

(1966) 04 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No's. 57-D, 58-D and 59-D of 1962 and 73-D of 1965

Prithvi Chand, Chandu Mal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-04-1966

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 40, 40(3)
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 49

Citation : AIR 1967 P&H 195 : (1967) 1 ILR (P&H) 503

Hon'ble Judges : R.P. Khosla, J;I.D. Dua, J

Bench : Division Bench

Advocate : I.M. Lal, for the Appellant; P. Narain, for the Respondent

Final Decision : Dismissed

Judgement

1. This judgment will dispose of four Letters Patent Appeals (Letters Patent Appeals Nos. 57D, 58D, 59D of 1962 and 73D of 1965). Main arguments have been addressed in L, P. A. 58-D of 1962 and it is conceded that the other three appeals would stand or fall with this one. The facts giving rise to this appeal may now briefly be stated.

2. The petitioner claiming to be a displaced person from district Hazara N. W. F. P., now forming part of West Pakistan, migrated to India and settled down permanently in village Tihar in Delhi. He was owner of agricultural land and buildings in West Pakistan. His claim in respect of agricultural land was verified for 4 standard acres and 9-1/2 units while his claim in respect of rural buildings was verified for Rs. 9,441/8/-. The latter claim was, however, rejected on the ground that the petitioner had already been allotted agricultural land in India against the land held by him in Pakistan. His claim for agricultural land having thus been verified, he was found to be eligible for allotment of agricultural land in Delhi State. The Additional Custodian of Evacuee Property (Rural), New Delhi, in November, 1953, allotted to the petitioner barani agricultural land, the

possession of which was taken by the petitioner soon after. He claims to have been in continuous possession of the said land, having also spent more than Rs. 3,000/- on improvement thereof. According to Rule 49 of the Displaced Persons (C and R) Rules, 1955, a displaced person having a verified claim in respect of agricultural land is required, as far as possible, to be paid compensation by allotment of agricultural land. The writ petition continues to aver that according to Rules 62, 63 and 56 of the said Rules, the petitioner is entitled to permanent transfer of the entire area of agricultural land in his occupation which had been allotted to him before the commencement of the said rules against his verified claim relating to agricultural land left in Pakistan. On 10-7-1959, however, the Settlement Officer, Managing Officer (Rural) Gokhle Market, Delhi, issued a notice to the petitioner alleging that the latter was not entitled to the transfer of the entire area allotted to him and called upon the petitioner to show cause why the allotment of the land except in respect of one Khasra number valued below Rs. 10,000/-not be cancelled. The petitioner preferred objections against the proposed action which were disallowed. An appeal was preferred by the petitioner to the Assistant Settlement Commissioner (Rural) but the same was dismissed on 21-10-1959, as time-barred. It was in these circumstances that the writ petition was presented in this Court. Grover, J., dealing with a large number of writ petitions together, did not feel inclined to exercise his extraordinary powers under Article 226 in favour of the petitioners because the learned counsel for the department (now Mr. Justice Jindra Lal) slated that the department was willing to give the benefit of the new rules contained in Chapter V-A of the Displaced Persons (C and R) Amendment Rules, 1960. It may be pointed out that the learned Judge was also of the view that Rules 22 and 23 could have no possible application to the cases before him, but in spite of this infirmity, he was disinclined to grant relief under Article 226 because of the willingness of the department to give the benefit of the new rules to the petitioners as stated by the learned Government counsel.

3. On Letters Patent Appeal in this Court, the short question canvassed on behalf of the appellant relates to the vires of the amended Rule 49 of the Displaced Persons (C and R) Rules. This rule may appropriately be read at this stage.

"49. Compensation normally to be paid in the form of land -- Except as otherwise provided in this chapter, a displaced person having verified claim in respect of agricultural land shall, as far as possible be paid compensation by allotment of agricultural land. Provided that where any such person wishes to have his claim satisfied, against property other than agricultural land, he may purchase such property by bidding for it at an open auction or by tendering for it and in such a case the purchase price of the property shall be adjusted against the compensation due on this verified claim for agricultural land which shall be converted into cash at the rates specified in Rule 56.

