

(2013) 10 GUJ CK 0110
In the Gujarat High Court

Case No : Special Civil Application No. 6014 of 2001

Thakor Rasikbhai Bhikhaji and Others	APPELLANT
Vs	
District Collector and Others	RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0110

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Shivang J. Shukla, for Petitioner No. 1-13, for the Appellant; Dhawan Jayswal, AGP for Respondent No. 1-2 and Mr. D.N. Kiratsata, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Patel, J.—The petitioners by this petition have challenged the order (Annexure-A) passed by the Municipality for terminating the services of the petitioners and the petitioners have prayed that the respondents be directed to reinstate the petitioners in service with full backwages, etc. When the matter is taken up for hearing, the learned AGP has brought to the notice of the Court that this petition is covered by the decision of this Court dated 04.10.2013 in SCA No. 7434/01, whereby this Court with the observation of available remedy to the petitioner to challenge the decision of the Collector before the State Government u/s 264 of the Gujarat Municipalities Act (hereinafter after referred to as the "Act"), had dismissed the petition.

2. I find that the contention raised by the learned AGP has substance inasmuch as this petition was even at the earlier point of time heard with SCA No. 7434/01 and this Court on 25.06.2004 had passed the common order whereby the petitions were admitted but the interim relief was dismissed. However, some how or other, the another Special Civil Application No. 6014/01 which is the present matter, came to be segregated.

3. It may be recorded that this in SCA No. 7434/01, had passed the following order:

1. The petitioner by this petition has prayed for the appropriate writ to quash and set aside the order dated 31.7.2000 at Annexure-A passed by the Municipality, whereby the service of the petitioner has been terminated and it is prayed by the petitioner to reinstate him with full backwages and continuity in service.

2. The short facts of the case are that as per the petitioner he was appointed as clerk with the then Ghatlodia Municipality in the year 1998. Thereafter on 29.12.1998 the District Collector directed the Municipality to take appropriate action] for relieving the petitioner from service) on the ground that proper procedure as required under the law was not followed. Apprehending the termination the petitioner preferred Special Civil Application No. 103 of 1999 before this Court and this Court had initially stayed the operation of the communication addressed to the Municipality. Ultimately in the said petition this Court found that the action on the part of the Collector could not be said to be illegal, but the Court did record the statement of the Municipality that the termination shall not be effected without following the due procedure of law and the petition was dismissed. The petitioner carried the matter in Letters Patent Appeal No. 1318 of 1999 against the order of the learned Single Judge but no stay was granted. Resultantly the Collector proceeded further u/s 258 of the Gujarat Municipalities Act (hereinafter referred to as "the Act" for short) and passed the order directing the Municipality to take appropriate steps for termination of the services of the petitioner. Based on the order of the District Collector u/s 258 of the Act the Municipality passed the impugned order at Annexure-A, whereby the services of the petitioner came to be terminated. In the meantime, in the Letters Patent Appeal, when it was noticed-by the Court that the services were already terminated, the Court found that such will be an independent cause to the petitioner and, therefore, the petitioner may challenge the said action before the appropriate forum and with the said observation the appeal was disposed of. Under the circumstances the present petition before this Court.

3. I have heard Mr. Shivang Shukla, learned counsel for the petitioner and Mr. Dhawan Jayswal, learned AGP for the respondent No. 1.

4. As such, it is clear from the impugned order Annexure-A that the same has been passed in view of the order passed by the Collector u/s 258 of the Act. The pertinent aspect is that the order of the Collector is not under challenge in the present petition. Therefore, if the matter is considered as it is, the only aspect to be considered in the present petition would be whether the Municipality was justified in terminating the services of the petitioner or nor.

5. In my view, if the District Collector in exercise of power u/s 258 of the Act has issued the direction and such direction of the District Collector is not set aside by any higher forum known to the law the Municipality would be bound to comply

with the direction issued by the Collector and hence the action cannot be said to be arbitrary or illegal.

6. I would have disposed of the matter, at that stage, however it was submitted by the learned counsel appearing for the petitioner that the petitioner may be permitted to amend the petition for challenging the order passed by the Collector which as per him was in breach of principles of natural justice. In my view, such cannot be permitted at the stage of final disposal of the petition that too after 12 years, during which petition remained pending before this Court. Further it would [completely change the nature of the petition. Therefore, I find it proper to observe that if the petitioner is aggrieved by the order of the Collector, the remedy is available to the petitioner to approach before the State Government u/s 264 of the Act.

7. Hence, subject to the aforesaid observations no relief deserves to be granted in the present petition. Hence, disposed of accordingly. Considering the facts and circumstances of the case no order as to costs.

5. In view of the above, as the issue in the present petition is already covered in the above referred decision and no other distinguishing circumstances are brought to the notice of this Court, in the present petition also it cannot be said that the action of the municipality of acting upon the order of the Collector can be said as illegal or arbitrary. However, if the petitioners are aggrieved by the order of the Collector, the remedy available to the petitioners is to approach before the State Government u/s 264 of the Act. Hence, subject to the aforesaid observations, no relief deserves to be granted in the present petition. Hence, disposed of accordingly. Considering the facts and circumstances, no order as to costs.