

(2004) 11 OHC CK 0043

In the Orissa High Court

Case No : Writ Petition (C) No. 11703 of 2003

Ramesh Chandra Samantray

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 154, 166, 226, 243U
Orissa Municipal Act, 1950 — Section 376, 401, 401(1), 401(2), 408

Citation : (2004) 11 OHC CK 0043

Hon'ble Judges : M.M. Das, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Subha Bikash Panda and I. Mohanty, for the Appellant; D.C. Mohanty, Govt. Advocate for O.Ps. 1 to 3, S.K. Nayak, B.K. Sahoo, M.S. Sahoo and Debasmita Nayak for O.P. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The Petitioner is the Chairperson of the Paradeep Municipality (erstwhile Paradeep Notified Area Council) and in this writ petition he has challenged the various steps taken by the State Government for dissolution of the Paradeep Municipality.

2. The facts briefly are that the Paradeep Notified Area Council (in short Paradeep N.A.C.) was constituted in the year 1979 under the provisions of the Orissa Municipal Act, 1950 (for short, "the Act"). The present Council of Paradeep N.A.C. was elected in April, 2000 and the Petitioner was elected by the Councillors of Paradeep N.A.C. as its Chairman and he assumed the office as such Chairman on 22.4.2000. The normal term of 5 years of the Councillors and the Chairman would expire only on 22.4.2005. But on the basis of reports of the Special Audit conducted during 15.1.2001 to 20.2.2001 and an enquiry conducted by the Under Secretary to Government in the Housing and Urban Development Department, the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development

Department, issued a show cause notice dated 26.12.2001 to the Petitioner and other Councillors of Paradeep N.A.C. asking them to show cause as to why the Government should not dissolve the Council of the Paradeep N.A.C. on the grounds mentioned in the said show-cause notice. Initially the Petitioner and the other Councillors of Paradeep N.A.C. requested for some documents to be furnished for the purpose of preparing their reply to the show-cause notice and took time for furnishing the said reply. After the documents were furnished, the Petitioner submitted his reply. Thereafter, the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department heard the Petitioner and the Councillors of Paradeep N.A.C. on 29.6.2002 and in his order dated 27.8.2002 recorded findings that most of the charges framed against the Petitioner as Chairperson and the Notified Area Council were proved and recommended to the Government to consider to take action against the Chairperson and the Council as per the provisions of the Act. The said findings of the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department were accepted by the Government and by notification dated 27.8.2002 of the Government of Orissa, Housing and Urban Development Department, the State Government in exercise of its powers under Sub-section (1) of Section 401 of the Act dissolved the Paradeep N.A.C. with immediate effect.

3. Aggrieved, the Petitioner and other Councillors of Paradeep N.A.C. filed a writ petition W.P.(C) No. 3103 of 2002 under Article 226 of the Constitution in this Court challenging the said notification dated 27.8.2002 dissolving Paradeep N.A.C. On 2.9.2003, this Court found from the records that while the Chairpersons of the Council of Paradeep N.A.C. has been heard by the Director of Municipal Administration on 29.6.2002, the decision to dissolve the Paradeep N.A.C. was taken by the Minister, Urban Development Department and relying on the decision of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , held that the person who is to take the decision is to hear the matter and accordingly quashed the notification dissolving Paradeep N.A.C. and directed that the Petitioners be given an opportunity of hearing by the authority of the State Government who is to take a decision on the proposal to dissolve Paradeep N.A.C.

4. Thereafter, on 29.10.2003, the Government of Orissa, Housing and Urban Development Department issued a notification in exercise of powers u/s 408 of the Act authorizing the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department to exercise the powers vested in the State Government u/s 401 of the Act and to conduct hearing of the Council of Paradeep Municipality on the charges levelled against the said Municipal Council vide Housing and Urban Development Department show-cause notice dated 26.12.2001 in accordance with the provisions of the Constitution of India. On the authority of the said delegation in the notification dated 29.10.2003, the Director, Municipal Administration and Ex-officio Additional Secretary to Government Housing and

Urban Development Department issued a notice dated 30.10.2003 to the Petitioner and the Councillors of Paradeep Municipality stating therein that he will hold personal hearing on the show-cause dated 26.12.2001 on 10.11.2003 and give an opportunity to the Petitioner and the Councillors of the Paradeep Municipality to attend the said hearing and put forth their defence, if any.