Explanation. -- In this rule and in the other rules of this Chapter, the expression "agricultural land" shall mean the agricultural fend situated in a rural area."

It is the Explanation against which the challenge is directed because this Explanation has been added in the year 1960 and has been made retrospective in its operation by providing that this Explanation is to be deemed always to have been inserted, vide amendment No. XXXIX, dated 11-2-1960, made by the Central Government acting u/s 40 of the Displaced Persons (C and R) Act No. 44 of 1948 (See 1960 L. L. T. Part VI, page 21). It may be pointed out that the rules under the Act were initially made in 1955.

4. It is argued by Shri I. M. Lal with his usual vigour that the power to make law, in other words, the legislative function under our Constitution has been entrusted to the Parliament and to the State Legislatures within their respective constitutional spheres and it is not open to them to pass on this solemn duty to any other body, however responsible or high placed. It is conceded that the Parliament could have in this case made a retrospective law similar to the provision contained in the impugned Explanation, but, according to the counsel, power to make retrospective law in the form of rules cannot under the Constitution be delegated to the Central Government. It is, however, not disputed that the Central Government can be delegated within permissible limits the power to make rules which operate prospectively. To accede to the delegated authority the power to make retrospective rules would be tantamount to the conferment on the delegate the power to make rules to operate even prior to the birth of the parent statute itself, says Shri Lal. This he adds, is not supportable in our democratic set up which is governed by Rule of law. A passing reference has been made to Articles 19(1)(f) and 31 of the Constitution and it is sought to infer from these provisions that the Constitution forbids retrospective legislation when right to property is infringed. This submission has been pressed because, according to the learned counsel, the petitioner claims to have a right similar to those guaranteed by Articles 19(1) (f) and 31. Reference was made by the learned single Judge to a Full Bench decision of this Court General S. Shivdev Singh and Another Vs. The State of Punjab and Others, in which a decision by Khosla and Falshaw, JJ. (as they then were) in CW No. 53 of 1951 decided on 28-9-1951 (Punj) was noticed and the following observations of Khosla J. reproduced:--

"It seems to me that the rule-making power is in the nature of legislative power within certain limits and as long as the rule is framed within limits it can be made to take effect retrospectively".

The Full Bench then proceeded to notice a later Bench decision of this Court, by Weston C. J. and Harnam Singh T. in CW No. 191 of 1951: decided on 13-5-1952, (Punj) in which a doubt was expressed with regard to the power of the rule-making authority to make rules with retrospective effect. The following observation by Weston C. J. was reproduced :--

"I must confess that I can see no justification for the proposition that an authority to whom rule making powers have been given can proceed to make rules and to direct that the operation of those rules shall have effect not from the

time they are made but for all previous time whether or not earlier rules have up to that time been in force."

The Full Bench then noticed two decisions, one of the Allahabad High Court and the other of the Hyderabad High Court containing certain observations supporting the view of Weston C. J. and also noted the view expressed in American Jurisprudence, Vol. 42 Section 101 supporting the validity of a rule operating retrospectively. Before the Full Bench, however, no question of retrospective effect of a rule arose and, therefore, it was not considered necessary to decide which view was correct. It may be pointed out that the Full Bench was concerned with the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act No. 80 of 1948, the question raised being whether that Act conferred power on the State Government to delegate its functions and powers with retrospective effect.

Shri I. M. Lall has also referred us to a recent decision of the Supreme Court in Dayalbagh Co-operative House Building Society v. Sultan Singh, C. A. No. 654 of 1965 decided on 6-1-1966, which is noticed in the Supreme Court Notes dated 15-1-1966 at serial No. 85; p. 48(SC).

