empower the Provincial Government to provide the right of appeal by framing rules. The reason is that in making a rule providing for appeals the Provincial Government is not making a rule for carrying into effect the purposes of the Act. It is adding in effect something to the Act. The object of the Act is to grant relief to agriculturists by providing machinery for the scaling down of their debts and this is achieved by the Court of the first instance deciding whether a case falls within or without the Act. It has been held in the decision that by providing for an appeal, the Provincial Government is not removing any difficulty in giving effect to the provisions of the Act. This decision has been referred to and discussed in the decision *State of Madras v. Louis Dreyfus and Co. Ltd.* (1955) 6 S.T.C. 318. It is pointed out in this decision that the familiar principles of the decision in *A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias*

Karuppayi Achi and Another, can hardly apply to a case where the language of the rule-making power is couched in different terms. The following passage in *State of Madras v. Louis Dreyfus and Co. Ltd.* (1955) 6 S.T.C. 318 which is also extracted in the judgment of Kailasam, J. brings out the distinction clearly.

In particular we might refer to Section 19(2)(j) which enables rules to be made prescribing the duties and powers of officers appointed for the purpose of enforcing the provisions of the Act particularly in the context of the Act leaving it to the rules to constitute the hierarchy of officials to exercise powers under the Act and secondly, Sub-clause (1) where power is conferred upon the Provincial Government to frame rules in respect of any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the purposes of this Act. These words are of the widest amplitude and, in the absence of any prohibitions or restrictions inferable from the Act itself, are apt to confer upon the Government power to constitute revisional authorities and invest them with powers in that behalf. This contention also fails and has to be rejected. We therefore hold that it was open to the Provincial Government to have framed Rule 14(2) conferring upon the Commercial Tax Officers the revisional powers that were vested in them by that provision.

9. In *Perumalla Venkayya Vs. Batchu Pullayya*, , also the above Full Bench case has been distinguished and the test laid down by the House of Lords in *Blackwood v. London Chartered Bank of Australia* (1873) L.R. 5 P.C. 92, 108 I , has been followed as-evident from the following passage:

As has been pointed out by the House of Lords in *Blackwood v. London Chartered Bank of Australia* (1873) L.R. 5 P.C. 92, , the test to apply in considering whether rules are within the-powers of the rule-making authority under a statute are (1) Whether the rules are reasonable and convenient for carrying the Act into full effect; (2) whether the rules relate to matters arising under the provisions of the Act; (3) whether they relate to matters not in the Act otherwise provided for and (4) whether they are consistent with the provisions of the Act. The validity of a rule is to be determined not so much by ascertaining whether it confers rights or merely regulates procedure, but by determining whether the rule is in conformity with the powers conferred under the statute and whether it is consistent with the statute, reasonable and not contrary to general principles.

10. We have already pointed out that Section 73 of the Act clearly provides for the State Government making rules as regards the filling up of appointments, other than those specified in Sections 12-C and 72 of the Act. Sections 303 (1) and (2)(r) clearly empower the State Government to make rules to carry out all or any of the purposes of the Act and in particular to define the powers of inspecting and superintending officers in respect of inspection, and superintendence. The above provisions give ample powers to the State Government to frame rules to confer on Inspector of Municipal Councils, jurisdiction to revise the order of the appointing authority. For the foregoing

reasons, we find that Rule 7-B(5) of the Establishment; Rules framed u/s 73 of the Act is not ultra vires of the powers of the State Government.

11. We, however, agree with the view of Kailasam, J., that the Inspector of Municipalities has really pre-judged the case even before giving the show cause notice to the second respondent P. Murugaiyan. We have already pointed out that the appellant K.S. Ramaswami preferred an appeal to the Inspector of Municipalities. Though the appeal is not really competent, the Inspector of Municipalities has jurisdiction to call for the records on the information gained by him through the appeal petition, to peruse the same and to revise the order of appointment, after giving an opportunity to P. Murugaiyan to show cause against the proposed action. But what the Inspector of Municipalities did was to pass an order on 16th November, 1967 on the appeal petition of K. Ramaswami, setting aside the order of appointment made by the appointment committee in favour of P. Murugaiyan without giving an opportunity to the said Murugaiyan to defend the order of appointment in his favour. In fact, the Inspector of Municipalities has mentioned in the order that though it is not obligatory under the rules to issue a notice, yet he as Inspector has directed the appointment committee and Murugaiyan to show cause within 15 days from the date of receipt of his order dated 16th November, 1967, why the appointment order in favour of P. Murugaiyan should not be cancelled. After Murugaiyan filed his objections in the form of a petition the Inspector finally passed the order on 29th January, 1968, rejecting his petition and directing his earlier order dated 16th November, 1967 to be carried out. In the first paragraph of his order dated 29th January, 1968 he has specifically stated that he had allowed the appeal petition of K.S. Ramaswami and set aside the order of the appointment committee. Even in the counter-affidavit filed in the writ petition, the Inspector of Municipalities has categorically stated that by his order dated 16th November, 1967 he allowed the appeal petition of K.S. Ramaswami and set aside the order of the appointment committee and then issued notice to Murugaiyan to show cause why the order passed by him should not be given effect to. Thus, there can be no doubt in this case that the Inspector of Municipalities has pre-judged the case of Murugaiyan and acted in total disregard of the principles of natural justice. It is true the position would have been different if the Inspector of Municipalities had merely come to a prima facie conclusion and given an opportunity to Murugaiyan to show cause against it. In *Felix Fernandez v. Integral Coach Factory* ILR (1966) Mad. 365 : (1966) 79 L.W. 422, a Bench of this Court has held that the Memorandum following the charge-sheet calling upon the delinquent to show cause why he should not be punished in case the charge is made out would not in any way indicate that the cause has been prejudged. But it is clear from the facts already stated that the Inspector of Municipalities in this case had clearly prejudged the case against Murugaiyan.

12. The order of Kailasam, J., setting aside the order of Inspector of Municipalities is therefore correct. But in view of our finding that the Inspector of Municipalities has powers to revise the order of the appointment committee, it is

open to the present Inspector of Municipalities to consider the relative claims of K.S. Ramaswami and P. Murugaiyan and to revise the order of the appointment committee if he sees sufficient grounds to do so.

13. The State of Madras and K.S. Ramaswami have preferred W.A. Nos. 376 and 218 of 1968 respectively against the order on W.P. No. 538 of 1968. But as objection was taken that no writ appeal had been filed against W.P. No. 539 of 1968 in which a writ of quo warranto was prayed for by the second respondent Murugaiyan, the decision of Kailasam, J., had become final. C.M.P. No. 18730 of 1969 has been filed to condone the delay and permit a writ appeal to be filed against the order on W.P. No. 539 of 1968. There can be no doubt that by oversight appellant K.S. Ramaswami failed to file a writ appeal against the order on W.P. No. 539 of 1968. The delay in filing the writ appeal is condoned.

14. In the result, the order of Kailasam, J. setting aside the order of the Inspector of Municipalities is confirmed, but, as already pointed out, it is open to the present Inspector of Municipalities to exercise his jurisdiction under Rule 7-B(5) of the Rules relating to employment under the Municipal Council to revise the order of the appointment committee, if he sees sufficient grounds to do so. The writ appeals are ordered accordingly but in the circumstances, there will be no order as to costs.