5. Aggrieved, the Petitioner has filed this writ petition under Article 226 of the Constitution praying to quash the report of the Special Audit in Annexure-1 to the writ petition, the report of the Under Secretary to Government of Orissa, Housing and Urban Development Department dated 9.7.2001 in Annexure-2 to the writ petition, the show-cause notice dated 26.12.2001 issued by the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department in Annexure-3 to the writ petition, the findings of the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department in his order dated 27.8.2002 in Annexure-10 to the writ petition, the notification dated 29.10.2003 delegating the powers of the State Government u/s 401 of the Act to the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department in Annexure-15 to the writ petition and the notice dated 30.10.2003 of the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department in Annexure-13 to the writ petition fixing the date of hearing on the show-cause notice dated 26.11.2003 on 10.11.2003 and giving an opportunity to the Petitioner and the Councillors of Paradeep Municipality for hearing on the said date.

6. On 20.11.2003, the Court while issuing notice in the writ petition passed an interim order in Misc. Case No. 11455 of 2003 directing that the Director, Municipal Administration may complete the hearing pursuant to the impugned notice dated 30.10.2003 in Annexure-13 and may also pass final orders but if he passes orders for dissolution of the Paradeep Municipality, such order for dissolution will not be given effect to until further orders. Therefore, Misc. Case No. 3383 of 2004 was filed by the opposite parties No. 1 and 2 praying for modification of the interim order passed on 23.11.2003. In the said misc. case, opposite parties No. 1 and 2 have stated that the Director, Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department has already recorded a finding that the Chairperson and the other Councillors of Paradeep Municipality have abused their power, acted beyond their jurisdiction and violated the provision of the Orissa Municipal Act, 1950, rules thereunder and the O.G.L.S. Act, caused heavy financial loss to the N.A.C. during their incumbency as Chairperson and Councillors and failed to safeguard the interest of Paradeep N.A.C. vis-a-vis the public of the said local body and in exercise of powers conferred u/s 401(1) of the Act as delegated to him, he has passed order directing dissolution of the said Council with immediate effect, but the said order cannot be implemented unless the interim order passed by this Court on 20.11.2003 is modified.

7. At the hearing, Mr. Indrajit Mohanty, learned Counsel for the Petitioner, submitted that the functions of the State Government u/s 401 of the Act being judicial or quasi-judicial in nature cannot be delegated to any other authority even if Section 408 of the Act provides for delegation of powers of the State Government under the Act to any authority. He cited the English decisions in *Bernard and Ors. v. National Dock Labour Board and Anr.* (1953) 1 All E.R. 1113, and *Vine v. National Dock Labour Board*, (1956) 3 All E.R. 939, for the proposition that judicial or quasi-judicial power of an authority cannot be delegated to some other authority.

8. Mr Indrajit Mohanty sought to make a distinction between powers and duties and submitted that Section 408 of the Act provides for delegation of powers but not delegation of duties. He argued that since Section 401 of the Act does not confer any power on the State Government but imposes some duties, such duties cannot be delegated to any other authority u/s 408 of the Act. He also submitted that in Section 401 "the State Government" means the Governor in whom the executive power of the State is vested under the Constitution and such power of the Governor is to be exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution or with the aid and advice of the Council of Ministers headed by the Chief Minister. He submitted that the Governor Orissa has framed the Rules of Business under Articles 166 of the Constitution of India and the said Rules of Business enable the Minister of Urban Development to perform the duties on behalf of the State Government u/s 401 of the Act and such duties cannot be further delegated to any other authority u/s 408 of the Act. He vehemently argued that if the power u/s 401 of the Act is delegated to the Director of Municipal Administration then such delegation will frustrate the very intent of the legislature u/s 401 of the Act vis-a-vis Article 243U of the Constitution of India as such delegation of power to the Director of Municipal Administration will be an antithesis to democracy.

9. Mr Indrajit Mohanty next submitted that plain reading of the notification dated 29.10.2003 in Annexure-15 to the writ petition would show that the delegation of power in favour of the Director of Municipal Administration is limited to only the hearing of the case relating to Paradeep Municipality u/s 401 of the Act. He argued that such delegation has been done on a gross misconception of para 6 of the judgment dated 2.9.2003 of this Court in the earlier writ petition filed by the Petitioner in W.P.(C) No. 3103 of 2002. He argued that such a limited and partial delegation of the functions of the State Government u/s 401 of the Act is also vitiated by mala fide inasmuch as the Petitioner belongs to the opposition political party.

