

(1942) 12 PRI CK 0005

In the Privy Council

Case No : Privy Council Appeal No. 26 of 1941

Ahmedabad Municipality

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 15-12-1942

Acts Referred:

Citation : (1943) AIR(PC) 21

Hon'ble Judges : Madhavan Nair, George Rankin, Lords Thankerton, JJ.

Advocate : India Office, Solicitor, Hy. S.L. Polak and Co., W.W.K. Page, J. Millard Tucker, U. Sen Gupta, C, Bagram, Sir Thomas Strangman, for the Appearing Parties.

Judgement

Sir Madhavan Nair, J.

This is an appeal from a decree of the High Court of Judicature at Bombay dated 8th February 1938, which reversed a decree of the First Class Subordinate Judge of Ahmedabad dated 31st March 1933, in favour of the plaintiff - the appellant before the Board. The plaintiff is the Ahmedabad Municipality; and the defendant is the Secretary of State. The question for decision is whether, in the circumstances mentioned below, the plaintiff is entitled to recover from the defendant sums of money amounting to Rs. 48,156-5-0 together with interest which were deducted by the Government of Bombay from grants for primary education made by them to the Ahmedabad Municipality, and during its supersession, to the Committee of Management. The facts are not in dispute, and may be briefly stated: On 9th March 1920, the Government of Bombay sanctioned the grant of Rs.4 lakhs to the plaintiff in connection with a scheme for the acquisition of building sites for primary schools. Two of the conditions of the grant were (1) that the building should commence within six months from the date the land was handed over to the municipality and (a) that the municipality should spend at least 4 lakhs on the buildings within 5 years from that date. No provision was made in the grant as regards interest which might be earned on the amount pending its application due to delay in acquiring land or for any other

sufficient reason. The money was paid over to the municipality on 30th March 1920. On 6th February 1922, the municipality was superseded by the Government of Bombay, under S.179, cl. (1), Bombay District Municipal Act, 1901, for two years; and under clause (3) (b) of the section, a Committee of Management was appointed to perform its duties during the period. As a consequence of the supersession, all the property of the municipality vested in His Majesty. See S. 179, cl. (3) (c). As the sum of 4 lakhs was not immediately spent, the whole, or the unspent balance, was "either invested or placed on deposit in the bank" and earned interest. For the financial year 1921-22, a sum of Rs. 24,000 was earned, and for the next year, 1922-23, Rs. 18,000-the total interest for the two years being Rs.42,000. On 26th January 1923, the Government passed a resolution directing that the Government grant to the Ahmedabad Municipality for primary education payable in 1922-23 should be reduced by Rs. 24,000 or by the interest which actually accrued during 1921-22 on the advance building grant of Rs. 4 lakhs paid by the Government whichever is greater. Similarly, in future years, the interest which actually accrues in any year or 6 per cent. of the unspent balance of that year whichever is greater should be deducted from the Government grant of the following year.

In pursuance of the above resolution a sum of Rs. 42,000 was deducted by the Government from the educational grant to the municipality for the year 1922-23. Similarly, sums of Rs. 2000 and Rs. 4156-5-0 representing interest on the unexpired balance of the 4 lakhs for the financial years 1924-25 and 1925-26 were deducted by the Government from a subsequent grant. The total sum thus deducted amounted to Rs. 48,156-5-0. It is this sum together with interest, amounting to Rs. 62,856-5-0, that is now claimed by the plaintiff in the suit. In the plaint, various contentions were raised. Amongst others, it was pleaded, that the amount of 4 lakhs having vested in the municipality by the grant, the interest accruing on it, or the unspent balance belonged to it in the absence of any reservation of the same in favour of the Government, and that the recovery of the interest on the building grant was contrary to the terms of the grant and was not warranted by it. Though it was not so specifically stated in the plaint, the substantial plea urged by the plaintiff was that the Government by deducting from the grants for education, amounts equal to the interest on the advance for the building sites was in effect recovering the interest on the amount which they were not entitled to do, as the interest accruing to it belonged to the municipality and not to the Government. The defendant in his written statement contended that the interest on the grant for the building sites belonged to the Government and that the suit was barred by limitation. He also stated in paras. 10 and 11 as follows:

Para. 10. The amounts in suit were deductions from the Government grant to the primary education and not recoveries in the ordinary sense of the term.

