

Housing Board of Haryana

Vs

Haryana Housing Board Employees' Union and Others

Civil Appeals Nos. 173-74 of 1995

(Kuldip Singh, S. Saghir Ahmad JJ)

30.10.1995

JUDGMENT

S. SAGHIR AHMAD, J.

1. Whether the Haryana Housing Board is a "Local Authority" within the meaning of Section 32(iv) of the Payment of Bonus Act, 1965 is the question to be decided in these appeals. If it is held that it is a "Local Authority", this Act, namely, the Payment of Bonus Act, would not apply to its employees, as it is provided in Section 32(iv) that it would not apply to those categories of employees (including the employees of the "Local Authority") enumerated, specified and categorised therein.

2. "Local authority" has not been defined in the Payment of Bonus Act, 1965 but it has been defined in section 3(31) of the General Clauses Act, 1897 as under :

"3. (31) '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."

3. Incidentally, "local authority" has also been defined in Section 2(j) of the Haryana Housing Board Act, 1971 as under :

"(j) 'Local authority' means a municipality constituted under the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), or a Gram Panchayat constituted under the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), or a Panchayat Samiti or a Zila Parishad constituted under the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (Punjab Act 3 of 1961), or an Improvement Trust constituted under the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922)."

4. Both the definitions are conclusive in nature and only those bodies including the Municipal Board or a Gram Panchayat etc. will be treated as "local authority" as are mentioned therein. But there is a significant difference inasmuch as the words "authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund" which are found in the definition contained in the General Clauses Act are not found in the definition of "local authority" in the Haryana Housing Board Act, 1971.

5. Concept of "local authority" is also found contained in Entry 5, List II of the Seventh Schedule of the Constitution which provides as under :

"5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

6. The entry empowers the State Legislature to make law with respect to any subject relating to Local Government including the constitution of "local authorities". The State Legislature can also confer such powers as it itself possesses upon a "local authority", including the power of taxation (within the limits of List II) for the purposes of local self-government. The "local authority", undoubtedly, is a representative body but notwithstanding its representative character, it remains a subordinate authority created by a statute and, therefore, it cannot claim the power of taxation which belongs to the State Legislature except to the extent it is conferred upon it by the statute which creates it.

7. The Municipal Committees, the District Boards, Gram Panchayats and Panchayat Samitis etc. represent the units of local self-government where people of a local area govern themselves through their elected representatives in respect of a large number of matters including construction of buildings, roads, parks, lighting of streets, sewerage, conservancy and waterworks etc. These local self-governments, namely, the Municipal Boards and the District Board etc. are constituted under statutory provisions which elaborately provide for the election, through adult franchise, of persons who, on being elected, become members of the Municipal Boards or the District Board. These Boards are basically independent bodies with very little or minimal of Government control and that too in a limited field. They formulate their own policies and implement those policies through the machinery provided under law. They have power to levy panchayat, municipal or other local taxes and have also the power to realise those taxes through coercive processes, if they are not paid immediately on demand. They have also the right to raise, build up and manage their "local funds".

8. Under the basic principle of statutory interpretation, the words "other authority", having been placed in the company of "Municipal Council" and "District Boards" etc. in the definition of "local authority" in the General Clauses Act can be interpreted to mean a 'body' having and possessing, practically all the attributes of a Municipal Board or the District Board so far as their independent existence is concerned.

9. Similarly, in the definition of "local authority" in the Haryana Housing Board Act, 1971, it has been provided that it shall mean the Municipality, Gram Panchayats, Panchayat Samitis, Zila Parishads and Improvement Trusts.

10. It hardly requires to be mentioned that the Municipal Board, the Gram Panchayat or a Panchayat Samiti or a Zila Parishad, or for that matter, Improvement Trust, referred to in this definition are, at least, partially, if not wholly, elected bodies.

11. In *Municipal Corpn. of Delhi v. Birla Cotton, Spg. and Wvg. Mills, Hidayatullah, J.* (as he then was) observed as under :

"Local bodies are subordinate branches of governmental activity. They are democratic institutions managed by the representatives of the people. They function for public purposes and take away a part of the government affairs in local areas. They are political sub-divisions and agencies which exercise a part of State functions. As they are intended to carry on local self-government the power of taxation is a

necessary adjunct to their other powers. They function under the supervision of the Government."

12. In *Valjibhai Muljibhai Soneji v. State of Bombay* the State Trading Corporation was held not to be a local authority within the meaning of Section 3(31) of the General Clauses Act.

