

(2003) 11 GUJ CK 0011
In the Gujarat High Court

Case No : Special Civil Application No. 8767 of 2002

Tomar Arunaben Sureshbhai and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 10-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Gujarat Municipalities Act, 1963 — Section 10(3), 258(1), 91

Citation : (2004) 24 GLH 209

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : H.C. Buch and Sunita R. Barot, for Petitioner Nos. 1-11, for the Appellant; L.B. Dabhi, AGP for Respondents Nos. 1-3, Yogesh S. Lakhani and H.L. Patel, for Respondents Nos. 5-6 and 8, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—Heard the learned advocates.

2. This petition under Article 226 of the Constitution of India has been preferred by 11 petitioners selected and appointed as Assistant Teachers in Swami Vivekanand Vinay Mandir against the order dated 7th August, 2002 made by the District Collector, Junagadh in exercise of power conferred by Section 258(1) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act").

3. The facts leading to the present petition are as under :-

The aforesaid Swami Vivekanand Vinay Mandir is a secondary school (hereinafter referred to as "the said School"). The said School was, by Resolution dated 22nd March, 1967, placed under the management of the Junagadh Municipality (hereinafter referred to as "the Municipality"). The period of management by the Municipality was extended time and again upto 30th June, 2001. Since then, by Resolution dated 8th November, 2001, the State Government has transferred the said School under the management of Shri Swami Narayan Gurukul, Rajkot for a

period of five years. In the month of September, 2001 the Municipality moved the District Education Officer for issuance of "No Objection Certificate" for appointment of 13 teachers in various subjects. Such "No Objection Certificate" was issued on 13th November, 2001. Pursuant to the said "No Objection Certificate", advertisement calling for applications for the said 13 posts of teacher was published in local newspapers "Saurashtra Bhumi" and "Gujarat Today" on 14th November, 2001. Pursuant to the said advertisement interviews were held on 7th and 8th April, 2002. The appointment orders were issued to the twelve selected candidates on 8th April, 2002. The said candidates reported for duty on the same day i.e. 8th April, 2002. Some of the Councillors of the Municipality raised objections against the appointment of the petitioners herein and lodged a complaint before the District Collector, Junagadh u/s 258(1) of the Act. According to the complaint, the selection and appointment of the said teachers were unlawful and interference by the District Collector u/s 258(1) of the Act was called for. Pursuant to the said complaint, under the impugned order dated 7th August, 2002, the District Collector has issued injunction against the appointment of the said teachers. Feeling aggrieved, eleven of the said teachers have preferred the present petition.

4. The learned advocate Mr. Buch has assailed the impugned order on the grounds that the impugned order has been made without the authority of law and in violation of principles of natural justice.

5. Mr. Buch has relied upon Section 258(1) of the Act and has submitted that the said sub-section empowers the District Collector to suspend the execution or prohibit any order or resolution of the Municipality where the Collector is of the opinion that such act of Municipality is causing or is likely to cause injury or annoyance to the public or shall lead to breach of peace or is unlawful. Mr. Buch has submitted that powers conferred upon the Collector under the said sub-section are limited to the extent indicated in the said section. Further, such order or resolution of the Municipality shall have to be made or passed in performance of functions imposed on the Municipality under the Act. In other words, only such orders or resolutions of the Municipality can be questioned by the Collector under powers conferred upon him under the said sub-section which are made or passed in course of performing the functions imposed upon a municipality under the Act. In the present case indisputably it was not the Municipality which had established or which was running the said School in its ordinary course of business. The management of the said School was transferred to the Municipality under specific resolution passed by the State. The Municipality was, thus, a mere manager or the administrator of the said School. Any act committed by the Municipality with respect to the management or the administration of the School cannot be said to be an act done in performance of duty imposed by the Act or in exercise of powers conferred by the Act. The Collector, therefore, had no jurisdiction to invoke powers conferred by Section 258(1) of the Act to set aside the selection and appointment of the petitioners made by the Municipality.

