

(2011) 08 AHC CK 0093
In the Allahabad High Court
Case No : Writ C No. 43286 of 2011

Chandra Pal and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

All India Services Act, 1951 — Section 3(2)
Constitution of India, 1950 — Article 19(1)
Essential Commodities Act, 1955 — Section 3(6)
Housing (Financial and Miscellaneous Provisions) Act, 1946 — Section 10(2)
Mahatma Gandhi National Rural Employment Guarantee Act, 2005 — Section 33(2), 4
Road Traffic Act, 1930 — Section 10(4), 3

Citation : (2011) 8 ADJ 357 : (2011) 6 AWC 5604 : (2011) 3 UPLBEC 2270

Hon'ble Judges : Bharati Sapru, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri V.K. Singh, Senior Advocate, assisted by Sri S. Shekhar for the Petitioners and learned Standing Counsel for the Respondents.

2. The Petitioners are Pramukhs of Kshetra Panchayats elected in the year 2010. The Petitioners have come up in this writ petition praying for quashing the orders dated 7th July, 2011 and 8th July, 2011 issued by the District Rural Development Agency, Hamirpur and Mahoba respectively by which all the Block Development Officers/Programme Officers of District Hamirpur and District Mahoba were informed that in view of the dismissal of Writ Petition No. 57838 of 2007 the earlier notification dated 5th October, 2007 issued by the State Government laying down that accounts of the Kshetra Panchayat shall be operated by the joint signatures of Block Development Officer/Programme Officer and Assistant Development Officer (Panchayat) shall revive and accounts be operated with the joint signatures of the aforesaid two officers. The Petitioners have also prayed for quashing the Government order dated 7th September, 2007 and notification dated 5th October, 2007.

3. u/s 4 of the National Rural Employment Guarantee Act, 2005 (hereinafter referred to as the 2005 Act), the State Government published a scheme dated 8th February, 2007. Item No. 6.4 of Chapter VI of the said scheme provided that an account shall be opened in the name of Rojgar Guarantee Nidhi which shall be operated jointly by Block Development Officer and Block Pramukh of the Kshetra Panchayat. Paragraph 6.4 of the said scheme of the State Government was amended by Government order dated 7th September, 2007 to the effect that the operation of the account shall be done by the Block Development Officer/ Programme Officer and Assistant Development Officer (Panchayat). The Government order dated 7th September, 2007 was challenged before this Court by means of Writ Petition No. 47034 of 2007 (Gyanendra Singh and Ors. v. Union of India and Ors.) in which a Division Bench of this Court passed an interim order on 27th September, 2007 prima facie being satisfied that the scheme dated 8th February, 2007, which was earlier notified, cannot be amended by an executive order of the State Government dated 7th September, 2007. The State Government thereafter issued a notification dated 5th October, 2007 published in the U.P. Gazette Extraordinary on 5th October, 2007 modifying Paragraphs 6.3 and 6.4 of the scheme dated 8th February, 2007 which provided that account at Block level shall be jointly operated by Assistant Programme Officer (Block Development Officer) and Assistant Development Officer (Panchayat). Writ Petition No. 57838 of 2007 (Ran Vijay Singh and Ors. v. Union of India and Ors.) was filed before this Court and a Division Bench by order dated 23rd November, 2007 granted an interim order directing that the account shall be operated under the joint signatures of the Block Development Officer (Programme Officer) and Block Pramukh. Subsequently the said writ petition has been dismissed by Division Bench of this Court on 19th August, 2010. After dismissal of the writ petition, letters dated 7th July, 2011 (Annexure-10 to the writ petition) and letter dated 8th July, 2011 (Annexure-11 to the writ petition) have been issued noticing dismissal of the writ petition and providing that notification dated 5th October, 2007 has become effective and account be operated jointly by the Assistant Programme Officer (Block Development Officer) and Assistant Development Officer (Panchayat). Aggrieved by the aforesaid, the Petitioners have come up in this writ petition.

4. Learned Standing Counsel at the very outset, has submitted that issues, which have been raised in the present writ petition, have already been decided by the Division Bench of this Court, which has upheld the notification dated 5th October, 2007 in the case of Smt. Nazmi Begum and Ors. v. Union of India and Ors. reported in 2009(8) A.D.J. 627, hence this writ petition also deserves to be dismissed. Reliance has also been placed by the learned Standing Counsel on another Division Bench judgment dated 31st May, 2011 in Writ Petition No. 24301 of 2011 (Abhay Raj and Ors. v. Union of India and Ors.). The above Division Bench judgments in above two cases have considered the challenge to the notifications dated 5th October, 2007 and 7th September, 2007. 5. The Division Bench after considering the challenge to the aforesaid notifications by

the Block Pramukhs, have dismissed the writ petition and upheld the Government notification providing that accounts at block level shall be operated by Assistant Programme Officer (Block Development Officer) and Assistant Development Officer (Panchayat). The issues raised in this writ petition are fully covered by the aforesaid two Division Bench judgments where similar petitions filed by Block Pramukhs claiming that accounts at block level be directed to be operated by Block Pramukhs have been dismissed. The aforesaid writ petitions claiming same relief having been dismissed, we see no reason to take a different view.

