

(1961) 10 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Petition No. 57 of 1960

Narayan Keshav Dandekar

APPELLANT

Vs

R.C. Rathi and Another

RESPONDENT

Date of Decision : 03-10-1961

Acts Referred:

Constitution of India, 1950 — Article 12, 16, 226

Madhya Pradesh Municipal Corporation Act, 1956 — Section 442(2), 58, 58(2)

Citation : AIR 1963 MP 17 : (1963) JLJ 666 : (1963) MPLJ 709

Hon'ble Judges : V.R. Newaskar, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : R.G. Waghmare, for the Appellant; S.D. Sanghi and B.P. Jhanzaria, for the Respondent

Final Decision : Allowed

Judgement

Newaskar, J.

This is a petition under Article 226 of the Constitution for the issue of a writ of quo-warrato submitted by the petitioner who is a registered voter in the electoral roll maintained by the Municipal Corporation, Indore, owns House No. 13 in Jati Colony Indore and is a tax-payer paying annual taxes to the Indore City Municipal Corporation. The petition is directed against one Radha Krishna Champalal Rattii who has been appointed as the Assessment and Estate Officer in the Indore City Municipal Corporation. Indore City Municipal Corporation is impleaded as the second opponent.

The petitioner's case is that opponent Radha-Krishna Rathi had been employed in the Indore Municipality as a Personal Assistant to the Commissioner when the Madhya Bharat Municipalities Act, 1954, was in force and was applicable to the City Municipality of Indore, on 28-10-1955 Madhya Bharat Municipal Corporation Act of 1956 came into force and this Act was applied to the city of Indore on 31-10-1956. Prior to this application and while the Madhya Bharat Municipalities Act, 1954, was in force the Municipal Council of the Indore Municipality passed a

resolution on 10-10-1958 calling applications for posts of four Assessment officers for the Indore City Municipality as the assessment of the House-tax for the entire City was to be taken in hand. Opponent No. 1 Radhakrishna Rathi was one of the applicant and he was appointed as Assessment Officer on 29-10-1956 on a salary of Rs. 250/- per month with dearness allowance and an additional Conveyance allowance of Rs. 75A per month. His appointment was temporary and officiating. There was extension of his term from time to time upto 31-3-1959. There was however no change of designation nor any alteration in the temporary and officiating character of the post.

On 9-12-1958 the Municipal Commissioner submitted certain proposals to the Standing Committee of the Corporation. Amongst the said proposals was a proposal that there should be a permanent assessment section under the charge of an Assessment Officer to be designated as Assessment and Estate Officer and that this Officer should look after not only the business of assessment and re-assessment but also should maintain a record and look after the Immovable properties of the Corporation and from time to time draw the attention of the Engineering Department to any repairs etc., which might appear necessary. In accordance with this proposal of the Commissioner a provision was made in the budget for the financial year 1959-60 in respect of the aforesaid post. The Municipal Corporation by its Resolution No. 181 dated 31-8-1959 sanctioned the creation of the said post while sanctioning the budget proposals. This provision in the budget for the year 1959-60 only constituted a non-recurring item of expenditure. Opponent No. 1 who was then working as Assessment Officer, became Assessment and Estate Officer by the change in his designation. He, however, continued to draw the same salary and allowances throughout the financial year 1959-60.

For the next financial year 1960-61 the Assessment and Estate Officer was made permanent with a revised grade of Rs. 300-20-500 in pursuance of the Standing Committee Resolution No. 869 dated 15-1-1961 and the Municipal Corporation's Resolution No. 616 dated 19-3-1960. It was thereafter that opponent No. 1 was confirmed on this., post by the Standing Committee's Resolution No. 243 dated 205-1960. Petitioner's complaint is that upon a provision for a permanent Municipal Post having been made by opponent .No. 2 it was incumbent upon the Standing Committee of the Corporation to follow the normal procedure of seeking applications by giving public advertisement and providing equal opportunity to all who would have been eligible for the said appointment and that it was further incumbent upon the said Standing Committee to make the appointment in consultation with the State Public Service Commission; the appointment of Opponent No. 1 made without reference to the Public Service Commission and without following the procedure as indicated above with retrospective effect from 1-4-1960 is illegal and ultra vires the powers of the said Standing Committee and is in abuse of their powers to the detriment of Municipal funds. The petitioner also complains that the said appointment of opponent No. 1 on a new and permanent post of Assessment and Estate Officer in the manner done is in

contravention of Article 16 of the Constitution. The petitioner therefore prays for the issue of a writ of quo-warranto directing him to vacate the office of Municipal servant in the post of Assessment and Estate Officer which he has usurped. He also prays for the issue of a writ of mandamus against the Municipal Corporation to remove opponent No. 1 from the post of Assessment and Estate Officer.

