

(2003) 02 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No"s. 2021 of 2003 N and O.P. 28965 of 2002 W

V.K. Maheswari

APPELLANT

Vs

Alappuzha Municipality and Others

RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Municipalities Act, 1994 — Section 14(c), 15, 15(1), 15(3)(b), 15(6)
Kerala Panchayat Raj Act, 1994 — Section 271G

Citation : (2003) 97 FLR 352 : (2003) 2 KLJ 587 : (2003) 1 KLT 833

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : B. Gopakumar and Chiney Gopakumar, for the Appellant; N.N. Suganapalan, for the Respondent

Judgement

K. Balakrishnan Nair, J.—An interesting but short question which arises for decision in this case, is whether the Secretary of Municipality is competent to suspend a Municipal employee working under him, notwithstanding the objection raised by the Chair Person of the Municipality against the suspension. The brief facts necessary for the disposal of this case are the following: The petitioner is a Public Works Overseer Grade I/Draftsman Grade I working under the first respondent Municipality. She was placed under suspension by the Secretary of the Municipality by Ext. P13 order dated 8.11.2002. The allegation against her was that while she was in charge of the store of the Municipality, 18 sodium vapour lamps were stolen from the store. Though they were subsequently recovered from the premises of the Municipal Office, she was negligent in the performance of her duty as the custodian of the property It was alleged in the suspension order. The petitioner challenged the said suspension order before this Court by filing OP No. 33286/02 on the ground that the suspension has been made in violation of Section 49(1)(k) of the Kerala Municipality Act (hereinafter referred to as the Act) in as much as the suspension was made without the knowledge of the Chairperson. This Court found that the suspension was made

without the knowledge of the Chairperson and therefore, quashed it by Ext. p14 Judgment with liberty to proceed afresh in accordance with law. Thereafter, the Secretary of the Municipality issued Ext. P15 letter dated 14.1.2003 informing the Chairperson of the Municipality that he has decided to suspend the petitioner, and that the said letter is being submitted for her knowledge. On the very same letter on the very same day the Chairperson of the Municipality wrote her opinion, which read as follows:

To the Secretary.

On going through the Judgment of the High Court. It is understood that the Court has held that you have no power to take a decision unilaterally; especially in view of your personal animosity towards Smt. Maheswari. It is understood that the Driver of the Municipality is the accused in the case. If it is found that Smt. Maheswari is guilty, action can be taken against her you are informed that otherwise there is no necessity for any disciplinary action. Therefore, respecting the Judgment of the High Court. Smt. Maheswari should be permitted to continue in service.

Chairperson (Sd/-) 14.01.03

2. But, ignoring the direction issued by the Chairperson, the Secretary has suspended the petitioner from service by Ext. P16 order dated 15.1.2003. The petitioner challenges Ext. P16 on various grounds. The petitioner submits that the provision regarding knowledge contained in Section 49(1)(k) is not an empty formality and therefore, in the light of the opposition of the Chairperson, the Secretary should not have suspended her. It is also submitted that the order is vitiated by malafides from the part of the Secretary of the Municipality who is impleaded as co-nomine party in this Original Petition. The petitioner attacks Ext. P16 as one issued without jurisdiction. According to the learned counsel for the petitioner, in view of the provisions contained in the Kerala Municipality Act 1994 the Secretary has no jurisdiction to suspend the petitioner, when the said course of action is opposed by the Chairperson.

3. A Statement has been filed on behalf of the first respondent by its standing counsel, supporting the impugned order. It is asserted therein that the Secretary of the Municipality has jurisdiction to suspend the petitioner. The allegations of malafides are denied by the respondents. I am not going into the disputed question of malafides raised by the petitioner and denied by the respondent. As agreed by the parties. I am confining my decision to the power of the Secretary to suspend an employee in the face of the opposition to the same by the Chairperson.

4. The respondents support the suspension relying on Section 49(1)(k) of the Act which reads as follows;

40. Functions of the Secretary -(1) Subject to the provisions of this Act and he rules made thereunder, the Secretary shall,-

(k) take disciplinary action against the Municipal employees with the knowledge of the Chairperson.

They also rely on Rule 15 of the Kerala Municipal Common Service Rules which reads as follows:

15. Suspension:- (1) The appointing authority or the commissioner if he is not himself the appointing authority may at any time, place an employee under suspension:-

(a) where a disciplinary proceeding against him is contemplated or is pending.

