
(1979) 07 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No. 1139 of 1978

R.C. Jain, etc.

APPELLANT

Vs

Delhi Development Authority, etc.

RESPONDENT

Date of Decision : 27-07-1979

Acts Referred:

Citation : (1980) ILR Delhi 29

Hon'ble Judges : V.S. Deshpande, C.J.; Harish Chandra, J

Bench : Division Bench

Advocate : P.R. Mridual, P.N. Gupta, Aruneshwar Gupta, Vivek Seth, N.S. Sistani, K.N. Kataria and Padam Saxena, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) Is the Delhi Development Authority (DDA) a "local authority" within the meaning of section 3(31) of the General Clauses Act is the question raised by this writ petition. The definition is as follows :

"local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund ; "

"The first part of the definition is clear. A local authority can be identified easily when it is a municipal committee, district board or body of port commissioners. The second part of the definition is divisible into two sub-divisions. If an authority is legally entitled to or entrusted by the Government with the control or management of a municipal fund not much difficulty will arise in identifying local authority because a municipal fund will mean the fund of a municipal committee or a municipal corporation and unless the fund belongs to such local authorities it will not be a municipal fund.

(2) It is with the second sub-division of the second part of this definition that we are concerned. The Dda is of the view that it is a local authority because it is an

authority legally entitled to or entrusted by the Government with the control or management of a "local fund". The crucial question to be discussed will be the meaning of a "local fund".

(3) The Delhi Development Authority was established by the Delhi Development Act, 1957. Under the wide meaning given to the definition of "industry" in section 2(j) of the Industrial Disputes Act, 1947 by the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , the Dda has been taken to be an industry. It is engaged in the production of goods, such as developed land and of service such as development of land. This definition of industry has been incorporated in the Payment of Bonus Act, 1965 because section 2(22) thereof says that the words and expressions used but not defined in that Act and defined in the Industrial Disputes Act, 1947 shall have the meanings respectfully assigned to them in the latter Act. u/s 8 of the Payment of Bonus Act every employee is entitled to be paid by the employer in an accounting year, bonus, in accordance with the provisions of the said Act. Accordingly, the Dda has been paying bonus to its employees for some time. By the impugned circular of 29th February, 1976, however, the employees were informed by the Vice-Chairman of the Authority that the Ministry of Works and Housing on the advice of the Ministry of Law have decided that bonus would no longer be admissible to the employees of the DDA. The payment of bonus to the employees has since then been stopped by the authority.

(4) This stoppage of the payment of bonus by the impugned circular has been assailed by the petitioners who are employees of the said authority. They contend that the Delhi Development Authority is bound to pay bonus u/s 8 of the Payment of Bonus Act to the petitioners and pray that the impugned circular be quashed and the authority be ordered to pay bonus to the petitioners. The Dda has defended the writ petition on the ground that it is exempted from payment of bonus u/s 32(iv) of the Payment of Bonus Act which is as follows :

" EMPLOYEES employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;"

The contention of the Authority is that it is a "local authority" within the meaning of section 32(iv) of the Payment of Bonus Act.

(5) Since the expression "local authority" has not been defined either in the Payment of Bonus Act or the Industrial Disputes Act, the definition of "local authority" given in section 3(31) of the General Clauses Act set out above is applicable to section 32(iv) of the Payment of Bonus Act.

(6) It is not the contention of the authority that the industrial activity carried on by it is by or under the authority of any department of the Central Government. The distinction between the activity or business carried on by the Central Government through one of its own department and by a statutory Corporation or a Government company is well established. A department of the Government

is a part of the Government. A statutory Corporation or a Government company is not a part of the Government. Its identity is different from that of the Government. The Dda created by the Delhi Development Act of 1957 has an identity separate from the Central Government. Section 3(2) of the said Act says that the authority shall be a body corporate with power to acquire, hold and dispose of property and to contract and that it shall by that name sue or be sued. It is thus completely separate from the Government in all respects. The defense is, Therefore, that it is a local authority.

(7) Since it is not a municipal committee it has to be seen whether it is an authority legally entitled to or entrusted by the Government with the control or management of a "local fund". The first enquiry, Therefore, has to be as to the meaning of "local fund" and whether the authority is entitled to or entrusted by the Government to control or manage such a local fund. Since the meaning of "a local fund" is the most ambiguous part of the definition, "local authority" in section 3(31) of the General Clauses Act, which was enacted in 1897, one would have expected some judicial decisions to exist regarding the meaning of "a local fund" inasmuch as the local authority is an important part of the structure of local Government in India and its meaning should have often arisen for the consideration of the courts. Surprisingly enough no such decision was brought to our notice by Shri P. R. Mridul for the petitioners or by Shri N. S. Sistani for the respondents. Not being covered by authority, the question is thus of first impression. We will, Therefore, attempt to arrive at the true meaning of the expression "local fund", firstly by looking to its legislative history and" secondly by construing the meaning of a local authority in the context of the Delhi Development Act as a whole. Legislative History of the phrase "Local Fund" :

(8) Chronologically the first definitions of "local authority" and "local fund" are found in section 3 of the Cattle Tres-pass Act, 1871. they are as follows : " local authority means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area," and

"local fund" means any fund under the control and management of a local authority."

The significant features of this definition are the following : (1) A local authority is invested with the control and administration of certain matters within a specified local area. The word "local" refers to a specified area, such as village or a town. A village Panchayat or a town Municipal Committee would, Therefore, be local authorities because they are invested with control "and administration over these local areas. (2) A local authority exercises the governmental function of administration. It is necessary to note that only the Government or a part of the Government can administer the country or a part of the country or a local area in the country. Formerly, "authorities" meant only the Government or governmental bodies. Subsequent developments have resulted in the creation of many other public bodies created for discharging specified functions. If they are not discharging the function of the Government administration, these bodies would

not be the Government or a local authority. The statutory authorities or corporations not created to exercise the function of administration would not be local authorities. (3) Local fund can be understood only in relation to a local authority. It has no independent existence. There can be no local fund which is not administered by a local authority. The fund is local only because the authority is local. The authority is local because it administers a specified area. Unless so understood, the expression "local fund" can be quite puzzling. For, a fund is money and the adjective "local" can hardly be applied to it. Money existing at a particular place has no meaning separate from money simpliciter. The adjective "local" as applied to fund would be meaningless unless it is understood that the word "local" is a shortened expression for the word "local authority". The true meaning of the expression "local fund" is thus "local authority fund" or a fund controlled or managed by a local authority.

(9) It is in this context that the definition of "local authority" in section 3(31) of the General Clauses Act, 1897 is to be understood. The identity of a local authority with a governmental body invested with the function of administration is further brought out when the local authority is seen as a part of the administration of the country. In Fundamental Rule 9(4) made u/s 96B of the Government of India Act, 1951, and in Treasury Rule 652 framed u/s 151 of the Government of India Act, 1935, the expression "local fund" is said to denote "(i) revenue administered by bodies which by law or rule having the force of law come under the control of the Government, whether in regard to the proceedings Generally, or to specific matters such as the sanctioning of their budgets, sanction to the creation or filling up of particular appointments, the enactment of leave, pension or similar rules; (ii) the revenues of any body which may be specifically notified by the Government as such."

(10) A local fund consists not of any money but only of revenue administered by bodies which are under the (control of the Government for certain purposes. What is "revenue" ? According to the Concise Oxford Dictionary this word has two meanings. A wider meaning is that it is income especially of large amount from any source. But the narrower meaning is that it is the annual income of the state from which public expenses are met. It is in this sense that the expression "inland revenue" in England means taxes and duties. In which of these two senses it is used in these definitions of "local fund" ? The answer has to be that the word "revenue" in defining local fund has been used in the narrower sense. For, section 151 of the Government of India Act enables the Governor General to make rules for the purpose of securing that all moneys received on account of the revenues of the federation or of the province shall be paid into the public amount of the federation or of the province. The phrase "Revenues of the Federation" goes back to the phrase revenue of India used in section Xli of the Government of India Act, 1858. It has been repeated in section 20(3) of the Government of India Act, 1915. Section 136 of the Government of India Act, 1935 says that the meaning of "Revenues of Federation" and "Revenues of Provinces" is that they include "all revenues and public moneys raised or

received by the Federation or by a Province". Since the taxes imposed by the Government constitute a major part of the public revenues, the word "revenue" has acquired a specific meaning.

