

(1960) 10 GUJ CK 0005
In the Gujarat High Court

Desai Kantilal Maganlal

APPELLANT

Vs

Nadiad Borough Municipality at Nadiad

RESPONDENT

Date of Decision : 12-10-1960

Acts Referred:

Bombay District Municipal Act, 1901 — Section 167

Bombay Municipal Boroughs Act, 1925 — Section 206, 206A, 206A

Citation : (1961) 2 GLR 325

Hon'ble Judges : J.M. Shelat, J

Bench : Single Bench

Judgement

J.M. Shelat, J.—[His Lordship after stating the facts further observed:] Mr. Oza, who appears for the appellant-plaintiff, has raised two questions before me:

(1) Whether the notice addressed to the municipality through the President and served at the municipal office was valid? and

(2) Whether on the facts and circumstances of this case, notice was at all necessary u/s 206a of the Act?

2. Now, the first thing that Mr. Oza contended was that u/s 206A, what was contemplated was a notice on the municipality. He argued that u/s 8 of the Act, a municipality is a body corporate with perpetual succession and which can sue and be sued in its name. A municipality, therefore, being a legal entity, a notice to the municipality, though addressed through its President, was a valid notice. Mr. Oza also contended that u/s 206A, the only requirement was that a notice should be delivered at the municipal office, when a suit is to be filed against such a municipality. Since the notice in fact was served at the municipal office and handed over to a clerk of the municipality who accepted it, though, on behalf of the President, the requirement of Section 206 was fulfilled and, therefore, the notice cannot be said to be an invalid notice. It is no doubt true that by virtue of Section 8 of the Act, a municipality is a body corporate, has perpetual succession and may sue and be sued in its corporate name. But though the municipality is a body corporate, it has to act through some agency. u/s 9, a municipality consists

of elected councillors and the municipal affairs are to be transacted, therefore, by those councillors. It is obvious, however, that the municipal administration cannot be run by a large number of councillors. It is true that the Act provides for the office of a President but u/s 31 of the Act, he has specific duties and functions assigned to him. The provisions of Section 31 show that his duties and functions are to exercise supervision and maintain general control over the municipal administration which would be carried out through the officers of the municipality, Section 33 provides for the appointment of a Chief Officer and lays down certain conditions of tenure of his service. Under Sub-section 2 of Section 30, it is provided that the executive powers for the purpose of carrying out the provisions of the Act vests in the Chief Officer appointed u/s 33 subject to certain limitations and restrictions with which I am not concerned in this appeal. Under Section 8 of the Act though the municipality can sue or be sued under its corporate name if it is specifically provided that it can sue or be sued through its Chief Officer. It is thus clear that though the municipality has been created u/s 8 as a body corporate with perpetual succession the legislature realised that a municipality can act only through some agency. Section 8 shows that that agency is the Chief Officer for it provides that it is only through the Chief Officer that a municipality can sue or be sued.

3. Section 206A then provides that no suit shall lie against a municipality in respect of any act done in pursuance or execution or intended execution of the Act or in respect of any alleged neglect or default in the execution of the Act unless it is commenced within six months next after the accrual of the cause of action and until the expiration of one month after notice in writing has been in the case of a municipality delivered or left at the municipal office. It is true as was contended by Mr. Oza that Section 206A does not lay down specifically that the notice contemplated thereunder has to be addressed or sent in the name of the Chief Officer. He argued that there being no such provision the notice addressed to the municipality itself cannot be said to be a notice which is not valid. He contended that if a notice is given in the name of the municipality but it contains the further words through the President such a notice cannot be treated as one which is not valid in as much as the legislature has given legal entity to the municipality by constituting it as a body corporate. Therefore he argued that the notice was a valid notice. There is so no force in Mr. Oza's contention. But as I have already said u/s 8 of the Act a municipality can sue or be sued only through its Chief Officer in whom under Sub-section (2) of Section 30 the executive power of the municipality vests. Therefore in its executive function the municipality acts in its day to day administration through the Chief Officer. Since the municipality can be sued through its Chief Officer only it would seem that all processes as also a notice required to be served u/s 206A have to be served upon the municipality through its Chief Officer. This is also the view taken in two decisions of the High Court of Bombay. It is no doubt true that when these decisions were given the section dealing with notice was the old Section 206 as it stood before it was amended by Section 29 of the Bombay Act. XXXVI of 1949.