6. Learned Counsel for the Petitioners, faced with the aforesaid two judgments, has submitted that one important issue has escaped consideration in both the Division Bench judgments, hence the aforesaid judgments are not good law. It is well settled proposition that mere fact that an argument has not been considered in a judgment does not dilute the precedential value of a judgment. However, we have permitted the learned Counsel for the Petitioners to raise the submission.

7. Learned Counsel for the Petitioners has submitted that the 2005 Act is a Parliamentary enactment under which the Central Government as well as the State Government are empowered to frame rules and the scheme. It is submitted that Section 33 of the 2005 Act provides for laying down of the rules and scheme before the legislature and since in the present case the rules or scheme has not been laid down before each of the houses of the State legislature, the scheme framed by the State Government as amended on 5th October, 2007 is ineffective and void.

8. Section 33 of the 2005 Act is as follows:

33. Laying of rules and Schemes. -(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall have thereafter effect only in such modified form or be of not effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule or Scheme made by the State Government under this Act shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

9. Laying of the rules before the legislature is one of the modes of legislative control over delegated legislation. Legislature, which has delegated its legislative power to the executive for making a rule or scheme in several enactments

provide for laying of the said rules before the legislature. Section 33 of the 2005 Act is with the aforesaid purpose and intent. The basic purpose of laying procedure is informational. The laying of delegated legislation is of several categories. i.e. simple laying, laying with annulment and laying subject to affirmation. In the present case, we are concerned with laying of the scheme framed by the State Government in exercise of the power u/s 4 of the 2005 Act. Thus in the present case Section 33(2) of the 2005 Act, as quoted above, is attracted. A perusal of Section 33(2) clearly indicates that the provisions contemplate only simple laying. A laying requirement has been held as directory when not coupled with affirmative resolution of laying rules in draft form requiring approval of the houses. The Apex Court had occasion to consider similar submission in the case of *M/s Atlas Cycle Industries Ltd. and Ors. v. State of Haryana* reported in AIR 1979 S.C. 1149. Section 3(6) of the Essential Commodities Act, 1955 provided that any order issued u/s 3 of the Act shall be laid before both the houses after it is made. An order issued u/s 3 of the 1955 Act was not laid in the houses and the same was challenged as ultra vires. The argument was rejected by the Apex Court and Section 3(6) was held directory and not mandatory and it was held that non laying of an order before the Parliament does not make it void. The Apex Court laid down following in paragraphs 11, 21 and 22, which are as under:

11. Sub-section (6) of Section 3 of the Act ordains that every order made under this section by the Central or by any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be, after it is made.

21. Now the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament being to keep supervision and control over the aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending on the degree of control which the legislature may like to exercise. As evident from the observations made at pages 305 to 307 of the 7th Edition of Craies on Statute Law and noticed with approval in *Hukam Chand etc. v. Union of India and Ors.*(1) there are three kinds of laying which are generally used by the Legislature. These three kinds of laying are described and dealt with in Craies on Statute Law (Supra) as under:

- (i) Laying without further procedure,
- (ii) Laying subject to negative resolution,
- (iii) Laying subject to affirmative resolution.

(i) Simple laying. The most obvious example is in Section 10(2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules etc., for a period during which time they were not in operation and could be thrown out without ever having come into operation

(compare Merchant Shipping Act, 1894, Section 417; Inebriates Act 1898, Section 21) but this is not used now.

(ii) Negative resolution. Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is "subject to annulment in pursuance of a resolution of either House of Parliament." This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by proposing some modification.

(iii) Affirmative resolution. The phraseology here is normally "no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House Parliament. Normally, no time limit is fixed for obtaining approval none is necessary because the Government will naturally take the earliest opportunity of bringing it up for approval -but Section 16(3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 did impose a limit of forty days. An old form (not much used nowadays) provided for an order to be made but not to become operative until a resolution of both Houses of Parliament had been obtained. This form was used in Section 10(4) of the Road Traffic Act, 1930 (cf. Road Traffic Act, 1960, s.19 (3).).... The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected....

22.... In the instant case, it would be noticed that Sub-section(6) of Section 3 of the Act merely provides that every order made u/s 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made u/s 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both House of Parliament. In

these circumstances, we are clearly of the view that the requirement as to laying contained in Sub-section (6) of Section 3 of the Act falls within the first category i.e. "simple laying" and is directory not mandatory.

10. Thus on the aforesaid submission of learned Counsel for the Petitioners, no infirmity can be found in the scheme framed u/s 4 of the 2005 Act by the State Government.

