

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Appeal No.676 of 2017

Kotha Sambasiva Rao

.... Appellant

v.

The State of Andhra Pradesh rep. by its Principal Secretary,
Municipal Administration & Urban Development Department,
Amaravathi, Krishna District and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 16.06.2017

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE T.RAJANI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals - -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - -

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* HON'BLE SMT. JUSTICE T.RAJANI**

+ Writ Appeal No.676 of 2017

% Dated 16-06-2017

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.... Appellant

v.

\$ The State of Andhra Pradesh rep. by its Principal Secretary,
Municipal Administration & Urban Development Department,
Amaravathi, Krishna District and others.

.... Respondents

! Counsel for Appellant : Sri N.Subba Rao

^ Counsel for respondents: Sri R. Sudheer, Learned Standing
Counsel for the Vijayawada
Municipal Corporation.

<GIST:

> HEAD NOTE:

? Citations:

1. AIR 1989 SC 2138
2. AIR 1967 SC 1753
3. (1991) 2 All ER 726
4. (2004) 7 SCC 288
5. AIR 1993 SC 2444
6. AIR 1959 SC 896
7. [1972] 3 SCR 1
8. [1975] 1 SCR 321
9. [1964] 1 SCR 809
10. AIR 1988 SC 1681
11. AIR 1995 SC 705
12. (1919) A.C. 533
13. (1988) 2 SCC 293
14. AIR 1962 SC 159
15. 1987 Supp SCC 350
16. AIR 1969 SC 1048
17. (1991) 1 SCC 86
18. (1981) 4 SCC 173
19. (1989) 1 SCC 724
20. AIR 1979 SC 1049



HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE T. RAJANI

WRIT APPEAL No.676 OF 2017

JUDGMENT: (per Hon'ble the Acting Chief Justice Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P. No.13654 of 2017. The appellant herein is the petitioner in W.P. No.13654 of 2017 wherein he sought a mandamus to declare the action of the Commissioner, Vijayawada Municipal Corporation ("VMC" for short), in not renewing the lease of the Shadhikhana in favour of the petitioner, as illegal, arbitrary, unconstitutional and contrary to G.O.Ms. No.56 dated 05.02.2011. A consequential direction was also sought to the respondents to extend the appellant's lease of the Shadhikhana for another three years from 22.04.2017 to 20.04.2020.

Facts, as noted in the order under appeal, are that the petitioner was the successful bidder in the tender floated by the respondent-Corporation for leasing out the subject Shadhikhana initially for a period of three years; thereafter the lease period was extended upto 21.04.2008, to compensate for the 208 days during which the respondents had used the subject premises as a D.P.L. centre and for distribution of ration cards; the respondent-Corporation granted further extension of the lease for a period of three years from 22.04.2008 to 21.04.2011; thereafter, in view of the interim orders passed in W.P. No.26263 of 2011 dated 29.09.2011, the lease was further extended upto 2014, with the enhanced rate of 33 1/3% excess over the existing lease amount; the lease was further extended upto 22.04.2017; and, as the lease was to expire by 22.04.2017, the petitioner made an

application on 04.04.2017 requesting the Commissioner, VMC to grant further extension, claiming parity with K.G. Gupta Kalyanamandapam the lease of which was extended for a period of three years by resolution No.5/66 dated 25.05.2016.

After noting the rival submissions, urged on behalf of the petitioner and the respondent-Corporation, the Learned Single Judge observed that the rules notified under the A.P. Municipalities Act, 1965 (the “1965 Act” for short) did not automatically apply in relation to anything to be done in Municipal Corporations; the Hyderabad Municipal Corporation Act, 1955 (for short the “HMC Act”) had received the assent of the President of India; while G.O.Ms. No.56 was made in the exercise of the powers conferred by Section 326(1) of the 1965 Act, no corresponding rules were made under the HMC Act; by G.O.Ms. No.56 dated 05.02.2011, the Government had added clause (h) to Rule 12(1) of the Special Rules; the Municipalities Rules were amended in line with the guidelines issued in G.O.Ms. No.389 dated 24.09.2004 which stipulates that the lease period should not exceed twelve years, the lease period is initially for five years, and the lease can be renewed for three years at 33 1/3% excess over the lease amount; these guidelines were not statutory in character, and were not binding on the Corporation; these guidelines were not enforceable, especially when they were not in conformity with the statutory provisions, in the light of the law declared by the Supreme Court in **Narendra Kumar Maheshwari v. Union of India**¹, following the earlier decision of the Supreme Court in **G.J. Fernandez v. The State of Mysore**²; even assuming that the guidelines were required to be followed by the Corporation, the petitioner had, admittedly, entered into the lease of the

¹ AIR 1989 SC 2138

² AIR 1967 SC 1753

property in 2004, and the lease granted in his favour was extended, from time to time, until 21.04.2017 which was beyond the 12 year period stipulated in the guidelines in G.O.Ms. No.389; further, Section 148 of the HMC Act mandates that sanction of the Standing Committee is required for transfer of immovable properties by lease; as a matter of fact, there was a statutory bar for granting lease for a term exceeding three years in each instance; there were no merits in the case; and the Writ Petition was liable to be dismissed.

