
(2004) 07 BOM CK 0123

In the Bombay High Court

Case No : Writ Petition No. 1948 of 1991

Syed Kasim Syed Rustam

APPELLANT

Vs

Additional Commissioner, Amravati Division and Others

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 308(1), 76(1)

Citation : (2005) 2 ALLMR 769 : (2005) 1 MhLj 246

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Sachin Khandekar, for the Appellant; A.S. Kilor, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Shri Khandekar, learned counsel for the petitioner and Shri Kilor, Assistant Government Pleader for the respondents.

2. The present writ petition is directed against the order dated 29-6-1991 passed by the Additional Commissioner as well as order of Termination dated 20-7-1991 passed by the Municipal Council - respondent No. 2.

3. The learned counsel for the petitioner states that in the year 1986, some vacancies arose in the Primary School run by Municipal Council in the post of Assistant Teacher. The petitioner's name was recommended by the Employment Exchange. The petitioner appeared before the Interview Committee on 12-9-1986 and was selected by the Committee and therefore, the Municipal Council, vide Resolution dated 17-9-1986 appointed the petitioner as Assistant Teacher in the Primary School. Pursuant to the said resolution, the appointment order dated 18-9-1986 was issued by the Municipal Council and the Education department granted approval to the appointment of the petitioner on 18-2-1988. The learned counsel states that the Chief Officer - respondent No. 2 made a complaint to the Collector that the appointment of the petitioner was made

without prior approval of the Regional Director, Municipal Administration, as required u/s 76(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short hereinafter referred to as "the Act"). The Collector, vide order dated 21-8-1988, set aside the Resolution dated 17-9-1986 passed by the Municipal Council on the ground that the post could not have been created without prior approval of the Regional Director, Municipal Administration. The petitioner being aggrieved by the said order of the Collector, filed Revision before the Additional Commissioner and the Additional Commissioner, vide order dated 29-6-1991, though held that the Collector did not have power u/s 308 of the Act to set aside the Resolution of the Municipal Council dated 17-9-1986, however, observed that he had power to stay the execution of the said Resolution, if the same is illegal and unlawful. At the same time, affirmed the observations of the Collector that the Municipal Council should have waited till adequate and proper sanctions is received from the appropriate authority and it is only thereafter the appointment of the petitioner ought to have been made by the Municipal Council. It is further submitted that the Municipal Council, in view of the order dated 29-6-1991 passed by the Additional Commissioner, terminated the services of the petitioner vide order dated 20-7-1991. The petitioner being aggrieved by this order, constrained to file the present writ petition.

4. The learned counsel for the petitioner contended that the petitioner has challenged the validity of the impugned orders on the ground that u/s 308(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the Collector does not have jurisdiction/power to suspend the Resolution of the Municipal Council, appointing a teacher in the Municipal School. It is contended that the plain reading of Section 308 would show that the Collector is empowered to suspend the Resolution passed by the Municipal Council if he is of the opinion that the Resolution of the Municipal 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 peace and not otherwise. It is submitted that in the instant case, the Resolution dated 17-9-1986 passed by the Municipal Council, appointing the petitioner as Assistant Teacher in the Primary School, in no way results in causing or is likely to cause injury or annoyance to public or is against the public interest nor does it lead to a breach of peace and therefore, the Collector was not competent in such a situation to suspend the said Resolution, in view of provisions of Section 308 of the Act.

5. The learned counsel for the petitioner further contended that the power conferred on the Collector u/s 308(1) of the Act are even otherwise required to be exercised by the Collector in the exceptional circumstances and in emergency, in order to prevent injury or annoyance to the public or breach of peace likely to be caused by the resolution of the Municipal Council. However, in the instant case, there is no such contingency existed and therefore, the order dated 21-8-1988 passed by the Collector in exercise of powers u/s 308(1) of the Act, itself is without jurisdiction and is null and void and consequently the order of the

Additional Commissioner dated 29-6-1991 for the same reason, cannot be sustained in law and therefore, the order of termination dated 20-7-1991 issued by the Municipal Council, passed on the basis of above referred orders, is also unsustainable in law and needs to be set aside. In order to substantiate the contention, reliance is placed on the Division Bench judgment of this Court in the case of Prakash Kutik Choudhary v. The Collector of Dhule and Ors. (Writ Petition No. 1934 of 1987 dated 17-2-1989).