(b) where a case against him in respect of any criminal offence is under investigation or trials, or

(c) where final orders are pending on the disciplinary proceedings if the appropriate authority considers that in the then prevailing circumstances it is necessary in public interest that the employee should be suspended from service....

The above Rule is practically a re-production of Rule 10 of the Kerala Civil Services (Classification. Control & appeal) rules. The said Rule will survive subject to the provisions of the Act by virtue of the saving clause in Section 575(2) (ii) of the Act read with Section 23 of the Interpretation of General Clauses Act, 1125.

6. The penultimate paragraph of the suspension order will show that the petitioner is kept under suspension in view of the disciplinary proceedings and also the registration of the crime in connection with the theft of sodium vapour lamps. While earlier, the petitioner was suspended by Ext. P13, the ground of suspension was only the contemplation of disciplinary proceedings against her. But while issuing Ext. P16, the registration of the crime has also been made an additional ground. But it is pertinent to notice that the petitioner is an accused in the case.

7. The contention of the petitioner is that throwing a letter at the face of the Chairman informing about the proposal to suspend the petitioner will not authorise the Secretary to suspend a municipal employee. According to her, tacit consent of the Chairperson is necessary or at least when the Chairperson is opposing the suspension as well as initiation of the disciplinary action, the Secretary cannot proceed with the matter.

8. A perusal of the relevant statutory provisions will help the resolution of this dispute. The Kerala Municipality Act has been enacted as evident from its preamble to give effect to Part IX A of the Constitution of India. Chapter III of the Act deals with the post of Chairperson, his functions and powers. Section 10 provides, inter alia, that every Municipal Council shall have an elected Chairperson who shall be a full time functionary of the Municipality. Section 14(c) says that the Chairperson of a Municipality shall "exercise overall supervision

over the working of the Municipality and shall coordinate the functions of the Municipality. Secretary and the Committees thereof". Section 15(1) empowers the Chairperson to give directions and orders he thinks fit with regard to the implementation of the resolutions of the Council and its Committees and the Secretary is bound to obey those directions. Section 15(3) (b) provides as follows:

15(3): Without prejudice to the generality of the foregoing provisions the Chairperson shall-

(b) supervise and control the acts done and steps taken by the Officers and employees of the Municipality, prepare the confidential report of the Secretary and also review the confidential reports prepared by the Secretary in respect or other employees:

Sub-section (5) thereof enables the Chairperson to call the Secretary or any Officer or employee under the control of the Municipality to discuss with him on any matters relating to the functions and administration of the Municipality. The most important power of the Chairperson in relation to Officers and employees of the Municipality relevant for this case is contained in sub-section (6) of Section 15. The said provision reads its follows:

(6) The Chairperson shall have the power to suspend from service any officer or employee in the service of Municipality if necessary other than the Secretary and other Government Officers in the Gazetted rank, transferred to the service of the Municipality, where disciplinary action have to be taken against them, on grounds of gross negligence of duty, dereliction of duty and violation of rules and standing orders.

Section 48(7) and (12) deals with disciplinary powers of the Council and the Chairperson over the Secretary. They are extracted below for convenient reference:

48(7): The Council shall, subject to the rules that may be made in this behalf, be competent to impose minor penalties on its Secretary.

48(12): Where disciplinary proceedings have to be initiated against the Secretary, the Chairperson shall have the power to conduct an enquiry against him and in the case of imposition of a major penalty, to report to the Government with approval of the council to take further action under the rules applicable to the Secretary and the Government shall as soon as the report is received take appropriate action and intimate the final decision taken thereon, in writing to the Chairperson.

Sub-section (3) of Section 222 says that:

The Municipal Council shall subject to such rules as may be made in this behalf, have the power to impose minor penalties on any Officer or employee of the Municipality.

It is pertinent to note that the Secretary of the Municipality is not exempted from the operation of this sub-section as was done in sub-section (6) of Section 15(6). Subsection (8) of Section 222 provides that in the case of disciplinary proceedings which may result in imposition of major penalty against Officers or employees of the Municipality, the Chairperson shall have power to report to the authority competent to impose major penalty on such Officer or employee for appropriate action. Section 229 dealing with the power of the Chairperson over the establishment reads as follows:

229. Power of Chairperson over establishment: The Chairperson shall exercise supervision and control over the work of all officers and staff under the Municipality, including the Government Officers and employees who have been transferred to the Municipality by the Government u/s 30 or Section 52 or Section 227; and may require the Secretary, to make available all necessary reports and Informations relating to their work and shall have authority to issue all directions necessary for the speedy implementation of the decisions of the Council, or a Committee thereof.

