
(2011) 07 CAL CK 0098
In the Calcutta High Court
Case No : W.P.L.R.T. No. 124 of 2011

Hazi Md. Nasiruddin Akunji

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 16, 4(13), 4(2), 4(3)

Citation : (2011) 07 CAL CK 0098

Hon'ble Judges : Pratap Kumar Ray, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : Md. Abdul Alim, for the Appellant;Chandi Charan De, Lalit Mohan Mahato and Sk. Md. Galib, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—A judgement 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 judgement there is no indication that the judgement will have prospective effect by applying the doctrine of prospective overruling and, as such, the judgement delivered will have a retrospective effect in view of the decision passed by the Apex Court in the case of 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 judgement which normally is retrospective. The said doctrine has been applied by the Apex Court for the first time in the case of I.C. Golak Nath and Others Vs. State of Punjab and Another,

2. Despite such legal position about effect of said judgement 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, that even if the appointment of a Judge or a Presiding Officer or any Adjudicatory Forum stand cancelled or set aside, the decision or judgement pronounced shall not be illegal on that score, but merit of the said judgement 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 usufruct 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, judgements 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 judgement pronounced

and acts done by a Judge de jure. Such is a de facto 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 cases of Pulin Behari Das and 34 others Vs. King-Emperor Emedisetti Ram Krishnaiah Sons vs. State of Andhra Pradesh, reported in AIR 1967 Andhra Pradesh 193; P.S. Menon vs. State of Kerala, reported in AIR 1970 Kerala 165 (F.B.); Milward vs. Thatcher, reported in 100 E.R. 45; Sadding vs. 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 vs. Carroll, reported in 1871 (38) Conn.449; Re:- Albridge, reported in 1893 (15) N.Z.L.R. 361 and Notton vs. Sheby County, reported in 30 L.Ed. 178.

4. Same view echoed by the Apex Court in a Constitution Bench judgement in the case of B.R. Kapur vs. 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 of 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 judgement 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.

8. Heard learned Advocates appearing for the parties.

9. Admittedly, the petitioners were not parties before learned Tribunal below. Petitioners have assailed the order of learned Tribunal in this writ application. There is a legal embargo of entertaining this writ application in view of judgement of Apex Court in that field. In the case of Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others, relying upon the view expressed in the case of L. Chandra Kumar Vs. Union of India and others, it has been held that Tribunal is the first Court wherein grievance to be raised and nobody who is not a party in a proceeding before learned Tribunal, is entitled to move the writ application straightway. In that case, it has been further held that for remedy, review application to be filed before learned Tribunal below. Section 16 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 under clause (d)

provides power of Tribunal to review its own decision.

10. In view of such and having regard to the views expressed by the Apex Court in *Rajiv Kumar (supra)*, the writ application is not maintainable. It stands dismissed.

11. There will be no order as to costs.

12. Petitioners are at liberty to move before learned Tribunal below by filing an application for review/recalling in accordance with law agitating their grievances.

Md. Abdul Ghani, J.

I agree.