(2002) 10 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 7619 of 2002

Lathi Nagarpalika Karmachari Mandal APPELLANT

Vs

Lathi Nagar Palika RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:
Gujarat Municipalities Act, 1963 — Section 260

Citation : (2003) 4 GLR 386

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : T.R. Mishra, for the Appellant; Dhiren Mehta, for P.V. Hathi and R.V. Desai, AGP, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Shah, J.—The petition is filed on behalf of the employees of the Lathi Municipality (hereinafter referred to as "the respondent Municipality"). It is the case of the petitioners that in 1998 the employees of the respondent Municipality were granted the benefit of the fifth Pay Commission pay scales w.e.f. 1.1.1996 and now the Chief Officer of the Municipality proposes to take away that benefit in view of the instructions issued by the Director of Municipalities, Gujarat State on 23-7-2002.

The learned counsel for the petitioner has referred to the decision dated 30-7-2002 of this Court in Special Civil Application No. 3532 of 2002 in support of the contention that even if the staff expenditure is in excess of 45%, the permanent employees who are appointed on the sanctioned set-up of the Municipality need not be made to suffer if the excess takes place on account of recruitment of daily wagers or regularizations of daily wagers. The learned counsel for the petitioner has submitted that the Chief Officer had no power to reduce the pay scales once the pay scales were given by the Municipality.

1A. It is further submitted by Mr Mishra for the petitioners that the members of the petitioner-association are permanent employees of the Municipality for whose salary, the respondents cannot fix any upper limit by way of percentage of income of the Municipality. Mr Mishra has heavily relied on the report of the Fifth Pay Commission and submitted that the Commission had considered the question of paucity of finances and, therefore, that defense can not now be raised by the Municipality. It is also submitted that even State Government facing such financial difficulties has not reduced the pay scales of its employees.

2. Mr RV Desai, learned AGP for the Director of Municipalities points out that the Director has issued instructions that the fifth Pay Commission pay scales are not to be paid by a Municipality which is spending more than 45% of its income on the salaries and wages to its employees.

Mr Desai has placed reliance on the decision in Meman Aslam vs. Director of Municipalities, 1994 (1) GLR 446 laying down that in taking any decision u/s 260 of the Act neither the Director nor the Municipality implementing such a decision is required to give hearing to any employee.

Mr Desai learned AGP also points out that the unpaid dues of the GEB are more than Rs. 26 lacs and outstanding loan amount due from the Municipality is more than Rs. 28 lacs as on 1-10-2002.

3. Mr Dhiren Mehta learned counsel for the respondent-Municipality points out from the affidavit in reply that on perusal of the accounts of the last three years, the establishment expenditure for the year 1999-2000 was 78%, for the year 2000-2001 it was 80% and for the year 2001-2002 it was 75% of the total annual income derived by the Nagar Palika from house tax, water tax, octroi/ octroi grant and other miscellaneous income; that from April, 2002 to July, 2002, the Nagar Palika has received an income of Rs. 16,30,243/- as against which the salary bill is Rs. 10,74,606 amounting to 66%. That accordingly the salary bill has always exceeded 45% and has reached far beyond the said limits as stated above. Mr Mehta also points out that even after including the octroi grant and the salary grant in the income of the Municipality as contended by the petitioners, the statement at Annexure D'' shows that as against the Municipality''s income of Rs.47.92 lacs for the year 2001-02, the salary bill of the permanent and daily rated employees was Rs. 31.90 lacs i.e. 66% of the income of the Municipality and, therefore, far in excess of permissible 45% as stipulated by the Director of Municipalities. It is pointed out that even taking the salary bill of only the permanent employees in the regular sanctioned set-up, the salary bill is more than 50% of the income of the Municipality.

4. Section 260 of the Gujarat Municipalities Act, reads as under:-

260. Power of Director to prevent extravagance in the employment of establishment:

If in the opinion of the Director the number of persons who are employed by a municipality as officers or servants, or whom a municipality proposes to employ or the remuneration assigned by the municipality to those persons or to any particular person is excessive the municipality shall, on the requirement of the Director reduce the number of the said persons or the remuneration of the said person or persons.

Provided that the municipality may appeal against any such requirement to the State Government whose decision shall be conclusive.

The underlined words clearly show that the Director of Municipalities is vested with the power to instruct the Municipality to reduce the remuneration to the persons who are employed by a Municipality as officers or servants. The contention that the Chief Officer cannot pass the order is, therefore, without authority as the Municipality itself is bound to comply with the direction of the Director of Municipalities u/s 260 of the Act.

