

PETITIONER:
J.N. GANATRA

Vs.

RESPONDENT:
MORVI MUNICIPALITY, MORVI

DATE OF JUDGMENT: 19/07/1996

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
AHMAD SAGHIR S. (J)

CITATION:
JT 1996 (6) 661 1996 SCALE (5)375

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Kuldip Singh, J.

The appellant was employed as an Overseer with Morvi Municipality in Rajkot District, State of Gujarat. He was dismissed from service by a resolution dated December 1, 1970 passed by the Municipality. The appellant challenged the order of dismissal by way of a civil suit. The trial court dismissed the suit. The appellate court, however, reversed the findings of the trial court and decreed the suit. The second appeal filed by the Municipality was allowed by the High Court and the judgment and decree passed by the first appellate court was set aside and the suit of the appellant was dismissed on the short ground that the same was barred by limitation under Section 253(1) of the Gujarat Municipalities Act, 1963 (the Act). This appeal by way of special leave is against the judgment of the High Court.

It is not disputed that before passing the order of dismissal it was mandatory for the Municipality to have followed the procedure laid down under the Morvi City Municipal Officers and Servants, Conduct, Discipline, Dismissal, Penalty and Appeal etc., Rules 1960 (the Rules). Rule 35 of the Rules, which is relevant is as under:

"Before imposing the penalty under sub-sections 3,6,7 & 8 of Section 21 upon the officer or employee, the investigating general Board or Committee shall have to follow the following methods/procedure.

1. To take decision for action against the responsible officer or employee.
2. Written Charge-sheet should be given to him.
3. To make investigation/enquiry and to take evidence in respect of

his misbehaviour, fault of offence.

4. To take written explanation from him.

5. After the aforesaid proceeding the opinion should be given and decision of order should be made."

The High Court on merits came to the conclusion that the order dismissing the appellant was passed without complying with the provisions of rule 35 of the Rules. The High Court, therefore, held that the order of dismissal was illegal. The relevant part of the High Court judgment in this respect is as under:

"Rule 35 of the Morvi City Municipal Officers and Servants, Conduct, Disciplines Dismissal, Punishment and Appeal Rules framed by the said Municipality in 1960 lays down that before imposing a punishment upon an officer or servant of the Municipality, the General Board or the Committee has to: (1) take a decision to take action against the officer or servant, (2) give him a charge-sheet in writing, (3) take evidence about the misconduct of the servant, (4) call for his written explanation, (5) reach a conclusion and give a decision and pass an appropriate order.

In the present case, it is an admitted position that no decision was taken either by the General Board or by the Controlling Committee of the Municipality to take any such action against the plaintiff. It is also an admitted position that no charge-sheet has been given by the General Board or by the Committee acting through the Chief Officer or any other officer. It is clear on the face of it that the charge-sheet, Ex.41, is issued by the president in his own name and is signed by him. There is also nothing on record to show that any evidence was taken in the present case to consider whether the charges levelled against the plaintiff were established. It appears that the plaintiff was called upon to give his explanation and he did give some explanation. There is nothing on record to show that any notice was given to the plaintiff informing him that the charges against him were proved and calling upon him to show cause why he should not be dismissed from service. But it appears that the Chief Officer of the Municipality gave a notice, Ex.55, dated 7-10-1969 to the plaintiff informing him that the General Board will be taking up for consideration the

resolution passed by the Controlling Committee on 17-4 1969 with regard to his dismissal from service and he may produce whatever evidence he wants to in defence before the General Board. In view of this, we may say that he was given an opportunity to give a written explanation as required by sub-rule (4) of the Rule 35. The provision of sub-rule (5) of Rule 35 lays down that the General Board or the Committee, as the case may be, has to reach a conclusion and pass a judgment and also pass a consequential order. This shows that the General Board or the Committee, as the case may be, has to record a finding with reasons for reaching the conclusion about the guilt of the delinquent. The resolution of the Controlling Committee is at Ex.38. It is dated 17-4-1969. It only mentions that the charge against the delinquent plaintiff was established and the Committee was of the opinion that the plaintiff should be removed from service and the matter may be placed before the General Board. No reasons are disclosed in this resolution as to why the Committee had reached such a conclusion. The resolution also does not show as to what inquiry, if any, was held against the plaintiff before taking this decision. The resolution of the General Board is at Ex.85. The resolution is dated 1-12-1970. This resolution also does not disclose any reasons as to why the General Board had reached the conclusion to dismiss the plaintiff except that it had taken into consideration the resolution of the Controlling Committee and the submissions made by the advocate on behalf of the plaintiff. This shows that neither Ex.38 nor Ex.85 disclosed any reasons whatsoever." The High Court finally concluded as under:

