
(1999) 04 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 1218 of 1999

Vadhwan Nagar Palika

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 258

Citation : (1999) 04 GUJ CK 0044

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : A.D. Desai, for the Appellant; V.B. Gharania, for Respondent Nos. 1 and 3, Mamta R. Vyas, for Respondent Nos. 2 and 4 to 33, for the Respondent

Judgement

S.K. Keshote, J.—In the petitions under Article 226 and 227 of the Constitution filed in the Court it is expected of the counsel for the

petitioner to give out synopsis of the case/list of events. The object and purpose of calling from the advocates who are filing the petitions before this

Court, synopsis/list of events, is that the court may have a glance on the facts of the case and the points which have been raised therein without

going through the whole of the petition. It is some sort of summary of the facts and the question of law arising for the consideration of the court in

the petition. In this case, list of events, which has been given is so sketchy and does not serve the purpose for which it is desired. It is nothing but

only, what the learned counsel for the petitioner did, to fulfil the formality.

2. Heard the learned counsel for the parties.

3. The dispute in this special civil application pertains to the appointment given to the respondents No.4 to 33 on different posts in Wadhwan

Nagar Palika, Wadhwan Dist. Surendranagar. It is not the stage where this court

has to adjudicate on the validity, legality and correctness of this appointments made in Wadhwan Nagar Palika, Wadhwan Dist. Surendranagar for the reasons which I am stating briefly in the later part of the judgment. Felt aggrieved of these appointments, the matter has been taken before the District Collector, Surendranagar by four persons namely, Shri GambhirSinh Jambha Zala, Shri Mohabbatsingh Rupsang Dodiya, Shri Parmar Lalibhai Savjibhai and Shri Rathod Vajesingh Vanesing u/s 258 of the Gujarat Municipalities Act, 1963. It is not in dispute that the Collector, Surendranagar under its order dated 3-2-1999 found these appointments to be illegal and accordingly the order has been passed for quashing of the same. The matter has been taken up by some of the appointees before the State Government and the State Government under its order dated 12-2-1999 set aside the order of the Collector and the matter has been remanded back to him to consider this matter afresh after giving opportunity of hearing to the affected persons i.e. the appointees. This order of the State Government is under challenge in this special civil application at the instance of Wadhwan Nagar Palika, Wadhwan, Dist. Surendranagar. On the facts of this case, on which the learned counsel for the parties, have no any controversy, the Dist. Collector, Surendranagar passed the impugned order setting aside the appointments of the respondents No.4 to 33 without giving notice and opportunity of hearing to them. Similarly, the order of the State Government impugned in this special civil application has been passed without giving notice or opportunity of hearing to the petitioner.

4. Learned counsel for the petitioner has raised manifold contentions on merits of the matter but in view of the fact that the matter has been remanded back to the District Collector, Surendranagar to examine the validity of these appointments and the Collector has the power to go on and decide on the validity of these appointments u/s 258 of the Gujarat Municipalities Act, no exception to this order of the State Government otherwise can be taken though the respondent No.1 has acted arbitrarily and against the basic principles of natural justice in passing of the impugned order without notice to the petitioners.

5. There is yet another reason on the basis of which I do not consider it to be a fit case where interference in the order of the respondent No.1 has

to be made on the ground that the same has been passed in violation of the principles of natural justice. It is no more re integra that this court in a writ of certiorari or mandamus will not quash the order of the authorities, result of quashing of which is of restoration of illegal order of the lower

authority. Reference in this respect may have to the following decisions

Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,

Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another,

AIR 1968 KER 76 A.M. Mani vs. State Electricity Board

Devendra Prasad and Others Vs. State of Bihar and Another,

Himmat Jain Vs. The State of Rajasthan and Others,

Chintamani Sharan Nath Sahadeo Vs. State of Bihar and Others,

6. It is not in dispute as stated aforesaid, that the District Collector, Surendranagar passed the order in total violation of the principles of natural

justice. The appointments of the respondents NO.4 to 33 are legal or not is a question to be decided and in case where it is found that the same

are not legal, the Collector has all the power to set aside the same u/s 258 of the Gujarat Municipalities Act, 1963 but before making any

adjudication the legality of the appointments, and quashing of the same, the persons who are likely to be affected by this order are the appointees

and they have to be heard, which precisely has not been done in the present case. Thus the order of the Collector which is made in violation of the

principles of natural justice is illegal and the same cannot be restored by this Court by quashing the order of the respondent No.1 though it is also

suffering from the same vice of illegality.

7. In the result, this special civil application is disposed of in the terms that the respondent No.3, District Collector, Surendranagar shall decide the

matter afresh after giving an opportunity of hearing to the petitioner as well as the respondents No.2, 4 to 33 and to decide regarding the validity,

legality and propriety of the appointments of theirs made by the Municipality. The matter be decided finally within a period of one month from the

date of the receipt of writ of this order. The respondents No.2, 4 to 33 are directed to remain present before the District Collector either

personally or through their advocate where the advocates are permitted to appear in those proceedings or through their representative on 3-5-

1999. The petitioner shall also remain present on the said date before the District Collector, Surendranagar either through its advocate or its

representative, as the case may be. Thereafter the District Collector shall fix the date convenient to him for hearing the matter and for decision

thereof but the decision has to be given within one month of the receipt of the writ of this order or from 3rd May, 1999 whichever is later.

8. The next question which calls for the consideration of this Court is whether during this interregnum, the respondents No.2, 4 to 33 should be

allowed to continue or not. From the record of this special civil application, I find that the respondents No.2, 4 to 33 are not working today. Their

services in fact were terminated vide order dated 22-2-1999. Learned counsel for the respondents No.2, 4 to 33 admits this position but what she

stated that this termination has been ordered only because of the interim relief which has been granted by this Court on 17th February, 1999.

Learned counsel for the petitioners submits that the order of termination of the services of the respondents No.2, 4 to 33 has rightly been passed

as this court has stayed the order of the respondent No.1. The undisputed fact is that the respondents No.2, 4 to 33 are not in service today.

Looking to the fact of this case and the order which has been passed directing therein to the respondent No.3 to decide the matter within a period

of one month from the date of receipt of writ or from 3rd May, 1999, whichever is later otherwise also I do not consider it to be appropriate to

permit their reinstatement. This court has also not quashed the order of the respondent No.1. Taking into consideration all these facts, I do not

consider it to be a fit case where pending the decision on the application filed u/s 258 of the Gujarat Municipalities Act, 1963, these persons may

be ordered to be reinstated back in service. However, in case ultimately the Collector decides the matter in favour of the appointees they shall be

forthwith reinstated back in service and for interregnum they will be entitled for salary etc. It is further made clear that even if the applicants who

approached to the Dist. Collector, Surendranagar by application u/s 258 of the Gujarat Municipalities Act, 1963 for any reason if they desire to

withdraw the same, it may not be dismissed as withdrawn but the application shall be decided on merits by the authority as it has also suo motu

powers to initiate the proceedings under the said provision against the actions, resolutions, orders etc. of the Municipalities.

9. Rule stands disposed of in the aforesaid terms with no order as to costs.