
(1989) 03 MAD CK 0026
In the Madras High Court
Case No : W.A. No. 252 of 1983

Shanta Kamalanathan

APPELLANT

Vs

Tamil Nadu Housing Board, Madras and another

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Tamil Nadu State Housing Board Act, 1961 — Section 161(1), 161(3)

Citation : AIR 1990 Mad 369

Hon'ble Judges : Nainarsundaram, J;Bellie, J

Bench : Division Bench

Advocate : A.L. Somayaji for R. Mohan, for the Appellant; V. Sunder Anandan and P. Samuel, Government Advocate, for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner in W.P. No. 1094/3 of 1981 is the appellant in this Writ Appeal. The respondents herein are the

respondents in the writ petition. It will be convenient for us, if we refer to the parties as per their array in the writ petition. The petitioner, who was,

at the relevant point of time, an Assistant in the services of the first respondent, had a grievance with reference to promotions of personnel as

Superintendents Grade II on the ground, they lacked the prescribed educational qualification even for the post of an Assistant, from which

promotion has to be made. The prescribed educational qualification for the post of an Assistant, prevailing then, was that the candidate must be a

graduate of a recognised university. The petitioner is such a graduate, while the other personnel are not. She came to this Court by way of W.P.

No. 4072 of 1975, expressing this grievance of hers. In answer to the grievance of the petitioner G.O.Ms. No. 648, Housing Department, dt. 17-

6-1975 was put forth by the first respondent herein, which was also the first

respondent in that writ petition to say that the service regulations of the first respondent in this behalf have been amended relaxing the prescriptions regarding the educational qualification for the post in question and the amendments have been approved and confirmed by the Government. The learned single Judge did not countenance the move of the respondents before him to take advantage of this Government order and opining that the relaxation of the prescription of educational qualification could be effective only from 17-6-1975, and cannot validate lack of the prescribed educational qualification in respect of personnel already appointed, allowed W.P. No. 4072 of 1975. However, the learned single Judge made it clear that the first respondent shall not be debarred from considering the appointments of the concerned personnel after 1975.

2. On 31-3-1981, there was a Resolution No. 102 of the first respondent, amending the Service Regulations and relaxing the prescriptions regarding educational qualification for the post of an Assistant. The Resolution declared that the amendment shall be deemed to have come into effect from 22-4-1961. The power of the first respondent to make, modify or cancel the Regulations has to be gleaned from Sec. 161 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act, 17 of 1961), hereinafter referred to as the Act. Section 161(1), before its amendment by the Tamil Nadu State Housing Board (Amendment) Act, 1981 (Tamil Nadu Act, 36 of 1981), read as follows :--

161(1) : The Board may, by notification, make regulations not inconsistent with this Act and the rules made thereunder, for the purpose of giving effect to the provisions of this Act.

As we could see from the language of S. 161(1) of the Act, before its amendment by Tamil Nadu Act (36 of 1981), the first respondent was not vested with the power to make regulations retrospectively. However, as already noted, by the Resolution No. 102, dt. 31-3-1981, it has been directed that the amendment to the regulations shall be deemed to have come into effect from 22-4-1961. This Resolution of the first respondent got communicated to the second respondent by the Chairman of the first respondent on 9-4-1981. By G.O.Ms. No. 921, Housing and Urban Development Department, dt. 22-10-1981, the second respondent, pursuant to powers under S. 161(3) of the Act, approved and confirmed the

same. On 8-6-1981, the Tamil Nadu State Housing Board (Amendment) Act, 1961 (Tamil Nadu Act, 86 of 1981) was published in the Gazette,

by virtue of which S. 161(1) of the Act was amended; inserting the words "whether prospectively or retrospectively" after the words "making

regulations", found in that provision. The amended Sec. 161(1) of the Act reads as follows:

161(1): The Board may, by notification, make regulations whether prospectively or retrospectively not inconsistent with this Act and the rules

made thereunder, for the purpose of giving effect to the provisions of this Act.

It must be noted that the Tamil Nadu Act (36 of 1981) received the assent of the President on 28-5-1981. The petitioner challenged in the present

writ petition the Resolution of the first respondent No. 102 dated 31-3-1981, as approved by the second respondent by G.O.Ms. No. 921,

Housing and Urban Development Department, dt. 22-10-1982, as null and void.