In that case, while dealing with Section 3(c) of the Land Acquisition Act, it seems to have been observed that the said Act confers statutory powers of an exceptional character upon the Collector and it is well settled that the statutory powers of this description can be exercised only subject to the limitations and conditions prescribed by the Act itself: the powers of special appointment conferred by Section 3(c) of that Act accordingly cannot be so exercised as to have retrospective effect. Shri Murari Singh had made an order under that Act on 26-2-1957, when he was not invested with the requisite power to do so. The State Government subsequently conferred on him the necessary power retrospectively so as to validate the above order, which, when made was admittedly without jurisdiction. The Supreme Court seems in this context to have proceeded to observe that in the absence of any express power in the Act itself, the State Government could not clothe Shri Murari Singh with jurisdiction from a prior date, as that would mean the validation of orders which were admittedly without jurisdiction. The notification by the Delhi Administration dated 13-3-1957 was on this view held to operate prospectively and not with retrospective effect. According to Shri I. M. Lall, on the analogy of this decision, the power to make rules with retrospective effect must be conferred expressly by statute and cannot be assumed to inhere in the rule-making authority. Shri T. M. Lall has also referred us to the Commissioners of Customs and Excise v. Cure and Deeley, Ltd. (1961) 3 All EH 641 for the contention that it is always open to the Court to examine whether or not a regulation was made by an authority within the power conferred on it.

5. Shri Parkash Narain has on behalf of the respondents at the outset drawn our attention to Sub-section (3) of Section 40 of the Displaced Persons Compensation Act which confers on the Central Government power to make rules

to carry out the purpose of the Act. Tin's sub s. is in the following terms :--

"Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the sessions in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no 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." According to the learned counsel, this provision places the rules made under this Act on a higher pedestal than the rules made by a delegated authority in cases in which the Parliament does not reserve to itself a right and an opportunity of scrutinising and reviewing the statutory rules before their enforcement. These rules, says the counsel, are as effective as the provisions of the Act itself. He has also cited the Supreme Court decision in *Kathi Raning Rawat Vs. The State of Saurashtra*, , but that decision does not seem to me to be very much in point. *Ram Autar Pandey Vs. State of Uttar Pradesh and Another*, , a Full Bench decision of the Allahabad High Court, however, does lay down that the rule-making power conferred by Article 309 on the Governor or his nominee is not confined to prospective rule-making and is apparently wide enough to include the making of rules with retrospective effect. In this connection reference has also been made to a Single Bench decision of this Court in *Krishena Knmar v. Comptroller and Auditor General of India* 1966 DLT 104 where it is observed that if effective powers of control by the delegating authority are extremely significant, the Court may uphold the entrnstment of power by denying that there has been any delegation at all, on the ground that in substance the authority responsible for passing on the functions to his subordinates continues to address its own mind to the exercise of its powers. It is unnecessary to make a detailed or extensive reference to the cases supporting the proposition that the Legislature can make a law which is intended to operate retrospectively because this proposition is not disputed by the petitioner's learned counsel and, in my opinion rightly so. The cases cited, however, are *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, and *Bihari Lal Batra Vs. The Chief Settlement Commissioner and Others*, The counsel has submitted that there is no question here of violation of any right guaranteed by Article 19 (1) (f) or Article 31 of the Constitution because except for the bald assertion from the bar, the petitioner has not shown any such right to be vesting in him.

6. In my view, the appellant's contention is without merit. It is a generally accepted position that Government provides machinery through which people formally regulate their social order. It is unnecessary to enter into conflicts of political theories and constitutional law. In our Republic, the exercise of

