

(2002) 02 BOM CK 0128

In the Bombay High Court

Case No : Writ Petition No. 1949 of 1987

Meghraj Raghobaji Nevle and Others

APPELLANT

Vs

Additional Collector, Nagpur and Another

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 308(1)

Citation : (2002) 3 ALLMR 840 : (2002) 4 BomCR 728 : (2002) 2 MhLj 576

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant;

Final Decision : Allowed

Judgement

V.M. Kanade, J.—By this petition, the petitioners are challenging the Order passed by respondent No. 2.- Chief Officer, Municipal Council, Kalineshwar, terminating the services of the petitioners. A short question, which is raised in this petition, is whether the Additional Collector, Nagpur, was competent to pass an order of termination by exercising the powers u/s 308 of the Maharashtra Municipalities Act.

2. The brief facts, giving rise to the present petition, are as follows: The petitioner's came to be appointed temporary with effect from 10-8-1987 by virtue of the order passed by the Standing Committee dated 24-3-1987. Even prior to the issuance of the said letter of appointment, the petitioners were in the employment of the Municipal Council and all of them had completed more than 240 days. Some of them had completed 4 years in service prior to the said letter of appointment being issued to them.

3. It is submitted that suddenly the services of the petitioners were terminated by an order passed by the Additional Collector dated 12-8-1987, which was communicated to them by the Chief Officer by his letter dated 10-9-1987. It is submitted by the learned counsel appearing on behalf of the petitioners that

none of the petitioners had received any notice from the Collector nor they were party to it.

4. Heard the learned counsel appearing on behalf of the petitioners. Though respondents 1 and 2 are served, none appears for respondents 1 and 2. No reply has been filed by the respondents. It is submitted by the learned counsel appearing on behalf of the petitioners that the Additional Collector had no power to issue the order of termination by exercising the powers u/s 308(1) of the Maharashtra Municipalities Act. It is submitted that no notification has been issued under the Act by the Government authorising the Additional Collector to exercise the powers of the Collector. The order is, therefore, without jurisdiction and apart from that it had been issued without satisfying the requirements of section 308 of the Maharashtra Municipalities Act.

5. Section 308(1) of the Maharashtra Municipalities Act (hereinafter referred to as "the Act") reads as under:

"If, in the opinion of the Collector, 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, is causing or is likely to cause injury or annoyance to the public or is against the public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof."

6. The learned counsel appearing on behalf of the petitioner relied upon the Judgment of this Court reported in 1984 Mh.LJ. 821 in the case of Chandrashekhar Shankarrao Zade and others v. Additional Collector, Nagpur and others. He submitted that this Court has held in the said case that the Additional Collector is not entitled to exercise powers of the Collector and discharge his duties and function unless and until the State Government gives directions in that behalf under Notification issued by the State Government in Official Gazette.

7. We have perused the petition, annexures thereto and also the Judgment of this Court relied upon by the petitioners. In our view, the ratio of the Judgment cited supra is squarely applicable to the facts of this case and, therefore, we have no hesitation to hold that the impugned order terminating the petitioners is liable to be quashed and set aside. The respondents are directed to continue the petitioners in service. At the time of granting Rule, this Court had granted interim stay in terms of prayer Clause (c). As a result of the interim order, the petitioners have continued to work in the respondent No. 2- Municipal Council.

8. In the result, the petition is allowed in terms of prayer Clause (a). Rule is made absolute accordingly. In the circumstances, there shall be no order as to costs.