

Before M. M. Kumar & Rajiv Narain Raina, J.J.

JATINDER KUMAR—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 10861 OF 2010

27th February, 2012

Constitution of India, 1950 - Art. 226 - PIL (Public Interest Litigation) - Punjab Municipal Act, 1911 - S. 52 - Municipal Account Code, 1930 - RL 11.9 - By resolution Rs. 80 lacs spent by Municipal Council, Mandi Gobindgarh from Municipal Fund dolling out the huge amount to the Improvement Trust, Pathankot for meeting the expenses of the State Level Function organised by the Government - Resolution impugned by way of PIL - Section 52 deals with Municipal Funds and property and the contingencies under which funds of Municipal Committee can be applied - An exhaustive list of 'does' have been enumerated therein - No word in it to support the expenditure for an event held outside the territorial jurisdiction of MC, Mandi Gobindgarh - Impugned resolution quashed - Direction issued to devise a plan for restitution of the money spent and consider action against erring officials and place the same before this Court on the expiry of six months from the date of pronouncement of the order.

Held, that Section 52 falls in Chapter IV of the Punjab Municipal Act, 1911 which deals with Municipal Funds and property and the contingencies under which funds of Municipal Committee can be applied. An exhaustive list of 'does' have been enumerated therein. We have gone through the provisions of Section 52 with the assistance of both the learned counsel and we are at loss to find any word in it to support the expenditure incurred in the present case. We asked Mr. Piyush Kant Jain, Addl. AG, Punjab to further justify this expenditure dc hors Section 52 for an event held outside the territorial jurisdiction of MC, Mandi Gobindgarh. Learned counsel was at pains to point out any provision justifying such expenditure.

Held Further, that we have given our anxious consideration to all the issues involved in the present case and are of the considered view that the impugned resolution No.51 (P-8) dated 27.05.2010 deserves to be quashed. We also express our displeasure against the order dated 18.04.2011 passed by the Secretary, Local Government, Punjab, Chandigarh. The reasons for our displeasure are not far to find, to wit, that a responsible officer at the level of Secretary, Local Government, Punjab has treated the letter dated 25.06.2010 (P-9) as a final order of approval of State Government. The Secretary, Local Government, Punjab, Chandigarh most certainly knows that neither he nor the Director, Local Government by themselves equivalent to State Government. We, therefore, have no hesitation in quashing the order dated 18.04.2010 as well.

(Para 15)

Held Further, that we have then pondered as to what should be the aftermath of quashing the aforesaid resolution and the order. We are unable to brush under the carpet the exorbitant expenditure incurred at Pathankot from the pocket of the Municipal Council, Mandi Gobindgarh. MCMG has been deprived illegally of Rs.80 lacs. This amount of Rs.80 lacs would need to be regurgitated by the Improvement Trust, Pathankot to MCMG. We would request the Chief Secretary, Punjab to place before this Court the State Government's view on the following points:-

- (i) Why should not the Minister-in-charge be made accountable for the expenditure incurred together with the then Secretary, Local Government and Director, Local Government, Punjab who attended the meeting with the Minister in which the crucial decision was taken to unlawfully divert funds from MCMG to IT Pathankot, and too, for a political event and in such shameful scale?
- (ii) Why should not the President of MCMG Sh. Dharam Pal Rao - respondent No.3, Sh. Ranbir Singh, EO, MC, Gobindgarh and Members respondent Nos.5 to 14 be not held accountable for their actions/inactions which led to the plunder of public money and its transmission outside the limits of MCMG and in far of ITP?

(Para 17)

Further held, That let the Chief Secretary, Punjab devise a plan for restitution of the money spent and consider action against erring officials and place the same before this Court on the expiry of six months from the date of pronouncement of this order.

(Para 18)

Amit Rawal, Advocate, *for the petitioner.*

Piyush Kant Jain, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

(1) This case presents a picture of profligate spending of an amount of Rs.80 lacs by the Municipal Council, Mandi Gobindgarh (for short MCMG) from Municipal Fund under impugned resolution No.51 dated 27.05.2010 passed by the Municipal Councilors respondents Nos.5 to 14 and duly signed by the Executive Officer, MCMG respondent No.4 doling out the huge amount to the Improvement Trust, Pathankot (for short ITP) for meeting the expenses of a State Level Function organized by the Punjab Government for unveiling the statue of Dr. Shayama Prasad Mukherjee, Founder President of Jan Sangh held on 20.03.2010 at Madhopur Pathankot.

