

Municipal Corporation, Jabalpur

Vs

Krishi Upaj Mandi Samiti and Another

Civil Appeal No. 480 of 1986

(K. Jagannatha Shetty, Dr. T.K. Thommen JJ)

25.01.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. This appeal by leave from a judgment of the M.P. High Court concerns the scope of Section 415 of the M.P. Municipal Corporation Act, 1956 ('the Act' for short).

2. The circumstances can be shortly stated :

Within the Jabalpur Municipal Corporation limits, there is a "Mandi" established under the M.P. Krishi Upaj Mandi Adhiniyam, 1973 ('Adhiniyam') covering an area of 55 acres. It is enclosed by high boundary wall and is under the control and jurisdiction of the Krishi Upaj Mandi Samiti or otherwise called the Market Committee. Under Section 7 of the Adhiniyam, the Market Committee is a body corporate with power to provide facilities for regulation of buying and selling of agricultural produce and establishment of proper administration of the market. Section 7(3) of the Adhiniyam provides that "notwithstanding anything contained in any enactment for the time being in force, every Market Committee shall for all purposes, be deemed to be a 'local authority'". Inside the Mandi, the Market Committee appears to have constructed office building, shop complexes, godowns, market yards, shades and office building. The Jabalpur Municipal Corporation assessed property tax in respect of the building within the Mandi area and also demanded safai tax, water tax, electricity charges, development charges for the years 1980-81 to 1983-84. The Market Committee has refused to pay the same and claimed that the Corporation has no jurisdiction to levy and collect such taxes or charges. The Corporation did not agree with that claim and initiated proceedings to recover the dues. Challenging the action taken, the Market Committee moved the High Court under Article 226 of the Constitution for quashing the recovery proceedings. The High Court following an earlier decision arising under Section 334 of the M.P. Municipalities Act, 1961, allowed the petition and quashed recovery proceedings. The High Court also directed the Corporation no take steps in accordance with Section 415 of the Act for resolving the dispute with the Market Committee. The order of the High Court reads as follows :

"Section 415 of the M.P. Municipal Corporation Act, 1956 provides for adjudicating of disputes between the Corporation and local authorities by the State Government on a reference made to it for this purpose. The corresponding provision in the M.P. Municipalities Act, 1961 is Section 334. In a similar situation, where recovery proceedings had been commenced against a Krishi Upaj Mandi Samiti, like the petitioner, by the Municipal Council, Gadawara, a Division Bench in Misc. Petition No. 994 of 1981 (Jawahar Krishi Upaj Mandi Samiti, Gadawara and another)

decided on May 5, 1983 quashed the recovery proceedings and directed the Municipal Council to take steps under Section 334 of the M.P. Municipalities Act, 1961 for adjudication of the dispute between itself and the Krishi Upaj Mandi Samiti. Since Section 415 of the M.P. Municipal Corporation Act, 1956 is in pari materia with Section 334 of the M.P. Municipalities Act, 1961 that decision has to be followed.

Consequently, this petition is allowed. The pending recovery proceedings against the petitioner are quashed and the respondent Municipal Corporation, Jabalpur is directed to take steps in accordance with Section 415 of the M.P. Municipal Corporation Act, 1956 for resolving its dispute with the petitioner. The parties shall bear their own costs."

3. In this appeal, the Municipal Corporation, Jabalpur has challenged the validity of the above order.

4. Before us, the core of the argument of learned counsel for the appellant is that the Market Committee is not a local authority either under the Municipal Corporation Act, or under the M. P. General Clause Act, 1957. It has been declared to be a local authority only for purposes of the Adhinyam and that declaration could not be relevant for the purpose of Section 415 of the Act. The Market Committee unless it falls within the definition of 'local authority' under the M.P. General Clauses Act, 1957, the dispute under Section 415 of the Act could not be referred to the government. Counsel also referred to us the various provisions of the Act which confer power on the Corporation to levy and collect taxes and charges.

5. Indisputably, the respondent is not a local authority as defined under M.P. General Clauses Act, 1957. Section 2(20) of the said Act defines 'local authority' to mean 'a Municipal Corporation, municipality, local board, Janapad Sabha, village panchayat, or other authority legally entitled to, or entrusted by the government with the control of management of a municipal or local fund.'" Counsel for the respondent however, strongly relied upon Section 7 (3) of the Adhinyam which provides that the Market Committee shall be deemed to be a local authority notwithstanding anything contained in any other enactment.

6. It seems to us that it is not necessary to express any opinion on this controversy and even if we assume in favour of the respondent that it is a local authority without deciding, the recovery proceedings could not have been quashed by the High Court. And the Corporation could not have been directed to refer the dispute to the government under Section 415 of the Act.