11. Sri V.K. Singh, Senior Advocate, appearing for the Petitioner has also placed reliance upon the judgments of the Apex Court in Ref. Kerala Education Bill, 1957 reported in AIR 1958 SC 956 and in the cases of D.S. Garewal Vs. The State of Punjab and Another, Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, M.K. Papiiah and Sons Vs. The Excise Commissioner and Another, and Veneet Agrawal Vs. Union of India (UOI) and Others,

12. In Kerala Education Bill Ref. (supra), the Apex Court had occasion to consider provisions of Kerala Education Bill, 1957 including proviso to Clause 15 of the said Bill. While considering the power under the said proviso, following was laid down in paragraph 19 of the said judgment:

19... The exercise of the power is also controlled by the proviso that no notification under that sub-clause shall be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly-a proviso which clearly indicates that the power cannot be exercised by the Government at its whim or pleasure. Skipping over a few clauses, we come to cl. 36. The "power given to the Government by cl. 36 to make rules is expressly stated to be exercised " for the purpose of carrying into effect the provisions of this Act ". In other words, the rules to be framed must implement the policy and purpose laid down in its long title and the preamble and the provisions of the other clauses of the said Bill. Further, under el. 37 the rules have to be laid for not less than 14 days before the Legislative Assembly as soon as possible after they are made and are to be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. After the rules are laid before the Legislative Assembly they may be altered or amended and it is then that the rules, as amended become effective....

13. From the above, it is clear that provisions of the above proviso falls in third category of laying i.e. "affirmative resolution".

14. As observed above, present is not a case of laying falling in third category, i.e. affirmative resolution, hence the said judgment does not help the Petitioners.

15. In D.S. Garewal's case (supra) challenge to All India Services (Discipline and Appeal) Rules, 1955 was on the ground of excessive delegation. The Apex Court held that Section 4 along with Section 3(2) of the All India Services Act, 1951 clearly make out that there was no excessive delegation to the Central Government by Section 3(1). The above case also does not help the Petitioners.

16. The Jan Mohammad Noor Mohammad Bajhan's case (supra) was also a case

where rules framed by the State Government were required to be laid before each of the Houses of provincial legislature. Following was laid down by the Apex Court in paragraph 8 of the said judgment:

8. This Court in *M.C.V.S. Arunachala Nadar etc. v. The State of Madras and Ors.* (1) was called upon to deal with the validity of the Madras Commercial Crops Markets Act 20 of 1933. In that case certain traders had challenged the validity of Madras Act 20 of 1933) on the -round that the provisions of the Act imposed unreasonable restrictions upon their right to do business, and the Court on an exhaustive review of the provisions of the Act hold that the provisions which imposed liability to take out a licence for carrying on trade in "commercial crops", and the restrictions relating to the place where the business may be carried on were reasonable and did not infringe the right guaranteed by Article 19(1)(g) of the Constitution. In *Mohammad Hussain's case*(1) this Court held following the judgment in *Arunachala Nadar's case* (2) Nadar's that the impugned provisions viz. ss. 4, 4A, 5, 5A and 5AA of the Bombay Agricultural Produce Markets Act 22 of 1939 were not unconstitutional. It was pointed out by this Court that the provisions impugned in that case were substantially the same as were contained in Madras Act 20 of 1933 and therefore the restrictions imposed by the impugned provisions could not be regarded as unreasonable.

17. The *N.K. Papiiah's case* (supra) was a case where the Apex Court had occasion to consider requirement of laying of rule before the legislature. The argument that legislature has abdicated its legislative function was repelled and the provisions of laying of rule before the legislature was termed as control over delegated legislation. The said case also does not support the submission made by the Petitioners' counsel.

18. The last judgment relied by learned Counsel for the Petitioner in *Veneet Agrawal's case* was a case where the provisions of Section 31 of the Securities and Exchange Board of India (Stockbrokers and Sub-brokers) Regulations, 1992 which provided for laying of rule before both the houses of Parliament, was under consideration. The Apex Court after considering the provisions held that provision was merely directory and not mandatory and even if the rules were not laid before the Houses at all even then the non compliance with the laying down of the rules before Parliament could not be a ground to declare the rules as ultra vires. Following was laid down in paragraph 17 of the said judgment:

17. It was observed that provision was merely directory and not mandatory and even if the rules were not laid before the House at all even then the non-compliance with the laying down of the rules before the Parliament could not be a ground to declare the rules/regulations framed under the statute as ultra vires.

19. In view of the foregoing discussions, Petitioners are not entitled for any relief as prayed for in the writ petition. The issues are fully covered by the Division Bench judgments of this Court in *Smt. Nazmi Beguam's case* (supra) and in *Abhay Raj's case* (supra). Following the aforesaid two Division Bench judgments,

the writ petition is dismissed.