

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 376 of 2010**

1. Municipal Corporation Bilaspur, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.
2. Commissioner, Municipal Corporation Bilaspur, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

---Appellants/Defendants

Versus

Devidas S/o Yashwant Rao Aarkile, A/A 65 years, Occupation Assistant Health Officer (Retd.), Municipal Corporation Bilaspur, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh, R/o Near Pump House, Ashok Nagar Phase-2, Rajkishore Nagar, Sarkanda, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

---- Respondent/Plaintiff

For Appellants	:-	Mr. Anumesh Shrivastava, Advocate
For Respondent	:-	Mr. Rajeev Bharat, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

17/09/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. This second appeal preferred by the appellants/defendants was admitted for hearing on

the following three substantial questions of law :-

"1. Whether the findings of both the Courts below are perverse regarding compliance of Section 401 of the Chhattisgarh Municipal Corporation Act, 1956 ?;

2. Whether the findings of both the Courts below are perverse regarding suit filed within limitation ?; &

3. Whether the findings of both the Courts below are perverse regarding maintainability of the suit ?"

[For the sake of convenience, the parties will herein-after referred to as per their status before the trial Court.]

3. The plaintiff/respondent herein filed a civil suit bearing No. 151-A/2009 for declaration that though he has been rendering his service on the post of 'Assistant Health Officer' w.e.f. 01/08/1987, but he has not given the regular/revised pay-scale of the said post whereas one Narendra Chauhan who is also posted as 'Assistant Health Officer' has been given the benefit of regular/revised pay-scale w.e.f. 16/07/1997, therefore, he is also entitled to receive the regular/revised pay-scale of 'Assistant Health Officer'.

4. On 14/07/2000, the plaintiff served notice under Section 401 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter, called as 'the Act of 1956') vide Exhibit P/5 to the appellant/defendant No. 2 i.e. Commissioner, Municipal Corporation, Bilaspur and thereafter, instituted the suit on 10/11/2000 claiming for regular/revised pay-scale of 'Assistant Health Officer' and the arrears thereof.

5. Resisting the suit, defendants No. 1 and 2 filed written statement stating *inter alia* that no benefit of regular/revised pay-scale of 'Assistant Health Officer' is being given to Narendra Chauhan, and though it was given to him in anticipation, but it was then withdrawn. It was further pleaded by the defendants that notice under Section 401 (1) of the Act of 1956 has been issued and served by the plaintiff only to defendant No. 2 i.e. Commissioner, Municipal Corporation, Bilaspur, therefore, it is total non-compliance of Section 401 (1) of the Act of 1956 and thus, the suit is not maintainable. Furthermore, it was pleaded that the suit filed by the plaintiff is barred by limitation as it

has not been brought within three years from the date of arising out of the cause of action.

6. Learned trial Court, upon appreciation and evaluation of oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 09/09/2009 rejecting the preliminary objection raised by the defendants with regard to the non-service of valid notice under Section 401 (1) of the Act of 1956 and also holding the suit to be within limitation. On appeal being preferred, learned first appellate Court maintained the judgment and decree of the trial Court and dismissed the appeal of the defendants vide its impugned judgment and decree dated 13/08/2010 against which the present second appeal has been filed under Section 100 of the CPC in which substantial questions of law have been framed and set out in the opening paragraph of this judgment.

7. Mr. Anumesh Shrivastava, learned counsel appearing for the appellants/defendants, would submit that both the Courts below have misconstrued the provisions contained under Section 401 of the Act of 1956 and have erred in holding that notice served by the plaintiff to

defendant No. 2 i.e. Commissioner, Municipal Corporation, Bilaspur (Ex. P/5) is a valid notice whereas they ought to have held that the notice contemplated under Section 401 of the Act of 1956 was required to be served by the plaintiff to defendant No. 1 i.e. Municipal Corporation, Bilaspur and though it can be served to the Principal Chief Executive Officer or the Commissioner of the said Corporation, but with no stretch of imagination, the notice issued to the Commissioner, Municipal Corporation can be said to be the notice served in compliance of Section 401 of the Act of 1956. He would further submit that the suit, as framed and filed by the plaintiff, is admittedly barred by limitation as it was not filed within three years from the date from which the cause of action accrued and moreover, this being a service matter, the civil suit filed as such is not maintainable.

8. Mr. Rajeev Bharat, learned counsel appearing for the respondent/plaintiff, would submit that the notice under Section 401 of the Act of 1956 has rightly been issued and served to the Commissioner, Municipal Corporation, Bilaspur and the dispute raised in this regard is a pure and

simple technical issue which is also covered by the decision of the Madhya Pradesh High Court in **Khursheed Ahmad v. Mehrunnisha and Anr.**¹. He would also submit that non-payment of regular/revised pay-scale is a recurring cause of action, thus, the suit cannot be held to be barred by limitation and accordingly, the second appeal deserves to be dismissed.

9. I have heard learned counsel appearing for the parties, considered their rival submissions and went through the records with utmost circumspection.

