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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (MAIN) No.296 of 2010 & C.M. Appl. No.4064 of 2010

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04.06.2010

MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Ms. Mini Pushkarna, Advocate.

Versus

BANSO DEVIRespondent
Through: Ms. Pooja Goel, Advocate for R-1.
Mr. Arvind Kumar, Advocate for DJB.

Reserved on: 22nd April, 2010
Pronounced on: 4th June, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition under Article 227 of the Constitution of India, the petitioner/MCD has assailed an order dated 16th January, 2010 whereby the learned Tribunal ordered that the petitioner be impleaded as a party to the claim petition filed by the respondent.

2. The plea of the petitioner is that the sewer jetting machine bearing registration No.DNG 1229 with which the accident took place belonged to Delhi Jal Board and was being driven by one of the employees of Delhi Jal Board, namely, Dharampal, s/o Kalu Ram. The MCD was sought to be impleaded by the claimant on the ground that this machine was registered in the name of MCD. However, the Tribunal ignored the fact that the functions of water supply and sewerage disposal, under MCD till 1996, were separated from the MCD and a separate undertaking, namely, Delhi Water Supply and

Sewerage Disposal Undertaking was created and the work of water supply, maintenance and cleaning of sewers, maintenance of sewerage, sullage pump house, desilting, design and planning of drains, etc., was transferred to this Undertaking and MCD had nothing to do with this work and machines employed for the work. All immovable and movable properties of MCD connected with the transferred work were transferred to this Undertaking. Subsequently, an autonomous body called Delhi Jal Board came into existence and these functions got transferred to Delhi Jal Board. All vehicles and other movable assets pertaining to these functions also stood transferred to Delhi Jal Board and, therefore, MCD was neither a necessary nor proper party but the Tribunal ignored this fact and made MCD as a party.

3. A perusal of the order of the Tribunal shows that this plea was considered by the Tribunal. The Tribunal referred to Section 511 B of Delhi Municipal Corporation Act which read as under :-

“(1) In this Section, “transferred functions” means such functions of the Corporation which immediately before the commencement of the Delhi Municipal Corporation (Amendment) Act 1993 were the functions of the Corporation but as from such commencement become the functions of any other authority or functionary hereinafter called the “new authority”.

(2) On and from such commencement –

- (a) all lands and buildings (together with all interests of whatsoever nature and kind therein) vested in the Corporation immediately before such commencement and used for the purposes of “transferred functions” shall pass to and vest in the new authority concerned;
- (b) all stores, articles and other movable properties belonging to the Corporation immediately before such commencement and utilized for or in connection with the “transferred functions” shall pass to and vest in the new authority concerned.”

4. The Tribunal after referring to above Section observed that this Section only deals with transfer of functions and it nowhere speaks about transfer of vehicles of MCD to Delhi Jal Board. I consider that the Tribunal ignored Section 511 B (2) (b) of DMC Act reproduced above wherein it is clearly mentioned that all stores, articles and other movable properties belonging to the Corporation before the commencement shall stand transferred and pass to the newly constituted authority. Vehicles are movable properties and, therefore, it cannot be said that the vehicles were not included in this transfer.

5. The other observation made by the Tribunal is that the MCD failed to produce an office order showing that vehicle in question was transferred to Delhi Jal Board and since the vehicle still stood registered in the name of MCD, therefore, MCD was a necessary party.

6. I consider that since the MCD was the registered owner of the vehicle MCD would be a proper party in the claim petition. However, while adjudicating the liability as to whether it was Delhi Jal Board or MCD liable to pay compensation, the Tribunal shall take into account the entire evidence as may be placed before it by MCD regarding the transfer of vehicle in question either directly or indirectly to Delhi Jal board. The Tribunal shall give opportunity to MCD to produce evidence and documents regarding this issue. The Tribunal shall consider as to who was in actual control of vehicle and was using it.

7. With these directions, the petition stands disposed of.

SHIV NARAYAN DHINGRA, J.

JUNE 04, 2010
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