Before us Sri N. Subba Rao, Learned Counsel appearing on behalf of the appellant-writ petitioner, would submit that the Rules, framed under the Receipts and Expenditure Rules, 1968, is applicable to the VMC by virtue of Section 6(3) of the Vijayawada Municipal Corporation Act, 1981 (for short the "1981 Act"); the Learned Single Judge erred in holding that G.O.Ms. No.389 was not binding on the Corporation; the action of the respondents, in denying extension of lease to the petitioner, is discriminatory and in violation of Article 14 of the Constitution; similarly situated persons were granted renewal of lease for a period beyond twelve years, following the G.Os issued by the Government to all Municipal Corporations in the State of A.P; the information sought for, and obtained, under the Right to Information Act reflects the views of the Government that extension of lease can be granted by all Municipal Corporations upto a period of 25 years; the appellant-writ petitioner's representation was not even placed before the Standing Committee, let alone considered by them; G.O.Ms. No.56 dated 05.02.2011 provides for extension of lease, of Municipal Corporation properties, for periods between 3 to 25 years; and the guidelines issued by the Government are binding in view of the transitional provisions in Section 6(3) of the 1981 Act.

On the other hand Sri R. Sudheer, Learned Standing Counsel for the Vijayawada Municipal Corporation, would submit that the transitional provision, in Section 6(3) of the 1981 Act, would only cover Rules made prior to the said Act coming into force; as the 1981 Act came into force in 1981, it is only the Rules made under the Municipalities Act, prior thereto, which would continue to be applicable to the VMC till fresh rules are made under the 1981 Act; amendment to the A.P. Municipalities (Regulation of Receipts and Expenditure) Rules, 1968 (for short the “1968 Rules”), vide G.O.Ms. No.56 dated 05.02.2011, long after the 1981 Act came into force, would not fall within the ambit of Section 6(3) of the 1981 Act; the plea of discrimination is not tenable; it is for the Corporation to decide, with respect to each of its premises/properties, whether to extend the lease or put it to public auction; no right is conferred by the Rules on the lessee to claim automatic extension of the lease; the Corporation intends either to use the subject property for itself or conduct a public auction for grant of lease; in case an auction is held, it is always open to the appellant to participate; the guidelines issued by the Government are contrary to Section 148 of the HMC Act; the VMC is bound by statutory provisions, and not by administrative guidelines; and guidelines, contrary to the applicable statutory provisions, are not valid.

I. NO RIGHT IS CONFERRED EITHER UNDER THE 1981 ACT OR THE HMC ACT, ON LESSEES OF IMMOVABLE PROPERTIES OF MUNICIPAL CORPORATIONS, TO SEEK EXTENSION OF THE LEASE GRANTED IN THEIR FAVOUR EARLIER:

In the exercise of the powers conferred by Section 326(1) of the 1965 Act, the Government of A.P. made the 1968 Rules. Rule 12(1)(e) thereof stipulates that leases of buildings, shops or godowns and of land belonging to the Municipal Council, the rents of which are expected to exceed Rs.200/- per annum, shall be effected by public

auction which shall be conducted by the Commissioner or by a person duly authorised by him; the bids at the auction shall be placed by the Commissioner, before the competent authority, to enter into a contract under Section 43 of the 1965 Act; the said authority shall determine which of the bids at the auction shall be accepted; and, where the bid accepted is not the highest bid, the reasons for rejecting a bid or bids higher than the one accepted shall be recorded in writing.

Rule 12(4), inserted into the 1968 Rules by G.O.Ms. No.56 MA & UD dated 05.02.2011, deals with renewal of lease of immovable properties, and the Municipal Council has been conferred power thereunder to renew the lease of immovable properties for a period of three years at one time and, with the prior sanction of the Government, to renew the lease for a period exceeding three years and not exceeding twenty five years at a time without conducting public auction, if the lessee agrees to renew the lease in his favour at the rent as fixed under the Rules, and for revision of the rent once in three years as per the procedure specified below - (a) rent at 10% of the current market value of the property per annum i.e., both building and land as per market value of the land and construction rates of the structures and buildings fixed by the Registration Department under the Andhra Pradesh Revision of Market Value Guidelines Rules, 1998, or (b) rent at 33 1/3 percent above the earlier rent, or (c) prevailing rent of such properties in the vicinity whichever is higher.

As noted hereinabove, the 1968 Rules were made in exercise of the powers conferred under Section 326(1) of the 1965 Act. Section 326 confers power on the Government to make Rules and, under subsection (1) thereof, the Government may, by notification in the A.P. Gazette, make rules for carrying out all or any of the purposes of the

Act (i.e the 1965 Act). The 1965 Act is an Act to consolidate and amend the law relating to municipalities in the State of Andhra Pradesh. Section 2(22) of the 1965 Act defines “municipality” to mean the municipality of such grade as may be declared by the Government, from time to time by notification in the Andhra Pradesh Gazette, on the basis of its income and such other criteria as may be prescribed. Section 2(42-a) defines ‘transitional area’ or a ‘smaller urban area’ to mean such area as the Governor may, having regard to the population of the area, density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of the 1965 Act, subject to such rules as may be made in this behalf. Section 3 relates to constitution of municipalities and under sub-section (1) thereof, where a notification is issued specifying an area as a smaller urban area under Section 2(42-a), a municipality shall be deemed to have been constituted for such area. It is evident, therefore, that the 1968 Rules, made in exercise of the powers conferred under Section 326(1) of the 1965 Act, applies only to municipalities in the State of A.P.

