
(2011) 07 CAL CK 0028
In the Calcutta High Court
Case No : W.P.L.R.T. No. 140 of 2011

Fakir Chand Biswas

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Citation : (2012) 2 CALLT 662

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Mrityunjay Goswami and Ms. Barnali Dey, for the Appellant; Pratik Prokash Banerjee for the State, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—A judgment has been delivered by Special Bench comprising of Three Judges of the Hon"ble High Court at Calcutta in W.P. No. 331 of 2009 on 14th July. 2011 by passing the following order:-

On consideration of the entire materials on record, we, therefore, hold that unless the following defects in the Act are removed in the light of our observations, the Act as presently structured is unconstitutional for the reasons stated earlier. However, the Act may be made operational by making suitable amendments, as indicated below:

A) Section 4(2) (b) of the Act should be deleted and should be substituted by a new provision for Constitution of Selection Committee broadly on the following lines:

(a) Chief Justice of High Court or his nominee- as Chairperson (with a right of casting vote;

(b) A senior Judge of the High Court-as Member;

(c) Secretary in the Ministry of Finance-as Member; and

(d) Secretary in any of the Ministries- as Member.

B) In section 4(3)(c)(i) of the Act, the phrase "Joint Secretary" should be deleted and substituted by "Secretary or Additional Secretary" and the phrase "a specified Act" mentioned therein should be deleted and substituted by "all the specified Acts".

C) In section 4(3)(c)(ii) of the Act, the phrase "Joint Secretary" should be deleted and substituted by "Secretary or Additional Secretary" and the phrase "a specified Act" mentioned therein should be deleted and substituted by "all specified Acts."

D) The last proviso to section 4(13) of the Act should be deleted and instead thereof, suitable proviso should be incorporate by giving power of constitution of the larger Bench of the Tribunal to the Chairman of the same in case of difference of opinions between two or more benches with further stipulation that in such larger Bench, the number of Administrative Member must be less than that of Judicial Member.

The writ application is, thus, disposed of in terms of our present order.

Though in the judgment there is no indication that the judgment will have prospective effect by applying the doctrine of prospective overruling and, as such, the judgment delivered will have a retrospective effect in view of the decision passed by the Apex Court in the case P.V. George and Others Vs. State of Kerala and Others, The doctrine of prospective overruling is a feature of American Jurisprudence and is an exception to the normal principle of law about effect of a Judgment which normally is retrospective. The said doctrine has been applied by the Apex Court for the first time in the case I.C. Golak Nath and Others Vs. State of Punjab and Another,

2. Despite such legal position about effect of Judgment as quoted above, this writ application could be considered for our adjudication, which has been filed assailing the order passed by West Bengal Land Reforms and Tenancy Tribunal applying the de facto and de jure doctrine. The principle has been illustrated by the Apex Court in several cases by holding, inter alia, hat even if the appointment of a Judge or a Presiding Officer or any Adjudicatory Forum stand cancelled or set aside, the decision or judgment pronounced shall not be illegal on that score, but merit of the said judgment could be decided by Court. The Three Judges Bench of the Apex Court in the case Gokaraju Rangaraju Vs. State of Andhra Pradesh, held to this effect "a Judge, de facto is one who is not mere intruder or usurper but one who held office under colour of lawful authority, even though his appointment is defective and may later be found to be so. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the power and function of the office, albeit unlawfully, have the same efficacy as judgment pronounced and acts done by a Judge de jure. Such is a defacto doctrine born of necessity and public policy to prevent needless confusion and needless mischief."

3. The Apex Court in the said case considered the views of different High Courts as well as the English Court, namely, the case *Pulin Behari v. King Emperor* reported in 16 CWN 1105, *Emedisetti Ram Krishnaiah Sons v. State of Andhra Pradesh* reported in AIR 1967 Andhra Pradesh 193, *P.S. Menon v. State of Kerala* reported in AIR 1970 Kerala 165 (F.B.). *Millward v. Thatcher* reported in 100 E.R. 45, *Sodding v. Lorant* reported in 10 E.R. 165 (H.L.). *Re:-James (an insolvent)* reported in 1977(1) A.E.R. 364 (C.A.); *State of Connecticut v. Carroll* reported in (1871) 38 Conn.449, *Re:-Albridge* reported in (1893)15 N.Z.L.R. 361 and *Notton v. Sheby County* reported in 30 L. Ed. 178.

4. Same view echoed by the Apex Court in a Constitution Bench judgment in the case *R R. Kapur v. State of Tamil Nadu* reported in (2001) 7 SCC 231, wherein appointment of a Chief Minister was quashed, but action taken by Chief Minister and Council of Ministers was declared as valid.

5. The said de facto principle has been applied by the Apex Court in the case *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, where it is held "acts of officers de facto cannot be questioned for lack of legal authority except by some direct proceeding". The legal maxim that acts of officers de facto, cannot be allowed to be questioned collaterally, relied upon.

6. Having regard the said principle as discussed, we are of the view that the order impugned in the writ application could be decided under the anvil of judicial review by us sitting in the writ jurisdiction and the judgment dated 14th July. 2011 passed in W. P. No. 331 of 2009 though has not identified its force applying prospective overruling principle and, as such, effect could be considered as retrospective, the writ application is maintainable to test the legality and validity of the impugned order applying the "principle of de facto and de jure doctrine" as discussed above.