The amendment in 1949 however does not seem to make any difference as the provisions with regard to a notice are more or less the same. u/s 206 of the Act as it stood prior to the amendment it was provided that no person shall commence any suit against any municipality for anything done or purporting to have been done in pursuance of this Act without giving to such municipality two months previous notice in writing of the intended suit and of the cause thereof nor after six months from the date of the act complained of. The requirements both u/s 206 as it originally stood and u/s 206A of the present Act are thus more or less the same. In *S.M.D. Thakersey and Co. v. The Poona City Municipality* ILR 1951 Bom. 302 the plaintiffs entered into a contract with the Supply Department of the Government of India for supply of tentage to Defence Services at Kirkee Arsenal within the octroi limits of the Poona City Municipality. In 1940 and 1941 the plaintiffs imported into the limits of the municipality goods out of which tents were manufactured by them within the municipal limits and then delivered to the Supply Department. The plaintiffs had to pay Rs. 8000 and odd by way of octroi duty on the goods so imported but they did that under protest. Considerable correspondence ensued between the parties and ultimately on January 2 1942 the plaintiffs served a notice on the Octroi Superintendent of the municipality demanding the octroi duty paid by them under protest. The question arose whether the notice was valid u/s 206 as it stood then. The High Court on a consideration of Section 206 as also Sections 8 and 30 Sub-section (2) observed that since under Sub-section (2) of Section 30 the executive power vested in the Chief Officer the notice of the suit must be given to the Chief Officer of the municipality. The learned Judges who decided that appeal approvingly cited an unreported judgment in First Appeal No. 396 of 1945 to which one of them was a party and where it was held that the notice of the suit against the municipality addressed to its President was invalid and that it ought to have been sent to the Chief Officer and not to the President. It was also held that the notice not being one contemplated u/s 206 was not a valid notice and hence the plaintiffs suit was liable to be dismissed.

4. It may be observed that in both the appeals notice was neither addressed nor sent to the Chief Officer and in both the decisions it was held that a proper notice u/s 206 as it then stood would be a notice addressed either to the municipality through its Chief Officer or to the Chief Officer of the municipality. But it was contended by Mr. Oza that the learned Judges there have not held that a notice in the name of the municipality would not be a valid notice and that such a question did not in fact arise for their consideration. It is true that in one case the notice was served in the name of the Octroi Superintendent while in the other the notice was served in the name of the President and therefore in neither case the notice was served in the name of the municipality. It is also true that the question whether a notice in the name of the municipality would be valid or not was not specifically raised in either of two decisions. Nevertheless the question as to what would be a proper notice under the provisions of Section 206 as it stood then was expressly raised and canvassed and the learned Judges on a

consideration of the relevant provisions of the Act came to the conclusion as expressly held by them that a valid notice u/s 206 of the Act would be one addressed to the Chief Officer of the municipality. These observations cannot be said to be mere obiter or made without the question having been raised before them. The two decisions relied upon by Mr. Patel on behalf of the municipality are binding upon me and I must therefore hold that the notice in question having been addressed to the municipality through its President and delivered to the President through a clerk of the municipality was not a valid notice.