The 1981 Act came into force on 06.06.1981. The VMC is a municipal corporation constituted under Section 3(1) of the 1981 Act and, in terms thereof, the local area included in the Vijayawada Municipality shall constitute the city of Vijayawada for the purposes of the 1981 Act and, on and from such commencement, a Municipal Corporation shall be deemed to have been established for the said city by the name of Vijayawada Municipal Corporation. Section 4 of the 1981 Act prescribes that the Municipal authorities, charged with

carrying out of the provisions of this Act, shall be (a) a Corporation; (b) a Standing Committee; (c) a Commissioner.

Section 6(1) of the 1981 Act stipulates that, subject to the provisions of sub-section (2) and (3), the 1965 Act shall, with effect on and from the commencement of the 1981 Act, cease to apply to the local area comprised within the city of Vijayawada. The erstwhile Vijayawada Municipality was included, by virtue of Section 3(1) of the 1981 Act, in the Vijayawada Municipal Corporation on and from the commencement of the 1981 Act i.e. 06.06.1981 (when the 1981 Act was deemed to have come into force). While the 1968 Rules were applicable to the erstwhile Vijayawada Municipality, it did not apply to the Vijayawada Municipal Corporation as on and from 06.06.1981 when the erstwhile Vijayawada Municipality ceased to remain in existence, and became a part of the local area included in the Vijayawada Municipal Corporation.

Section 6(3) of the 1981 Act, however, provides that, notwithstanding anything contained in sub-section (1), all notifications, rules, bye-laws, regulations, orders, directions and powers made, issued or conferred under the 1965 Act, and in force at the commencement of the 1981 Act, shall, so far as they are not inconsistent with the provisions of the 1981 Act, continue to be in force within the local area comprised within the city of Vijayawada until they are replaced by the notifications, rules, bye-laws, regulations, orders, directions and powers to be made or issued or conferred under the 1981 Act. It is only by virtue of Section 6(3) of the 1981 Act that the rules made under the 1965 Act continued to remain in force in the local area comprised within the city of Vijayawada.

It is, therefore, necessary to examine the scope of Section 6(3) of the 1981 Act which is in the nature of a transitional provision. While it is not possible to give a definitive description of what constitutes a transitional provision (**Britnell v. Secretary of State for Social Security**³), its function is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force. (**Britnell**³; **Thornton on Legislative Drafting (3rd Edn, 1987) p.319**). A transitional provision enacts how the statute will operate on the facts and circumstances existing on the date it comes into force and, therefore, the construction of such a provision must depend upon its own terms. (**Milkfood Ltd. v. GMC Ice Cream (P) Ltd.**,⁴; **G.P. Singh: Principles of Statutory Interpretation, 8th Edn., p. 188**). One feature of a transitional provision is that its operation is expected to be temporary, in that it becomes spent when all the past circumstances, with which it is designed to deal, have been dealt with, while the primary legislation continues to deal indefinitely with the new circumstances which arise after its passage. (**Britnell**³).

In view of the non-obstante clause therein, Section 6(3) would prevail notwithstanding anything contained in Section 6(1) whereunder, subject to the provisions of Section 6(2) and (3), the 1965 Act shall, with effect on and from the commencement of the 1981 Act (from 06.06.1981), cease to apply to the local area comprised within the city of Vijayawada. Section 6(2) stipulates that such cesser shall not effect (a) the previous operation of the 1965 Act in respect of the local area comprised within the city of Vijayawada; (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against the 1965 Act; or (c) any investigation, legal proceeding or remedy in respect

³ (1991) 2 All ER 726

⁴ (2004) 7 SCC 288

of such penalty, forfeiture or punishment, and any such penalty, forfeiture or punishment may be imposed as if the 1981 Act had not been passed.

Section 6(3) provides that all rules made under the 1965 Act, and in force at the commencement of the 1981 Act, shall, in so far as they are not inconsistent with the provisions of the 1981 Act, continue to remain in force in the local area comprised within the city of Vijayawada until they are replaced by Rules made under the 1981 Act. The 1968 Rules, made under the 1965 Act, were in force at the commencement of the 1981 Act. However Rule 12(4), which relates to renewal of leases of immovable properties, was inserted in the 1968 Rules by G.O.Ms.No.56 dated 05.02.2011 nearly 30 years after the 1981 Act came into force on 06.06.1981. While the 1968 Rules, as it stood prior to 06.06.1981, continued to apply to the Vijayawada Municipal Corporation in view of Section 6(3) of the 1981 Act, Rule 12(4), inserted by G.O.Ms.No.56 dated 05.02.2011, would not fall within the ambit of Section 6(3) as it was not made on or prior to the commencement of the 1981 Act ie., on or prior to 06.06.1981.

