

PETITIONER:
G.B. MAHAJAN AND ORS.

Vs.

RESPONDENT:
JALGAON MUNICIPAL COUNCIL AND ORS.

DATE OF JUDGMENT 13/09/1990

BENCH:
VENKATACHALLIAH, M.N. (J)
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VENKATACHALLIAH, M.N. (J)
OJHA, N.D. (J)

CITATION:
1991 AIR 1153 1990 SCR Supl. (3) 20
1991 SCC (3) 91 1991 SCALE (1)378

ACT:

Constitution of India, 1950: Articles 14 and 298--State Instrumentality--Municipal Council entering into contract with private developer for construction of Commercial Complex on self financing basis--Adoption of such an unconventional technique as a policy option--Validity of.

Article 226--Resort to--Contractual transaction of Government or its instrumentality--Presence public law element--Essential for invoking Judicial Review.

Municipalities: Maharashtra Municipalities Act, 1965: Sections 92 & 272(1)--Municipal Market--Disposal of occupancy rights--Construction of Commercial Complex--Private developer to undertake on self financing basis--Giving administrative building to Municipal Council free of cost--Shops to be given to allottees--Liberty to dispose of the remaining accommodation to cover financial outlays and project ---Whether valid.

Administrative Law: Judicial Review--Policy decision--Government or its instrumentality--Whether free to evolve and adopt any method for executing of a Project--Such decisions--whether open to Judicial Review.

Test of 'Reasonableness'--To distinguish between proper use and improper use of power--Applicability of the test depends upon context.

Delegation of power---Statutory function under Section 272 of the Maharashtra Municipalities Act, 1965 Occupancy rights--Powers to substitute occupiers in its own place by developer--Whether permissible.

Interpretation of Statutes: Use of same word/phrase or concept in different laws--Distinction in meaning and usage--Need for.

Words & Phrases.' 'Reasonableness'--'Reasonable man'--Meaning of.

HEADNOTE:

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The respondent Municipal Council received by way of gift certain lands from one 'L' and the said lands were used by the Agricultural Produce Market Committee as a cotton market and wholesale fruit and vegetables market. The Respondent Council, in order to put the land to a better and more profitable use, persuaded the Market Committee to yield up

possession. However, since the gift stipulated certain conditions regarding the user, the Respondent Council approached the heirs of the donor for amending the terms of the gift, and the heirs bargained for and secured a benefit that five shops be given to them free of cost in the proposed commercial complex. The entire project of constructing the Administrative building, an adjacent structure for vegetable market and a commercial complex was to be executed by a developer at his own expense. The estimated/financial outlay was about Rs.11 crores. It was contemplated that the developer was to hand over the Administrative building free of cost to the Municipality and the vegetable market to the allottees and the five shops to the heirs of the donee of the land. Thereafter the developer would be entitled to dispose of the occupancy rights in respect of the rest of the accommodation in the commercial complex and retain the premia received therefrom to cover the financial outlays and profit thereon. The occupiers to whom allotments were made as also the occupiers inducted by the developer were to pay rents to the Respondent Council for 50 years.

Tenders were issued for the project, and after scrutiny of the tenders submitted by five developers, the tender of Respondent No. 6 was accepted by the Respondent-Council, and a formal agreement was entered into between the Council and Respondent No. 6.

The appellants, residents of the area petitioned to the Collector to suspend the Resolutions of the Council undertaking the said project and the agreement entered with Respondent No. 6, on the grounds that the proposed transaction amounted to a lease for 50 years which was prohibited under Section 92 of the Maharashtra Municipalities Act, 1956; that sanction of the Development Department was not obtained; that an impermissible encumbrance would be created on the Council's property in favour of the developer and that the intended user violated the original terms of the gift. On the said petition, the Collector passed orders suspending the Resolutions. On revision, the Minister stayed the operation of the Collector's order.

Meanwhile, a Writ Petition was filed before the High Court, assailing the said Resolutions. Another Writ Petition was filed challenging the Minister's orders staying the order of the Collector. Both the

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Writ Petitions were heard together. The main contention of the Writ Petitioners was that the financial estimates of the project were made grossly under-estimating the probable receipts by way of premia for the grant of occupancy rights with the intention of giving an opportunity for unjust enrichment to Respondent No. 6. The High Court directed that occupancy rights in regard to the shops at the disposal of the developer tenders be called from the public, so that the difference between what was taken into account in the estimate and what was actually secured might go to the benefit of the Municipality. Accordingly, advertisement were issued, but it did not evoke any favourable response from the public. The matter was listed again before the High Court. It was held that the High Court's earlier order was self-executory, and the Writ Petitions were dismissed. Review Petition was also dismissed. Another Writ Petition challenging the advertisement issued pursuant to High Court's earlier order was also dismissed.

The Special Leave Petitions filed against the above-said orders of the High Court, were dismissed by this Court with the observations that it was open to the petitioners to move the Minister for final disposal and the Minister would

expeditiously dispose of the matter taking into consideration whether the scheme was in conformity with the statutory provisions. The Minister disposed of the Revision Application recording his findings against the appellants. Thereupon, the appellants filed a fresh Writ Petition before the High Court challenging the Minister's orders. The High Court declined to interfere. Aggrieved by the High Court's order, appellate preferred the present appeal by special leave.