(2) The petitioner has filed this petition as a Public Interest Litigation. The petitioner states that he is resident of Mandi Gobindgarh, Distt. Fatchgarh Sahib and had earlier filed CWP No.8304 of 2010 (PIL) with 4 co-petitioners before this Court questioning misappropriation of funds by the MCMG involving lacs of rupees. That writ was disposed of by order dated 7.05.2010 (P-5) after hearing the State of Punjab. Directions were issued to dispose of the representation of the petitioners therein by passing a reasoned order not later than three months from the date of receipt of a copy of the order. Liberty was also granted to those petitioners including the present petitioner to assail orders passed on the representation in case the petitioners feel aggrieved.

(3) Notice of motion to the respondents was issued in the present case by this Court on 07.07.2010 with notice regarding stay. When the petition was brought, the directions of this Court in CWP No.8304 of 2010 had not been complied with. During the pendency of this petition, an order dated 18.04.2011 (Annexure R-1) was passed by the Secretary, Local

Government, Punjab, Chandigarh justifying the expenditure incurred on the ground that it had *ex-post facto* approval of the House of the Council and with the approval of the Government. It was observed in the order that the action of MCMG vide resolution No.51 dated 27.05.2010 was "again confirmed/approved by the Government" vide letter dated 25.06.2010 issued by the Director, Local Government, Punjab. In the circumstances, it was held that no action is called for against the President or the Executive Officer of the MCMG. Resultantly, the expenditure incurred by MCMG in a State Level Function beyond the confines of its territorial jurisdiction has been treated to be a charge on the Municipal Fund. Prayer (ii) in this petition is for issuance of a writ in the nature of mandamus directing the State Government not to approve and sanction the said impugned resolution as per Section 30 of the Punjab Municipal Act, 1911.

(4) Mr. Amit Rawal, learned counsel appearing for the petitioner submits that the order dated 18.04.2011 (R-1) has come into existence after the filing of the writ petition but has been passed as a consequence of the orders passed by this Court in CWP No.8304 of 2010 though well beyond the time limit framed by this Court for decision on the representation, therefore, he should be permitted to impugn the said order for the reasons already set out in CWP No.8304 of 2010 and the present PIL. Further, that it should be quashed.

(5) We have heard Mr. Amit Rawal, learned counsel for the petitioner and Mr. Piyush Kant Jain, Addl. AG, Punjab for the State Government. Mr. Sandeep Khunger, learned counsel for respondent Nos.3, 5 to 12 chose not to appear before us to address arguments on behalf of his clients. We have, however, perused the short reply by way of affidavit of Dharam Pal Rao, President, MCMG, District Fatchgarh Sahib, respondent No.3 on behalf of the aforesaid respondent.

(6) Learned counsel for the petitioner has, to start with, drawn our attention to agenda item No.13 of the proceedings of the General Meeting of MCMG held on 01.04.2010 on which resolution No.40 is stated to have been passed. The agenda item records that a meeting was held on 10.03.2010 under the Chairmanship of the Minister-in-charge, Local Government, Punjab that the occasion of unveiling the statue of Dr. Shayama Prasad Mukherjee be regarded as a State Level Function and amount of Rs.80 lacs be given

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from MCMG to Improvement Trust, Pathankot to celebrate the State Level Function. In the meeting held on 10.03.2010 the Principal Secretary, local Government and the Director Local Government were present with the Minister-in-charge when the decision was taken to spend Rs 80 lacs on the Satte level Function to commemorate the arrest of Sh Shyama Prashad Mukherjee at Madhopur, Pathankot on way to J & K by unveiling the eminent leaders' statue. It appears that the Minister ordered that the amount be immediately transferred to Improvement Trust by MCMG and thereafter, the matter be put up to the Government after passing a resolution in the House meeting. On 01.04.2010 Rs.80 lacs was already remitted to ITP and then the matter was put up on this date for approval of the MCMG after the event. In the meeting of the House, Sh. Joginder Pal Singla and Sh. Balmukand Aggarwal both Members of the MCMG had expressed dissent and that Government should return this amount of Rs.80 lacs to MCMG. Their dissent was also voiced by Sukhwinder Singh and Om Parkash Gupta Members of the MCMG. 15 other members joined in the protest including the Local MLA Sh. Sadhu Singh representing Amloh constituency.

(7) Mr. Rawal would then draw our attention to the proceedings of the General Meeting of MCMG held on 27.05.2010 (P-8) where agenda item No.4 was considered and the impugned resolution No.51 dated 27.05.2010 came to be passed. It appears that an order then was raised in MC, Gobindgarh with reference to Government instructions contained in policy circular dated 10.03.2010 regarding the State Level Functions. It is recorded in the agenda item that in compliance of abovesaid instructions the proposal was placed in the meeting of the MCMG held on 01.04.2010 for giving *ex-post facto* approval to the expenditure already incurred in March 2010 at Pathankot. The MCMG, however, unanimously rejected this proposal vide resolution No.40 dated 01.04.2010. The Minister-in-charge Local Government, Punjab wrote letter dated 04.05.2010 asking the MCMG to take a decision regarding resolution No.40 after reconsidering all the facts. In the light of the request of the Minister, the item was reconsidered at the meeting. The Members stated that Government would consider the legal facts at his own level. However, the House in the light of the letter of the Government is stated to have unanimously accorded unanimous approval of the expenditure but with the rider that this expenditure is really

an appropriate charge on the Municipal Funds and, therefore, its *ex-post facto* approval be obtained from the Government. Mr. Rawal points out that the word "burden" in Annexure P-2 is not a correct translation from the vernacular and should be read as "appropriate charge".