13. The aforesaid two cases came to be considered by this Court in *Union of India v. R. C. Jain* in which the question whether the Delhi Development Authority created under the Delhi Development Act, 1957 was a "local authority" within the meaning of Section 32(iv) of the Payment of Bonus Act or not, was involved and on a consideration of all the attributes of the Delhi Development Authority, it was held to be a "local authority". This Court speaking through O. Chinnappa Reddy, J. observed as under : (SCC pp. 311-12, para 2)

"What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body or Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

14. Since this decision will equally apply to the definition of "local authority" set out in the Haryana Housing Board Act, 1971 as that definition is substantially similar to the definition of "local authority" in the General Clauses Act, it is in the light of the above principles that it has to be seen whether the Haryana Housing Board answers the attributes specified above so as to be treated as a "local authority" within the meaning of Section 32(iv) of the Payment of Bonus Act.

15. The Haryana Housing Board Act, 1971 in its preamble states that it is "an Act to provide for measures to be taken to deal with and satisfy the need of housing accommodation".

16. The Statement of Objects and Reasons set out at the time of introduction of the Bill in the Legislative Assembly indicates, inter alia, as under :

"Next to food and clothing, housing is the basic necessity of mankind. The housing problem has become serious on account of the phenomenal increase in population.

Rapid industrialisation has led to congestion in urban areas. The concentration of almost all industries in urban areas and the comparative high wages paid to the factory workers coupled with the lack of sufficient opportunities in the rural areas have resulted in a large-scale shift of population from villages....

With a view to achieve the aforesaid object the matter was considered in the conference of Ministers for Housing, Urban Development and Town Planning held at Bangalore from 18-6-1969 to 20-6-1969. The consensus of opinion was that the statutory State Housing Boards are the best agencies for tentative and speedy implementation of the housing programmes. Accordingly, it is proposed to constitute a Haryana State Housing Board. Hence the Haryana Housing Board Bill, 1971."

17. The Haryana Housing Board (for short "the Board") has been established and constituted under Section 3 of the Act which, inter alia, provides that the Board shall be a body corporate having perpetual succession and a common seal and shall have the power to acquire, hold, administer and transfer property, moveable or immovable, and to enter into contracts.

18. Sub-section (4) of Section 3 provides that the Board shall consist of a Chairman, a Chief Administrator and such other members, not more than 12 and not less than 6, as the State Government may, from time to time, by notification appoint. Under Section 5 of the Act, the State Government has the power to grant such leave to the Chairman and the Chief Administrator as may be admissible to them under the Rules made under the Act.

19. Section 7 provides that every member of the Board shall hold office for a period of three years from the date of his appointment and shall be paid such salary and allowances as may be prescribed. Conditions of service are also required to be prescribed by Rules made under the Act. It is also provided in this section that on the expiry of the term of 3 years, a member shall be eligible for reappointment. Section 7-A indicates that the Chairman, Chief Administrator and other members of the Board shall hold office during the pleasure of the State Government.

20. Section 14 provides for the appointment of one or more committees for any particular local area for purpose of discharging such duties or performing such functions of the Board as may be delegated to them with due regard to the circumstances and requirements of that area.

21. Chapter III of the Act deals with the Housing Schemes.

22. Section 20 provides as under :

"20. Duty of Board to undertake housing schemes. - Subject to the provisions of this Act and subject to the control of the State Government, the Board may incur expenditure and undertake works in any area for the framing and execution of such housing schemes as it may consider necessary from time to time or as may be entrusted to it by the State Government."

23. The exercise of power by the Board in framing and executing housing schemes is not only subject to the provisions of the Act but also subject to the control of the State Government.

24. The matters which may be provided for in a housing scheme are indicated in Section 21 which include laying or re-laying of the land, construction and reconstruction of buildings, construction and alteration of streets and back lanes, drainage, water supply and lighting of the area included in

the Scheme, parks, playing fields, sanitary arrangements etc.

25. The accounts of the Board are to be audited by such persons as are deputed by the Government [see sub-section (2) of Section 61] and the Board does not seem to have any choice in the matter except to submit its accounts to that person. The Board has also to comply with such directions as may be issued to it by the State Government after a perusal of the auditor's report. Special audit may also be made of the Board's accounts under the directions of the State Government.

26. Other statutory provisions indicating control of the State Government over the Board are contained in Sections 71 and 72 of the Act relevant portions of which are reproduced below :

"71. Power of Government to give direction to Board. - The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, after giving an opportunity to the Board to state its objections, if any, to such directions and after considering the said objections and it shall be the duty of the Board to comply with such directions.