6. Shri Kilor, learned Assistant Government Pleader, on the other hand, contended that the order of the Collector dated 21-8-1988 is just and proper and the same is also sustainable in law. It is contended that the Collector in the order itself has observed that the appointment of the petitioner was made without prior administrative or financial sanctions from the Regional Director, Municipal Administration, which is necessary in view of provisions of Section 76 of the Act. It is further contended that the order of the Collector further reveals that at the relevant time, the Government has put a ban on creation of the posts in order to economise the expenditure of the Municipal Council and if it is necessary to create posts, same will have to be created after following due and proper procedure and appointment could have been made after obtaining sanction from Regional Director, Municipal Administration and Deputy Director of Education. The learned AGP, therefore, contended that in the instant case, the appointment of the petitioner was made by the Municipal Council on the post which did not have prior approval/sanction of the Regional Director of Municipal Administration nor there was any financial sanction from the Deputy Director of Education and therefore, the impugned orders are just and proper.

7. Shri Kilor, learned AGP further contended that the Resolution of the Municipal Council dated 17-9-1986, whereby the petitioner was appointed, makes it clear that the appointment was made subject to the following conditions:

(i) that the post on which the petitioner was appointed should have been approved or sanctioned by the R.D.M.A. in view of the provisions of Section 76(1) of the Act.

(ii) for the said post, the financial sanction must have been accorded by the Education Officer, Zilla Parishad/Deputy Director of Education.

(iii) the appointment would be temporary in nature and candidate appointed shall not get his salary till such time, the appointment is approved by the Education Officer; and

(iv) if the appropriate authority does not grant approval to the post on which the candidate is appointed, in that case the appointment of such candidate can be terminated without any prior notice.

8. On the backdrop of the above referred facts, the learned Assistant Government Pleader contended that in the instant case, the petitioner was aware about these facts and since post on which the petitioner was appointed was

neither approved/sanctioned by the R.D.M.A. nor there was any financial sanction accorded by the Education Officer or Deputy Director of Education, the Collector was justified in suspending the said resolution dated 17-9-1986 and the order of the Additional Commissioner dated 29-6-1991 is also just and proper.

9. We have given our anxious thoughts to the various contentions canvassed by the learned counsel for the respective parties and perused the judgment relied on and cited by the learned counsel for the petitioner. We have also considered the judgment of the Full Bench of this Court in the case of Sanjay Govind Sapkal and Others Vs. Collector of Dhule and Others, .

10. Before we consider the legal aspects involved in this petition, there are certain undisputed facts which are relevant for adjudication, are as follows :

In the instant case, the petitioner was appointed vide Resolution dated 17-9-1986 passed by the Municipal Council on certain conditions referred to hereinabove. Perusal of the order of the Collector and the Additional Commissioner referred to hereinabove makes it evident that the post on which the petitioner was appointed as Assistant Teacher in the Primary School was not accorded sanction by the R.D.M.A. as required u/s 76 of the Act. The Collector vide order dated 21-8-1988 set aside the Resolution dated 17-9-1986, on the ground that the post on which the petitioner was appointed was not accorded prior sanction/approval by the R.D.M.A. The Additional Commissioner vide order dated 29-6-1991 though upheld the order of the Collector, however, has observed that u/s 308(1) of the Act, the Collector can only suspend the resolution of the Municipal Council and therefore, the order of Collector dated 28-8-1988 was treated to be the order by which the resolution dated 17-9-1986 of the Municipal Council was suspended. Pursuant to the order dated 29-6-1991 passed by the Additional Commissioner, the Municipal Council terminated the services of the petitioner vide order 20-7-1986.

11. The contention of the learned counsel for the petitioner is that the powers u/s 308 of the Act, conferred on the Collector, are to be exercised in exceptional circumstances and in emergency only. The learned counsel contended that the appointment of the petitioner vide Resolution dated 17-9-1986 by the Municipal Council was not the exceptional circumstance nor there was any emergency as such in order to attract the provisions of Section 308(1) of the Act, therefore, the exercise of power u/s 308(1) of the Act by the Collector vide order dated 21-8-1988 itself is de hors of the provisions of Section 308 of the Act and hence, same is unsustainable in law in view of the judgment of the Division Bench of this Court in the case of Prakash Kutik (supra).