10. Mr. Indrajit Mohanty next submitted that while the impugned delegation of powers u/s 401 of the Act was made in favour of the Director of Municipal Administration on 29.10.2003, the show-cause notice was issued on 26.12.2001 and the findings were against the Petitioner recorded by the Director of Municipal Administration in his order dated 27.8.2002 much before the impugned

delegation was made in favour of the Director of Municipal Administration. The Petitioner and the other members of the Council of Paradeep Municipality objected to the jurisdiction and authority of the Director of Municipal Administration in initiating the proceedings in their reply dated 10.11.2003 under Annexure-14 filed before the Director of Municipal Administration. Finally, he submitted that the impugned delegation by the notification dated 29.10.2003 under Annexure-15 to the writ petition is baseless, bald, sham, bad in law, arbitrary, unlawful and contrary to the statute and hit by the doctrine of bias and Article 14 of the Constitution.

11. Mr Durga Charan Mohanty, learned Government Advocate, on the other hand, submitted that u/s 408 of the Act, the State Government may by notification authorize any person or authority to exercise in regard to any Municipality any one or more of the powers vested in them by the Act and in exercise of this power u/s 408 vested by the State Government in the State Legislature, the State Government has delegated its power u/s 401 of the Act in relation to the aforesaid case against Paradeep Municipality to the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department by the notification dated 29.10.2003 and such delegation of powers therefore cannot be held to be ultra vires or illegal by the Court. He further submitted that in exercise of such delegated power, the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department has issued the notice to the Petitioner dated 13.10.2003 in Annexure-13 to the writ petition giving opportunity to the Petitioner and other Councillors of Paradeep Municipality to attend the hearing and put forth their defence and it is only after hearing the Petitioner and the other Councillors that the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department has recorded a finding that the Chairperson and the Councillors of Paradeep Municipality have abused their power, acted beyond their jurisdiction and violated the provisions of the Orissa Municipal Act and the rules thereunder and caused heavy financial loss to the N.A.C. during their incumbency as Chairperson and Councillors and has accordingly passed orders directing dissolution of the Council of Paradeep Municipality with immediate effect. But this order of the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department cannot be given effect to on account of the interim orders passed by this Court on 2.11.2003.

12. For deciding the questions raised in this writ petition, it is necessary to extract the provisions of Clause-1 of Article 243U of the Constitution of India, Sub-sections (1) and (2) of Section 401 and Section 408 of the Act and the notification dated 29.10.2003 of the Government of Orissa, Housing and Urban Development Department in Annexure-15 to the writ petition.

Clause-1 of Article 243U of the Constitution of India

243U. Duration of Municipalities, etc.- (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

Sub-sections (1) and 2 of Section 401 of the Act

401. Dissolution and reconstitution of Municipality - (1) If in the opinion of the State Government a Municipality is incompetent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers, they may, by notification published in the prescribed manner, direct that the Municipality be dissolved.

(2) Before publishing a notification under Sub-section (1), the State Government shall communicate to the Municipality the grounds on which they propose to do so, fix a reasonable period for the Municipality to show cause against the proposal and consider the explanations and objections, if any, of the Municipality.

Section 408 of the Act

408. Delegation of powers by State Government - The State Government may by notification authorize any person or authority to exercise in regard to any Municipality any one or more of the powers vested in them by this Act, except the power to make rules or alter Schedules, the power to determine contributions payable and the power to sanction prosecution u/s 376 and may in the like manner withdraw such authority.

Notification dated 29.10.2003 of the Government of Orissa, Housing and Urban Development Department

Government of Orissa Housing and Urban Development Department

NOTIFICATION

Bhubaneswar Dated the, 29.10.03

No. Spl.M1-50/2003 47039/HUD., In exercise of the powers conferred by Section 408 of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) and read with Article 243-U of the Constitution of India, the State Government do hereby authorize the Director of Municipal Administration and Ex-officio Additional secretary to Government, Housing and Urban Development Department to exercise the powers vested in the State Government u/s 401 of the said Act and to conduct hearing of the council of Paradeep Municipality (erstwhile Paradeep N.A.C.) on the charges leveled against the said Municipal Council vide Housing and Urban Development Department show cause Notice No. 45875 HUD dt. 26.12.2001 in accordance with the above provisions of the Constitution of India. The delegation is limited to hearing of the aforesaid case relating to Paradeep Municipality.

By Order of the Governor S. K. Ray Under Secretary to Government

13. A plain reading of Clause-1 of Article 243U of the Constitution quoted above would show that every Municipality is to continue for a period of five years from the date appointed for its first meeting and no longer, unless sooner dissolved under any law for the time being in force. But the Proviso to Clause-1 of Article 243U of the Constitution states that before its dissolution the Municipality shall be given a reasonable opportunity of being heard. Such law is contained in Sub-section (1) Section 401 of the Act quoted above which provides that the State Government may direct that the Municipality be dissolved if in the opinion of the State Government such Municipality is incompetent to perform or persistently make default in performing the duties imposed on it by law or exceeds or abuses its powers. Sub-section (2) of Section 401 of the Act quoted above further provides that the State Government shall communicate to the Municipality the ground on which they propose to dissolve the Municipality and fix a reasonable period for the Municipality to show cause against the proposal and consider the explanation and objections, if any, of the Municipality. According to Mr. Indrajit Mohanty, learned Counsel for the Petitioner, the power to dissolve a Municipality under Sub-section (1) of Section 401 of the Act is a quasi-judicial power or a judicial power and cannot be delegated by the State Government to any other authority and for this proposition he has relied on the English decisions in *Bernard and Ors. v. National Dock Labour Board* and *Anr. (supra)* and *Vine v. National Dock Labour Board (supra)*.

14. In *Bernard and Ors. v. National Dock Labour Board and Anr. (supra)*, the facts were that the National Dock Labour Board was set up under the Dock Workers (Regulation of Employment) Order, 1947 to administer the Scheme provided by the Order with power to delegate to the local boards constituted by the Order certain disciplinary functions. Clause 16(2)(b) of the said Order conferred on the local board the power to suspend a worker for failing to comply with a provision of the Order. The Plaintiffs refused to obey a lawful order issued to them by their employers and the local board purported to delegate their powers under Clause 16(2)(b) of the Order to suspend the Plaintiffs to the Secretary to the that board and the Port Manager acting in exercise of such delegated power placed the Plaintiff under suspensions. The Court of Appeal held that the power of suspension conferred by Clause 16(2)(b) of the Order on the local board was a judicial or quasi-judicial function and the local board had no power to delegate it or subsequently ratify a decision by a person to whom the power of suspension had been improperly delegated.

15. In the said decision of the Court of Appeal, three separate judgments were delivered by Singleton, L.J., Denning, L.J. and Romer, L.J. and in each of the said three separate judgments, it has been held that the Dock Workers (Regulation of Employment) Order, 1947 did not expressly provide for delegation of powers of the local board to any other authority. Relevant passages from the said three judgments are quoted herein below:

Singleton, L.J.:

The first question for consideration is whether the local board had power to delegate their duties under cl.15 and cl.16 of the Dock Workers (Regulation of Employment) Order, 1947. The order does not give any such power expressly....

(emphasis supplied)

Denning, L.J.:

While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication.

(emphasis supplied)

Romer, L.J.:

... Therefore one finds that those local boards are primarily themselves delegates, and there the well-established principle of law that, *prima facie*, a person to whom powers or duties are delegated cannot themselves delegate their performance to someone else. That is the general rule, but in Clause 5(7) (a) of the scheme there is one express exception to it:

The local board shall from time to time appoint appeal tribunals for the purpose of appeals under the scheme, and shall, if necessary, appoint a registration committee to whom it may delegate such duties as it may think fit in relation to the registers both of dock workers and of employers of dock workers.

(emphasis supplied)

16. In *Vine v. National Dock Labour Board* (supra), a similar question arose for decision before the House of Lords. The Plaintiff was a registered dock worker employed in the reserved pool by the National Dock Labour Board under the scheme framed under the Dock Workers (Regulation of Employment) Order, 1947. By Clause-3(3) of the scheme, the National Board had the duty of delegating as many as possible of their functions to local boards. By Clause-16(2) (c), the local boards were given power to give seven days' notice of termination of employment to any registered dock worker who failed to comply with any provision of the scheme. The Plaintiff failed to obey a valid order to report for work with a company of stevedores and the local board instructed their disciplinary committee to hear the case and the disciplinary committee having heard the case gave seven days' notice in writing to the Plaintiff terminating his employment under Clause-16(2)(c). The House of Lords approving the decision of the Court of Appeal in *Bernard and Ors. v. National Dock Labour Board and Anr.* (supra) held that the dismissal of the Plaintiff was a nullity since the local board had no power to delegate its disciplinary functions. Viscount Kilmuir, L.C., in particular held:

I now turn to the contention that the local board could delegate its functions to

the disciplinary committee. I have had the advantage of seeing in print the opinion, which my noble and learned friend, LORD SOMERVELL OF HARROW, is about to express and, on this part of the case, I find myself in complete agreement with it. It was urged that the very idea was negatived by the fact that this was a quasi-judicial act. I am not prepared to lay down that no quasi-judicial function can be delegated, because the presence of the qualifying word "quasi" means that the functions so described can vary from those which are almost entirely judicial to those in which the judicial constituent is small indeed (see *Cooper v. Wilson* (1937) 2 All E.R. 726 at p. 740, per SCOTT, L.J.) As so much has been said on this point I think it is right to say that there is a judicial element here in the sense discussed by DONOVAN, J. in *R. v. Metropolitan Police Comr., Ex p. Parker* (1953 2 All E.R. 717). Nevertheless, that is not the end of the matter. It is necessary to consider the importance of the duty which is delegated, and the people who delegate. In this case, the duty is to consider whether a man will be outlawed from the occupation of a lifetime. The scheme will not work unless discipline is maintained by the wise use of that power. I do not make any reflection on the ability or sense of justice of the pairs of gentlemen who from time to time form the committee. I notice that the pair would always consist of one representative of the employers and one of the workers, but my view is that this duty in this scheme is too important to delegate unless there is an express power.

(emphasis supplied)

Thus, in the decision of the Court of Appeal and the House of Lords in the two English decisions cited by Mr. Mohanty, learned Counsel for the Petitioner, the English Courts have taken the view that in the absence of an express power to delegate, the local board could not delegate its power to any other authority. But in this case, we find that an express provision is made in Section 408 of the Act that the State Government may by notification authorize any person or authority to exercise in regard to any Municipality any one or more powers vested in them by the Act. The said Section 408 of the Act further makes it clear that only the powers of the State Government to make rules or alter a Schedule, the power to determine contributions payable and the power to sanction prosecution u/s 376 of the Act cannot be delegated by the State Government to any person or authority. Thus, by an express provision in Section 408 of the Act, the State Government can delegate their power u/s 401 of the Act to direct dissolution of a Municipality in favour of any person or authority.

17. Mr. Indrajit Mohanty, however, has contended that u/s 408 of the Act, a power can be delegated but a duty cannot be delegated and u/s 401 of the Act, the State Government does not exercise a power, but performs a duty and thus impugned delegation was not permissible. Section 401(1) of the Act provides that the State Government "may" direct that the Municipality be dissolved if in their opinion the Municipality is incompetent to perform or persistently make default in performing the duties imposed on it by law or exceeds or abuses its

powers. Section 401, therefore, confers a power on the State Government to direct dissolution of the Municipality and does not impose a duty on the State Government to direct dissolution of Municipality in every case where they find that the Municipality is incompetent to perform or persistently makes default in performing its duties imposed on it by law or exceeds or abuses its powers. Hence, the State Government can delegate this power u/s 401 of the Act to direct dissolution of a Municipality on the grounds mentioned therein to any person or authority u/s 408 of the Act.

18. Mr. Indrajit Mohanty further argued that the power of the State Government u/s 401 of the Act is the executive power of the Governor under the Constitution and it can only be exercised by the Minister, Urban Development, in accordance with the Rules of Business made by the Governor under Article 166 of the Constitution. Article 154 of the Constitution which is relevant in this regard is quoted herein below:

154. Executive Power of State.- (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall-

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Clause-1 of Article 154 provides that the executive power of the State shall be vested in the Governor and shall be exercised by him or by any officer subordinate to him in accordance with the Constitution, but Clause-2(b) of Article 154 provides that nothing in Article 154 shall prevent the Legislature of the State from conferring by law functions on any authority subordinate to the Governor. Thus, the Legislature of a State can always make a law conferring functions on any authority subordinate to the Governor notwithstanding the provision in Clause-1 of Article 154 that the executive powers of the State shall be vested in the Governor. The Legislature has made a provision in Section 401 of the Act vesting power on the State Government to direct dissolution of the Municipality in any of the contingencies mentioned therein and has made a further provision in Section 408 of the Act that any of the powers of the State Government under the Act including the power u/s 401 of the Act can be delegated to any person or authority and so long as such person or authority to whom the power is delegated is a person or authority under the Governor, such delegation is permissible under Article 154 of the Constitution. In the instant case, the power of the State Government u/s 401 of the Act including the power to conduct a hearing on the charges levelled against Paradeep Municipality in the show-cause notice dated 26.12.2001 has been delegated to the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and

Urban Development Department who is an authority subordinate to the Governor. Hence, the contention of Mr. Indrajit Mohanty, learned Counsel for the Petitioner that such power of the Governor can only be exercised by the Minister, Urban Development, in accordance with the Rules of Business framed by the Governor under Article 166 of the Constitution is not correct.