Section 229A dealing with the relations between elected Authorities and the Officers will be relevant for the purpose of this case. The said provision reads as follows:

229A. Relationship between the Elected Authorities and the Officers:-

(1) The Government shall prescribe a general code of conduct relating the relationship between the elected authorities of the Municipality and its employees for the purpose of protection of the right of the Officers and employees, under the control of the Municipality to tender advice on the matters dealt with by them, and their professional freedom and statutory rights.

(2) The views expressed by the officials shall be included in the minutes of discussions.

(3) There shall be a mutual respect in behavior between the elected authorities, officials and employees of the Municipality, totally avoiding rude language, gesture of action.

(4) Any complaints on the infringement of the code of conduct by the elected authorities shall be considered by the Ombudsman for local Self Government institutions, constituted u/s 271G of the Kerala Panchayat Raj Act. 1994 (13 of 1994) and the report thereon shall be forwarded to the Government for appropriate action.

(5) Oral instructions by the elected authorities to the Officials shall be confirmed in writing before they are implemented.

9. Going by the above provisions, it can be seen that the Legislature has made a distinction between Officers and employees of the Municipality. There is no definition as to who are the Officers and who are the employees. But from a

perusal of the above said provisions it can be inferred that the Officers mentioned are Gazetted Officers and the employees mentioned are non-gazetted staff. Both sides have endorsed this view at the time of hearing of this Original Petition. u/s 49(1)(k), the Secretary has got power to take disciplinary action against employees of the Municipality. The petitioner being a Public Works Overseer Grade I is a non-gazetted employee and therefore the Secretary has power to take disciplinary action against her. Therefore, in the light of the said provision read with Rule 15 of the municipal common service, the Secretary is competent to suspend the petitioner from service in normal circumstances. But the Act has conferred power on the Chairperson to suspend the petitioner under Rule 15(8). The Chairperson is even empowered to suspend any Officer in the service of the Municipality except the Secretary and the Government Officers in the Gazetted rank. So there is concurrent power in the Chairperson and the Secretary to suspend the petitioner. Having regard to the scheme of the Act, the Chairperson is a superior authority when compared to the Secretary of the Municipality. The Chairperson is even authorised to write the confidential report of the Secretary and under the statutory scheme, the Secretary is bound to respect the views of the Chairman. So, when power is conferred on two statutory authorities to suspend an employee and when the superior authority orders that the employee need not be suspended, the inferior authority though having concurrent power, cannot exercise the power to suspend the delinquent. The power under Rule 5 of the Municipal Common Service Rules is subject to the power of the Chairperson u/s 15(6) of the Act. The power conferred by a subordinate legislation can never override the power conferred by a plenary legislation on a superior authority. So when the Chairperson having regard to the facts of this case stated in Ext.P15 that the petitioner need not be suspended, the Secretary has no power to overrule the same and suspend her from service. The view expressed by the Chairperson in Ext. P15 is her decision u/s 15(6) of the Act. So the contention of the first respondent that by merely giving information to the Chairperson, he is competent to proceed against the petitioner is unsustainable in law. When the superior authority has positively decided not to take action against the petitioner or to suspend her the Secretary is bound by it. Under the statutory scheme, on the basis of the same set of facts, the Secretary has no power to suspend her. Therefore. Ext. P16 order is ultravires and unauthorised. So it is quashed. The petitioner shall be reinstated in service forthwith. She will be entitled to all consequential benefits. The original Petition is allowed as above.

OP Nos 28965/02 W.

In this Original Petition, the petitioner challenges Ext. P3 and P4 orders. They concern internal transfers and postings of the petitioner and others in the establishment of the Municipality. The petitioner challenges those orders on various grounds. Her main allegation is that they are vitiated by malafides on the part of the Secretary of the Municipality. They have the effect the demoting her, it is submitted. This Court under Article 226 of the Constitution of India is not

justified in interfering with the internal transfers made by the competent authority apparently for the proper functioning of the Municipality. If the petitioner has any grievance against her posting made as per Exts. P3 and P4, she may file a representation before the Chairpersons of the Municipality within two weeks from today. In that event, the Chairperson will hear the petitioner, consider her grievance and pass appropriate orders thereon within one month from the date of receipt a copy of this judgment.

The Original Petition is disposed of as above.