It was contended on behalf of the appellants that the scheme of financing the project was not, as a matter of policy, open and permissible to a Governmental authority; that the Municipal authority could have put up the construction itself departmentally or awarded the execution of the whole project to a building contractor; that the method of financing and the execution of the project are, beyond the powers of the Municipal authority under the Act; that the terms of the agreement with the developer that the latter be at liberty to dispose of the occupancy rights in the commercial complex in such manner and on such terms as it may choose would amount to an impermissible delegation of the statutory functions of the Municipal Council, under Section 272 of the Maharashtra Municipalities Act; that the project, in effect amounted to disposal of Municipal property by way of a long term lease with rights of sub-letting in favour of the developer and hence violative of Section 92 of the Act; and that the scheme was arbitrary, unreasonable and violative of Article 14 of the Constitution. It was further con-

23 tended that the project was patently intended to provide for an unjust enrichment of Respondent No. 6 at public expense.

On behalf of the Respondent it was contended that the increasing revenue expenditure and other financial commitments rendered it impossible for the Municipal Council to set apart the financial inputs required for the project; that in the management of the transaction regarding disposal of occupancy rights and prompt mobilisation of funds, the deficiencies and limitations of the bureaucratic machinery should not be ignored in assessing the value and utility of the alternatives; that all the said Resolutions in regard to the Project were passed unanimously which lend credence to the propriety and wisdom of the measure and its reasonableness; that the estimates and calculations on which the scheme was worked out by the Respondent Council would show that the developer had no opportunity of making any run-away profits or exploitative gains.

Dismissing the appeal, this Court,

HELD: 1. A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The question is not whether it is un-conventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. No doubt there is a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost over-runs in projects, balancing of costs against time-scales, quality-control, cost-benefit ratios. etc. In search of these values it might become necessary to adopt appropri-

ate techniques of management of projects with concomitant economic expediencies. There are essentially matters of economic policy with lack of adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications, or if they amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority. [35C-G]

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Forward Construction Co. & Ors. v. Prabhat Mandal, [1986] 1 SCC 100; relied on.

Ramana Dayanand Shetty v. International Airport Authority, [1979] 3 SCR 1014; Kasturilal Laxmi Reddy v. State of J JUDGMENT:

New State Ice Company v. Ernest A. Liebmann, 285 US 262 Dissenting opinion of Brandeis J; Education Secretary v. Tameside B.C., [1977] AC 1014; referred to,

"The Purpose and Scope of Judicial Review" by Sir Garard Brennan is "Judicial Review of Administrative Action in the 1980s", Oxford University Press; referred to.

2. In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. In the context of expanding exigencies of urban planning it will be difficult for the court to say that a particular policy option was better than another. The project is not ultra vires of the powers of the Municipal Council, and hence there is no justification for quashing the Resolution of the Municipal Council. [36G]

Policy making Paradigms in Administrative Law" by Colin S. Diver in Harvard Law Review, vol. 95 p. 393; referred to.

3. In the instant case, it is possible to fit the power exercised by the Municipal authority into Section 272(1) of the Maharashtra Municipalities Act and hence there is no reason why the provision be interpreted unduly restrictively to exclude such enterprise. [40E]

4. It has not been established that the essential elements of the transaction are such that Section 92 of the Act is violated. It would, indeed be unduly restrictive of the statutory powers of the local authority if a provision enabling the establishment of markets and disposal of occupancy-rights therein are hedged in by restrictions not found in the statute. The developer who was authorised to induct occupiers in respect of the area earmarked for him merely exercised, with the consent of the Municipal Council a power to substitute an Occupier in his own place. This is not impermissible when it is with the express consent of the Municipal Council. [40H; 41A-B]

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5.1 Some phrases which pass from one branch of law to another--as did the expression 'void' and 'voidable' from private law areas to public law situations--carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words "Reasonable", "Reasonableness" etc. Different contexts in which the operation of "Reasonableness" as test of validity must be kept distinguished. The administrative law test of 'reasonableness' as the touch-stone of validity of the Resolution in the instant case is different from the test of the 'reasonable man' familiar to the law of torts, whom English Law figuratively identifies as the "man on the clapham omnibus". In the latter case the standards of the 'reasonable-man', to the extent such a 'reasonable man' is court's creation, is a

mere transferred epithet. Yet another area of reasonableness which must be distinguished is the constitutional standards of 'reasonableness' of the restrictions on the fundamental rights of which the Court of Judicial Review is the arbiter. [42F-G; 43A-B]

5.2. The 'reasonableness' in administrative law must distinguish between proper and improper use of power. [44D]

Davis Contractors v. Fareham U.D.C., [1956] 2 AH ER 145; Associated Provincial Picture Houses Ltd. v. Fednesbury Corporations, [1948] 1 KB 223; Nottinghamshire County Council v. Secretary of State for Environment, [1986] AC 240; Tiller v. Atlantic Coast Line Rail Road Company, 318 US 54; Chief Constable v. Evans, [1982] 3 All ER 141; referred to.

Administrative Law, by H.W.R. Wade, 6th Edn., pp. 407, 408; Legal Control of Government, by Bernard Schwartz and H.W.R. Wade, p. 253; referred to.

6. While it is true that principles of judicial review apply to the exercise by a government body of its contractual powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. In a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked. In the present case the material placed before the Court fails far short of what the law requires to justify interference. [46F]

7. There is no merit in the contention that the Project Scheme was tailored to suit Respondent No. 6 alone or that the project as put to tender did not admit of tenders on fixed comparable parameters. No

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other tenderer expressed any grievance. The tenders were such that the tenderer could identify the terms which form the basis of comparative evaluation. The charge of arbitrariness cannot be upheld. [46G-H; 47A]

8. To condemn the Municipal authority's decision, otherwise valid, on the ground alone that the developer is likely to resort to transactions of unaccounted money would, as a judicial remedy, be plainly unthinkable. [47E]

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