19. The next question to be decided in this case is whether the delegation of the power in favour of the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department limiting such power to only hearing the case relating to Paradeep Municipality was permissible under law or was vitiated by mala fide and was arbitrary and hit by Article 14 of the Constitution. The language of Section 408 of the Act quoted above makes it clear that the State Government may by notification authorize any person or authority to exercise in regard to any Municipality any one or more powers vested in them by the Act. Thus, the delegation u/s 408 of the Act in favour of any person or authority can be in regard to "any Municipality" and similarly the delegation by the State Government may be of "any one" of the powers vested in the State Government under the Act. It was thus permissible for the State Government to issue a notification u/s 408 of the Act delegating its power only u/s 401 in favour of the Director of Municipal Administration and Ex-officio Additional secretary to Government, Housing and Urban Development Department in respect of only Paradeep Municipality. Moreover by the notification dated 29.10.2003 such delegation has been made in favour of the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department who is a high and responsible official of the State Government and he is not expected to act in an arbitrary, biased, mala fide or undemocratic manner. Thus, the contention of Mr. Indrajit Mohanty, learned Counsel for the Petitioner, that the impugned delegation in favour of the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department in the impugned notification dated 29.10.2003 was in any way illegal or vitiated by mala fide or arbitrary and hit by Article 14 of the Constitution cannot be accepted.

20. The next question to be decided in this case is whether the State Government has grossly misconceived para 6 of the judgment dated 2.9.2003 of this Court in the earlier writ petition in W.P. (C) No. 3103 of 2002. In para 6 of the said judgment, this Court while quashing the earlier notification of the State Government directing dissolution of Paradeep Municipality directed that the Chair person and the Councillors of Paradeep Municipality will be given an opportunity of hearing by the authority of the State Government who will take a decision on the proposal to dissolve Paradeep Municipality. The State Government has accordingly issued the impugned notification dated 29.10.2003 authorising the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department to conduct a hearing of the Councillors of Paradeep Municipality on the charges levelled against the

Municipal Council in the show cause notice dated 26.12.2001 and to exercise the powers u/s 401 of the Act on the proposal to dissolve Paradeep Municipality. The impugned notification dated 29.10.2003 does not show that para 6 of the said judgment of this Court has been grossly misconceived by the State Government.

21. The report of the Special Audit in Annexure-1 to the writ petition and the report of the Under Secretary to Government of Orissa, Housing and Urban Development Department, in Annexure-2 to the writ petition are only materials against Paradeep Municipality and cannot be quashed by the Court. The show cause notice dated 26.12.2001 has been issued by the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department. It is the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department who deals with all municipal affairs on behalf of the State Government. It is therefore difficult to hold that the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department did not have any authority to act on behalf of the State Government while issuing the show cause notice dated 26.12.2001.

22. The findings of the Director of Municipal Administration and Ex-officio Additional Secretary to Government, Housing and Urban Development Department in his order dated 27.8.2002 in Annexure-10 to the writ petition stand quashed because the notification dated 27.8.2002 of the State Government on the basis of the said findings has been quashed by the judgment dated 2.9.2003 of this Court in the earlier writ petition in W.P.(C) No. 3103 of 2002 and as per the said judgment, the authority who was to take the decision on the proposal to dissolve Paradeep Municipality was required to record fresh findings after affording an opportunity of hearing to the Petitioner and the other Councillors of Paradeep Municipality. Hence, it is not necessary to quash the said findings of the Director of Municipal Administration in the order dated 27.8.2002 in Annexure-10 to the writ petition.

23. We are therefore of the view that the Petitioner is not entitled to the reliefs claimed in this writ petition and we accordingly dismiss the writ petition and vacate the interim order passed by this Court on 20.11.2003. In the facts and circumstances of the case, we make no order as to costs.

M.M. DAS, J.

24. I agree.