**(1960) 10 MP CK 0016**

**In the Madhya Pradesh High Court**

**Case No :** M.P. No. 52 of 1958

Gangaram Bandil — APPELLANT

Vs

Municipal Corporation, Gwalior — RESPONDENT

**Date of Decision :** 10-10-1960

**Acts Referred:**

Madhya Pradesh Municipal Corporation Act, 1956 — Section 23, 25

**Citation :** (1961) JLJ 282

**Hon'ble Judges :** Shiv Dayal Shrivastava, J;A.H. Khan, J

**Bench :** Division Bench

**Advocate :** G.P. Patankar, for the Appellant; P.L. Dubey, for the Respondent

**Final Decision :** Allowed

## Judgement

Shivdayal, J.—This is a petition under Art. 226 of the Constitution challenging as utira vires a resolution of the Municipal Corportion, Gwalior granting the following allow ances:-

(1) To the Mayor Rs. 200/-per month, and to the Dy. Mayor and the Chairman of the Standing Committee" Rs. 125/- per month, each, with restrospective effect from the date of their assumption of the respective offices, on the constitution of the Corporation.

(2) To every corporator, Rs. 8/- per meeting of the Corporation, and Rs. 5/- per meeting of a Committee or sub-Committee.

2. The Municipal Corporation of Gwalior (hereinafter called the Corporation) is a corporation established and constituted under the Madhya Bharat Municipal Corporation Act, 1956. (hereinafter called the Act.). As provided in the Act, the Corporation is constituted by elected Councillors and nominated eldermen. These corporators elect from among themselves a Mayor and a Deputy Mayor for a term of one year. One of the corporators is also elected Chairman of the Standing Committee, as it is called.

3. The petitioner is a tax payer in the City of Gwalior and is also a Councillor of the Corporation.

4. The Corporation in its meeting held on December 3, 1958, adopted the following resolutlon:-

"

"

5. It is contended by the petitioner that the Corporation has no power to grant these allowances. In my judgment, this contention must be accepted. The powers of a statutory corporation are limited and circumscribed by the statute under which it is constituted and they extend no further than are expressly stated in that Act. What the statute does not expressly or by necessary implication authorise must be taken to be prohibited. Sec. 9 Halsbury (Salmond) 62, para 129, and a number of cases cited there.

6. That is the settled position of the law on principle and authority. Now it is to be seen whether the Corporation has authority to spend a part of its fund In payment of the impugned allowances. Part 3 of the Act deals with Finance. Section 86 runs thus:-

"There shall be one Municipal Fund and it shall be held by the Corporation in trust for the purpose of this Act, subject to the provisions therein contained"

The word ''trust'' is very significant. This section clearly means that nothing can be appropriated out of municipal fund unless and until there is a sanction in the Act itself.

7. Section 87 deals with credit of moneys to municipal fund and section 88 with the application of the municipal fund. Section 88

runs thus:-

"The moneys from time to time credited to the municipal fund shall be applied in the following order of preference,-

Firstly, in making due provisions for the repayment of all loans payable by the Corporation under the provisions of Chapter IX.

Secondly, in discharge of all liabilities imposed on the Corporation by Section 3.

Thirdly, in payment of all sums, charges and costs necessary for the purposes specified in section 66 and 67 and for otherwise carrying this Act into effect or of which the payment shall duly or directly sanctioned under any of the provisions of this Act

inclusive of-

(a) the expenses of every election of Councillors held under this Act;

 

(b) the salaries, allowances and contributions to pensions and leave salaries of the Commissioner and of any other officer whose services may at the request of the Corporation be placed by the Government at the disposal of the Corporation;

(c) the salaries and allowances of municipal Officers and servants, and all pensions, gratuities, contributions and compassionate allowances payable under the provisions of this Act.

(d); (e), (f): (g); (h)."

Section 66 enumerates matters to be provided for by the Corporation as its obligatory duties and section 67 gives a list of matters for which the Corporation may provide in its discretion. These two Sections are of no assistance to the respondent Corporation on the question with which I am dealing Apart from section 88, there is no provision in the Act which authorises any expenditure or payment of salaries, allowances and fees. I do not find any provision in section 88 which enables the corporation to pay any salary or allowance to its Mayor, Deputy Mayor, Chairman of the Standing Council, Councillors or elder-men.

8. Shri Dubey strenuously relies on the expression "for otherwise carrying this Act into effect" in section 88, ''thirdly'', and contends that it empowers the Corporation to pay these allowances. The argument is that the allowances granted under the impugned resolution are in fact conveyance allowances to enable the corporators to attend the meetings, and for the Mayor and Deputy Mayor to exercise their control under sections 23 and 25 of the Act. If I may say so, the argument is far fetched. The resolution itself does not call it ''conveyance allowance.'' In the return filed by the Corporation that plea was not taken. Moreover, section 88 does not authorise even conveyance allowance to be paid to the Mayor or the Deputy Mayor of the Corporation. The expression "for otherwise carrying this Act into effect" has no doubt a wide connotation. Even so it does not clothe the Corporation to make any payments to its Mayor, Deputy Mayor Councillors or elderman. It requires authority in clear language for a trustee to appropriate the funds of the trust in paying to himself. The import of the residuary phrase is to authorise expenditure on purposes intimately associated with the purposes of the Corporation. I do not say that this expression is to be read ejusdem generis and I am prepared to read it so as to include all sums, charges and costs which, though not contemplated by the framers of the Act in clauses (a) to (h) of section 88, are necessary for carrying the Act into effect. Learned counsel has not been able to point out to us how the payment of these allowances are required for carrying the Act into effect. It is not the case for the respondents that the Mayor, Deputy-Mayor, Councillors or eldermen could not function unless these allowances were paid to them. In the absence of any provision in the Act for the payment of such allowances, they assumed their respective offices knowing full well that they were not to get any honorarium, or allowances until and unless the Act was amended.

