

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8088 OF 2015

CHANDRAKANT RAMDAS FARKANDE
VERSUS
THE MUNICIPAL COUNCIL PACHORA AND ANOTHER

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Advocate for Petitioners : Shri Dhorde Vikram R.
Advocate for Respondent 1 : Shri Thoke D.B.
AGP for Respondent 2 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 16, 2017

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PER COURT :-

1. The common judgment delivered by the Industrial Court dated 20.3.2015 in the group of Revision (ULP) Nos. 65 to 69 and 74 to 79 of 2012 has been challenged by the petitioner to the extent of Revision (ULP) No.75 of 2012.

2. It is submitted jointly by the learned Advocates for the petitioner and respondent No.1, that this Court, by judgment dated 1.2.2016 in Writ Petition No.6865 of 2015 (Sanjay Jagannath Pardeshi - Revision (ULP) No.76 of 2012 and 66 of 2012), has sustained the judgment of the Industrial Court and the petition has been dismissed. It is, therefore, stated that the same order needs to be passed in this matter.

3. In the above referred judgment dated 1.2.2016, in the case of

Sanjay Jagannath (supra), this Court has come to a conclusion in paragraph Nos.13 to 17 as under:-

“13. An identical situation was before the Full Bench of this Court in the matter of Sanjay Govind Sapkal and others Vs. Collector, Dhule and others, 2003(3) BCR 550 = 2004(2) Mh.L.J. 874. The Full Bench considered the law laid down by the Division Bench in the matter of Chandrashekhar Shankarrao Zale Vs. Additional Collector, Nagpur, 1984 Mh.L.J. 821 and the judgment of the Division Bench of this Court in the case of Prakash Kutik Chaudhary Vs. Collector of Dhule, 1989(1) CLR 374 and expressly overruled both these judgments which mandated an opportunity of hearing and compliance of the principles of natural justice before the Collector exercised its power u/s 308(1).

14. It would be apposite to reproduce the observations of this Court from paragraph Nos. 35 to 44 as under :-

“35. In the instant case, the case of the Municipal Council was that the posts were not sanctioned posts; there was no necessity of making appointments of employees, there were surplus and excess employees, no prior permission of the competent authority was taken; no applications were invited; no names from Employment Exchange were called; the provisions of the Act. Rules and Regulations were not observed; and the President made the appointments of his kiths and kins in violation of statutory provisions. A prayer was, therefore, made to the Collector to exercise power

under [Section 308\(1\)](#) of the Act. The Collector, by a speaking order and recording reasons, suspended the said order, once it has been held that the Collector could exercise the power, the action cannot be held illegal on the ground of absence of authority. Declaration of law by different Division Benches of this Court in Chandrashekhar and Prakash Kutik reiterated in subsequent cases, in our considered opinion, did not lay down correct law on the interpretation of [Section 308](#). We, therefore, overrule all the decisions. We hold that even if an order or resolution passed by the Municipal Council is implemented, executed or given effect to, power under [Section 308\(1\)](#) of the Act can be exercised and execution or implementation can be suspended by the Collector if the conditions laid down in the said provision are shown to be present.

36. Whether in a given set of circumstances, such power could or could not be exercised or whether or not such power was exercised bona fide, is a question of fact and must be decided in the light of attenuating circumstances of the case. As a proposition of law, however, it cannot be laid down that once an order or resolution is executed, the authority of Collector comes to an end, in our judgment, therefore, the Court, in earlier cases has committed an error of law and the said view deserves to be interfered with by overruling those decisions.

37. It was finally contended that in any case, such an order would adversely affect the employees inasmuch

as their appointments will be set aside by the Collector. It was, therefore, obligatory on the Collector even if it is assumed that he has power to invoke Sub-section (1) of [Section 308](#) of the Act that he should comply with principles of natural justice and fair-play. In the instant case, no notice was issued; no explanation was sought and no reasonable opportunity of hearing was afforded to the petitioners before taking an action of suspension of the order and on that ground also, the order passed by the Collector was liable to be set aside. For the submission, Prakash Kutik was relied upon. There, the Division Bench held, over and above the authority of the Collector, that while exercising statutory power, the Collector was obliged to comply with the principles of natural justice.

38. *In our opinion, however, the submission of the learned Counsel for the Municipal Council is well-founded and deserves to be accepted that in the present proceedings, the question before the Collector related to the validity of an order passed by the Municipal Council, Dhule. If no action could have been taken by the Municipal Council or by the President and the action was unlawful, the same could have been suspended by the Collector and in exercise of power under [Section 308\(1\)](#) of the Act and by recording reasons, the Collector passed an order, which cannot be said to be without authority of law. If the case of employees was that the action taken by the Municipal Council was unlawful, it was open to them to take appropriate proceedings in accordance with law. But*

once it has been held that the Collector has power to press into service [Section 308\(1\)](#) of the Act and suspend an order or resolution of the Council, the matter must necessarily end there. In our opinion, therefore, even those observations in *Prakash Kutik* are not sound and we do not approve them.

39. We are supported in our conclusion by a decision of the Supreme Court in [Subhash Chandra and Ors. v. Municipal Corporation of Delhi and Anr.](#), . There, the question of observance of principles of natural justice was raised against an order passed by the State Government under the Punjab Municipal Act, 1911. In that case, since an action of the Municipal Committee in granting certain benefits to the employees was not found to be in consonance with law, the execution was suspended. The aggrieved employees approached the Supreme Court by filing a petition under [Article 32](#) of the Constitution.