Section 6(3) of the 1981 Act makes the 1968 Rules applicable to the local area comprised within the city of Vijayawada only in so far as they are not inconsistent with the provisions of the 1981 Act. Section 7 of the 1981 Act relates to application of the provisions of the HMC Act to the Vijayawada Municipal Corporation and under sub-section (1) thereof, save as otherwise expressly provided therein, all the provisions of the HMC Act, including the provisions relating to levy and collection of any tax or fee, were extended to and were to apply mutatis mutandis to the Vijayawada Municipal Corporation. Section 7(1) of the 1981 Act also requires the HMC Act to be read and construed in relation to the

Vijayawada Municipal Corporation as if the provisions of the HMC Act formed a part of the 1981 Act. All provisions of the HMC Act must, therefore, be read as provisions of the 1981 Act. Consequently, the 1968 Rules would apply to the local area, comprised within the city of Vijayawada, only if they are held not to be inconsistent with the provisions of the HMC Act.

It is relevant in this context to refer to the relevant provisions of the HMC Act. Section 2(9) thereof defines “Corporation” to mean the Municipal Corporation of the city. Section 3 relates to the constitution of the Corporation and, sub-section (2) thereof, stipulates that the Corporation, established under Section 3(1), shall be a body corporate having perpetual succession and a common seal. Section 124 relates to the power of the Commissioner to execute contracts on behalf of the Corporation and stipulates that, with respect to the making of the contract under or for any purpose of the Act, the following provisions shall have effect, namely (a) every such contract shall be made on behalf of the Corporation by the Commissioner; (b) no such contract for any purpose which, in accordance with any provision of the Act the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first of all been duly given. Under sub-section (c) it shall be competent for the Commissioner to make a contract, other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto, not involving an expenditure exceeding Rs.50 lakhs; and, under sub-section (e), the foregoing provisions of Section 124 shall, as far as may be, apply to every contract which the Commissioner shall have occasion to make in the execution of the Act and the same provisions of the Section, which

apply to an original contract, shall be deemed to apply also to any variation or discharge of such contract.

Section 148 of the HMC Act relates to disposal of property and interest therein. Under sub-section (1) thereof, subject to the provisions of Section 124, the Commissioner may grant, for any term not exceeding twelve months, a lease of any immovable property belonging to the Corporation. Under the proviso thereto, every such lease made or granted by the Commissioner shall be reported to the Standing Committee within fifteen days. Section 148(2) provides that, with the sanction of the Standing Committee, the Commissioner may grant, for any term not exceeding three years, a lease of any immovable property belonging to the Corporation. Section 148(3) relates to cases not covered by Section 148(1) and 148(2), and stipulates that the Commissioner shall not lease any movable or immovable property belonging to the Corporation without the previous sanction of the Corporation and of the Government. Under the proviso to Section 148(3), in no case shall the lease period of immovable property exceed twenty five years.

In exercise of the powers conferred by Section 585(2) of the HMC Act, the Government of A.P. made the Municipal Corporation of Hyderabad (Acquisition and Disposal of, Immovable Property) Rules, 1970 (for short the "1970 Rules") which came into force from 09.07.1970. Rule 6 of the 1970 Rules relates to transfer by lease of immovable property belonging to the Corporation and, under sub-rule (1) thereof, subject to the provisions of Section 124 and 148 of the HMC Act, the Commissioner may lease out any immovable property belonging to the Corporation. Rule 6(2) stipulates that the lease deed, for the immovable property, shall be in Form III(a) indicated in Schedule

III appended to the Rules with such variations as circumstances may require. Rule 8 relates to publication of the proposed leases. Rule 8(1) stipulates that, in every case of a lease falling under Rule 6, the Commissioner shall publish a notice of the proposed lease, giving full particulars of the property to be leased, the name of the proposed lessee and the consideration for the transfer or the rent reserved under the lease - (a) in the Andhra Pradesh Gazette, if the rent reserved under the lease exceeds Rs.200/- per annum; and (b) by affixture in a conspicuous place. Rule 8(2) stipulates that, in every case where such lease is to be by public auction, a notice with full particulars of the property to be leased shall be published (a) in the Andhra Pradesh Gazette and in one or two prominent local newspapers and (c) by tom-tom in suitable places.

While Section 124(a) of the HMC Act requires any contract, on behalf of the Corporation, to be made by the Commissioner, clause (c) confers power on the Commissioner to make a contract (other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto) not involving an expenditure exceeding Rs.50.00 Lakhs. Clause (b) of Section 124 disables the Commissioner from carrying out the contract for any purpose which, in accordance with any provision of the HMC Act, requires the approval or sanction of some other municipal authority to be made, until or unless such approval or sanction has first been duly given. In terms of Section 124(b) of the HMC Act unless approval or sanction has been given by the concerned municipal authority, the Commissioner cannot carry out the contract made by him.