12. It is no doubt true that the law laid down by this Court in the case of Prakash Kutik (supra) supports the contention canvassed by the learned counsel for the petitioners. However, it is no more a good law since the judgment of this Court in Prakash Kutik's case (supra) is overruled by the Full Bench of this Court in the case of Sanjay Govind Sapkal (supra) and therefore, the contention canvassed

by the learned counsel for the petitioners in this regard is misconceived and cannot be accepted. The relevant observations of the Full Bench in Sanjay Govind Sapkal's case, made in para 38, are as follows :

"In our opinion, however, the submission of the learned counsel for the Municipal Council is well-founded and deserves to be accepted that in the present proceedings, the question before the Collector related to the validity of an order passed by the Municipal Council, Dhule. If no action could have been taken by the Municipal Council or by the President and the action was unlawful, the same could have been suspended by the collector and in exercise of power u/s 308(1) of the Act and by recording reasons, the Collector passed an order, which cannot be said to be without authority of law. If the case of employees was that the action taken by the Municipal Council was unlawful, it was open to them to take appropriate proceedings in accordance with law. But once it has been held that the Collector has power to press into service Section 308(1) of the Act and suspend an order or resolution of the Council, the matter must necessarily end there. In our opinion, therefore, even those observations in Prakash Kutik are not sound and we do not approve them."

13. It is, therefore, evident that the Collector, before exercising powers u/s 308(1) of the Act is required to take into consideration the facts and circumstances of the case involved and after due consideration is required to form the opinion that the execution of any order or resolution of the Municipal Council is causing or is likely to cause injury or annoyance to the public or is against the public interest or results in breach of peace or is unlawful and if his opinion is in affirmative then he is entitled to suspend the execution of such resolution or can prohibit the doing thereof irrespective of the fact that resolution or order of the Municipal Council, is in respect of appointment or termination of the teacher in the Municipal Council.

14. In the present case, the petitioner is appointed on the post as Assistant Teacher in the Primary School vide resolution dated 17-9-1986 passed by the Municipal Council to which there was no prior approval or sanction accorded by the R.D.M.A. as required u/s 76(1) of the Act which was also condition of appointment mentioned in the resolution itself and therefore, the appointment of the petitioner was undoubtedly illegal or unlawful and therefore, in our considered view, the Collector was competent to suspend the resolution dated 17-9-1986 passed by the Municipal Council. It is no doubt true that provisions of Section 308(1) of the Act does not empower the Collector to set aside the resolution but he is entitled only to suspend the same and therefore, the Additional Commissioner was justified in modifying the order of the Collector to that extent vide order dated 29-6-1991. The order of the Additional Commissioner for the same reasons, in our view, is just and proper and sustainable in law, consequently, rendering the order of termination dated 20-7-1991 passed by the Municipal Council also sustainable in law.

15. At this stage, the counsel for the petitioner states that since the impugned

orders passed by the Collector and the Additional Commissioner are confirmed by this Court, the Municipal Council may recover the salary paid to the petitioner during the pendency of the petition for the work, which he has actually discharged during such period as Assistant Teacher in the Primary School run by the Municipal Council and since the petitioner has been paid for the period he has factually worked, Municipal Council may be directed not to recover the salary paid to the petitioner. Since the petitioner was paid salary for the period factually worked by him as Assistant Teacher for all these years, we feel it reasonable to hold that the Municipal Council shall not be entitled to recover the same from the petitioner.

16. The learned counsel for the petitioner further submits that the petitioner is in the employment for last so many years in view of the interim order passed by this Court and therefore, the petitioner in such a situation is independently entitled to get certain protection in view of certain Government Resolutions and seeks permission to make representation to the Competent Authority. It is very difficult for us to consider this aspect in the absence of adequate material or specific ground in the petition in this regard. However, if it is otherwise permissible in law, we grant such liberty to the petitioner.

17. For the reasons stated hereinabove, no case is made out for interference. Writ Petition is dismissed. Rule is discharged. There shall be no order as to costs.