

(2017) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : Review Petition No. 447 of 2016

Omprakash Kukreja

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 173, 174, 174(1), 184, 184(1), 184(2)(a), 403

Citation : (2017) 1 MPWN 329

Hon'ble Judges : Sheel Nagu and S.A. Dharmadhikari, JJ.

Bench : Division Bench

Advocate : Shri Amit Bansal, Advocate, for the Petitioner; Shri Ankur Maheshwari, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Dismissed

Judgement

1. The present petition seeks review of final order dated 9/9/2016 passed in Writ Appeal No. 290/16, which has been disposed of in following terms:-

"In view of the liberty prayed for by learned counsel for the appellant to approach the Appellate Authority against the demand notices dated 27/03/2016, we deem it appropriate to direct that in case the appellant files an appeal under Section 184 of the Act before the Appeal Committee within a period of ten days from the date of receipt of certified copy of the order passed today, the Appeal Committee shall decide the appeal by a speaking order within a period of one month from the date of receipt of such appeal. The respondent- Corporation is directed to open the premises of the appellant. However, the Municipal Corporation would be at liberty to issue an order of attachment in respect of the property of the appellant during the pendency of the appeal before the appellate authority. Accordingly, the order dated 21/07/2016, passed by the learned Single Judge is modified."

2. The above reveals that on the prayer made by the appellant, the writ appeal while being disposed of, liberty was extended to the appellant to prefer an appeal

under Section 184 of the M.P. Municipal Corporation Act, 1956, for brevity the 1956 Act, before Appeal Committee within a period of 10 days and with corresponding direction to the said Committee to decide the same by a speaking order.

3. The appellant is now before this court seeking review that since the objection, R/2 preferred by the petitioner in response to the notice under Section 174 of the 1956 Act had not been decided, grant of the liberty is futile in view of the statutory bar contained in Section 184(2)(a) of the 1956 Act, which reads thus:-

"184. Appeals.-

(1) Appeals against any notice of demand issued under sub section (1) of section 174 may be made to the Appeal Committee constituted under section 403 and in the manner prescribed therein. Provided that the appeal shall not be entertained unless the sum due under section 174 is deposited in the Corporation and a copy of the receipt is enclosed with the appeal memo.

(2) No such appeal shall be heard had determined unless-

(a) a written objection has been made and determined in accordance with the provisions of this act; and

(b) the amount claimed from the appellant has been deposited by him in the municipality office, and a receipt thereof has been filed with a memo of appeal."

4. On the other hand, learned counsel for the respondents No. 2 and 3 submits that the said objection of the petitioner to the notice dated 15/2/16 was decided on 16/3/2016 and thus the respondents seek dismissal of the present review-petition.

5. From bare perusal of the above said provisions contained in Section 184 reveals that there are two restrictions to the entertainment, hearing and determination of the appeal. The first relates to the very entertainment of the appeal in the proviso to Section 184(1) by prohibiting entertainment of the appeal in the absence of deposit of the sum due under Section 174. The other restriction is on the hearing and determination of the appeal unless written objection has been made and determined in accordance with provisions of the Act 1956.

5.1 For ready reference and convenience Section 174 is reproduced below:-

"174. If bill not paid within 15 days notice of demand to issue.-

(1) If the sum , for which a bill is presented as aforesaid, is not paid and no objection has been prefer within 15 days from the presentation of the bill, the Commissioner may, serve upon the person to whom such bill has been presented a notice demand in the form prescribed by bye-laws.