The petition is opposed by both the opponents. In the returns submitted by them it is contended by them that the Standing Committee by its Resolution No. 243 dated 26-5-1960 merely confirmed the appointment of opponent No. 1 as the Assessment and Estate Officer and there was no fresh and new appointment made to that post or to any new post. According to them all that happened is that a pre-existing temporary post was made permanent and the pay and grade of that post was revised and a person who was-already a Municipal employee and was at that time holding that post temporarily was confirmed in that post. For such confirmation, it is said, consultation with the Public Service Commission was not necessary. Reliance was also placed upon Section 442(2) of the Madhya Bharat Municipal Corporation Act for the view that the opponent No. 1 being a permanent Municipal employee of the Indore Municipality and had been posted on a temporary post as Assessment Officer of the said Municipality on 29-10-1956 should be taken to be an officer duly appointed to that post by opponent No. 2 u/s 58 of the Madhya Bharat Municipal Corporation Act.

The principal points for consideration on these respective submissions are:

Whether the appointment of opponent No. 1 on the permanent post of Assessment and Estate Officer in pursuance of the Standing Committee's Resolution No. 243 dated 26-5-1960 is illegal on the ground that it contravenes the provision of Section 58 of the Madhya Bharat Municipal Corporation Act or whether his appointment amounts merely to his confirmation OR that post with revision as to his salary and grade which was within the competence of the Standing Committee more particularly in view of Section 442(2) of the Madhya Bharat Municipal Corporation Act

Whether the said appointment is contrary to Article 16 of the Constitution?

In order to consider these questions it will be necessary to refer to the provisions of Section 58 and Section 442(2) of the Madhya Bharat Municipal Corporation Act, No. 23 of 1956, which according to either parties are material.

Section 58 of the Madhya Bharat Municipal Corporation Act, No. 23 of 1956, is as follows:

"(1) Subject to the provisions of, this Act the corporation shall appoint a City Engineer, a Health Officer, a revenue Officer, a Municipal Secretary and a Municipal Accountant and may appoint a Deputy Municipal Commissioner and such other officers and servants as are necessary for the efficient carrying out of the purposes of this Act and may assign to them such duties and pay them such salaries and allowances, pensions and gratuities and may make on their behalf

such payments to the provident or annuity funds as the Corporation may determine by the rules made in this behalf u/s 433 ;

Provided that:

(1) the power of appointing any person on a municipal post which carries a maximum monthly salary exceeding 150/- rupees shall vest in the Standing Committee;

(2) the power of appointing any person on a municipal post which carries a maximum monthly salary not exceeding 150/- rupees shall vest in the Commissioner;

(3) any appointment made within his power by the Commissioner shall be reported for its information to the Standing Committee;

Provided further that the appointment to be made by the Standing Committee shall be so made in consultation with the State Public Service Commission in the manner prescribed;

Provided also that in case of any difference of opinion between the Standing Committee and the State Public Service Commission, the matter shall be laid before the Corporation. If the Corporation agrees with the State Public Service Commission, the appointment shall be made accordingly. In other cases a reference shall be made by the Corporation to the Government whose decision shall be final."

Section 442, Sub-Clause (2) of the Madhya Bharat Municipal Corporation Act, No. 23 of 1956, is as follows:

"All the municipal officers and servants in the employment of the Municipality shall be officers and servants employed by the Corporation under this Act as if they had been appointed u/s 58."

It is clear from the Proviso (1) to Section 58 that the power of appointing any person on a municipal post which carries a maximum monthly salary exceeding Rs. 150/- vests in the Standing Committee. But in making such appointment the Standing Committee has, under the second Proviso, to consult the State Public Service Commission in the manner prescribed. On consulting in this manner if a difference of opinion arises between the Standing Committee and the State Public Service Commission the matter has to be placed before the Corporation. Where the Corporation agrees with the State Public Service Commission the appointment is to be made accordingly. However if there is difference of opinion between the Corporation and the State Public Service Commission then in that case a reference has to be made by the Corporation to the Government and the decision of the Government becomes final in the matter of such appointment. Thus it is plain that consultation with the State Public Service Commission is not a matter of mere form but has other consequences. Where the State Public Service Commission is not agreeable with the Standing Committee and the

Corporation the appointment can only be made on reference to the Government, It is not disputed and is clear from the order of appointment, itself that the appointment of opponent No. 1, if it be a new appointment, would fall under Clause (1) of the First Proviso and would be bad due to the absence of consultation with the State Public Service Commission.