72. Control of State Government over Board. - (1) The State Government shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly and is abusing its powers and is guilty of corruption or mismanagement, it may, by notification, suspend the Board :

Provided that the Board shall be reconstituted, within a period of one year from the date of its suspension, in the prescribed manner.

(2) When the Board is suspended under sub-section (1), the following consequences shall ensue, namely :

#(a).... * * *(b).... * * *"#

27. Chapter IV deals with the acquisition and disposal of land. Chapter VII deals with the Board's finance, accounts and audit. Section 56 provides that the Board shall have a fund called the housing board fund which shall consist of all moneys received by or on behalf of the Board as also all proceeds of land or any other kind of property sold by the Board, including all rents, interest, profits and other moneys accruing to the Board which has also been authorised by sub-section (2) to accept grants, donations and gifts from the Central Government or the State Government or a local authority or any individual or body, whether incorporated or not, for all or any of the purposes of this Act.

28. Section 72-A provides for appeals against orders passed by the officers of the Board or the Chairman. Section 72-B which provides for a revision to the State Government lays down as under :

"72-B. Revision. - The Government may either suo motu or on an application of a party, call for and examine the record of any proceedings or decision or order passed by the Board, Chairman, Chief Administrator or competent authority or Deputy Commissioner or any other officer appointed by the State Government for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government may, after giving the

persons affected thereby an opportunity of being heard, pass such order thereon as it may deem fit."

29. The above provisions clearly spell out that the Board which is basically and essentially a creation of the Act of State Legislature consists of persons appointed by the State Government on salary basis. The Board's personnel are not elected by the people and there is no element of people's choice being represented in any manner in the constitution of the Board. The Board functions strictly under the supervision and control of the State Government and does not hold or possess a "local fund". What constitutes the fund of the Board has already been specified above.

30. These functions as are indicated in a housing scheme are essentially performed by municipal boards or municipal council which, undoubtedly, are "local authorities" but on that analogy the Haryana Housing Board cannot be treated to be a "local authority" as the extent of control of the State Government under which the Board has to function is so prominently pervasive that it is almost destructive of its independence which will also be apparent from the fact that in the matter of settlement of its Annual Programmes, Budget and Establishment Schedule, the Board has to obtain the sanction of the State Government under Section 24 of the Act. The supplementary budget and programme, if any, has also to be sanctioned by the State Government.

31. We need not refer to other provisions as the provisions already referred to above are sufficient to bring home the point that Haryana Housing Board does not have even the semblance of independence which are normally possessed by local self-governments, like Municipal Boards or District Boards etc. The Board also does not even partially consist of elected representatives of the people.

32. The Board, no doubt, has the power to levy and realise betterment charges (see Section 40 to Section 43 of the Act) and various amounts of money due from persons in possession of the properties of the Board by way of rent etc. are recoverable as arrears of land revenue but that by itself is not sufficient to clothe the Board with the status of a "local authority".

33. It is contended by the learned counsel for the appellant that since it has already been provided in sub-section (3) of Section 3 of the Haryana Housing Board Act, 1971 that for purposes of this Act, namely, the Haryana Housing Board Act, 1971 and the Land Acquisition Act, 1894, the Board shall be deemed to be a "local authority", it cannot but be treated to be a "local authority" with the consequence that it is not liable to pay bonus to its employees as it would squarely fall within the exceptions set out in Section 32(iv) of the Payment of Bonus Act. We do not agree.

34. Sub-section (3) of Section 3 provides as under :

"(3) For the purposes of this Act and the Land Acquisition Act, 1894, the Board shall be deemed to be a local authority.

Explanation. - The purposes of this Act referred to in sub-section (3) include the management and use of lands and building belonging to or vesting in the Board under or for the purposes of this Act and the exercise of its rights over and with respect to such lands and buildings for the purposes of this Act."

35. It will be seen that the Legislature itself has given the Board limited status of "local authority" only for the purpose of Land Acquisition Act as also the parent Act, namely, the Haryana Housing Board Act, 1971, under which the Board has been constituted and established. The Legislature has

given this status only fictionally as the Board, in reality, is not a "local authority" and that too only for a limited purpose. The Legislature could well have given this status to the Board for purposes of other Acts also including the Payment of Bonus Act but this has not been done and consequently the Board cannot, specially in view of what has been stated above, be treated as "local authority", under the Payment of Bonus Act.

36. There does not, therefore, appear to be any reason to differ from the view expressed by the learned Single Judge or by the Division Bench (in appeal) of the Punjab and Haryana High Court that the Board is not a "local authority" as it does not possess the attributes indicated by this Court in the case of R. C. Jain.