Section 148(1) confers power on the Commissioner to grant lease of any immovable property belonging to the Corporation for any term not exceeding 12 months. Even for grant of lease, of immovable properties of the Corporation, for a period upto 12 months, the proviso to Section 148(1) obligates the Commissioner to report, the grant of such lease, to the Standing Committee within 15 days. Section 148(2) confers power on the Commissioner to grant lease of any immovable property belonging to the Corporation for a period not exceeding three years with the sanction of the Standing Committee. While the Commissioner is empowered under Section 148(1) to grant lease, of immovable properties of the Vijayawada Municipal Corporation, for a period upto 12 months, Section 148(2) requires him to obtain the sanction of the Standing Committee before he grants a lease for a period exceeding 12 months but not exceeding three years. Grant of lease exceeding three years is covered by Section 148(3) which prohibits the Commissioner from granting lease, of immovable properties belonging to the Vijayawada Municipal Corporation, without the previous sanction of both the Corporation and the Government. In effect, the Commissioner is prohibited from granting lease of the immovable properties of the Vijayawada Municipal Corporation for a period exceeding three years unless he obtains prior sanction of both the Vijayawada Municipal Corporation and the Government of A.P. The proviso to Section 148(3) stipulates that, in no case, the lease period, of the immovable properties of the Vijayawada Municipal Corporation, shall exceed 25 years. As a result while the Commissioner can, after obtaining approval of the Vijayawada Municipal Corporation and the Government of Andhra Pradesh, grant lease of the immovable property of the Vijayawada Municipal Corporation for a period

exceeding three years but not exceeding 25 years, the proviso to Section 148(3) places an embargo, and prohibits grant of lease of immovable property belonging to the Vijayawada Municipal Corporation for a period exceeding 25 years. Even the Government of Andhra Pradesh cannot permit the Commissioner to grant lease, of any immovable property of the Vijayawada Municipal Corporation, for a period exceeding 25 years.

The Estate Officer, VMC issued memo dated 17.02.2017 informing the petitioner that his lease was due to expire on 21.04.2017 and, as such, the concerned officer would take possession of the Shadikhana after expiry of the lease. The petitioner informed the Commissioner, VMC, by his letter dated 03.03.2017, that the lease period for the Shadi Khana was to expire by 24.04.2017, on which date the 12 years lease period was getting completed; as per Government Orders, there was a possibility of extending the lease for 25 years; and, therefore, he may be granted an extension of lease for a further period of 3 years. The petitioner claims that this memo dated 17.02.2017 was served on him long after he had submitted a representation to the Commissioner on 03.03.2017. The appellant-writ petitioner was, admittedly, granted lease of the immovable property of the Vijayawada Municipal Corporation, pursuant to an auction of the lease hold rights, initially for a period of three years, which was subsequently renewed from time to time. When the current period of lease of three years expired on 24.04.2017, the appellant-writ petitioner was holding the property of the Vijayawada Municipal Corporation on lease continuously for a period of 12 years. His request for extension of lease for a further period of three years is, in effect, for lease to be granted for a period of 15 years (12 years for which lease was hitherto granted periodically, and

3 years from 24.04.2014 to 24.04.2017). In view of Section 148(3) even if the Commissioner, Vijayawada Municipal Corporation, intended to grant such a lease, he could only have done so with the previous sanction of the Vijayawada Municipal Corporation and of the Government of Andhra Pradesh.

Section 148 only confers power on the Commissioner, and does not obligate him to grant lease. It is always open to the Commissioner not to grant lease of the immovable properties of the Corporation if, in his opinion, these properties should be put to use by the Corporation itself. Even if he chooses to grant lease, it is open to the Commissioner to decide whether the lease should be granted for a period of 12 months, or for a period beyond 12 months and below three years, or for a period beyond three years upto 25 years. While the Commissioner is empowered to decide the period for which a lease is to be granted, the restriction placed by Section 148(2) and (3) would require the Commissioner, even if he decides to grant lease for a period beyond 12 months and below 3 years, or above 3 years but below 25 years, to obtain prior sanction of the Standing Committee, and the previous sanction of the Vijayawada Municipal Corporation and the Government of Andhra Pradesh, respectively. No right is conferred on any person to claim that he should either be granted a lease, or his lease should be automatically renewed periodically upto 25 years, by the Commissioner, Vijayawada Municipal Corporation. These are all matters for the Commissioner in his discretion, and for just and valid reasons, to decide.

A fair, rational and transparent mode of grant of lease, of immovable properties of local bodies, is by way of public auction as the object for which leases are granted by the Corporation is, primarily, to

maximise its revenue. It is not even the appellant's case that he has been prohibited from participating in any such auction merely on the ground that he was granted a lease earlier. As the conditions prescribed for renewal of lease of immovable properties under Rule 12(4) of the 1968 Rules, are inconsistent with Section 148 of the HMC Act, Section 6(3) of the 1981 Act renders the 1968 Rules inapplicable to the Vijayawada Municipal Corporation.

II. ADMINISTRATIVE GUIDELINES, ISSUED BY THE GOVERNMENT IN G.O.MS. NO.389 DATED 24.09.2004, CANNOT BE ENFORCED IN WRIT PROCEEDINGS:

The Government of Andhra Pradesh issued G.O.Ms.No.389 dated 24.09.2004 on the subject of construction of shopping complexes in urban local bodies under goodwill auction basis. G.O.Ms. No.389 dated 24.09.2004 records that the Government, in supercession of the orders issued earlier, had ordered that Municipal Corporations and Municipalities can take up construction of shopping complexes on lands belonging to them duly following the guidelines mentioned in the said G.O which, among others, are that the lease period should not exceed 12 years, and the lease period is initially for 5 years; and the lease can be renewed for 3 years @ 33 1/3% excess over the lease amount. G.O.Ms. No.389 dated 24.09.2004 is in the nature of administrative or executive guidelines, issued by the Government to Municipal Corporations and Municipalities, regarding construction of shopping complexes in urban local bodies.