5. Mr. Oza next contended that assuming that the notice served by the appellant was not a valid notice as required u/s 206A of the Act on the facts and circumstances of this case there was no necessity of giving any notice under that section. He argued that the appellants suit was for damages for wrongful discharge from his service and that being so it was not in respect of any act done in pursuance or execution or intended execution of the Act. He argued that discharge of a municipal employee from service is not an act done in execution or in pursuance or intended execution of the Act. He contended that there is no provision in the Act which casts or imposes a duty or obligation upon the municipality to engage an assistant engineer or to discharge him from service. Consequently Section 206A of the Act would not apply in a case where such an employee is discharged from service. A question similar to the one raised by Mr. Oza arose before the Full Bench of the High Court of Bombay in *Municipal Borough of Ahmedabad v. Jayantilal Chhotalal Patel* 49 Bom. L.R. 724 That was a suit to recover money due under a contract as also the amount of deposit paid thereunder. On October 5 1935 the plaintiff Jayantilal entered into a contract with the Borough Municipality of Ahmedabad undertaking to remove rubbish from the streets of Ahmedabad city and to dump it at places specified. A sum of Rs. 4100 was deposited by the plaintiff with the municipality for the due performance of the contract. The plaintiff carried out the work under the contract for some time but subsequently intimated to the municipality that he would not carry out the work from April 6 1936 Later on the municipality decided to withhold the amount of deposit whereupon the plaintiff served notice upon the municipality demanding payment of the money as also the repayment of the deposit together with interest thereon. The question that arose before the Full Bench was whether when a municipality has obtained power from a municipal Act to enter into a contract is the exercise of power to enforce the contract an act done in pursuance of the municipal Act? Construing the words in pursuance of the Act contained in Section 206 it was held that the act done must be the direct result of some duty cast upon the local body or some authority conferred upon it. If it was a direct result of a contract which although the local body was empowered to enter into but was under no obligation to do so then that act was not an act contemplated by the section. Thus it is only if a municipality forfeited a deposit purporting to act under a power given to it by the statute then the section would apply. It was held that hence a suit to enforce rights of a private individual under a contract which a municipality was not under any statutory obligation to enter

into did not fall within the ambit of Section 206 The Full Bench also held that only those suits fell within the ambit of the section which were in respect of anything done or purported to have been done by the municipality in pursuance of the Act and that the key words were in pursuance of the Act. This decision thus lays down that if an act is done in pursuance of the Act and a suit is filed in respect of such an act such a suit would fall within the preview of Section 206 and therefore a notice as contemplated u/s 260A would be necessary.

6. A similar question also arose in the "The Municipality of Ratnagiri v. Vasudev Balkrishna Lotlikar ILR Bom. 600 where on a construction of Section 167 of the Bombay District Municipal Act 1901 which contains provisions similar to those of Section 206 and 206A of the present Act it was held that when a district municipality exercising power given to it by the District Municipal Act or the statutory rules made under the Act dismisses an officer of the municipality that is an act done or purporting to have been done in pursuance of the Act within the meaning of Section 167. Section 167 of the District Municipal Act provides that 4 it shall be commenced against any Municipality for anything done or purporting to have been done in pursuance of this Act with out giving to such municipality one months previous notice in writing of the intended suit and of the cause thereof nor after six months from the date of the act complained of. The provisions of Section 167 of the District Municipal Act are thus similar to those of Section 206 and 206A of the Bombay Municipal Boroughs Act 1925 The construction placed on Section 167 of the District Municipal Act in this case would show that an order of dismissal of an employee by the municipality exercising the power given to it either under the Act or under the statutory rules made thereunder must be treated as an act. done or purporting to have been done in pursuance of the Act.

7. The question is can the act of discharge of a servant from service be said to be an act done in pursuance or execution or intended execution of the Act? For the answer to this question I must turn to certain other provisions of the Act. Section 53 of the Act confers powers upon the municipality to make rules amongst other things determining the staff of officers and servants to be employed by the municipality and the respective designations salaries fees allowances of such officers and servants and their powers and duties determining subject to the limitations imposed by Sections 33 34 and 34A the mode and conditions of appointing punishing or dismissing any officer or servant and delegating to certain officers designated in the rules the powers to appoint fine reduce suspend or dismiss any officer or servant Clause (h) of Section 58 confers upon the municipality the power to make rules regulating the period of service of its officers and servants and determining the conditions under which such officers and servants or any of them shall receive pensions gratuities or compassionate allowances on retirement or discharge from service. The words or discharge from service were added in this Sub-clause by Section 9 of Bombay Act XXXVI of 1947. u/s 58 the respondent municipality has in fact framed rules. Rule 200 of these rules deals with the question of liability of a municipal employee to be

discharged from service on his being given one months notice. Every municipal servant therefore accepts the employment of the municipality subject to these rules which form part and parcel of the conditions of his service. Since Section 58 confers authority upon the municipality to frame rules any act done by the municipality either in pursuance of the Act or under the statutory rules framed u/s 58 for instance an order of discharge of a municipal employee made or issued under any of these rules must constitute an act done in pursuance of the Act. This is what has actually been held in the Municipal Borough of Ahmedabad v. Jayantilal 49 Bum. L.R. 724. That being the position the contention raised by Mr. Oza that the appellant was not required to serve any notice u/s 206A of the Act must fail.