Answer to Substantial Question of Law No. 1 :-

10. In order to decide the dispute with regard to the valid issuance of notice under Section 401 (1), it would be appropriate to consider the provisions contained under Section 401 (1) of the Chhattisgarh Municipal Corporation Act, 1956 :-

"401. Notice, limitation and tender of amends in suit against Corporation, etc. -

(1) No suit shall be instituted against the Corporation, the [Mayor-in-council] or any Corporation officer or servant, or any person acting under the direction of the Corporation, the [Mayor-in-council] or any municipal officer or servant, in respect of

¹ 2007 (3) M.P.H.T. 352

any act done or purporting to have been done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act or any rule or byelaw made thereunder until the expiration of one month next after notice in writing has been delivered or left at the Chief Corporation Office or at the residence of such officer, servant or person stating with adequate particulars -

(a) the cause of action;

(b) the name and residence of the intending plaintiff and of his advocate, pleader or agent, if any, for the purpose of the suit; and

(c) the relief which he claims."

11. All that this section requires, is that in case, a suit is to be instituted against a Corporation or Mayor-in-council, or any Corporation Officer/or servant, an notice in writing must be delivered or left at the Chief Corporation Officer. This has to be construed strictly.

12. The question whether service of notice to the Municipal Corporation under Section 401(1) of the Act of 1956 is mandatory before institution of suit stands concluded by the decision of the Madhya Pradesh High Court in the matter of Municipal Corporation, Murwara, Katni v. Lalchand

Jaiswal² wherein it has been held that it is mandatory to serve notice under Section 401 of the Act prior to filing of the suit, where injunction is sought, suit could not be filed without serving notice under Section 401(1) of the Act. The principle of law enunciated therein has been followed by this Court also in M/s Mangilal Pagariya Builders and Contractors v. Nagar Palika Nigam, Raipur³.

13. The short question that falls for consideration is whether the notice addressed and served to the Commissioner, Municipal Corporation, Bilaspur is due and valid notice to the Municipal Corporation, Bilaspur as required under Section 401(1) of the Act of 1956.

14. At this stage, it would be proper to notice Section 7(1) and 7(3) of the Act of 1956, which read as under :-

"7. Constitution of Municipal Corporation. -

(1). There shall be constituted a Municipal Corporation for a larger urban area in accordance with the provisions of this Act.

(2). XXXXXX XXXXXX XXXXX

(3). The Corporation shall be a body corporate having perpetual succession and a

² 2000 (2) MPLJ 288

³ 2013 (3) CGLJ 65

common seal and shall be the said name sue and be sued."

15. Section 9(1) of the Act provides for composition of Municipal Corporation which states as under :-

"9. Composition of Municipal Corporation. -

(1). A Municipal Corporation shall consist of -

(a) a Mayor, that is Chairperson, elected by direct election from the Municipal area;

(b) Councilors elected by direct election from the wards;

(c) not more than six persons having special knowledge or experience in the Municipal administration, nominated by the State Government.

[Provided that only a person residing within the Municipal area and being otherwise not ineligible for election as a Councillor, may be nominated];

(d) Members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(e) Members of the Council of States registered as electors within the Municipal area;

[Provided that a member of the House of the people and a member of the State Legislative Assembly as mentioned in clause (d) or a member of Council of States, as

mentioned in clause (c) may nominate his representative, who possesses such qualifications as may be prescribed in this behalf to attend the meeting of the Corporation.]

16.A close and careful reading of the aforesaid provision makes it transparently clear that the Municipal Corporation incorporated under the Act of 1956 is body corporate having perpetual succession and is separate and distinct entity. The Madhya Pradesh High Court in Prabharani Vishwakarma v. State of Madhya Pradesh⁴, while considering section 18 of the M.P. Municipalities Act, 1961 held that Municipality is distinctive juristic personality having separate existence in law by holding as under :-

“7. Testing on the aforesaid touchstone, it is graphically clear that the Municipality having been incorporated as a body corporate has to have its distinct name and separate legal entity. It is a body corporate for which the name is a sine quo non. The councilors who are elected as members of Municipality are members of a body corporate and their individual identity is merged in the body corporate. Being a body corporate it has to be given the status of distinctive juristic

personality having separate existence in law."

17. The question as to whether notice addressed and served to the Municipal Corporation under Section 401(1) of the Act of 1956 is a valid notice to the Municipal Corporation came up for consideration before the Madhya Pradesh High Court in Putli Bai v. Municipal Corporation, Gwalior⁵ in which it has been held that a notice addressed to the "Commissioner" cannot be deemed to be the notice addressed to the Corporation. Relying upon the decision of the Supreme Court in S.N. Dutta and Company v. Union of India⁶, the Madhya Pradesh High Court observed as under :-

"These observations are emphatic and I am bound by them. Following them with the utmost respect, it must be said that a notice addressed to the 'Commissioner' cannot be deemed to be notice to the 'Corporation'."