The appellant's request for renewal of lease is not for a shop in a shopping complex constructed by the Vijayawada Municipal Corporation, but for a Shadikhana belonging to the Corporation.

The guidelines, in G.O.Ms.No.389 dated 24.09.2004, relate only to construction of shopping complexes and grant of lease of shops therein, and not to any other lease. Extending the said guidelines to lease of other immovable properties, belonging to the Corporation, would result in its falling foul of Section 148 of the HMC Act.

The power to issue G.O.Ms. No.389 dated 24.09.2004 is not referable to any statutory enactment or the Constitution. The said G.O. is merely in the nature of guidelines issued by the Government. Instructions in the nature of guidelines, and which do not have statutory force, do not confer a legally enforceable right. (**Union of India v. S.L. Abbas**⁵). Guidelines, which are not statutory in character, are not enforceable. (**Narendra Kumar Maheshwari**¹; **Fernandez**²; **R. Abdullah Rowther v. State Transport**⁶; **Dy.Asst. Iron & Steel Controller v. Manekchand Proprietor**⁷; **Andhra Industrial Work v. CCI & E**⁸; and **K.M. Shanmugham v. S.R.V.S. Pvt. Ltd.**,⁹).

The executive power of the State, under Article 162 of the Constitution, enables the Government to issue administrative instructions to its servants on how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. Non-observance of such administrative instructions does not give any right to a person to come to Court for any relief on the alleged breach of the instructions. (**G.J. Fernandez**²; **J.R. Raghupathy v. State of**

⁵ AIR 1993 SC 2444

⁶ AIR 1959 SC 896

⁷ [1972] 3 SCR 1

⁸ [1975] 1 SCR 321

⁹ [1964] 1 SCR 809

A.P.¹⁰). These guidelines do not confer any legally enforceable right on the appellant to claim that the lease granted to him should be periodically extended by the Corporation for a total period of 25 years. Reliance placed by the appellant-writ petitioner, on G.O.Ms. No.389 dated 24.09.2004, is therefore misplaced.

III. CAN THE APPELLANT SEEK PARITY WITH OTHERS WHOSE LEASE, OVER IMMOVEABLE PROPERTIES OF THE CORPORATION, HAS BEEN EXTENDED?

A notice was issued to one Sri Y. Srinivasa Rao, by the Estate Officer, Vijayawada Municipal Corporation, on 22.03.2016 informing him that extension of lease of the Karmal Bhavan was granted for a period of three years i.e. from 01.03.2015 to 28.02.2018; and the leaseholder should pay the amounts mentioned in the notice, register the lease agreement, and submit the same to their office. Similar extension of lease, of Karmal Bhavan at Durgapuram, was granted to Sri K. Panduranga Rao for a period of three years i.e. from 01.03.2015 to 29.02.2018 by notice dated 24.03.2016. With regards the Kalyana Mandapam at Mango Market, extension of lease of three years was granted to Sri A.Purnachandra Rao from 01.02.2016 to 31.01.2019 vide notice dated 24.03.2016.

The plea of discrimination, vis-à-vis those who were granted extension, and the claim for being extended a similar benefit does not merit acceptance. As held by the Supreme Court, in **Chandigarh Administration v. Jagjit Singh**¹¹, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be a ground for issuing a writ in favour of the petitioner on the plea of discrimination; the order in favour of the

¹⁰ AIR 1988 SC 1681

¹¹ AIR 1995 SC 705

other person might be legal and valid, or it might not be; that has to be investigated first before it can be directed to be followed in the case of the petitioner; if the order in favour of the other person is found to be contrary to law, or not warranted in the facts and circumstances of the case, such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order; the extraordinary and discretionary power of the High Court cannot be exercised for such a purpose; merely because the respondent authority has passed one illegal/unwarranted order, does not entitle the High Court to compel the authority to repeat that illegality again and again; the illegal/unwarranted action must be corrected, if it can be done according to law; wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but, even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition; by refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination; giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest; it will be a negation of law and the rule of law; if in case the order in favour of the other person is found to be lawful and justified, it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case; but then why examine another person's case in his absence, rather than examining the case of the petitioner who is present before the Court and seeking the relief; it is more appropriate and convenient to examine the entitlement of the petitioner before the Court

to the relief asked for in the facts and circumstances of his case, than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case; such a course, barring exceptional situations, would neither be advisable nor desirable; the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction, and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise; each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles; the orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and the High Courts, nor can they be elevated to the level of the precedents as understood in the judicial world; and the question of discrimination can be said to have arisen only if two findings are recorded by the High Court, viz., (1) the order in favour of the person, with whom parity is sought, was legal and valid, and (2) the case of the writ petitioners was similar in material respects to the case of the person with whom parity is sought, but he has not been accorded the same treatment.

None of the lessees, with whom the petitioner seeks parity in treatment, have been arrayed as respondents in the Writ Petition. It would be wholly inappropriate for us to examine, in their absence, whether or not extension of lease granted in their favour is in accordance with law. As noted hereinabove, the provisions of the 1981 Act read with the relevant provisions of the HMC Act confer a discretion on the Commissioner, subject to the restrictions specified therein, whether or not extension of lease should be granted. No right is

conferred by these provisions on lessees to claim that they should be granted extension of lease for the mere asking. The claim for extension of lease, on the plea of discrimination, must therefore fail.