Para.11. There was no legal obligation on the part of the Government to bear any portion of the costs of elementary education incurred by the municipality. The

grants are in the nature of bounties and the municipality has no legal right to enforce their payment. Consequently, the reduction of the grants by any amount was a matter entirely within the discretion of the defendant and furnishes no cause of action to the plaintiff.

As the issues framed in the case did not cover the point raised in the above two paragraphs, the defendant submitted to the Court that the following additional issue should be framed, viz.:

Whether the municipality has any legal right to enforce payment of any grants for elementary education and whether any such reduction furnish any cause of action to the plaintiff.

The First class Subordinate Judge by his order dated 7th February 1933, rejected the defendant's application on the ground that the issue asked for did not arise on the pleadings and that it changed the nature of the case. The First Class Subordinate Judge held that the grant of 4 lakhs vested in the municipality, that it carried with it the interest that might accrue on it, and that the Government had no right, since the municipality was the owner of the interest, to make deductions from the primary education grant payable every year, on account of such interest. He also held that the question as to whether or no Government have the right to reduce the recurring amount of the primary education grant payable every year does not really arise in the case, as according to him the parties have all along proceeded on the basis that the Government claimed the interest on the grant in suit and the way they recovered it was by deducting so much money from the recurring grant payable for primary education.

On the question of limitation, the Subordinate Judge held that the suit was not barred having regard to S.10, Limitation Act. On appeal to the High Court, the learned Chief Justice (with whom Wassoodew J. agreed) set aside the decision of the Subordinate Judge and dismissed the plaintiff's suit. The learned Judge agreed with the Subordinate Judge that the interest on the 4 lakhs or the unspent balance belonged to the municipality; but he held that the plaintiff had no cause of action to maintain the suit. He pointed out what in fact was true that out of the interest nothing at all has been paid to Government. The interest was received by the municipality and it has always been retained by the municipality.

In the course of his judgment he also observed that if Government choose to make no grant at all, they are at liberty to do so; and if they choose to make a grant less a particular sum to which they consider they have a moral claim but to which they have no legal claim that cannot confer any right of action upon the recipient of the balance of the grant; and that is really the plaintiff's case.

Their Lordships find themselves in agreement with this view. It is clear that the First Class Subordinate Judge failed to appreciate the true nature of the case. This may possibly be due to the fact that the defendant contended that the interest on the 4 lakhs belonged to the Government. However that may be, the position before the Board has been made clear by the admissions made by

counsel. Sir Thomas Strangman stated candidly that he cannot contend that the primary education grant annually made by the Government was not a bounty; while Mr. Tucker has with equal candour conceded that the Government cannot legally claim the interest on the 4 lakhs or the unspent amount. In their Lordships' view the legal position has been stated correctly by the learned counsel. If the position is that the annual primary education grant made by the Government is only a bounty, then it must follow that the Government can make deductions from the amount of whatever sums they like. This is the basis of their resolution dated 26th January 1923. The fact that the amounts of interest which had accrued during any period or would accrue in the future on the 4 lakhs or the unspent balance formed measures of the deductions to be made from the annual payments for primary education does not by any means show that it was the interest on the grant that the Government were seeking to deduct. The amounts of interest are but measures of the deductions and nothing more. The interest is there for the municipality to collect, and as the learned Chief Justice has well pointed out, the interest was received by the municipality and it has always retained it. The First Class Subordinate Judge should have framed the new issue asked for by the defendant and considered the question whether the plaintiff had any cause of action to maintain the suit. Their Lordships hold, agreeing with the High Court, that the plaintiff has no cause of action; the question whether the suit is barred by limitation does not therefore arise for decision. The result is that the appeal fails and their Lordships will humbly advise His Majesty that it should be dismissed with costs.