

(1959) 06 CAL CK 0026
In the Calcutta High Court

Sudhir Kumar Chatterjee

APPELLANT

Vs

Berhampore Municipality and Others

RESPONDENT

Date of Decision : 09-06-1959

Acts Referred:

Bengal Municipal Act, 1932 — Section 66(1), 92(1)(c)

Citation : 63 CWN 772 : (1959) 2 LLJ 607

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The petitioner was appointed in 1946-47 as a tax collector of the Municipality of Berhampore. According to the affidavit of the chairman, his services from its inception had been unsatisfactory. A long list of commissions and omissions of the petitioner has been set out in the affidavit in opposition affirmed by the chairman. It appears that the petitioner committed various acts for which disciplinary actions were about to be taken but at his importunity he was excused. He was put in various departments, but he proved inefficient in all of them, until in May 1955 he was deputed to work as a sarkar at the burning ghat at Khagra. On 22 August 1955 the petitioner made an application to the chairman declining to accept the responsibility of maintaining the register of stock of fuel at the burning ghat. The chairman on the same day directed the petitioner to maintain the register. A complaint has been made before me that the actual order was that "he must maintain the stock," and it is argued that this does not mean the maintenance of the stock register. There is nothing in this argument, as will appear abundantly clear by looking at the petitioner's own letter written on the occasion which deals with the maintenance, not of the stock but of the stock register. The petitioner declined to carry out the order of the chairman. On 23 August the chairman passed an order directing the petitioner to show cause why he should not be dismissed for disobeying his order of 22 August 1955 asking the petitioner to maintain the register of stock. He was also suspended from 24 August 1955. On 24 August 1955 the petitioner gave a written explanation. The chairman thereafter placed the explanation of the

petitioner at a general meeting of the commissioners and on 22 November 1955 it was decided by the commissioners at a general meeting that the petitioner should be dismissed from service. On 29 November 1955 the chairman wrote to the petitioner that he had been dismissed from service by the commissioners at their last general meeting held on 22 November 1955. This application has now been made challenging the orders of the chairman and the commissioners.

2. The point made is that u/s 66 of the Bengal Municipal Act, 1932, it is not the commissioners at a general meeting but the chairman who is the dismissing authority. According to Section 15 of the said Act, the municipality is really a body of commissioners having authority over the municipality, consisting of such members not more than 30 or less than 9, as the State Government may specify in the notification constituting the municipality. It is the commissioners who constitute a body corporate by the name of "municipal commissioners" of the place by reference to which the municipality is known, having perpetual succession and a common seal. The "question of establishment" is dealt with in Section 66 of the said Act. Sub-section (1) of Section 66 lays down that the commissioners at a meeting may, subject to the provisions of the Act and the rules made thereunder, determine as to what officers and what servants "of the commissioners" are necessary for the municipality, and may fix the salaries and allowances to be paid and granted to such officers and servants. It will be noted here that the officers and servants that are to be appointed are officers and servants of the commissioners, that being the language used in the sub-section. The marginal note also is "appointment of subordinate officers." Sub-section (2) lays down that, subject to the scale of establishments approved by the commissioners under Sub-section (1), the chairman shall have power to appoint such persons as he may think fit and from time to time remove such persons and appoint others in their place. Then there is a proviso and the relevant part thereof runs as follows:

A person shall not be appointed to an office carrying a monthly salary of more than Rs. 50 or a salary rising by periodical increments to more than Rs. 50 without the sanction of the commissioners at a meeting, and an officer or servant whose post carries a monthly salary of more than Rs. 20 shall not be dismissed without such sanction.

The petitioner occupied a post which enjoys a salary of more than Rs. 50 so that his appointment required the sanction of the commissioners and his dismissal would also require the sanction of the commissioners. What has happened in this case is that instead of the chairman stating that he was discharging the petitioner according to the sanction of the commissioners, he has stated that he was doing so according to the mandate of the commissioners which is contained in a resolution passed at a general meeting of the commissioners on 22 November 1955. The scheme of appointment of subordinate officers is this: The commissioners at a meeting lay down the scale of establishment which would be necessary. Then the chairman proceeds to make the appointments subject to the

approved scale of establishment. In making such appointments, no further sanction would be necessary, unless it came within the provisions laid down in the sub-sections. The succeeding parts of the section lay down that in some cases the sanction of Government is to be obtained, and in other cases a resolution of the commissioners at a special meeting was necessary. The question is as to whether the procedure that has been adopted in this case, which is slightly divergent from the procedure laid down in the section, has rendered the dismissal, a matter without jurisdiction, and therefore, void. In this case, instead of the chairman himself dismissing the petitioner, he placed all the facts before the general committee of the commissioners, at which he himself was also present, and the commissioners decided to dismiss the petitioner, and the chairman gave effect to it. Apart from this fact, it must be recollected that it was the chairman who issued the show-cause notice for violation of his own order. In fact, in this case it is the chairman who has filed an affidavit enumerating a long list of commissions and omissions of the petitioner. There can be no doubt about the opinion of the chairman himself. As I have stated above, the administration of the municipality vests in the commissioners, who indeed constitute the municipality. In my opinion, it cannot be said that the chairman had power of appointment and dismissal, and the commissioners had not. Although Sub-section (2) says that the chairman is vested with the power, there is no provision anywhere that the commissioners had been divested of it. As I have stated above, the marginal note of Sub-section (1) of Section 66 speaks about "appointment of subordinate officers," and the sub-section itself speaks about officers and servants "of the commissioners."

3. In my opinion, the commissioners are not divested of the power of appointing or dismissing any member of their establishment, and the power given to the chairman does not override these powers of the commissioners. I think that the matter is also saved by the provisions of Section 92(1)(c) of the Act. It is laid down there that no act done or proceeding taken under the Act shall be questioned on the ground merely of any defect or irregularity not affecting the merits of the case. Here what has happened is that the chairman, instead of saying that he was carrying out the mandate of the commissioners at the general meeting, said that the petitioner was dismissed by the commissioners at the general meeting. The view of the chairman himself is abundantly clear. Therefore, at best, it is only a defect or irregularity not affecting the merits of the case. There can be no doubt that the chairman, even if he had followed the strict technicalities of the law, would have done the same thing as he has done in the present case, namely, dismiss the petitioner. Therefore, apart from the fact that the chairman wrote a letter in a particular form, or that the commissioners, instead of sanctioning the dismissal, ordered the dismissal, it has not prejudiced the petitioner. In the circumstances I do not see why I should exercise my discretionary powers in favour of petitioner and, in my opinion, no interference is called for.

4. The rule is discharged. Interim order, if any, is vacated. There will be no order

as to costs.