IV. ORDER OF THE DIVISION BENCH IN W.P. NO.6354 OF 2009 DATED 25.08.2009 AND SECTION 277(4) OF THE A.P. MUNICIPALITIES ACT – THEIR SCOPE:

The Government of Andhra Pradesh issued G.O.Ms.No.120 dated 31.03.2011 informing the Commissioner and Director of Municipal Administration, and all Municipal Commissioners in the State that, in view of the order of the High Court in W.P.No.6354 of 2009 dated 25.08.2009, the Commissioner and Director of Municipal Administration, and all Municipal Commissioners should apprise the said orders of the High Court to the respective Chairpersons, Councils, and Municipal Commissioners; and to go for public auction, of all municipal properties, after completion of the lease period of 25 years.

The Commissioner and Director of Municipal Administration, A.P, Hyderabad, by his letter dated 11.02.2015, informed that, in terms of the directions issued in W.P.No.6354 of 2009, all the Commissioners were requested to take steps for vacating the lessees who were in occupation of the Municipal shop rooms beyond 25 years, and go for public auction for the said shop rooms; Section 277(4) of the 1965 Act prescribes that the maximum period of lease, of any municipal property, is 25 years; he should, therefore, take action to evict lessees, who have completed 25 years of lease, in terms of Section 277(4) of the 1965 Act as stipulated in the HMC Act, and in terms of the directions issued by the High Court in W.P.No.6354 of 2009 dated 25.08.2009; and the lease period, in respect of shop rooms which had not completed 25 years, may be renewed for every 3 years at a time, with an enhancement of

lease rent of 33 1/3% over the existing rent, with the approval of the Council, for a total period of 25 years.

Section 277 of the 1965 Act confers power in respect of public markets. Section 277(4) stipulates that the Council may lease any land, shop, godown, building or terrace of a building owned by it and situated anywhere in the municipality for any period not exceeding five years at a time, and subject to such terms and conditions as the Council may deem fit. Under the proviso thereto, it shall be competent for the Council to grant, with the prior sanction of the Government, any such lease for a period exceeding five years but not exceeding 25 years at a time. Section 2(11) of the 1965 Act defines 'Council' to mean a municipal council constituted under the said Act, which means a municipal council for a municipality. As Section 277(4) applies only to municipalities in the State of Andhra Pradesh and not to municipal corporations, such as the Vijayawada Municipal Corporation, reliance placed on Section 277(4) of the 1965 Act is misplaced.

The Judgment of the Division Bench of this High Court, in W.P. No.6354 of 2009 dated 25.08.2009, was also in respect of lease of immovable properties of a municipality under the 1965 Act, and not with respect to the properties belonging to municipal corporations. The Division Bench was neither called upon nor did it examine the provisions of either the 1981 Act or the HMC Act. The question which arose for consideration before the Division Bench was whether lease of properties of a municipality could be extended beyond a total period of 25 years, even if it is with the prior approval of the Government. The Division Bench held that the State Government lacked power to grant approval for extension of lease of immovable properties, belonging to municipalities, beyond a total period of 25 years. The judgment of the

Division Bench, in W.P.No.6354 of 2009 dated 25.08.2009, has no application to the facts of the present case.

V. IS THE UNDERSTANDING OF GOVERNMENT OFFICIALS, REGARDING THE SCOPE OF STATUTORY PROVISIONS, BINDING?

On information being sought under the Right to Information Act, the Assistant Director, Municipal Administration Department, Government of Andhra Pradesh, vide letter dated 31.03.2017, informed that municipal complexes/Kalyana mandapams/Karmal Bhavan/shops should be given on lease through open auction/tender procedure/continuance of lease in terms of the guidelines/rules issued by the Government from time to time, and in terms of the provisions of the Act; the lease period should accord with the guidelines/rules issued by the Government in terms of the provisions of the Act; the Municipal Council may resolve to fix the lease period; the terms and conditions for renewal of lease were envisaged in the Acquisition and Transfer of Immovable Properties Rules, 1967 under the 1965 Act wherein the Rules relating to the Acquisition and Transfer of Immovable Properties by Municipal Councils, and the terms and conditions were stipulated; extension of lease in Municipal Corporations, like Vijayawada and Guntur, were governed by G.O.Ms. No.56 MA & UD (JI) Department dated 05.02.2011; the Municipal Council may renew leases of immovable properties for a period of three years at one time; with the prior sanction of the Government, the lease could be renewed for a period exceeding three years, and not exceeding 25 years at a time; and Rule 12(1)(e) and (4) of the Receipts and Expenditure Rules, 1968 were applicable to Municipal Corporations.