37. Learned counsel for the appellant referred to the decision of this Court in Surya Kant Roy v. Imamul Hak Khan wherein it was found that : (SCC pp. 532-33, paras 3 and 4)

"Mines Board of Health constituted under the Bihar and Orissa Mining Settlement Act, 1920 is a body corporate having perpetual succession and a common seal with power to hold and acquire property. It consists of not less than seven and not more than eleven members of whom not less than two and not more than four are elected by owners of mines within the mining settlement, three non-officials selected by the State Government and two or more members but not exceeding four nominated by the State Government. The Chairman of the Board is to be appointed by the State Government from among the members of the Board. A fund called 'The Mining Settlement Fund' is formed for every mining settlement and the fund vests in the Board. The fund consists of sums charged by the Board under the Act from landowners, etc., as also sums allotted to the Board from the State Revenues; sums borrowed by the Board under the Local Authority Loans Act; Grants received from local authorities, associations and private persons, etc. The Board appoints Health Officers as well as Sanitary Inspectors. The Board can impose taxes like latrine tax and also make yearly assessment. There are certain powers conferred on the State Government under the Act but they are no more than the power conferred on State Governments in respect of various local bodies. The respondent was appointed by the Government as the Chairman of the Jharia Mines Board of Health.

We agree with the learned Judge of the High Court that it is difficult to accept the argument that the Board is wholly under the control of the State Government in all its functions. The Board levies taxes and other assessments and has got its own funds. The fact that the Government and other local authorities might make grants to the Board does not mean that all the funds of the Board are Government funds or Government property. The provisions we have set out above are enough to establish that the Board is a 'local authority' within the meaning of that expression as defined in clause (31) of Section 3 of the General Clauses Act, 1897."

38. It will be relevant to point out the further observations of the Supreme Court as under : (SCC p. 533, para 4)

"Indeed, this position does not seem to have been disputed by the petitioner before the High Court in the course of his argument. We do not, therefore, think that the mere fact that the respondent was appointed as Chairman of the Board by the Government would make him a person holding an office under the State

Government."

39. Thus, the decision that the Mines Board was a local authority was not disputed. In any case, this Court, on the basis of relevant statutory provisions specially that the Board has power to levy taxes and other assessments and has got its own fund, found it to be a local authority. It may be pointed out that the decision was rendered not in connection with the provision of Payment of Bonus Act but under provisions of the Representation of the People Act to find out whether an office of profit under the State Government was held by the respondent.

40. Learned counsel for the appellant then cited *Kendriya Nagrik Samiti v. Jal Sansthan* in which it was held that Jal Sansthan constituted by the State Government under the U. P. Water Supply and Sewerage Act, 43 of 1975 was a "local authority", although, the Court had also found it to be an instrumentality of the State Government. The High Court noticed that Jal Sansthan as defined in Section 2(9) of the Act meant "a local authority constituted by the State Government under Section 18 to perform its functions under the Act in one or more local areas" and on account of this definition, the High Court, after referring to the definition of the "local authority" in Section 4(25) of the U. P. General Clauses Act, held that Jal Sansthan was a "local authority" which was to be treated at par with Municipal Corporation etc. for the purpose of local self-government. It may be pointed out that under Section 18 of the Act, Jal Sansthan consists of, amongst others, three Sabhasads of the Nagar Mahapalika nominated by the State Government. Sabhasads, under the U. P. Nagar Mahapalika Adhiniyam, are directly elected by the people as members of the Municipal Corporation.

41. Learned counsel for the appellant also relied upon the decision of *Mahavir v. State of U. P.* in which Mandi Samiti constituted under the U. P. Krishi Utpadan Mandi Adhiniyam was held to be a local authority for purposes of Land Acquisition Act.

42. Significantly, Section 12(2) of the Adhiniyam contains a deeming provision that "the Committee shall be deemed to be a local authority for purposes of Land Acquisition Act, 1894 and any other law for the time being in force". This case is, therefore, clearly distinguishable.

