
(2009) 02 GUJ CK 0068
In the Gujarat High Court
Case No : S.C.A. No. 1742 of 2009

Viramgam Municipality

APPELLANT

Vs

Dansig Chaturbhai Vaghela

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Citation : (2009) 121 FLR 579 : (2009) 3 LLJ 465

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Deepak P. Sanchela, for the Appellant;

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—In this petition, the petitioner has brought under challenge, after almost 3 years, an order dated May 9, 2005 passed by

the Controlling Authority directing present petitioner to pay gratuity amount to the tune of Rs. 51,640/- along with interest at the rate of 10% w.

e.f. April 1, 1996.

2. Either from the annexures to the petition or from the averments in the petition, it does not emerge that the petitioner herein carried the order

dated May 9, 2005 passed by the Controlling Authority under the provisions of the Payment of Gratuity Act, 1972 in appeal before the Appellate

Authority under the Act. Not only the petitioner failed to challenge the Controlling Authority's order before the Appellate Authority, but did not

take any steps in connection with the said order and now, after almost 3 years when the Controlling Authority, on account of total inaction on the

part of the petitioner, issued recovery certificate, the petitioner has woken up from slumber and has approached this Court by way of present

petition.

3. It deserves to be mentioned that even the recovery certificate which made the petitioner to rise from its slumber is dated February 29, 2008 i.e.

almost one year old and even the subsequent notice is of May, 2008.

4. In view of the fact that at the relevant time or thereafter the petitioner did not prefer any appeal against the impugned order of the Controlling

Authority and for 3 years it has not taken any action against the order. This petition, now after 3 years, does not deserve to be entertained.

5. Even otherwise, no ground in the petition is made out on merits also against the impugned order. The petitioner has failed to make out either a

case that the respondent is not entitled for gratuity and/or that the direction to pay gratuity is contrary to law or without jurisdiction and/or that the

act does not apply to the appellant. Actually no ground, on merits, against the order is made out and raised in support of the relief prayed for and

against the order. In absence of any substantive ground on merits against the impugned order, the petition does not deserves to be entertained.

6. Mr. Sanchela, learned advocate for the petitioner, has attempted to rely upon some notings made during audit process wherein remarks appear

to have been made with regard to certain payment allegedly made during the period when probably the respondent herein was working in the

Octroi Department. The said remarks also appear to be almost 15 years old inasmuch as it relates to the period of 1993-1994 and the petitioner

appears to have suddenly come across the said audit remarks, now after such a long time. If at all the petitioner has any cause of action on that

basis, the procedure in accordance with law in connection with the said audit objection, could have been taken by the petitioner but the petitioner

has failed on that count also.

7. No ground for interference against the impugned order has been made out. Hence, the petition fails and the same is rejected.