
(2011) 11 AHC CK 0153

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43014 of 2011

Nagar Palika Parishad, Swar, Rampur and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Uttar Pradesh Municipalities Accounts Rules — Rule 5

Uttar Pradesh Municipalities Act, 1916 — Section 57, 58, 59, 59(1), 59(2)

Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 31, 442

Citation : (2011) 11 AHC CK 0153

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon. Dilip Gupta, J.—This petition seeks the quashing of the order dated 4th July, 2011 passed by the District Magistrate, Rampur by which on transfer of the Executive Officer of Nagar Palika Parishad Swar, District Rampur and Executive Officer of Nagar Palika Parishad Tanda district Rampur has been given the additional charge of Executive Officer of Nagar Palika Parishad Swar, District Rampur in addition to his own charge till an Executive Officer is appointed for Nagar Palika Parishad Swar by the State Government.

2. It is stated that Nagar Palika Parishad Swar, district Rampur resolved to appoint the petitioner no. 2-Shafeeqe Ahad to discharge the duties of Executive Officer in officiating capacity under Sections 59(1) and Section 59(2) of the U.P. Municipalities Act, 1916 (hereinafter referred to as the "Act") and he started discharging duties thereafter but the District Magistrate passed the order on 4th July, 2011 for giving the additional charge of this Nagar Palika Parishad to the Executive Officer of Nagar Palika Parishad Tanda.

3. It is submitted by Sri. Ashok Khare, learned Senior Counsel for the petitioners assisted by Sri. Rajesh Kumar Mishra, that the District Magistrate committed an illegality in passing the order as the District Magistrate cannot appoint an

Executive Officer of the Nagar Palika Parishad and it is Nagar Palika Parishad alone has the power to appoint an Executive Officer u/s 59 of the Act.

4. Sri. Prem Chandra, learned counsel appearing for respondent No. 3 has, however, submitted that under the provisions of Section 69-B of the Act and Rules 31 and 442 of the U.P. Palika (Centralized) Service Rules as also Rule 5 of the U.P. Municipalities Accounts Rules, the State Government issued Government Order dated 27th March, 2008 for giving officiating charge on the vacant post of Executive Officer in Nagar Panchayats and Nagar Palikas and it is in accordance with this Government Order that the District Magistrate issued the impugned order. It is also his contention that the controversy involved in this petition is covered by a Division Bench judgment of this Court in Writ Petition No. 24973 of 2008 (Pyare Vs. State of U.P. & Ors.) decided on 21st May, 2008. He, therefore, submits that the petition is liable to be dismissed.

5. I have considered the submissions advanced by learned counsel for the parties.

6. In Pyare (supra) the Court examined the validity of the Government Order dated 27th March, 2008 by which powers were delegated to the District Magistrate for authorizing any Executive Officer of a nearby local body to function as the Executive Officer of Nagar Panchayat on the vacant post and it was observed as follows:

In order to cope up with huge deficiency of Executive Officers, the State Government initially issued a Government Order on 18.07.1996 authorising District Magistrates to make officiating arrangement by authorising Executive Officer of nearby local body for disbursement of funds which can be done only under the signatures of Executive Officer under Rule 5 of the U.P. Municipalities Account Rules. The said authorisation was reiterated in Government Orders dated 22nd June 1999 and 15th November 2002. However, by the impugned Government Order dated 27th March 2008, finding functioning of local bodies to be difficult by adhering to Government Order dated 15th November 2002, the State Government has now authorised District Magistrates to make officiating appointment as under:

(i) In the municipal bodies having population upto one Lac by authorising Executive Officer of nearby local body or Deputy Collector.

(ii) Where population is more than one Lac, by authorising an officer equivalent to Executive Officer of nearby municipality or an Additional District Magistrate or any other officer of Indian Administrative Service posted in that district.

The said delegation is clearly referable to Rule 42 of 1966 Rules and it cannot be said that the State Government has no power of delegation. Moreover, where a situation is not specifically covered or there is some hardship in implementing 1966 Rules, Rule 41 also empowers the State Government to issue a Government Order dispensing with requirement of any particular provision of 1966 Rules to deal with the situation in a just and equitable manner. Besides,

Rule 40(2) also provides that matters not covered by these rules shall be governed by such orders as the State Government may deem proper to issue.

From a conjoint reading of the aforesaid provisions and in particular Rule 31 read with Rule 42 of 1966 Rules, we do not find that the impugned Government Order is ultra vires or contrary to 1966 Rules in any manner. Learned counsel for the petitioner could not show as to how the impugned order can be said to be in violation of Section 57 to 65 of 1916 Act when it is referable to 1966 Rules framed in exercise of powers u/s 69B of 1916 Act which has overriding effect over the provisions contained in Section 57, 65 etc.

It is worthy to mention here that power of appointment of Executive Officer was conferred by Sections 57 and 59 of 1916 Act and rest of the provisions are in respect to various functions which are to be performed by Executive Officers. Both the aforesaid provisions, i.e. Sections 57 and 59 are overridden by Section 69B of the Act and, therefore, in the matter of appointment of Executive Officer, only are to be seen under 1966 Rules are relevant and not Sections 57 and 59 of 1916 Act.

(emphasis supplied)

7. It is, therefore, clear from the aforesaid decision of the Division Bench of this Court, that the District Magistrate has the power to appoint an Executive Officer of the Nagar Palika Parishad against the vacant post and Section 59 cannot come to the aid of the petitioners. The impugned order, therefore, does not suffer from any illegality.

8. There is, therefore, no merit in this petition. It is, accordingly, dismissed.