40. It was contended on behalf of the employees that no opportunity was afforded to the Municipal Committee to show cause. Such opportunity could not be dispensed with. Non-compliance with natural justice rendered the order void and ineffective. Support was sought from a decision of the High Court of Madras in [Abdul Gafoor v. State of Madras](#).

41. Negating the contention, interpreting the provisions of the Act and distinguishing *Abdul Gafoor* and holding that, the petitioners could not raise such

contention, the Supreme Court stated :

"Section 235 requires the State Government to give an opportunity to the Municipality and to none else. No grievance is alleged to have been made by the Committee of the omission by the Government to give it the opportunity contemplated by Section 235. It has to be borne in mind that an order under Section 235 takes effect immediately and its operation is not made dependent upon the action contemplated under Section 235. Where an order is made thereunder by an authority other than the State Government that authority has to report to the State Government. But, though such authority is bound to make a report is not inoperative or inchoate. It has to be given effect to by the Committee. It is true that till the procedure set out in Section 235 is complied with, it cannot be regarded as final. But want of finality does not vitiate the order under Section 232. The order is, unless modified or annulled by the State Government, legally effective and binding on the Committee. The Committee can, therefore, acquiesce in it and waive the non-compliance by the State Government with the provisions of Section 235. Since Section 235 does not require an opportunity to be given to parties affected by the order other than the Municipality the petitioners are not entitled to say that the order is bad."

42. The above observations in Subhash Chandra apply with equal force in interpreting the provisions of Section 308 of the Act as well. The Collector has passed an order and as per the requirement of Sub-section (2) of Section 308, he has forwarded the said order to the Municipal Council, Dhule, affected by the said order, indicating therein the reasons for making the order. The Collector has also submitted a report to the Director along with a copy of the order. It was, therefore, open to the Municipal Council, Dhule, to invoke Sub-section (3) of Section 308 of the Act and to forward a statement to the Director within 30 days from the receipt of the order of the Collector indicating that the order of the Collector should be rescinded, revised or modified. Sub-section (3) clarifies that if no such statement is received by the Director within time, it shall presume that the Council has no objection if the order of the Collector is confirmed. Sub-section (4) of Section 308 of the Act enjoins the Director on receipt of the report from the Collector, and Council's statement referred to in Sub-section (3), if any, to rescind the order or revise, modify or confirm it or direct that the order shall continue to remain in force with or without modification. The proviso to the said sub-section casts a duty on the Director to take into account the statement, if received before such an order is made by him.

43. It is thus clear that the order passed by the Collector is subject to confirmation, modification or setting aside by the Director and if the Municipal

Council was aggrieved by such action or was of the view that no such order could have been made, the legislature had provided remedy and it was open to the Municipal Council to make grievance against the action taken by the Collector by invoking Sub-section (3) of [Section 308](#). The provision expressly declares that if no such communication has been sent by the Council to the Director, the latter will presume that the former has no objection if the order passed by the Collector is confirmed. It is not the case of the Municipal Council or even the petitioners that an action was taken by the Municipal Council under Sub-section (3) of [Section 308](#) and yet, the Director had failed to perform his statutory obligation under Sub-section (4) of [Section 308](#) of the Act. Nor it is the case of the Municipal Council that the procedure required by the section had not been followed and in spite of objections raised by it against the report of the Collector, the Director, in violation of statutory provisions, confirmed the order passed by the Collector. It, therefore, cannot be said that the principles of natural justice were violated. The action taken by the respondents, hence cannot be said to be invalid, illegal or contrary to the principles of natural justice and fair-play.

44. For the aforesaid reasons, in our opinion, the reference deserves to be accepted. We hold that the Collector has power, authority and jurisdiction to invoke Sub-section (1) of [Section 308](#) of the Act if he is satisfied that one of the eventualities mentioned in the said sub-section exists. His power, authority and

jurisdiction does not come to an end even if the order or resolution is implemented, executed or effected. The reference is answered accordingly. In the facts and circumstances, however, there shall be no order as to costs.” (Emphasis supplied)

15. *In the light of the ratio laid down by the Full Bench of this Court and in view of the declaration that the law laid down in the case of Chandrashekhar and Prakash Kutik (supra) do not lay down the correct law on the interpretation of Section 308, the issue is therefore no longer res-integra. The observations of the Full Bench in the reproduced paragraph clearly indicate that by overruling the said two judgments of the Division Bench, the Collector was not held to be under an obligation to issue a notice of hearing, before invoking his powers u/s 308(1), to the petitioner.*

16. *In the instant case, the judgment of the Full Bench in the case of Sanjay Govind Sapkal (supra) was not brought to the notice of the Labour Court, which has interfered with the action of the Collector purely on the count that Section 25-F was not complied with. The Industrial Court after considering the law, has concluded that at best, the complainant could be entitled to notice pay and retrenchment compensation for the period of work that he has performed.*

17. *In the light of the above, I do not find that the impugned judgment would be termed as being perverse or erroneous. This petition is, devoid of merit and is, therefore, dismissed. Rule discharged. ”*

4. Considering the above, since the impugned judgment has already been sustained by this Court, this petition, being devoid of merits is dismissed.

(RAVINDRA V. GHUGE, J.)

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