7. Now the main matter is taken up for hearing.

Heard the learned Advocates appearing for the parties.

8. Assailing the order dated 17 May, 2011 passed by the West Bengal Land Reforms & Tenancy Tribunal, Third Bench, in OA No. 1031 of 2009 (LRTT), this writ application has been filed.

The impugned order reads such.

17.5.11

Mr. M. Goswami learned Advocate is appearing for the applicant.

Learned Govt. Representative is present.

We have heard the learned Advocate for the applicant and also the learned Govt. Representative. Perused the averments made in this application. The learned Advocate for the applicant prays that a copy of this application be treated as a representation of the applicant by the B. L. & L. R.O. concerned and consider the

same in accordance with law and dispose of the same by a reasoned order. Such being the prayer of the learned Advocate for the applicant, we dispose of the instant application by the following orders:-

The B.L. & L.R.O., Santipur, Dist. Nadia is directed to treat the application as a representation of the applicant, consider the same in accordance with law and dispose of the same by a reasoned order after affording just, fair and reasonable opportunity of oral hearing to the applicant and all other persons interested in the subject plot within a period of six months from the date of communication of this order.

The applicant will be at liberty to make an application for a certified copy of the reasoned order passed by the B.L. & L.R.O. concerned and if such application is made then the certified copy of the reasoned order should be made available to the applicant within 15 date from the date of such application.

The applicant is directed to serve copy of this application with all its annexures along with order passed by the Tribunal today upon the aforesaid B.L. & L.R.O. within four weeks from today.

In these terms. O.A. No. 1031 of 2009 (LRTT) is disposed of.

Let a plain copy of this order duly countersigned by the Principal Officer of this Tribunal be made over to the learned Govt. Representative for communication to the aforesaid B.L. & L.R.O. for compliance and Xerox certified copy of the order if applied for by the applicant be delivered subject to payment of requisite Court fees.

Sd/- B.C. Pal A. Mondal

9. On bare reading of the impugned order, it appears that learned Advocate on behalf of the petitioner who appeared before learned Tribunal, submitted before learned Tribunal to pass appropriate order directing to consider the application as representation before B.L.& L.R.O. On the basis of such submission, learned Tribunal below passed necessary order directing concerned B.L.& L.R.O. to treat the application as representation.

10. Learned Advocate for the petitioner orally submits before us that it was not the submission of the learned Advocate for the petitioner before learned Tribunal below.

11. Such oral submission contradicting recording of learned Tribunal cannot be accepted having regard to the settled legal position to this effect that recording in a proceeding should be considered as right state of affairs and nobody should be allowed to controvert it either by oral submission or by filing any affidavit to that effect.

12. Accepting his oral submission, we can dispose of this writ application applying the settled legal position of law. Even if it is assumed for argument that learned Advocate appeared on behalf of the writ petitioner before learned

Tribunal below did not submit to withdraw Original Application, still then this Court cannot interfere with the impugned order. It is settled law now, having long back of its origin, by the judgment of the Privy Council that wrong submission recorded as alleged by the party, cannot be a ground of attack controverting the order and proper course is to approach the concerned Court or Tribunal with an application seeking review. In the case *Shyam Sunderam v. Subramonium* reported in AIR 1926 Privy Counsel 136, Lord Atkinson expressed the view in the following language "we are bound to accept the statements of the judges recorded in their judgments, as to what transpired in Court. We cannot allow the statements of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges" say in the judgments that something was done, said or admitted before them, that has to be the last word on the subject and remedy to call attention of the Court on such issue". Same view earlier expressed by Lord Buckmaster, in the case *Madhusudan v. Chandrabati* reported in 21 CWN 897. Sir Ashutosh Mookerjee also opined same view in the case *Sarat Chandra v. Bivabati Debi* reported in AIR 1922 (Cal) 584 in the following term" in such case litigant to apply the Judge without delay praying rectification or review of Judgment." Same view re-echoed in the case *King Emperor v. Barendra Kumar* reported in AIR 1924(Cal) 257 (Full Bench). The Apex Court also considered this point in the case *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, wherein the Court held "judge"s record is conclusive, neither Lawyer nor the litigant may claim to contradict it, except before the judge"s himself but no where else." The same view reiterated by the Apex Court in the case *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, *Shankar K. Mandal and Others Vs. State of Bihar and Others*, , *Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another*, . *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, a judgment of 3- Judges Bench. Earlier 3-Judges Bench in another case *D.P. Chadha v. Triyugi Narain Mishra* reported in (2001) 2 SCC 221 re-echoed the same view. Same view was taken in the case *Mount Carmel School Society Vs. D.D.A.*, . Hence said principle in the judicial field starting from the year 1926, now got a deep root.

13. Having regard to such legal position, oral submission controverting recording made by learned Tribunal below about submission of the learned Advocate cannot be considered by us.

14. Hence, there is no scope to entertain this writ application.

15. The writ application stands dismissed.

Md. Abdul Ghani, J.

I agree.