In his letter dated 15.03.2017, the Deputy Commissioner, in response to a query under the Right to Information Act, opined that,

according to G.O.Ms. No.56 dated 05.02.2011 and as per the provisions of the HMC Act, open auction would be conducted by the Greater Visakhapatnam Municipal Corporation (“GVMC” for short) every year for vacant Kalyanamandapams and shops; the open auction would be conducted for a 3 year period only; the lease period would be renewed as per the conditions laid down in G.O.Ms. No.56 dated 05.02.2011, and as per Section 148(2) and (3) of the HMC Act; leases in Municipal Corporations, like Visakhapatnam and Vijayawada, would be extended as per G.O.Ms. No.56 dated 05.02.2011, as per Section 148 of the HMC Act, and according to the conditions specified in the lease notification of the GVMC; with regards extension of lease under Section 148(2) and (3), the Standing Committee is empowered to sanction lease for 3 years; with the previous sanction of the Corporation and the Government, the lease period can be extended upto 25 years; and Rule 12(e)(4) of the Receipt and Expenditure Rules, 1968 were being followed by the GVMC under the transitional provisions.

The understanding of Government Officers regarding the scope of statutory provisions is not binding on the Court. *Contemporanea expositio est optima et fortissima in lege* is a maxim meaning “Contemporaneous exposition is the best and strongest in the law.” (**Black L. Dict.; Broom.**). Where the words of an instrument are ambiguous, the Court may call in aid acts done under it as a clue to the intention. (**Watcham v. Attorney General of the East Africa Protectorate**¹²). *Contemporanea expositio* is a well settled principle or doctrine which applies only to the construction of ambiguous language in old statutes (**Baktawar Singh Bal Kishan v. Union of India**¹³), but not in interpreting Acts which are comparatively modern. (**Senior**

¹² (1919) A.C. 533

¹³ (1988) 2 SCC 293

Electric Inspector v. Laxmi Narayan Chopra¹⁴; **J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India**¹⁵). Even if persons who dealt with the statute understood its provisions in another sense, such mistaken construction of the statute does not bind the Court so as to prevent it from giving it its true construction. (**National & Grindlays Bank Ltd. v. Municipal Corpn. of Greater Bombay**¹⁶; **Punjab Traders v. State of Punjab**¹⁷). The rule of construction, by reference to contemporanea exposition, must give way where the language of the Statute is plain and unambiguous. (**K.P. Varghese v. ITO**¹⁸).

Where the meaning of an enactment is obscure, the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct for a long period of time. (**National & Grindlays Bank Ltd.**¹⁶). The terms of the statute can well be construed by reference to such exposition, in the absence of anything in the statute to indicate to the contrary. (**State of T.N. v. Mahi Traders**¹⁹; **Desh Bandhu Gupta v. Delhi Stock Exchange Association Ltd**²⁰ and **K.P. Varghese**¹⁸).

We are satisfied that Sections 6(3) & 7(1) of the 1981 Act, and Sections 124 and 148 of the HMC Act, are unambiguous and clear. The rule of construction, by reference to *contemporanea expositio*, must give way where the language of the statute is plain and unambiguous. (**K.P. Varghese**¹⁸). In the light of Sections 6(3) and 7(1) of the 1981 Act, and Sections 124 and 148 of the HMC Act, it is evident that Rule 12(4) of the 1968 Rules has no application to municipal corporations in the State and, therefore, lessees of immovable properties belonging to the

¹⁴ AIR 1962 SC 159

¹⁵ 1987 Supp SCC 350

¹⁶ AIR 1969 SC 1048

¹⁷ (1991) 1 SCC 86

¹⁸ (1981) 4 SCC 173

¹⁹ (1989) 1 SCC 724

²⁰ AIR 1979 SC 1049

municipal corporations cannot claim, as of right, that they should be extended the lease for periods of three years each for a total lease period of 25 years.

We find considerable force in the submission of Sri R. Sudheer, Learned Standing Counsel for the VMC, that a decision, whether or not to grant lease of immovable properties of the Corporation, is required to be taken by the Commissioner with regards each of these properties; while the Corporation may decide to use some of these properties itself, it may choose to lease some of the other properties for a certain duration; the duration, for which these immovable properties should be given on lease, is to be determined by the Commissioner bearing in mind the future needs of the Corporation; even when leases are granted it is for the Commissioner to decide, bearing in mind the object of maximising the revenues of the Corporation, whether it would be beneficial to extend the lease to the very same lessee or to conduct a public auction for grant of leasehold rights; and, as the needs of the Corporation with respect to each of its properties would differ from one to another, the petitioner is not entitled to claim parity with regards extension of lease with others who may have been granted extension of lease by the respondent-corporation.

It is only if it is held that the appellant-writ petitioner has a right to seek extension of lease, can a direction be issued to the respondent-Corporation to consider his request for grant of extension of lease. As we are satisfied that no such right enures to lessees of immovable properties of the municipal corporation, there is no justification in issuing a mandamus to the Corporation to consider the petitioner's request for extension of lease. Suffice it to record the submission of Sri R. Sudheer, Learned Standing Counsel for the VMC, that the

respondent-Corporation would either use the subject property itself or conduct a public auction for grant of leasehold rights of the said property. Needless to state that, in case the respondent-Corporation decides to conduct a public auction for grant of leasehold rights of the subject property, it is always open to the appellant-writ petitioner to participate therein.

Subject to the aforesaid observations, we see no reason to interfere with the order under appeal. The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

Date:16-06-2017.

Note: L.R. copy to be marked
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