9. Payment of honorarium and allowances are not matters which can be termed

 

as unforeseen so as to invoke the residuary phrase relied on by Shri Dubey. Members of the Legislature themselves draw their allowances under a legislative enactment. The framers of the law cannot be supposed to be unmindful of the fact that the Mayor, the Deputy Mayor, and the Corporators will be discharging certain functions. If the legislature intended payment of any such allowances it would have made a clear provision in section 88 just as it did for salaries, allowances and contributions to pensions and leave salaries of the Commissioner and salaries and allowances of Municipal Officers and servants and compassionate gratuities etc., and salaries and fees of experts. Since Shri Dubey has been unable to demonstrate that the allowances were resolved to be paid in order to carry the Act into effect, his contention has no merit.

10. Learned counsel for the Corporation tells us that such allowances are paid by the Bombay Municipal Corporation. Shri Patankar in reply informs us that no such allowances are paid by the Madras Municipal Corporation or the Calcutta Municipal Corporation. Such arguments have no worth. In Bombay, honorarium and allowances are paid under the "Councillor''s Honorarium and Allowances Rules, 1958" made in exercise of the powers conferred by section 37-A of the Bombay Municipal Corporation Act. In Calcutta and Madras there is no provision in their Corporation Acts for payment of such allowances.

11. Our attention is also called to section 433 (5) (j). Section 433 confers a rule-making power on the Corporation and sub-section 5 (j) empowers it to make rules in respect of "conveyance allowances payable to Corporation Officers". Since it is no body''s case that the Corporation has made rules u/s 433, it is unnecessary to consider whether the Mayor, the Deputy-Mayor and Corporators are "Corporation Officers." The first requirement of that section is that there must be a previous publication in the Government Gazette, and the second is that the rules must be for the purpose of carrying into effect the provisions of the Act. Shri Dubey does not call in aid any other section of the Act.

12. It is stated in Antieau''s Municipal Corporation Law, Vol. 2, at page 425:-

"It must always be kept in mind that a Municipal Corporation must have authority or power to spend for particular purposes or properties. Absent such power, spending by the Municipal Corporation will be denied. Hundreds of illustrations abound in the reports,"

The learned author observes at page 448:-

"An appropriation of money by a corporation, to be lawful must be to an object or for a purpose that is not only beneficial to the interests of the inhabitants of the city, but it must also be to an object and for a purpose which belongs to, or is directly connected with the local government there-of.

And at the end of the Chapter, he states on the authority of decided cases:

"Where municipal officers made illegal disbursements, the corporation is generally entitled to have them made good by the. disbursing officer or his surety, and the city can often recover on trust theories from the recipient of an unlawful municipal expenditure. Most cases hold public officers liable for the loss of municipal funds entrusted to them though they were not at fault, although there is authority that they should be held personally liable only upon proof of negligence."

For these reasons the impugned resolution must be struck down.

13. In this petition the right of certain corporators to vote on the impugned resolution was also challenged, but in the very beginning Shri Patankar abandoned that part of his case and told us that he did not press for any relief or decision on it.

14 Shri Dubey raises two preliminary objections. He urges that the petition is not competent in asmuch as all the members of the corporation are not joined as parties although their interests are involved. This objection must be over-ruled on the short ground that what is challenged in the petition is an action of the-Corporation as such. It is the Corporation which is sought to be ordered not to appropriate the municipal funds in making payments by virtue of its impugned resulution. Merely because the corporators were, or were to be, the recipients of these allowances it was not necessary to make them parties. The second objection is that the Corporation should have been made a party as such and not "municipal Corporation Gwalior through the Commissioner," This objection is too technical and is of no consequence. The Corporation is a juristic person and it has to act through human agency, Essentially the first respondent named in this petition is the ''''municipal Corporation". Section 400 of the Act names the Commissioner as empowered to institute and defend legal proceedings and to obtain legal advice. Respondent No 2 is the Commissioner himself. The return which has been filed is on behalf of both the Corporation and the Commissioner. This objection also must, therefore be rejected.

15. The impugned resolution was passed by the Corporation after turning down the objection to the validity of the resolution As such, I would allow costs to the petitioner.

16. In the result, this petition is accepted The impugned resolution (No 48 on the agenda dated 22-7-1958) passed on December 3. 1958 whereby it was decided to give allowances to the Mayor, the Deputy Mayor, the Chairman of the Standing Committee and the Corporators is declared ultra vires of, and in excess of the powers of the Municipal Corporation conferred by the M.B. Municipal Corporation Act, 1956. A mandamus shall go to the Municipal Corporation Gwalior and to its Commissioner directing them to reat the said resolution as null and void and not to make any payment in pursuance there of. The petitioner shall get his costs from the Corporation respondent No 2. Counsel''s fee Rs. 100/-

A. H. Khan, J.

17. I agree.