7. Section 415 of the Act reads :

"415. Disputes between Corporation and local authorities. - If any dispute arises between the Corporation and any local authority as regards anything done or to be done under this Act, it shall be referred to the government for decision and such decision may include an order as to costs of any enquiry ordered by the government, and shall be final :

Provided that it shall be competent to the Corporation and the local authority to agree in writing that any such dispute shall, instead of being referred to the government for decision, be referred to the decision of an arbitrator or arbitrators appointed under the Arbitration Act, 1940, or to a civil court under Section 20 of the Code of Civil Procedure, 1908."

8. The Section is clear and provides that the disputes arising between the Corporation and local authority as regards anything done or to be done under the Act, shall be referred to the government for decision. It shall be competent also to the Corporation and local authority to agree in writing that any such dispute shall, instead of being referred to the government be referred to the decision of an arbitrator under the Arbitration Act or to a civil court under Section 20 of the Code of Civil Procedure. The assessment of tax or demand of any fees by the Corporation under the provisions of the Act could fall within the term "anything done or intended to be done under the Act" as provided under Section 415. Even refusal of the Corporation to consider the objections against assessment and recovery of tax or fees could also be considered as "anything done or intended to be done under the Act". The question however, is whether it would be obligatory for the Corporation in the event of the local authority refusing to pay taxes or fees to approach the government or refer the dispute to the government for decision ? The answer to the question should be in the negative. Section 415 does not provide that the refused to pay the tax or fees levied and demanded. There are also no rules framed by the government regulating the exercise of power under the section and at any rate our attention has been drawn to no statutory rules framed under section.

9. The High Court however, has followed its earlier decision arising under Section 334 of the Municipalities Act. There the dispute arose between the Gadarwara Municipal Council and Mandi Samiti Gadarwara as to the authority of the former to collect taxes and charges from the latter. The Mandi Samiti was an authority constituted like the present Market Committee under Section 7 of the Adhinyam and functioning within the municipal limits. It challenged the recovery proceedings initiated by the Municipal Council and moved the High Court for appropriate relief under Article 226 of the Constitution. The High quashed the recovery proceedings and directed the Municipal Council to approach the government under Section 334 of the Municipalities Act to resolve the dispute. This decision, we think, overlooks the plain terms of Section 334 and even otherwise it is not relevant for operation of Section 415 of the Act.

10. Section 334 of the M.P. Municipalities Act, 1961 reads :

"334. Dispute between council and other local body. - (1) In the event of any dispute arising between a Council and any other local authority established under any State Act on a matter in which they are jointly interested, such dispute shall be referred to the State Government, whole decision shall be final."

Under this section the State Government has framed rules called "Madhya Pradesh Municipalities (Regulation of Relations between Councils and other Local Authorities) Rules, 1971". Rules 2 and 3 are in these terms :

"2. Whenever a Council and any other authority are jointly interested in any matter, such matter shall be settled amicably between them and where they do not come to a mutual agreement, the matter shall be referred to the Collector.

3. The Collector shall then arrange a joint meeting of the Council and local authority and manage to bring about an amicable settlement."

11. The rules thus provide that the dispute in which the Council and local authority are jointly interested in any matter, but not possible to settle the dispute mutually, the matter shall be referred to the Collector. The Collector shall try to bring about an amicable settlement by arranging a joint meeting of both the authorities. Rules 4 and 5 are also relevant in this context and may be read :

"4. If the talk for amicable settlement fails, the Collector shall persuade the Council and the local authority to agree in writing to refer the matter to an arbitrator or arbitrators appointed under the Arbitration Act, 1940 and if they agree, the matter shall be referred to such arbitrator or arbitrators, as the case may be.

5. When the Council and local authority do not agree to refer the matter to arbitration the Collector shall refer the matter to the State Government with his comments on it and the decision of the State Government shall be final."

12. Under Rule 5, it would be for the Collector to refer the matter to the government with his comments, and not for the Municipal Council to approach the government.

13. By comparing the provisions of Section 415 of the Act with Section 334 of Municipalities Act, it will be seen that the structure of the former is different from the latter. Section 415 speaks of dispute between the Corporation and local authority as regards anything done or to be done under the Act. And such a dispute shall be referred to the government for decision. Section 334 refers to a dispute on a matter in which the Municipal Council and local authority are jointly interested and it states that such dispute shall be referred to the State Government for decision. Section 334 does not refer to the dispute as regards "anything done or to be done under the Act". Section 415 does not speak of any dispute in which the Corporation and the local authority are jointly interested. Secondly, there are no rules framed for operation of Section 415 of the Act. In view of the differences the view taken by the High Court that the Corporation must take steps to resolve the dispute cannot be justified. It has apparently no support either from the terms of Section 415 or from any rules framed for the purpose.

14. In the result, we allow the appeal and reverse the judgment of the High Court.

15. In the circumstances of the case, there will be no order as to costs.

</html