
(2013) 09 GUJ CK 0027

In the Gujarat High Court

Case No : C.A. No. 4442 of 2013 in Miscellaneous Civil Application (Stamp Number) No. 813 of 2013 in S.C.A. No. 23861 of 2007

Keshod Municipality

APPELLANT

Vs

Mulubhai Jiva Garchar and Others

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 140 FLR 263 : (2013) 4 LLJ 272

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Dipal R. Ravaiya, for the Appellant; P.C. Fernandez, Balkrishna Acharya and A.S. Supehia, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocate for the parties. The counsel appearing for the workmen seriously contended that the delay itself is not required to be condoned and main matter be required to be rejected as no ground for condonation is made out and pendency of this application and proceedings are treated as said order for not doing the needful in favour of the workmen, which the Municipality is supposed to do as per the order passed by this Court.

2. The Court also noted from the order-sheet that on 23rd August, 2013 when the matter was listed, learned advocate for the applicant has remained present and it was required to be adjourned to 10th September, 2013 and again on 10th September, 2013 the matter was required to be adjourned, as the Court had to record that the learned advocate for the applicant had not remained present and it was adjourned to 16th September. 2013.

3. The facts in brief to filing of this application indicate that the group of matters between Keshod Municipality and its workmen were pending in respect of the challenge to the award passed by the Labour Court, wherein the workmen were

ordered to be regularized on account of their establishing their case under the provision of Industrial Disputes Act, 1947. This Court on 15th October, 2012 recorded specific statement of the advocate representing the Municipality that he has received instructions from Mr. N.N. Patel, Chief Officer, that Keshod Municipality would make proposal in terms of the Labour Courts order impugned in the application in view of the order passed by this Court on 30th November, 1997 and in view of the observation of the Supreme Court in case of Secy., Secretary, State of Karnataka and Others Vs. Umadevi and Others, : Secretary, State of Karnataka and Others Vs. Umadevi and Others, Secretary, State of Karnataka and Others Vs. Umadevi and Others, This order was passed on as it is stated hereinabove on 15th October, 2012. Thereafter, as per the say of the applicant in this application, the correspondence exchanged between the counsel for opinion and ultimately the say of the then Chief Officer was obtained, who said that he had never instructed the advocate to make such statement before the Court and hence, the review is filed. In filing the review, delay of 146 days is prayed to be condoned by way of this application.

4. Learned counsel for the applicant respondent in this application contended that the earlier order dated 30th November, 2007 had been passed by this Court, wherein also the Court clearly recorded that the Municipality was prepared to send proposal for consideration and the matter was adjourned. Therefore, the workmen, who have received order in their favour in the proceedings in the reference of order in the year 2007, wherein the benefits are to be given from 7th February, 2000 are denied and the legitimate dues and benefits for no fault on their part are also denied. The Court therefore, may reject this delay condonation application as no ground is made out for condoning the delay nor have they made out any case for even recalling the order passed by this Court as the averments made in this application and application for recalling the order do not indicate any positive approach on the part of the authorities. In absence of any proper affidavit from the concerned, the Court may not accept the say of the deponent present Chief Officer only as the affidavit of Shri N.N. Patel, the then Chief Officer, who is said to have been instructing at the relevant time, through advocate is also not filed.

5. This Court is of the considered view that ordinarily when such is the case, the delay of 146 days could have been condoned and the matter could have been taken for disposal on merits. But, the condonation of delay and posting the matter for further hearing is protract the agony of the workmen for no fault on their part and it would amount to putting premium on the conduct of the applicant and Municipality. The Municipality has evinced a very casual approach in respect of the order passed by the Labour Court. There is a competent Court for adjudicating such type of controversies. The lack of regard noticeable in respect of the Labour Courts order is also required to be noticed so far as their conduct in this Court is concerned.

6. The Court is of the considered view that this Court shall laid into passing order on 30th November, 2007 and the Court had passed the following order.

1. Learned Advocate Mr. AS Supehia for respondent workmen, under the instructions from Shri Kanaiyalal Keshavlal, submits that the Director of Municipalities is prepared to consider the case of the workmen for regularization. He however submits that some proposal has to be sent by the petitioner Municipality and thereafter, Director of Municipalities may consider the case of the workmen for regularization.

2. Learned Advocate Mr. Dipak Sanchela appearing SCA/23861/2007 for the petitioner Municipality submits that the petitioner is prepared to send name of respondent workmen for consideration of the Director as suggested by the learned Advocate Mr. Supehia within one month. However, it is open for the respondent workmen to approach the Director of Municipalities with a request to consider their case for regularization. As and when such request made by the respondent workmen to the Director of Municipalities is received by the said authority, Director of Municipalities will consider the same in accordance with law.

3. Therefore, in above view of the matter, the matters are adjourned to 27.12.2007.

4. Direct Service is Permitted.

7. A close perusal of the aforesaid order also indicate that there the Municipalities advocate has in unequivocal terms submitted before the Court that the applicant-Municipality was prepared to send name of respondent workmen for consideration to Director as suggested by the learned advocate Mr. Supehia within one month. This was the approach of the Municipality way back on 30th November, 2007 and till the matter was taken-up for hearing on 15th October, 2012, but nothing had happened. The workmen infact in solemn hope of getting results of the litigation even gave up their right to insist upon continuation of the award in its original term under which the labour Court has straight way ordered requisition, which was inconsonance with the provision of Industrial Disputes Act, 1947 and the observation of the Supreme Court in case of Secy., State of Karnataka v. Umadevi (supra) would not have helped the Municipality-employer in any manner. Despite this, the workmen appears to have given consent for modification only on account of the assurance recorded on behalf of the Municipality. Therefore, when the workmen acted to their detriment on account of the assurance recorded in the order, the same cannot be recalled or sought to be recalled in a very casual manner as it is evinced in the conduct of the Municipality. The Court hastened to add here that had there been any substance in whatever is pleaded for recalling of the order then nothing prevented Municipality from placing on record the appropriate affidavit of the then Chief Officer Shri N.N. Patel, whose name has been specifically mentioned in the order, and for that matter even the advocate concerned. The fact remains to be noted that on earlier occasion also, as it is stated hereinabove when this Court had

passed order on 30th November, 2007 similar submissions were made and assurance were held out on behalf of the Municipality. There exists no explanation whatsoever qua the assurance recorded by the Court on 30th November, 2007. The Court is therefore, of the considered view that the Municipality applicant hereinabove is only interested in unduly prolonging the litigation and under the guise thereof interested in denying what is otherwise legitimate view to the workmen as even modified order also does not deprive the workmen of their right of being regularized only subject to the decision by the competent authority.

8. In my view, even if the delay was condoned, the matter did not deserve any acceptance or recalling nor would it merit consideration for recalling the order and therefore, the matter is required to be rejected, as no ground is made out for condoning the delay or even recalling the order, as the averments do not inspire any confidence whatsoever. Hence, the application is rejected. There shall be no order as to costs.

9. No orders in Misc. Civil Application no. 813 of 2013 in Special Civil Application no. 23861 of 2007, in view of the order passed in Civil Application No. 4442 of 2013. The office is directed to place copy of this order in each matter.