

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 837 of 2014

- Mahendra Singh S/o Late Sachchan Singh Aged About 52 Years
R/o Infront Of Jute Mill Gate, Banjin Pali, P.S. Raigarh, Civil and
Revenue District Raigarh (CG)

---- Petitioner

Versus

1. Municipal Corporation, Raigarh Through The Commissioner
Municipal Corporation Raigarh District Raigarh CG
2. Collector Raigarh District Raigarh (CG)

---- Respondent

For Petitioner	Mrs. Hameeda Siddique, Advocate
For Respondent No.1	Mr. H.B. Agarwal, Senior Advocate with Ms. N.K.Kashyap, Advocate
For Respondent No.2	Mr. Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

2/8/2016

1. Heard.
2. The petitioner is aggrieved by the order passed by the
Additional District Judge, (FTC), Raigarh, dismissing his
application under Section 387 of the C.G. Municipal Corporation
Act, 1956 (in short "the Act") on the ground that before moving
an application under Section 387 of the Act, the petitioner has
not served statutory notice under Section 387(1).
3. Mrs. Hameeda Siddique, learned counsel for the petitioner

would draw attention of this Court to the communication/letter dated 13.12.2011 addressed to the Commissioner, Municipal Corporation, Raigarh, by which, the petitioner has requested that an arbitration may be constituted under Section 387 of the Act within a period of one month and a Committee be constituted for resolving the dispute in presence of both the parties, to argue that there was substantial compliance of Section 387(1) of the Act and rejection of the application is contrary to the provisions of law.

4. Mr. H.B. Agarwal, learned Senior Counsel appearing for the Municipal Corporation would submit that the petitioner has not served a notice in the manner required under the law, therefore, the learned Additional District Judge has rightly rejected the application.
5. To dwell on the issue concerning requirement of service of notice under Section 387 of the Act, the provision contained under Section 387 needs to be referred, which is reproduced hereunder :

“387. Arbitration in cases of compensation etc.-(1) If an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a Panchayat of three persons of whom one shall be appointed by the Corporation, one by the party, to or from whom such compensation or damages may be payable or recoverable and one, who shall be Sarpanch, shall be selected by the members already appointed as above.

(2) If either party or both parties fail to appoint members within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, or if the members fail to select a Sarpanch, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Court.

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6. A careful reading of the provision would manifest that the notice contemplated under sub-sections (1) and (2) of Section 387 of the Act has not referred to any prescribed format. As a matter of fact, sub-section (1) nowhere uses the expression "notice". The same is referred only in sub-section (2) and more importantly, the scheme of the provision nowhere prescribes any mandatory consequence which would follow, if the notice as mentioned under sub-section (2) is not served. The provision is neither in the language as would occur in Section 80 of the Code of Civil Procedure, which prescribes that no suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to the State Government or the Central Government, as the case may be.
7. Even otherwise, the petitioner has been knocking the doors of this Court by earlier moving a writ petition bearing WPC No.159 of 2012, in which, by order dated 08.02.2012, he was directed to take recourse to the appropriate forum in accordance with law and thereafter, when the application under Section 387 of the

Act was not decided, the petitioner again preferred WPC No.1615 of 2014, in which, by order dated 22.08.2014, this Court directed the Court below to decide the application within a period of 04 months from the date of receipt of a copy of the said order.

8. In the first writ petition, the petitioner had categorically mentioned service of notice/application dated 13.12.2011 (Annexure P/4) and this Court noticed the provision contained in Section 387(2) of the Act to relegate the petitioner to take recourse to the appropriate forum.
9. The Court below has not only failed to interpret the provisions of law correctly but has also ignored the substance of notice dated 13.12.2011. The Court below appears to have been swayed by the form of the letter/application rather than going by the substance and contents of the same. The document Annexure P/4 is in substance a notice under Section 387(1) of the Act, which was duly served on the Commissioner, Municipal Corporation, before filing of the proceedings and it is only when the Corporation failed to take steps as required under Section 387 (2), the present application has been moved before the District Court.
10. Here it would be apt to mention that it is the substance that counts and must take precedence over mere form. The Supreme Court while dealing with this proposition in the matter of **State (NCT of Delhi) Vs. Sanjay** and other connected matters (2014) **9 SCC 772**, has held thus in para 64 to 66 :

"64. In *Liverpool Borough Bank v. Turner*¹ Lord Campbell, C.J. at p. 380 said : (ER p.718)

"...No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

65. In *Pratap Singh Vs. Shri Krishna Gupta*² at p. 141, the Supreme Court while interpreting the mandatory and directory provisions of statute observed as under : (AIR para 3)

"3. We do not think that is right and we deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter; they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which Judges must determine the matter and, exercising a nice discrimination, sort out one class from the other along broad based, common-sense lines."

66. The question is whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design and

1 (1860) 30 LJ Ch 379

2 AIR 1956 SC 140

the consequences which would follow from construing it the one way or the other.”

11. It is thus fairly settled that instead of searching for technicality, the Court should bear in mind the substance of the provision for its compliance so that mere form must not take precedence over substance.

12. For the foregoing, the impugned order is set-aside and the matter is remitted back to the Court below for deciding the application on merits within a period of 06 months from the date of presentation of certified copy of this order.

13. The writ petition is allowed to the extent indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

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Letter requesting for arbitration is sufficient compliance of Section 387(2) of Mun.
Corp. Act, 1956.