"It will appear from what has been discussed above no inquiry, 4<he plaintiff-respondent as required by the rules framed by the Municipality. The order passed by the General Board of the Municipality dismissing the plaintiff-respondent from service, therefore, is on the face of it, illegal and inoperative. On merits, therefore, the defendant-Municipality has no case."

Having held that the order passed by the General Board

of the Municipality dismissing the appellant from service was on the face of it illegal and inoperative, the High Court non-suited the appellant on the short ground that the suit was barred by limitation in terms of Section 253(1)(a) of the Act. The said section reads as follows:

"253(1) - No suit shall lie against a municipality in respect of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act, -

(a) Unless it instituted within six months next after the accrual of the cause of action; and..."

On the interpretation of Section 253(1)(a), the High Court posed the following question :

"On facts, I have found, as discussed earlier, that the action of the Municipality was bad, in that the procedure laid down by the rules has not been followed and further because no reasons have been given either by the Controlling Committee or by the General Board for reaching the conclusion to dismiss the plaintiff from service. The question is whether in view of this factual position, can it be said that the act of the Municipality was in pursuance or, at any rate, execution or intended execution of the Act?"

The High Court finally came to the conclusion that the suit filed by the appellant was barred by limitation as it was not filed within the period of limitation prescribed by Section 253(1)(a) of the Act. The High Court reached the finding on the following reasoning:

"The discussion made above clearly shows that even though the action of the Municipality in dismissing the plaintiff was null and void for the reasons which have been stated in the beginning none-the-less the Municipality can be said to have acted in intended execution of the Act and hence the provisions of Section 253(1)(a) will be attracted in the present case."

We have heard learned counsel for the parties. We are of the view that the High Court fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of rule 35 of the Rules, was an "act done in pursuance or execution or intended execution of this Act....." It is no doubt correct that the General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by rule 35 of the Rules. Admittedly the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. In view of the categorical finding given by the High Court to the effect

that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules it cannot be treated to have been passed under the Act.

This Court in Poona City Municipal Corporation vs. Dattatraya Nagesh Dattatraya Nagesh Deodher 1964 8 SCR 178 while interpreting a similar provision under the Bombay Provincial Municipal Corporation Act, 1949 observed as under:

"The benefit of this section would be available to the Corporation only if it was held that this deduction of ten per cent was "an act done or purported to be done in pursuance or execution or intended execution of this Act." We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of s.127(4) (to which we have already referred) the levy could not be said to be "purported to be done in pursuance or execution or intended execution of the Act." For, what is plainly prohibited by the Act cannot be claimed to be purported to be done in pursuance or intended execution of the Act".

This Court in Municipal Corporation vs. Sri Niyamatullah S/o Masitulla 1970 2 SCR 47 interpreted Section 135(2) of the Indore Municipal Act, 1909 which is similar to Section 253(a) of the Act in the following term:

"The provisions contained in section 135 of the Indore Municipal Act will be applicable to things done under the Act. It is manifest that in the present case the order of dismissal passed by Shri Ghatpande was beyond his jurisdiction and is therefore not an act done under the Act."

The dismissal order in the present case could only be passed by following the procedure laid down under rule 35 of the Rules. The Municipal Board had no jurisdiction or authority to dismiss the appellant without following the mandatory procedure. We are, therefore, of the view that the High Court was not justified in reaching the conclusion that the order dismissing the appellant was within the provisions of the Act. We allow the appeal, set aside the impugned judgment of the High Court and decreed the suit of the appellant with costs. We quantify the costs as Rs.20,000/-.