(8) Mr. Rawal has then drawn our attention to the memo dated 25.06.2010 issued by the Directorate, Local Government, Punjab addressed to the Executive Officer, MCMG regarding the further action taken on resolution Nos.48 to 51. In this matter, we are concerned with the impugned resolution No.51. This letter has been placed as Annexure P-9 by the petitioners in the rejoinder to the written statement filed on behalf of respondent Nos.3, 5 to 12. The letter has been signed by the Superintendent. There is no recital that it is on behalf of the Directorate though the communication is on the letter head of the Directorate, Local Government, Punjab, Chandigarh (Establishment Branch). The letter in translated extract reads as follows:-

"After considering the resolution No.48 to 51 sent by you with regard to the subject cited above vide letter No.1201 dated 28.05.2010 which were passed by the Municipal Council, Gobindgarh in the meeting held on 27.05.2010, the decision were taken by the Director, Local Government, Punjab which are as under :

<i>Resolution No.48</i>	<i>:</i>	<i>x x x</i>
<i>Resolution No.49, 51</i>		<i>Proceeding be initiated as per rules/instructions</i>
<i>Resolution No.50</i>		<i>x x x</i>

*Sd/-
Superintendent"*

(9) On reading of the aforesaid letter (P-9) Mr. Rawal urges that there is no concluded *ex-post facto* approval of the impugned expenditure till 25.06.2010 since proceedings were to be initiated as per rules/instructions. Mr. Piyush Kant Jain, learned Addl. AG, Punjab strangely relies upon this letter (P-9) as an order granting *ex-post facto* approval of the State Government. Even if we assume that the consideration on resolution No.51

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was by the Director, Local Government and was expressed in his name and signed by the Superintendent it is not a final order of the State Government. The Director, Local Government, Punjab, Chandigarh is not State Government. There is, to our mind, no real consideration of the matter at the level of the State Government in accordance with its rules of business. Of what has transpired consequent upon this letter regarding impugned resolution No.51 we have been kept in the dark and Mr. Jain has not been able to show us any final order of State Government granting approval to the what we may call profligate spending at the behest of the Minister-in-Charge to satisfy either himself, his political party or his Government on a political function disguised as a State Level Function in order to justify expenditure of such magnitude. We could have called upon the Government to justify the expenditure on unveiling a statue of the Founder of the Jan Sangh but we have not followed this course on account of the fact that we are convinced that the transfer of money due on Municipal Fund Mandi Gobindgarh to Improvement Trust, Pathankot was absolutely contrary to law and not justifiable under any provision of the Punjab Municipal Act, 1911. The order dated 18.04.2011 passed by the Secretary, Local Government justifying the action and giving a clean chit to the President of the MC, Mandi Gobindgarh is a clumsy attempt to cover up the misdeeds of high functionaries of State including the Minister himself who initiated such a bizarre plan of action to meet private political ends. That there has been substantial loss, waste and misapplication of public money there is no doubt in our mind. Custodians of public money ought not to breach the trust reposed in them and to utilize such money only for public good. In the face of an objection raised by the Assistant Controller (Local Fund), Nagar Council, Mandi Gobindgarh dated 25.03.2010 to the State Government highlighting therein that, despite the audit objection, a sum of Rs.80 lacs has been paid out from the Municipal Funds, Mandi Gobindgarh to EO, Improvement Trust, Pathankot and that such an expense is not a fit charge and also not within the domain of the approved budget of the Municipal Council, Mandi Gobindgarh has been ignored. The State Government was duly warned of the misfunding but yet the Jaggernaut set in motion by the Minister/State Government despite initial opposition of large number of MCMG members kept rolling on and may not have come to light or in sharp focus but for this PIL.

(10) Mr. Amit Rawal, learned counsel for the petitioner relies on Section 50 of the 1911 Act to highlight the liability of members of a Committee. Section 50 lays down that every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a Committee if such loss, waste or misapplication is reported by the Examiner of Local Funds accounts or other audit authority by the State Government in this behalf to be a direct consequence of his neglect or misconduct in the performance of the duties while acting as a member of the Committee. Such a person could be subjected to surcharge proceedings under the Act. Mr. Rawal submits that the order dated 18.04.2011 passed by Sh. S.S. Rajput, IAS, Secretary, Local Government, Punjab, Chandigarh goes out the way to shield the President and ex-Executive Officer of the MCMG and the others involved from the rigours of Section 50. Both of them have been exonerated without even meaning to issue a charge-sheet by resorting to surcharge proceedings.