(2) For every notice of demand a fee shall be charged at the rate specified in the bye-laws and shall be payable by the said person, and the fee shall be included

in the costs of recovery"

5.2 The making and determination of the written objection provided in Section 184(2)(a) does not in the considered opinion of this court, relate to the objection contemplated in Section 174(1). The reason is obvious. If the written objection mentioned in Section 184(2)(a) is treated to be an objection contemplated in Section 174(1) then that would cause offence to the language used by the statute. Section 174(1) provides that if the sum for which bill is presented, is not paid and no objection is preferred within 15 days from its presentation then the Commissioner is authorised to serve upon the noticee a notice of demand. This section 174(1) deals with the contingency of the failure of the person to make any objection within 15 days. Thus, the provision of Section 174(1) can operate even in the absence of any objection being made to the bill. However, on the other hand, Section 184(2)(a) provides for making and determination of the written objection and does not contemplate a situation where no objection is made. Therefore, the foundational pre-requisites for invocation of Sections 174(1) and 184(2)(a) of the 1956 Act are distinct. Section 174(1) can operate in a situation where no objection is filed whereas Section 184(2)(a) cannot operate in the absence of any objection. In fact, Section 184(2)(a) clearly provides that written objection should not only be made but also determined to enable the appellate authority to hear and decide the appeal.

5.3 If the argument of the petitioner is accepted, then a noticee, by not filing an objection to the bill u/S. 174(1) can frustrate and render the remedy of appeal u/S 184, otios. It is trite that an interpretation which frustrates the scheme of the statute and renders a part of the same unworkable, ought to be avoided.

5.4 In view of the above discussions, it is crystal clear that the expression "written objection" found in section 184(2)(a) does not mean "objection" contemplated by Section 174(1) of 1956 Act.

5.5. Learned counsel for the petitioner has placed reliance on the single bench decision of this court in the case of Dhanya Kumar Dharamdas Agarwal & others v. State of M.P. And others reported in 1999(2) MPLJ 56. A perusal of the said judgment reveals that the single bench has held that so long as the objections under Section 174 of the Act are not decided, the Corporation shall not be entitled to exercise power under Section 174 of the Act of issuance of notice of demand and thus analogy was drawn that when no notice of demand is issued in accordance with law, the remedy of appeal under Section 184 of the Act is not available. This court with all the humility at its command differs with the view of the learned single judge as the said judgment has not considered the impact of, intentional non-filing of the objections u/S. 173/174, upon the work-ability of Section 184 of the Act. Neither the point was raised nor was it considered by the learned single judge that an assessee by intentionally not making an objection u/S. 173/174 of the Act can frustrate the statutory remedy of an appeal u/S. 184. Any such interpretation of a part of statute which renders the other part of the same statute un-workable/otios ought to be avoided. This court is bolstered in

it's view by the decision of the Apex Court in the case of Visitor, Amu and others v. K.S. Misra reported in (2007) 8 SCC 593 wherein in paras 13 and 14 of the said judgment it has been observed as under:-

13. It is well settled principle of interpretation of statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. (See Principles of Statutory Interpretation by Justice G.P. Singh Ninth Edition page 68).

14. The provisions of sub-clause (c) of Statute 61(6) (iv) should be interpreted in a manner which makes the provision workable and not redundant or otiose. It is, therefore, not possible to accept the view taken by the High Court that the provision is directory as in such a case this clause will never come into operation if the employee exercises his option at any point of time before his retirement.

5.6 Thus, the decision of the learned single judge in the case of Dharamdas Agarwal & others (supra) is distinguishable and is of no avail to the petitioner.

5.7 The next question which begs for an answer is that what is this "written objection" contemplated by Section 184(2)(a). In the considered opinion of this court expression "written objection" should mean the objection to the appeal preferred u/S. 184(1) objecting to the hearing and allowing of the appeal. If interpreted in the manner explained above, Section 184(2)(a) shall become meaningful and harmonious to the object behind the statute. More so, the conflict between Section 174 and Section 184(2)(a) would be avoided.

6. In case no appeal is filed by petitioner till date, then the same if preferred within 10 working days of pronouncement of this order shall be considered on merits by the Appellate Committee of the Corporation subject to compliance of pre-requisites u/S.184.

7. In view of the above, this court finds no palpable error in the order under review. The instant review petition therefore fails and is dismissed though for reasons different than the one taken in the order under review.