5. So also it is not possible to accept the contention that Section 260 of the Act does not apply to the salary of the regularly appointed staff on the sanctioned set up of the Municipality. The title of Section 260 states in unmistakable terms that the section confers power on the Director to prevent extravagance in the employment of the establishment i.e. the staff. The section also recognizes that such extravagance can take place by the Municipality employing staff in excess of its requirements or by payment of excessive remuneration to the staff, even if there is no overstaffing or by both overstaffing and excessive payment. Excessiveness or unreasonableness will obviously have to be judged with reference to the availability of funds with the Municipality. The Director can, therefore, examine all the facets.

6. As regards the contention about the alleged violation of principles of natural justice, a Division Bench of this Court in Meman Aslam Hussain G. and Others Vs. Director of Municipalities and Another, has already considered the provisions of Section 260 of the ACt and held that neither the Director issuing the direction u/s 260 of the Act or the Municipality implementing such decision is required to give any opportunity of hearing to the employees. It has been held in the said decision as under :-

"The Director merely takes an administrative or management decision which ordinarily should be taken by the Municipality itself, as to what should be the strength of the staff and what measures should be taken to reduce the excessive staff or prevent extravagant employment. When the Municipality has failed to act in a prudent manner, the Director is enabled to issue directions to the Municipality to achieve these purposes which are purely management functions and policy decisions. In taking such decisions, the Municipality is not required to give any hearing nor the Director is required to give hearing to any employee. The decision of the Director does not directly affect any particular employee. Therefore, there is no question of giving any hearing to such person and there is no violation of principles of natural justice."

This decision does not appear to have been brought to the notice of the learned

Single Judge while deciding Special Civil Application No. 3532 of 2002. Hence, this Court is bound by the decision of the Division bench in Meman Aslam''s case (Supra).

7. By now it is well settled that the principles of natural justice are not in a straight jacket formula and their application depends on the facts and circumstances of the case. As indicated hereinabove, the object of the instructions is to prevent the Municipality from indulging into extravagance expenditure on the staff. Whether the expenditure can be controlled by reduction of the staff or by reduction of the salary or by both is a matter which is to be looked into by the Director of Municipalities. In any case, the permanent employees are also being given an opportunity to make appropriate representation to the Director of Municipalities but till then the funds of the Municipality need not be saddled with the excessive liability for which the limit is now fixed by the Director of Municipalities exercising statutory powers u/s 260 of the Act.

8. As regards the contention that there are other employees like daily wager employees whose salary bill takes the salary amounts beyond 50% and, therefore, the permanent employees should not suffer, it is to be noted that the instructions are issued by the Director of Municipalities with the wholesome purpose that the substantial income of the Municipality should not be spent on salary of the employees, otherwise very little amount will be left for providing services to the residents in the town for whose benefit the Municipality is constituted. If the Director of Municipalities, who has been vested with the statutory powers u/s 260 of the Act, has taken the policy decision that 45% is the reasonable percentage beyond which the Municipality should not spend for the salaries and wages of its employees, no fault can be found with such decision and the said percentage would, therefore, include the salaries and wages payable to all the employees irrespective of their status whether they are permanent or temporary or daily wagers.

It is not the case of the petitioners herein that they are prepared to do the work of the daily wagers and, therefore, the daily wagers'' services would not be required. As indicated hereinafter, the issue is not closed. The Director of Municipalities will finally examine the matter in the totality of the facts and circumstances of the case and, therefore, the protection claimed by the petitioners is not required to be granted till the Director finally decides the matter.

9. If the Municipality wants to make appointment of employees in excess of the sanctioned set-up or even on the sanctioned set up, the Municipality will have to obtain the permission of the Director u/s 260 of the Act for appointment/ remuneration and while considering such proposal, the Director of Municipalities will have to consider whether the proposal of the Municipality is reasonable or not and to what extent it is required to be accepted. In case the Municipality itself does not make any proposal, but the permanent employees are of the view that on account of excessive and illegal recruitment of the daily wagers, the

Municipality has to spend more than the required amounts of salaries and wages to the daily wagers and other illegally recruited persons, it would be open to such permanent employees to submit a joint representation to the Director of Municipalities and in such a case also, the Director of Municipalities shall consider such representation after giving an opportunity of hearing to the Municipality as expeditiously as possible and preferably within six months, but the Municipality is not required to continue to pay salary as per the fifth Pay Commission pay scales until such exercise is undertaken and final decision is taken by the Director of Municipalities.

9A The submission of Mr Mishra for the petitioners that the Fifth Pay Commission had considered the question of paucity of income cannot be accepted. The Commission did not have the particulars of the income and expenses and liabilities of Municipalities, much less of the respondent-Municipality. Mr Mishra has not pointed out anything from the Fifth Pay Commission report where the Commission has indicated that the prescribed pay scales should be paid to the employees even if giving such pay scales means spending more than 45% or 50% of the revenue income of a public sector employer, and that residents in the town may be deprived of the basic civic amenities and social services which a local self government body is required to provide. If any pay commission were to make such a recommendation, it would be unreasonable. Further, there is nothing on record to show that the State Government spends more than 45% of its income on the establishment. Hence the entire submission is misconceived. In any case, in view of the provisions of Section 260 of the Act, the exercise of the powers thereunder by the Director cannot be said to be illegal or arbitrary. In this connection, the Court would like to refer to the principles laid down by the Apex Court in State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, that the employer''s capacity to pay is an important factor which has to be kept in mind while evolving pay structure for the employees. Ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay scales. In the case of State of Haryana (supra), the Apex Court even held that comparison by a section of employees of the State Government with employees of the Central Government based merely on designation of the posts was misconceived.

10. While considering the question whether the expenditure incurred by the Municipality on its staff is excessive (for which the Director has presently fixed the limit at 45% of the income of the Municipality), the Director shall consider, inter alia, the following aspects:-

(i) While computing the income of the Municipality, its revenue income, octroi grant and salary grant being received by the Municipality from the Government/ Municipal Finance Board shall be taken into consideration.

(ii) While computing the salary bill of the Municipality, the salary and allowances paid/payable to the employees on the sanctioned set up as well as other set up and to daily wager employees shall also be taken into consideration, with the break-up of regularly appointed employees on the sanctioned set up, those not on the sanctioned set up but appointed with the sanction of the Director of Municipalities and thirdly daily wagers appointed or regularized without the sanction of the Director of Municipalities.

(iii) The Director of Municipalities shall also consider the suggestion being made on behalf of the petitioners that when the Municipality is required to pay the salary to the Chief Officer in the Fifth Pay Commission pay-scales, it would be discriminatory to direct the Municipality not to pay such pay-scales to other employees. It will be open to the Director to consider the above and suggest to the Government to reimburse to the Municipality difference between the salary payable to the Chief Officer as per the 5th Pay Commission pay-scales and the salary payable to the Chief Officer as per the 4th Pay Commission pay-scales.

(iv) The directions dated 23.7.2002 of the Director for withdrawing the 5th Pay Commission pay-scales are with prospective effect and not with retrospective effect. Hence, the directions are issued only for the limited purpose of stopping the payment of salaries in the Fifth Pay Commission with future effect. Hence, dismissal of the petition by this Court shall not be construed as requiring the Municipality to recover the amounts already paid to the employees in the past on the basis of Fifth Pay Commission pay-scales.

(v) Even where the present income of the Municipality may not be sufficient to pay its employees salaries in the fifth Pay Commission pay scales, the Director shall not merely stop at giving such findings, but shall take steps; at an appropriate time and stage, and after consultation with the appropriate authorities and bodies, for suggesting ways and means of increasing the income of the Municipality/ies including recommendations to the State Government for introducing and/or amending the relevant statutory rules for fixing the minimum rates of taxation u/s 104 of the Gujarat Municipalities Act, 1963.

(vi) The Director shall reserve liberty to the Municipality that after an adequate increase in the revenue income of the Municipality, it will be open to the Municipality to reconsider the matter and to submit a fresh proposal to the Director of Municipalities with full justification for enhancing the pay scales for its employees.

11. Subject to the aforesaid directions, the petition is accordingly dismissed. Notice is discharged. Ad-interim relief granted earlier stands vacated.

12. At this stage, the learned counsel for the petitioner prays that the ad-interim relief granted earlier may be continued for some time in order to enable the petitioner to have further recourse in accordance with law. The learned AGP and the learned counsel for the Municipality oppose the request.

13. In view of the fact that continuation of the ad-interim relief would mean directing the Municipality to incur an unreasonable portion of its income on the staff salary, the ad-interim relief does not deserve to be continued, particularly

when the Court has found that the petition deserves to be dismissed and is dismissed.