(11) More importantly, Mr. Rawal has drawn our attention to Section 52 of 1911 Act. Section 52 falls in Chapter IV of the Punjab Municipal Act, 1911 which deals with Municipal Funds and property and the contingencies under which funds of Municipal Committee can be applied. An exhaustive list of 'does' have been enumerated therein. We have gone through the provisions of Section 52 with the assistance of both the learned counsel and we are at loss to find any word in it to support the expenditure incurred in the present case. We asked Mr. Piyush Kant Jain, Addl. AG, Punjab to further justify this expenditure *de hors* Section 52 for an event held outside the territorial jurisdiction of MC, Mandi Gobindgarh. Learned counsel was at pains to point out any provision justifying such expenditure. Learned State counsel raised a feeble argument based on Section 52(1) to justify the expenditure. Section 52(1) reads thus:-

“all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants or expenditure whereon may be declared by the committee, with the sanction of the State Government to be an appropriate charge on the municipal fund.”

(12) The argument advanced is too far fetched to be acceptable.

(13) Learned counsel for the petitioner in order to hammer the point further has relied on Rule 11.9 of the Municipal Account Code, 1930 to contend that any expenditure in excess of amount provided in the sanction budget, though can be incurred but only with the sanction of the Audit. As per Sub-Rule 2 of Rule 11.9 no expenditure under any head in excess of amount provided in the sanctioned budget shall be incurred without the sanction of the Department of the Local Government and that sanction shall not be given unless Audit has by resolution approved it. These protections have been throw to the winds.

(14) Mr. Rawal next argues that the impugned resolution 51 itself is ex-facie illegal. The Deputy Commissioner had power to suspend any resolution or order of a Committee passed contrary to law. "The nomenclature" Deputy Commissioner used in Section 232 has been expanded under Punjab Government Notification dated 30.07.1966 to mean Director, Urban Local Bodies, Punjab in all districts of the States to perform the functions of the Deputy Commissioner in relation to the Municipal Committees of the first class under Section 232, except in so far as it relates to the powers to suspend resolution or orders of the Municipal Committees on the grounds that it is likely to lead to a breach of peace, to encourage lawlessness or to cause injury or annoyance to the public or any class or body of persons etc.

(15) We have given our anxious consideration to all the issues involved in the present case and are of the considered view that the impugned resolution No.51 (P-8) dated 27.05.2010 deserves to be quashed. We also express our displeasure against the order dated 18.04.2011 passed by the Secretary, Local Government, Punjab, Chandigarh. The reasons for our displeasure are not far to find, to wit, that a responsible officer at the level of Secretary, Local Government, Punjab has treated the letter dated 25.06.2010 (P-9) as a final order of approval of State Government. The Secretary, Local Government, Punjab, Chandigarh most certainly knows that neither he nor the Director, Local Government by themselves equivalent to State Government. We, therefore, have no hesitation in quashing the order dated 18.04.2010 as well.

(16) For the reasons recorded above, we allow this writ petition and quash the impugned resolution No.51 dated 27.05.2010 and the order dated 18.04.2011 (R-1).

(17) We have then pondered as to what should be the aftermath of quashing the aforesaid resolution and the order. We are unable to brush under the carpet the exorbitant expenditure incurred at Pathankot from the pocket of the Municipal Council, Mandi Gobindgarh. MCMG has been deprived illegally of Rs.80 lacs. This amount of Rs.80 lacs would need to be regurgitated by the Improvement Trust, Pathankot to MCMG. We would request the Chief Secretary, Punjab to place before this Court the State Government's view on the following points:-

- (i) Why should not the Minister-in-charge be made accountable for the expenditure incurred together with the then Secretary, Local Government and Director, Local Government, Punjab who attended the meeting with the Minister in which the crucial decision was taken to unlawfully divert funds from MCMG to IT Pathankot, and too, for a political event and in such shameful scale?
- (ii) Why should not the President of MCMG Sh. Dharam Pal Rao – respondent No.3, Sh. Ranbir Singh, EO, MC, Gobindgarh and Members respondent Nos.5 to 14 be not held accountable for their actions/inactions which led to the plunder of public money and its transmission outside the limits of MCMG and in far of ITP?

(18) Let the Chief Secretary, Punjab devise a plan for restitution of the money spent and consider action against erring officials and place the same before this Court on the expiry of six months from the date of pronouncement of this order.

(19) The petitioners are given liberty to file an application in the disposed of writ after the expiry of six months, in case, they feel the necessity arises or facts warrant.

(20) The writ petition stands disposed of with the above directions.