18. The principle of law enunciated by the Madhya Pradesh High Court in the matter of Putli Bai (supra) was followed by the same Court in Kashiram v. Municipal Council, Mandsour⁷ and it was held that notice served to the Chief

5 1964 JLJ 464 (CN 88)

6 AIR 1961 SC 1449

7 1966 JLJ (SN) 7

Municipal Officer under Section 319 of the Municipalities Act, 1961 and thereafter suit instituted against the Municipal Council on the basis of such notice was not maintainable.

19. Similarly, in the matter of Prabharani Vishwakarma (supra), it has been held by the Madhya Pradesh High Court that the Municipality is a body corporate having its own juristic personality and notice addressed to the Chief Municipal Officer is not a notice to the Municipality. Paragraph 11 of the report states as under :-

"11.... In view of the preceding analysis it is amply clear that the Municipality being a body corporate has its own juristic personality, and therefore the requirement of law that President intending to resign has to give a notice in writing to the Municipality, means, it has to be addressed to the Municipality. It may be delivered to the Chief Municipal Officer or any other person who has been authorized to receive it on behalf of the Municipality but the notice has to be addressed to the Municipality not to the Chief Municipal Officer. The Chief Municipal Officer may be the Chief Executive Officer of the Municipality and might have given authority to perform various functions but he cannot be substituted for the

Municipality. It has been observed in the case of Laxmi Narayan Dubey (Supra) that he has the duty to receive papers for or on behalf of the Municipality. In this regard we may say that the Chief Municipal Officer of the Council might have the authority to receive papers for or on behalf of the Municipal Council but when a notice is to be given in writing to the Municipality, though there is no explicit expression, it has to be addressed to the Municipality. It is inhered in the language employed as it has to be addressed to the Municipality which is a body corporate. In view of the analysis we are of the considered view that the decision rendered in the case of Amrit Chandra Rajpal (supra) and Laxmi Narayan Dubey (supra) do not lay down the correct law to the effect that notice on the Municipal Officer is notice to the Municipality. As the learned Single Judge in the instant case has relied on the aforesaid decisions and has arrived at the conclusion that notice on the Chief Municipal Officer has been properly served on the said view. Resultantly, our view is that the requirement of the statute is that the notice in writing has to be addressed to the Municipality and a notice to the Chief Municipal Officer does not meet the requirement of law."

20. This Court has also taken the same view before in the matter of Shyam Kishore Agrawal v.

Commissioner Nagar Palika Nigam, Raipur⁸ relying upon the decision of the Madhya Pradesh High Court in Prabharani (supra) and Putli Bai (supra).

21. Reverting back to the facts of the present case in light of the principle of law laid down by the Madhya Pradesh High Court in the aforesaid judgments of Prabharani (supra) and Putli Bai (supra), it is quite vivid that Exhibit P/5 i.e. notice dated 14/07/2000 was addressed and served by the plaintiff to the Commissioner, Municipal Corporation, Bilaspur and thereafter, the civil suit was instituted against the Municipal Corporation, Bilaspur as well as the Commissioner, Municipal Corporation, Bilaspur. It is evident that no notice was served to the Municipal Corporation, Bilaspur before the institution of the suit which is mandatorily required under Section 401(1) of the Act of 1956. The suit as framed and filed by the plaintiff after serving notice to the Commissioner, Municipal Corporation, Bilaspur cannot be said to be maintainable in view of Section 401(1) of the Act of 1956.

22.The Madhya Pradesh High Court in Municipal Corporation, Murwara, Katni (supra) has clearly held that service of valid notice to the Municipal Corporation is sine qua non for filing the suit against the said Municipal Corporation. In the instant case, no valid notice under Section 401(1) of the Act of 1956 was served to the Municipal Corporation, Bilaspur before institution of the suit, therefore, both the Courts below have clearly erred in decreeing the suit for want of notice under Section 401(1) of the Act of 1956.

23.The decision rendered by the Madhya Pradesh High Court in Khursheed Ahmed (supra) is clearly distinguishable and contrary to the facts of the present case and it has been clearly held therein that service of valid notice to the Municipal Corporation is a must.

24.Consequently, it is held that the suit as framed and filed by the plaintiff against the two defendants namely Municipal Corporation, Bilaspur and Commissioner, Municipal Corporation, Bilaspur respectively, claiming for the relief of regular/revised pay-scale for the post of 'Assistant Health Officer' was not maintainable

and both the Courts below were absolutely unjustified in not noticing the correct legal position and decreeing the suit in favour of the plaintiff.

25. In view of the aforesaid finding having reached by this Court that the suit as framed and filed by the plaintiff was not maintainable as valid notice under Section 401(1) of the Act of 1956 was not served to the Municipal Corporation, Bilaspur, I deem it unnecessary to answer the substantial questions of law No. 2 and 3. Accordingly, the judgment and decree of both the Courts below are hereby set aside and plaintiff's suit is dismissed. However, the plaintiff is at liberty to proceed in accordance with law.

26. The second appeal is allowed. No order as to cost(s).

27. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge