(1979) 08 GUJ CK 0008

In the Gujarat High Court

Case No : First Appeal No. 760 of 1973

State of Gujarat APPELLANT

Vs

Cambay Municipality RESPONDENT

Date of Decision : 25-08-1979

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 262(1), 262(2), 262(3)

Citation : AIR 1980 Guj 84 : (1980) 21 GLR 440

Hon'ble Judges : N.H. Bhatt, J;M.K. Shah, J

Bench : Division Bench

Advocate : R.H. Mehta, Asstt. Govt. Pleader, for the Appellant; S.K. Zaveri, for the Respondent

Judgement

Bhatt, J.

1-9. (xxxxx).

10. Mr. Mehta, however, verv strongly pressed into service the provisions of Section 262 of the Act, sub-section (lY of which is reproduced below:--

"262(1). When the State Government is informed, on complaint made or otherwise, that default, has been made in the performance of any duty imposed on a municipality by or under this Act or by or under an enactment for the time being in force, the State Government, if satisfied after due enquiry that the alleged default has been made, may direct the director to fix a period for the performance of that duty".

Relying heavilyupon the general controlling power of the State Government, Mr. Mehta urged that u/s 41 of the Primary Education Act, 1947, it is the dutv of every non-authorised municipality - Cambay municipality is a non authorised municipality and there is no controversy in this regard - "to Pay annually to every District School Board

.... for the purpose of primary education such proportion of the rateable value of Pr4erties in the area of the municipality as may from time to time be fixed in this behalf by the State Government and the income accruing from any funds (including trust funds) held and all moneys received by it for the said purposes". It cannot be denied that u/s 41 of the said Act, the respondent municipality was under a statutory obligation to make payment of the primary education contribution. If it be so, u/s 262 of the Gujarat Municipalities Act, which is quoted above, the State Government can get that duty of the municipality enforced. Section 262(1) of the Act is general in character. As and when the State Government comes to know through any source that the municipality has commented default in the Performance Of any of its duties imposed either under the Gujarat Municipalities Act or under any special enactment for the time being in force, the Government can set in motion the machinery contemplated in Section 262(1) of the Act in order to see that the said duty is duly done. The procure however, is well laid down in sub-s. (1) of S. 262, The State Government, before it proceeds further, has to hold a "due enquiry" about the alleged default and at the conclusion of the said due enquiry to be held in consonance with the Principles of natural justice, the State Government has to be satisfied that the alleged default has been committed. The next step that has to be taken by the State ''Government is to direct its Director to fix the period for the performance of the duty. The performance of duties contemplated by sub-s. (1) of S. 262 may be of a variegated character. Some duties may be such for which a special deputy will be required .to be appointed. For example, construction of latrines, keeping the public street open, getting sewage cleared, etc. Such a work cannot be done by the Government itself or by the Director. Such work is to be carried out through some agency and for that purpose some agency will be required to be appointed and under S. 262(2) the Director can appoint some such agency to perform it. The expenses of the performance of that duty and the remuneration of that agency, if any, naturally will be the liability of the municipality, to realise which a procedure has been contemplated in S. 262(3) of the Act. However, if there be any such duty, which can be got performed by the State Government through its Director without incurring any expenses or without ralsing the liability of any remuneration, the Government can get that duty discharged or performed under the general Power$ of S. 262(1) of the Act.

11. Mr. Zaveri for the respondent Municipality, however, very vehemently contended that because of the subsequent provisions of sub-secs. (2) and (3) of Section 262 of the Act, the scope and ambit of sub-section (1) should be treated as limited in character. In his submission, the Legislature contemplated the appointment of some agency by the Director and the involvement of expenses and remuneration went to suggest very clearly that some step through the intervention of some such third agency was the sine qua non of the discharge of the duty Or the performance of the duty contemplated by sub~ (1) to Section 262 of the Act. We are not in a position to accept this submission of Mr. Zaveri because sub-sections M and (3) are procedural in character. The substantive

power, that is conferred on the State Government is to be found in Section 262(1) and if without recourse to those ancillary and subsequent -steps the said power could be exercised, it is perfectly within the competence of the State Government to act under sub-section (1) of Section 262.

12. Mr. Zaverils second submission was that the statutory liability of the municipality to make contribution towards the primary education fund put at the disposal of the District School Board is referring to a- corresponding right of the District School Board and this for all practical purposes would be a money dispute between the two corporate statutory bodies and such a money dispute was ordinarily to be resolved by recourse to a civil forum, and the State''s 6pecific,and special powers contemplated in Section 262(1) are not to be necessarily invoked. However, the primary object of Section 262(1) of the Act is to see that all municipalities constituted or deemed to be constituted under the Gujarat Municipalities Act perform their statutory obligations and when the Government as the controlling authority comes to know that any municipality is derelict in any of its functions ''or duties, the Government as the controlling authority has got the power to set the things right. The power to deduct the amounts due from the municipality to the School Board, therefor6, is one of the powers that would squarely fall under the general ambit of Section 262(1) of the Gujarat Municipalities Act. We see no reason to narrow down the import of sub-section (1) of Section 262 which the Legislature has put in general terms. Procedural subsequent provisions are to be interpreted to refer to those cam which involve the incurring of some expenses and raising the liability of remuneration of the agent employed for carrying out certain duties, - out of the numerous duhe!% which could legitimately fall in the wide sphere of sub-section (1) of Section 262 of the Act. We see no reason - much less a compelling reason - to narrow down the natural and ordinary meaning of the text of Section 262(1) of the Act and we, therefore, hold that under law the State Government has got the powerto see that School Board''s dues are paid by the municipality.

13. Coming to the facts of the present case, we have to ultimately hold the issue No. 4 as originally framed by the learned Judge in negative because the provisions of Section 262(1) are violated. Public powers are to be exercised in accordance with law and in the manner laid down by law or not at all. The State Government as a preliminary step should have held a due enquiry and after being satisfied that the lapse had been committed by the municipality, should have asked the Director to fix a reasonable time for the municipality to comply with- the requirement. If this was complied, it was perfectly open to the State Government acting through the director to call upon the Collector to see that the payments are effected mi favour of the District Panchayat, that is, the District Education Committee. That having been not done, the second declaration that has been granted by the learned Judge will stand and consequential injunction prospectively operating also will stand.

14. Appeal dismissed.