43. Our attention was next drawn to the decision of the Mysore High Court in *Workmen v. Mangalore Port Trust* in which Board of Trustees of the Port of Mangalore was held to be a "local authority" within the meaning of Section 32(iv) of the Payment of Bonus Act. The Judges of the Mysore High Court relied upon the definition of "local authority" contained in Section 3(31) of the General Clauses Act in which the Municipal Committee, District Board and a Body of Port Commissioners are indicated to be local authorities and then they observed that there was no difference between the Body of Port Commissioners and the Board of Trustees of the Port of Mangalore and, therefore, the latter has also to be treated as the "local authority". They also relied upon the decision of the Madras High Court in *Official Assignee v. Trustees of Port Trust* in which the Trustees of the Port Trust, Madras, on account of the definition of "local authority" in the General Clauses Act were held to be "local authority". A decision of the Calcutta High Court in *Monoranjan Das v. Commr., Presidency Division* which was cited before us also by the learned counsel for the appellant, was considered by the Mysore High Court and it was noticed by them that the Calcutta High Court held that since the Calcutta Dock Labour Board had to control and manage its fund which was a local fund, it was a "local authority" within the meaning of the General Clauses Act. This decision is, therefore, of no help to the appellant as the concept regarding control and management of a "local fund" is outside the scope of the definition of "local authority" in the Haryana Housing Board Act, 1971.

44. A decision of the Andhra Pradesh High Court in *Budha Veerinaidu v. State of A. P.* has cited to indicate that Agricultural Market Committee functioning under the (Andhra Pradesh Agricultural Produce and Live Stock) Markets Act, 1966 was held to be a "local authority" as it was found that the Market Committee was entrusted by the Government with the control and management of "local fund". This decision is also distinguishable on the ground that definition of local authority in the Haryana Housing Board Act, 1971 does not refer to entrustment, control or management of "local fund".

45. In *12, I. C. Bose Road Tenants' Assn. v. Collector of Howrah* which was next cited before us, it was not disputed that Calcutta Metropolitan Development Authority was a "local authority" within the meaning of Section 3(31) of the General Clauses Act.

46. All the aforesaid decisions of various High Courts, therefore, do not help counsel for the appellant as all of them are clearly distinguishable. Moreover, the decision of this Court in *Union of India v. R. C. Jain* which has already been referred to above by us was not referred to in any of these decisions as those decisions were rendered prior to the decision of this Court except the Allahabad decision in *Kendriya Nagrik Samiti* in which also this decision was not noticed.

47. *R. C. Jain* case was, however, noticed by the Bombay High Court in *Krishi Utpanna Bazar Samiti v. ITO* in which the Hon'ble Judges after considering the scheme of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and after scrutinizing the tests laid down by this Court in *R. C. Jain* case observed as under :

"The Market Committee clearly satisfies all these tests. It is a body corporate having separate legal existence and autonomous status. It is independent of the Government and operates in a defined area. Its officer-bearers are elected and are free to take their own policy decisions. It performs governmental functions such as running market, providing civil amenities and doing civil duties. It also performs judicial, legislative, executive and fiscal functions."

48. Learned counsel for the appellant lastly contended that the Haryana Housing Board being an instrumentality of the Government or, in any case, being a statutory body is an 'authority' within the meaning of Article 12 of the Constitution and since local authorities have also been referred to in Article 12, the Board should also be treated as a local authority. The argument is fallacious.

49. Article 12 provides as under :

"12. Definition. - In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

50. This article contains the definition of 'State' which is an inclusive definition and includes Government and Parliament of India, Government and the Legislature of each of the States as also all local or other authorities. Article 12 does not define "local authority" but defines 'State'. The attempt of the learned counsel for the appellant is to invoke the rule of *ejusdem generis* which cannot be permitted.

51. When particular words pertaining to a class of genus are followed by general words, the latter, namely, the general words are construed as limited to things of the same kind as those specified (See

: K. K. Kochuni v. State of Madras; Thakur Amar Singhji v. State of Rajasthan). This is known as the rule of ejusdem generis reflecting an attempt to reconcile incompatibility between the specific and general words (Tribhuban Parkash Nayyar v. Union of India).

52. This Court in Amar Chandra Chakraborty v. Collector of Excise, Govt. of Tripura laid down that the rule applies when "(1) the statute contains an enumeration of specific words; (2) the subjects of enumeration constitute a class or category; (3) that class or category is not exhausted by the enumeration; (4) the general terms followed the enumeration; and (5) there is no indication of a different legislative intent".

53. Thus, it is essential for application of the ejusdem generis rule that enumerated things before the general words must constitute a category or a genus. It was, therefore, pointed out by Lord Simonds in Russell v. Scott that "indeed if a collection of items is heterogeneous, it almost seems a conflict in words to say that they belong to the same genus".

54. While interpreting the definitions of "local authority" contained in the aforesaid two Acts, namely, the General Clauses Act and the Haryana Housing Board Act, 1971, we invoked the rule of ejusdem generis but this rule cannot be applied to Article 12 as the definition of "State" in this article includes several bodies which are heterogeneous in character and, there is no genus in the definition.

55. For the reasons stated above, we find no merit in these appeals which are hereby dismissed but without any order as to costs.