
(2003) 08 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 33095 of 2003

Harish Chandra and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16(4), 166, 46
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198

Citation : (2003) 6 AWC 4613

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Yogesh Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned Counsel for the Petitioners and learned standing counsel. The Petitioners allege that their lands have been acquired for constructing a dam and an irrigation canal.

2. The Petitioners have challenged the validity of the impugned G.O. dated 3.9.1992 (Annexure-1 to the petition).

3. By the impugned G.O. the persons whose lands were acquired on 22.7.1967 or thereafter are entitled to preference in allotment of the land belonging to the Irrigation Department for agriculture purpose. The Petitioners land admittedly was acquired in 1959-60 and hence they are not entitled to any preference under the said G.O.

4. Learned Counsel for the Petitioners submitted that the cut of date 22.7.1967 is wholly arbitrary. We do not agree. It has been held by the Supreme Court in State of Bihar and others Vs. Ramjee Prasad and others, , that choice of a date cannot be held to be arbitrary even if no good reason is forthcoming, unless it is shown to be capricious or whimsical or wide off the reasonable mark. The same view was taken in Union of India (UOI) and Another Vs. Parameswaran Match

Works and Others, and in Union of India and Another Vs. Sudhir Kumar Jaiswal, .

5. In our opinion, the judiciary must maintain restraint in such matters of fixing cut-off dates and not encroach on executive or legislative functions, otherwise there is bound to be a reaction. By maintaining restraint, it enhances its prestige and respect. The judiciary does not consist of administrative experts and hence, it cannot claim expertise in such matters as fixing cut-off dates. Hence, we are not inclined to strike down the impugned G.O. on the ground that the cut-off date is arbitrary. In *Tata Cellular Vs. Union of India*, , the Supreme Court observed that the modern trend is of restraint in interference with administrative decisions.

6. Secondly, it was urged by learned Counsel for the Petitioner that the impugned G.O. has been signed by the Principal Secretary, U.P. Government but it does not state that it has been issued on behalf of the Governor, and hence it violates Article 166 of the Constitution. We do not agree. In *Samsher Singh Vs. State of Punjab and Another*, (vide para 35), it was observed by the Supreme Court:

"When a civil servant takes a decision, he does not do so as a delegate of his Minister. He does it on behalf of the Government. The officers are limbs of the Government and not its delegates."

7. Moreover, it was held by the Supreme Court in *R. Chitrallekha and Another Vs. State of Mysore and Others*, that Article 166 is only directory and not mandatory (see also *Ghaio Mall and Sons Vs. The State of Delhi and Others*,

8. Learned Counsel for the Petitioner then submitted that the preference has been given only to landless Harijans while the Petitioners are Brahmins and hence, there is discrimination. In our opinion, there is no merit in this contention. The Constitution, both in the fundamental rights vide Articles 15(4), 16(4) etc. as well as in the Directive Principles vide Article 46 has mandated the State to give benefits to the Harijans since they have been harassed for thousand of years in our country by the so-called upper castes. Hence, compensatory State action is required to uplift the Harijans who have been oppressed in a horrible manner by the so-called upper castes.

9. Learned Counsel for the Petitioner urged that the preference in allotment of land can only be done in accordance with Section 198 of the U.P. Zamindari Abolition and Land Reforms Act. In our opinion, the impugned G.O. carries out the mandate of the Constitution vide Article 46, and the Constitution is a higher law than the U.P. Zamindari Abolition and Land Reforms Act. Hence there is no merit in this submission also.

10. Learned Counsel for the Petitioner then submitted that the impugned G.O. has not been published. In our opinion, it is not necessary to publish it. A G.O. has only to be published when the statute so requires. We have not been shown any statutory provision requiring publication of the impugned G.O.

11. For the above reasons, there is no merit in the submissions made by the

learned Counsel for the Petitioner. The petition is therefore, dismissed.