legislative function is regulated by the Constitution which the people of India have given to themselves. It is pertinent to point out that our attention has not been drawn to any provision in the Constitution which prohibits the "delegation" of this function. I am using the word "delegation" as distinguished from "abdication" which means transferring the power without retention of supervisory control by the legislative wing, on which the power and the obligation of making laws has been conferred by the Constitution. The problem of the delegation of powers seems to me in a way to be a refinement of the larger doctrine of the separation of powers. This doctrine has its roots in the natural desire in a democratic society to describe a functionally satisfactory division of labour or assignment of work according to the persons or institutions ultimately receiving the power. Now if a department or wing of Government is not entitled to assume powers outside its proper allocated sphere, then it rationally follows that such department or wing may also not be able constitutionally to divest itself of its proper power by delegating or transferring the power to another department. But this disability is, in my view confined to what is generally described as abdication of the power entrusted by the Constitution. It may not profitably be extended to instances in which the ultimate responsibility and obligation for and control over the exercise of the power is not completely or substantially given up. Indeed, to so extend this disability would defeat rather than promote the efficiency in the functioning of the modern governmental departments. The necessities of an efficient welfare democratic set-up with the constantly increasing social and economic regulations clearly argue against such extension. The necessity of adapting legislation to complex conditions involving a host of details with which the Union or the State Legislature may not be able effectively to deal in advance to their entire satisfaction, may legitimately require in the larger interest of efficiency, assistance from some other body better equipped and more capable of working out the requisite details to suit variable conditions and circumstances. This function, from one point of view, may be considered not strictly legislative but to relate merely to the procedure, in the laws' execution for a reliable and uniform ascertainment of the subject upon which the law is intended to operate. The power of delegation is accordingly looked upon in Modern times as a constituent element of the legislative power as a whole because the Legislature enacts laws to meet the challenge of the complex socio-economic problems and it often finds it convenient and necessary to delegate subsidiary or ancillary powers to delegates of its choice for carrying out the policy laid down by its Act. The extent to which such delegation is permissible is by now fairly well settled. The Legislature cannot delegate its essential legislative function in any case, for that would amount to abdication of its solemn obligation, it must lay down the legislative policy and principle affording guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. It is not seriously urged that in the case in hand such guidance has not been laid down by the Parliament.

Now if the delegated legislation is a constituent element of the legislative power as a whole, then in case power is delegated within the permissible limits, it is not

understood why in the absence of any express or implied limitation to that effect, such power cannot be exercised by the delegate so as to make rules with retrospective effect. I am unable to infer such limitation merely from the fact that the power is conferred on the delegate without in express terms authorising the making of retrospective rules. If otherwise the subject-matter of the delegation and the retention of the requisite legislative control can legitimately sustain the grant of rule-making power in a given case, then I find no constitutional or legal objection to the making of rules with retrospective operation within permissible limits pursuant to this power. In the instant case, not only has the Act enacted the general outline of the statutory policy, purpose, and scheme but the Parliament has also retained an effective legislative control over the rule-making authority by enacting Sub-section (3) of Section 40. This control must remove all apprehensions -- if at all there be -- any that the delegation in question amounts in substance to abdication. There are several methods of retaining legislative control but the one adopted in this case brings the rules in close proximity to the provisions of the Act themselves. But this apart, I may also refer to a decision of the Supreme Court which seems to support the beneficent reading of the power to make rules so as to enable the making of retrospective rules. In *T. L. Tandon v. State of Punjab*, Civil Appeals Nos. 102 and 103 of 1960 decided on 11-8-1960 (SC), by a Bench of five Judges, the rules made by the President with retrospective effect came up for consideration and the Court expressed its view in the following words : -

"Now in the present case the rules had been made with retrospective effect. That does not in our view make the rules liable to objection. If the President had the power to make the rules of business as we have held he had under the Proclamation, it cannot be said that he did not have the power to make the rules operate retrospectively. The power to make the rules must be read beneficently. The President had to carry on the business of the Government and for that purpose he had the power to make rules for transacting executive business and if he could make them prospectively there is no reason why he would not be able to make them retrospectively with effect from the date of the Proclamation."

7. The contention that the power to make rules with retrospective effect may mean making rules prior to the enforcement of the parent Act or the delegation and, therefore, it should not be sustained is met with the short reply that such is not the case before us. All that has happened in the instant case is that by the impugned amendment a fiction has been created that the Explanation in question should be deemed to have been inserted when the rules were originally made. This is clearly permissible under the law. If the delegate in some other case makes a rule which suffers from the infirmity suggested on behalf of the appellant., it would be examined on its own facts in the background of the legislative scheme and language of the delegation. I express no opinion on such a hypothetical case.

8. In the result, this appeal fails, and is dismissed but without costs.