(11) It is well expressed in the next definition of "local authority" and "funds" found in the Local Authorities Loans Act, 1914. These definitions are as below :

"local authority" means any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area ;"

""funds", used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is entitled to impose, and any property vested in such authority."

They emphasise the following : (A) A local authority is legally entitled to manage a local or municipal fund or to impose any cess, rate, duty or tax within any local area. The distinction between" the receipt of ordinary income and the receipt of income by way of these taxes is clear. It is only the governmental authorities which can impose a cess, rate or a duty or a tax. A local authority being governmental in its nature can, do so within a local area. Other "authority" cannot. (B) The word "funds" in itself may be neutral. It may simply mean a fund of money. But when it is used in relation to a local authority then it means a local or a municipal fund. This is the clearest legislative provision static that the only reason why this fund is called a local fund is that it is managed by a local authority. (C) The local authority is distinct from other authorities by ifs power to impose a cess, rate, duty or a tax. This power can be possessed only by the Government or a local authority but not by other authorities including the statutory corporations.

(12) The local fund is thus a fund which can be controlled and managed only by a local authority and local authority must be governmental in its nature entrusted with the administration of a local area. It is in the context of this meaning of a "local fund" that we have to examine the provisions of the Delhi Development Act to know if, the Dda is a "local authority" within the meaning of section 3(31) of the General Clauses Act.

(13) The Delhi Development Act, 1957 : scrutiny of the provision"s of this Act brings out the following features which militate against the Dda being a local authority. (1) The object of the Act is the development of Delhi according to the plan. Traditionally, this has not been the function of either the Government or of a municipality or any other local authority. For instance, improvement trusts are created by law side by side with municipalities to. develop lands in municipal areas or even outside municipal areas. The very fact that improvement trusts have to be created shows that the functions of the improvement trusts could not have been discharged" by the municipalities. Similarly, the Dda is created to discharge a function which could not have been discharged by a municipality. (2)

The Delhi Development Act, 1957 was enacted almost simultaneously with the Delhi Municipal Corporation. Act, 1957. Since the latter was "a local authority" by definition care would have been taken in drafting the Delhi Development Act to indicate that the Dda is also a local authority if that had been the intention of the legislature. (3) But several sections of the Delhi Development Act throw a contrast or dichotomy between, the Dda on the one hand, and the local authority, on the other. If the Dda was to be a local authority according to the framers of the Delhi Development Act, such a dichotomy would not have appeared in this section. These sections are 12, 15, 21, 30, 31 and 36. In none of them is there the slightest indication, that the Dda is also a local authority. It would have been very confusing for the legislature to have used the word "local authority" to denote the Delhi Municipal Corporation and not to describe the Dda as a local authority if the legislature ever intended the latter to be a local authority. The dichotomy shows that the legislature was sure in its mind that the Dda was not a local authority and, Therefore, it could be contrasted with "local authority" i.e. the Delhi Municipal Corporation in the same provisions of the Act. (4) Section 59 enables the Central Government to dissolve the DDA. Since it is created only for a specific purpose it can be dissolved when the purpose is achieved. This is in contrast with a local authority which is not created for a limited purpose which can be accomplished in a limited time. A local authority is entrusted with administration which is a continuous process and never comes to an end. The dissolution of a local authority is unknown to law. A municipality may be superseded, but only as a temporary measure, for mal-administration. It cannot be said that its purpose is over and then it should, "be dissolved for ever. It is to be noted that the Dda is not entrusted with administration as such but with various other activities. (5) There is a distinction between, the meanings of the "State" in political science and, Therefore, in the Constitution on the one hand, and in Article 12 and Part Iv of the Constitution on the other. In, its natural sense the State consists of the legislature and the executive and the latter administers the country or an area. Local authority takes up this function of the State in, a limited area. On the other hand, the meaning of State in Article 12 and Part Iv of the Constitution is a special meaning for a special purpose. There the concept of State is widened to include not only the Government proper but many other bodies which exercises functions which are public and which in their nature are capable of being discharged by the Government When the scope of the Government has itself become wider in, these days of welfare State. While these statutory Corporations are States for the purpose of Article 12 of the Constitution, they are not either the legislature or the executive for the purpose of the rest of the Constitution. The Dda is such a statutory corporation. It is a State for the purpose of Article 12 but is neither the legislature nor the executive for the purpose of the rest of the Constitution. It is not, Therefore, a local authority because it does not administer Delhi or any area in Delhi. (6) Unlike Delhi Municipal Corporation, which is a local authority for Delhi alone, the Dda can exercise powers in areas outside Delhi such as Ghaziabad, Gurgaon, etc. This is inconsistent with the concept of local authority which has to be confined to a