6. Mr. Buch has further submitted that in any view of the matter what was challenged before the Collector was selection and appointment of the petitioners and one another. Before holding the said selection and appointment to be bad or unlawful, the Collector was under obligation to issue notice to the petitioners and to afford them an opportunity of hearing. Admittedly, the petitioners were not the parties before the Collector nor did the Collector issue notice to any of the petitioners. The impugned order has thus been made in contravention of principles of natural justice and fair play and requires to be set aside on that ground alone. In support of his contention Mr. Buch has relied upon the judgments in the matters of Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, ; of H.H. Parmar v/s. Collector, Rajkot and Anr. [1979(2) GLR 97]; of R.C. Gajjar and Anr. v/s. State of Gujarat and Ors. [1996(1) GLH 276] and of B.G. Sapariya v/s. Pradipkumar Pujari and Ors. [2000(3) GCD 2435 (Guj)]. Mr. Buch has candidly cited the judgment of the Hon''ble Supreme Court in the matter of Biswa Ranjan Sahoo and Ors. v/s. Sushanta Kumar Dinda and Ors. [JT 1996(6) SC 515] also.

7. The petition is contested by the learned AGP Mr. Dabhi. He has submitted that establishing and running secondary schools is one of the functions of a municipality. The acts in question of the Municipality, therefore, were necessarily done in exercise of the powers conferred under the Act.

8. Mr. Dabhi has also submitted that on the facts of the present case it is apparent that the selection and appointment of the petitioners was unlawful. The Collector has given cogent reasons for the same. In cases of such unlawful appointments personal hearing to the concerned selectee/appointee is uncalled for.

9. In the matter of Hameedia Hardware Stores (supra), the Hon''ble Court was considering the T.N. Buildings (Lease and Rent Control) Act, 1960. The Hon''ble Judges have, while construing Section 10(3)(a)(iii) of the said Act, held that though the said clause did not use the expression "if the landlord required it for his own use or for the use of any member of his family", such expression should be read in it. The Hon''ble Judges were of the opinion that, "...If the two sub-clauses are not so read, it would lead to an absurd result.....The State Legislature cannot be attributed with the intention that it required a more stringent proof by insisting upon proof of bona fides of his requirement or need also when a landlord is seeking eviction of a tenant from a garage than in the case of a non-residential building which is occupied by large commercial house for carrying on business."

10. Mr. Buch has submitted that likewise in Section 258(1) of the Act also this Court should read any order made or resolution passed by the Municipality in carrying out the function imposed upon it by the Act.

11. I see no substance in this submission. It is the cardinal principle of interpretation of statute that a piece of legislation shall be given natural and

simple meaning. No words can be added to a piece of legislation. In the above referred matter the Hon"ble Court had to read certain words in the enactment lest the enactment would become incongruent or would lead to an absurd result. Such is not the case in the present matter. Besides, as I shall discuss hereafter neither any word or expression is required to be added to Section 258(1) of the Act to make it reasonable or enforceable nor it can be said that managing the said School was not the function of the Municipality.

12. In the matter of H.H. Parmar (supra), the Division Bench of this Court has held that, "...As an academic proposition, it is true that an unlawful resolution or order confers no rights upon a third party nor is it capable of producing any such rights or benefits.....It was not enough, therefore, for the Collector that he heard the Municipality and took the impugned action. It was absolutely necessary for him to give a reasonable opportunity to the petitioner of being heard."

13. In my view, neither of the contentions raised by Mr. Buch is tenable. Section 91 of the Act confers discretionary functions upon a municipality. Part-B of the said section deals with "in the sphere of education". Clause-(d) thereof reads "establishing and maintaining secondary schools and institutions for higher or technical education". Thus, though discretionary, to establish and maintain secondary school or institution is one of the functions of a municipality. If the management of the said School was transferred to the Municipality by a resolution passed by the State Government such management by the Municipality cannot be said to be an act of grace performed beyond the functions of the Municipality. Besides, there is nothing in Section 258(1) of the Act to confine the application of the said section to the acts done and resolutions passed with respect to the functions imposed upon the Municipality under the Act. It is indisputable that in asking for "No Objection Certificate" or in issuing the advertisement or in selecting and appointing the petitioners the Municipality was acting under the purported powers conferred upon it under the Act. Hence, I hold that the Collector was right in invoking the powers conferred upon him by Section 258(1) of the Act. The impugned order, therefore, cannot be said to have been made by the Collector without the authority of law.