The only further question to be considered therefore is whether this appointment is saved by Clause (2) of Section 442 of the Madhya Bharat Municipal Corporation Act, This provision contained in Section 442 (2) is transitory in its nature. All that it provides is that all the Municipal Officers and servants in the employment of the Municipality as it existed when the provisions of the Madhya Bharat Municipal Corporation Act were made applicable to the City of Indore automatically became Officers and Servants employed by the Corporation under the latter Act and there is a statutory fiction that in their cases Section 58 has been complied with. Now this statutory fiction can go only to this extent that Mr. Radhakshna Rathi, who on the date of coming into force of the Madhya Bharat Municipal Corporation Act was an Assessment Officer on a temporary and officiating post, would become an Assessment Officer under the Corporation on a similar temporary and officiating post. It will have no application where a new and a permanent post is created with a specified grade and salary for the first time as a result of the resolution of the Municipal Corporation. The provision does not intend to do away with the requirement of following the method and procedure as indicated in Section 58 of the Act merely because the person who is to be appointed on a post newly created happened to be one of the employees of the Corporation itself.

There was no permanent post of an Assessment and Estate Officer in the Indore Municipality as it existed before the Madhya Bharat Municipal Corporation Act was applied to the City of Indore. This post for the first time came into existence as a result of the resolution, of the Municipal Corporation No. 616 dated 19-3-1960. Prior to that there was the same post which the opponent No. 1 had been occupying at the time of the commencement of the Act namely the Assessment Officer although for the financial year 1959-60 there was a slight change in the designation by adding the words "and Estate Officer", There is no change in the salary or allowances nor any substantial modification as regards the nature of the work to be performed by him. It is contended by Mr. Waghmare for the petitioner that even that appointment or posting would be hit by Section 58 in view of the change in the designation and the alteration in the duties. But for the purpose of the present petition that contention need not be considered. What is material for our purpose is to consider whether the appointment to the newly created permanent post as Assessment and Estate Officer carrying the salary and grade of Rs. 300-20-500 is saved by Sub-section (2) of Section 442 of the Madhya Bharat Municipal Corporation Act. For the purpose of Sec, 442(2) no resolution of the Standing Committee is called for. The officers and servants in the employment of the Municipality at the time of commencement of the Act to - came automatically the Officers and servants of the Corporation. However in the

present case intervention of the Standing Committee was necessary as is clear from the resolution of the Standing Committee dated 26-5-1960. With that resolution it is idle to have a recourse to Section 442(2) for contending that there is in fact no new appointment and that what was done was merely confirmation of opponent No. 1 in the post already held by him and there was merely revision of salary and grade. If such a contention were allowed to prevail that would amount to parmitting circumvention of a very salutary provision as contained in Section 58 Second Proviso, strict observance of which is necessary in public interest as well as for maintaining purity in the matter of appointments to public offices. It may be that opponent No. 1 was considered by the Standing Committee suitable for such appointment but that is not the criterion where the law requires the appointment to be made in the prescribed manner. It is, therefore, clear that the resolution of the standing Committee dated 28-5-1960 appointing opponent No. 1 as the Assessment and Estate Officer on the salary of Rs. 300-20-500 with allowances is contrary to Section 58 of the Madhya Bharat Municipal Corporation Act, No. 23 of 1956, and the said appointment is illegal.

The second question to be considered is whether the appointment violates Article 16 of the Constitution?

Once it is held that the appointment of opponent No. 1 is to a new post which was created as a result of the resolution of the Corporation dated 19-3-1960 It is clear that this appointment has been made contrary to Article 15 of the Constitution, it is not disputed that before making this appointment the post was not regularly advertised nor were any applications invited from persons qualified to hold the post. Article 16 of the Constitution requires that there shall be equality of opportunity for all citizens in the matters relating to employment or appointment in any office under the State. The word "State" as used in this Article is defined in Article 12. According to that Article the term "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the State and all local and other authorities within the territory of India or under the control of the Government of India. The Municipal Corporation is certainly a local authority and its Assessment and Estate Officer in the employment of the City Municipal Corporation is necessarily for that reason is a person holding an office under the State. In *Dattatraya Motiram More Vs. State of Bombay*, , the Division Bench consisting of Chagla C. J., and Dixit J; refused to hold a councillor elected under the Bombay Munipal Boroughs Act as a person holding the office under the State but that was because they held that he was a part of the local authority itself and not a person holding the office under the local authority. In the present case that is not the position. Opponent No. 1 is clearly a person holding an office under the local authority and is not a part of the local authority itself. His appointment therefore is also hit by Article 16 of the Constitution.

A writ of quo-warranto shall therefore be issued, directing opponent No. 1 to vacate his office and a writ of mandamus shall at the same time be issued

against the Corporation requiring it to remove opponent No. 1 from the office of Assessment and Estate Officer. It is open for the Corporation to pass any further and consequential orders.

The petitioner is entitled to his costs of this petition from the opponents who shall bear their own costs. Counsel's fee shall be taxed at Rs. 100/-.

H.R. Krishnan, J.

I agree.