local area. (7) The receipts into the fund of the Dda have been described in section 23 of the Delhi Development Act. Apart from the grants and loans given by the Central Government the moneys received by the Authority are commercial in their nature. This is in contrast to the nature of receipt of a local authority. The expenses of the administration carried on by the local authority are met out of the fund of the local authority. To finance this fund the local authority is given the power to impose "any cess, rate, duty or tax". It is these receipts which can be called "revenue". The local authority can impose these imports because it has governmental power. The fund of the local authority briefly called local fund is different from "all other funds" because it consists of such imposts and taxes which can be levied only by a local authority, because it has this peculiarly governmental power. The fund of the Dda does not receive any such duties or taxes because the Dda does not have any power to levy them. It is the absence of such a power in the Dda which shows that the Dda is not a governmental authority and thus not a local authority. (8) To sum up, a local authority has the power of administration of a local area in respect of specified matters. These powers are concerned with the administration of a local area. With such a local authority may be contrasted with all other authorities which may be "State" under Article 12 of the Constitution but which do not have the power of administration. The Dda is such an authority which does not have power of administration. It is not, Therefore, a local authority.

(14) Conclusion of Law : The Dda is not, Therefore, exempted from the application of the Payment of Bonus Act by virtue of section 32(iv) of the Payment of Bonus Act.

(15) Question of Policy : As was pointed out in *Shri C. N. Sharma v. Life Insurance Corporation*, 2nd (1979) 1 Del 525, the question whether bonus should be payable to the employees in a particular industry is a question of policy. Such policy has to take into account various factors such as (i) The contribution made by labour to the total production in the country and the share in the distribution of wealth to which the labour as a whole is entitled in the country. This subject has been discussed in the report of the National Commission on Labour. At the time the report was submitted the increase in the share of labour in the national distribution of wealth was not proportionate to the total increase in the production, of wealth in the country. (ii) A national policy of income, wages and prices has to be evolved as stated in the report of the Bhoothalingam Committee. The wages payable in one industry have to be seen in the perspective of wages paid in other industries. Distortion by which disproportionately high or disproportionately low wages are paid to the employees in a particular industry as viewed in the national perspective has to be corrected. (iii) The capacity of the particular industry to pay bonus is also to be considered.

(16) When the Central Government and the Dda decided to discontinue payment of bonus to the employees of the Dda, they must have in mind such policy

considerations. The policy behind the decision is for the Government to shape. The implementation of the policy has to be done, however, according to law. In considering the legal means of implementation a comparatively easy line of action was sought to be taken by discontinuing the payment of bonus on the ground that the Dda is a local authority exempted from payment of bonus u/s 32(iv) of the Payment of Bonus Act. This line of thinking is shown to be untenable.

(17) For the above reason's, the writ petition is allowed and the impugned circular, dated 29th February, 1976 is quashed. It is for the Dda and the Central Government to work out the details of payment of bonus to the petitioners. There will be no order as to costs.