
(1915) 06 BOM CK 0010

In the Bombay High Court

Case No : Appeal from Order No. 19 of 1914

The Municipality of Ratnagiri

APPELLANT

Vs

Vasudev Balkrishna Lotlikar

RESPONDENT

Date of Decision : 24-06-1915

Acts Referred:

District Municipalities Act — Section 167, 46

Citation : AIR 1915 Bom 121 : (1915) 17 BOMLR 652

Hon'ble Judges : Shah, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, C.J.—This was a suit filed by the plaintiff who was formerly the Municipal Secretary of the Ratnagiri Municipality against that Municipality, claiming damages for wrongful dismissal. The learned Assistant Judge held that the suit was barred by limitation under the provisions of Section 167 of the District Municipalities Act. That section provides that:-

No suit shall be commenced against any Municipality...for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Municipality...one month's previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of.

2. The suit was instituted more than six months after the dismissal of the plaintiff by the Municipality, and the question raised in the preliminary issue was whether the dismissal was something done, or purporting to have been done, in pursuance of the Act. The learned Assistant Judge held that it was done in pursuance of the District Municipalities Act, and that, therefore, the suit was out of time.

3. On appeal to the District Judge that decision was reversed and the case was remanded for hearing on the merits. The learned District Judge said:-

I hold that Section 167 of the District Municipalities Act does not cover this case. That section is applicable in cases relating to anything done, or purporting to

have been done, in pursuance of the Act. The test to be applied is not the nature of the suit or the subject-matter, but whether the cause of action was or was not connected with the exercise of the statutory powers conferred upon the Municipality. The employment and dismissal of servants are not acts done in pursuance of the Act within the meaning of this section.

4. We are unable to agree with that decision. Section 46 of the District Municipalities Act (Bom. Act III of 1901) provides that:-

Every Municipality shall, as soon as conveniently may be after the constitution thereof, make and may from time to time alter or rescind rules, but not so as to render them inconsistent with this Act,...determining... the staff of officers and servants to be employed by the Municipality and the respective designations, duties,... etc., of such officers and servants,... subject to the provisions of Section 184, determining the mode and conditions of appointing, punishing or dismissing any such officer or servant.

5. Section 2 of the Act provides that all Municipalities constituted and rules made under the repealed District Municipalities Acts of 1873 and 1884 shall, so far as may be, be deemed to have been constituted and made under this Act. Therefore, the rules which were in force at the time of the dismissal, which were rules made under the Act of 1884, must be deemed to have been made in pursuance of the duty cast upon the Municipality u/s 46 of the District Municipalities Act of 1901.

6. Now Rule 98 of the rules of 1884 provides that "the Municipality alone shall have power to appoint, reduce or dismiss the Municipal Secretary," and certain earlier rules, namely, 77 and following rules, prescribe that the Secretary shall be one of the staff of officers to be employed by the Municipality, and define his duties. The Municipality, therefore, have the power and the duty in a proper case to dismiss the Municipal Secretary. That duty is imposed upon them, and that power is given to them by the Act or the statutory rules deemed to be made under the Act. That being so, when they exercised such power by purporting to dismiss this Secretary, that is, in our opinion, an act done or purporting to have been done in pursuance of the Act within the meaning of Section 167. It does not appear to us that the decisions referred to in argument, namely, *Myers v. Bradford Corporation* [1915] 1 K.B. 417 or *Lyles v. Southend-on-Sea Corporation* [1905] 2 K.B. 1, give us any assistance in the decision of the particular question before us. We, therefore, set aside the order of remand, and restore the decree of dismissal passed by the Assistant Judge with costs throughout.