14. It appears that feeling aggrieved by the aforesaid Resolution dated 8th November, 2001 the Municipality challenged the same by taking out Civil Application No.12188/2001 in pending Special Civil Application No.11911/2000 before this Court. In view of the stay of the said Resolution dated 8th November, 2001 granted by this Court the Municipality proceeded to make selection of the teachers for appointment in the said School. Since then, the Municipality has been converted into a Municipal Corporation. The Municipal Corporation has withdrawn the aforesaid Special Civil Application No.11911/2000 and the Civil Application No.12188/2001. In view of the said withdrawal it can be said that on the relevant date the Municipality was not in management of the said School and had no authority to make appointment of teachers in the said School. Besides, pursuant to the "No Objection Certificate" issued by the District Education Officer

on 13th November, 2001 the advertisement was published on 14th November, 2001. Interviews were held on 7th April, 2002 and on 8th April, 2002; the selections were declared on 8th April, 2002; the appointment orders were issued to the selected candidates on the same day; the selected candidates also reported for duty on the very day. The close proximity of the date of "No Objection Certificate" and the advertisement and the date of interview, the selection and the appointment discloses the dishonest intention and illegality of the selection made by the Municipality. Besides, the Collector has also recorded that the said interviews were held and selections were made in contravention of the instructions issued by the Commissioner of Mid-day Meal and Schools. Thus, the selection and the appointment of the petitioners is ex-facie illegal and unlawful. The Collector has rightly invoked powers conferred upon him by Section 258(1) of the Act in issuing injunction against the said selection and appointment of the petitioners.

15. In the matter of B.G. Sapariya (supra) also, similar is the view taken by this Court. However, in the matter of Biswa Ranjan Sahoo and Ors. (supra), the Hon"ble Supreme Court has taken a somewhat different view so far as the principle of natural justice is concerned. The mass scale malpractices were found to have been committed in the selection in question. The Hon"ble Court held that, "...In a case like mass mal-practice as noted by the Tribunal, as extracted hereinabove, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedure adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution." Similar is the case before me. As recorded in the impugned order by the Collector, the selection made by the Municipality was ex-facie vitiated on account of unfair and arbitrary manner of selection procedure. The petitioners are the beneficiaries of such illegal act of the Municipality. It would not be possible to establish the special favour granted to each selected candidates. No one would come forward to say that he or she was granted special favour. Notice to the selected persons/petitioners would be a futile exercise. The selected candidates cannot have the knowledge about the procedure adopted/followed by the Municipality.

16. A similar question arose before the Hon"ble Supreme Court in the matter of Union Territory of Chandigarh Vs. Dilbagh Singh and others, . In that case a select list prepared for 32 vacancies of Conductors in Chandigarh Transport Undertaking was found to be dubious having been prepared in unfair and injudicious manner entailing cancellation thereof. The contention that the selected candidates were required to be heard before cancellation of the select list was rejected by the Hon"ble Court. The Hon"ble Court held that, "...it follows as a necessary concomitant that such candidate even if has a legitimate

expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily."

17. In similar cases where the recruitment and selection made by the concerned authority were found to be vitiated on account of serious irregularities committed by the recruiting and selecting authority such as malafide, manipulation, unfair or arbitrary procedure, etc., the Hon"ble Court has upheld the cancellation of selection and also of appointment. The Hon"ble Court has held that in such cases individual show-cause notice or hearing is not contemplated (reference can be had to the matters of Union of India and Others Vs. O. Chakradhar, ; of Brij Mohan Singh v/s. Union of India and others, (2002) 9 SCC 453 ; and of Dr. J. Shashidhara Prasad Vs. Governor of Karnataka and Another,

18. What the District Collector was called upon to examine was the action of the Municipality. Hence, it was the Municipality alone which was necessary party before the Collector. Even if the order of the Collector adversely affects the petitioners or prejudices the petitioners, keeping in view the illegality committed by the Municipality in selection and appointment of the petitioners, no individual notice to the petitioners or an opportunity of hearing was envisaged. No other contention is raised before me.

19. In view of the above discussion, the petition is dismissed. Rule is discharged. The parties shall bear their own costs.