3. The primary ground urged by the petitioner before the learned single Judge, who heard the writ petition, and now urged before us, is that on the

date of the Resolution No. 102 of the first respondent, namely, 31-3-1981, amending the Regulations, giving effect to them retrospectively, the

power to do so was lacking for the first respondent and hence the Resolution No. 102 dated 31-3-1981, as approved and confirmed by G.O.Ms.

No. 921, Housing and Urban Development Department, dt. 22-10-1981, must be declared to be null and void. The learned single Judge did not

countenance this ground of attack on a reasoning that though the Resolution No. 102 was passed on 31-3-1981 and even though at that time the

power to make Regulations retrospectively was lacking in the first respondent, yet the Resolution became effective only on its approval by

G.O.Ms. No. 921, Housing and Urban Development Department, dt. 22-10-1981 as per S. 161(3) of the Act and before that, the Tamil Nadu

State Housing Board (Amendment) Act, 1981 (Tamil Nadu Act, 36 of 1981) had come into force on 8-6-1981 and that will give sanctity to the

Resolution No. 102, dt. 31-3-1981, as approved by G.O.Ms. No. 921. This reasoning of the learned single Judge is not being accepted by the

petitioner. On an assessment of the legal position in the contest of the sequence of events exposed; we are obliged to concur with the submissions

made by Mr. A. L. Somayaji, learned Counsel for the petitioner, on this contention.

4. On 31-3-1981, when the first respondent passed the Resolution No. 102, pursuant to powers under S. 161(1) of the Act, as it stood prior to amendment, it was not vested with the power to make Regulations retrospectively. But the Resolution No. 102. dated 31-3-1981, did make the amendments to the Regulations to have retrospective effect from 22-4-1961. It is only this Resolution that got the approval and confirmation at the hands of the second respondent on 22-10-1981 under S. 161 of the Act is a power of Subordinate Legislation. Unless that provision has conferred the power on the first respondent to make Regulations retrospectively, the first respondent cannot do so. Courts have always declared retrospective rules invalid unless the authority making them has power to do so under the parent statute. If the first respondent lacked the very power to make the resolution retrospectively on the date when the Resolution No. 102 of that effect came to be passed, namely. 31-3-1981, we are unable to attach any legal sanctity to the same and it is not possible to say that merely because the approval and confirmation of the second respondent, as contemplated under S. 161(3) of the Act. had come to be given to it subsequently by G.O.Ms No.921 on 22-10-1981, the Resolution dt. 31-3-1981 attained legal sanctity, initially lacked by it and could survive. There could not be any doubt that on 31-3-1981 when the Resolution No. 102 came to be passed by the first respondent, it has no power to make regulations retrospectively. Section 161(1) of the Act was amended by Tamil Nadu Act (36 of 1981), which received the assent of the President on 28-5-1981 and it was published in the Gazette on 8-6-1981. Hence, the lack of power, on the part of the first respondent to make regulations retrospectively was patent. By this very infirmity, the Resolution No. 102, dt. 31-3-1981, must stand eschewed as lacking legal competency and void. Section 161(3) of the Act reads as follows :

161(3) : No regulation or its cancellation or modification shall have effect until the same shall have been approved and confirmed by the Government.

As we could see from its language, it merely says that no regulation or its cancellation or modification shall have effect until the same shall have been approved and confirmed by the Government. But, if the very power to make regulations retrospectively was initially lacking in the first

respondent, empowered to make the same, the approval and confirmation, as contemplated under S. 161(3) of the Act, could not ameliorate the

legal lacuna. After all, approval and confirmation by the second respondent could only be of valid acts and not invalid acts of the first respondent.

Section 161(3) of the Act has no place at all on the question of the competency of the first respondent to make regulations retrospectively. If what

was done by the first respondent was competent in law, then only the approval and confirmation of the same by the second respondent could be

upheld. The mere approval and confirmation by the second respondent do not sanctify an unsanctified act of the first respondent in the eye of law.

The act of approval and confirmation under S. 161(3) cannot be equated to the regulation making power under S. 161(1), on approval and

confirmation, the regulation made shall have effect. But, if the making of the regulation was itself incompetent, approval and confirmation of the

same is no consequence. In this view, we are not able to subscribe our support to the reasoning of the learned single Judge, when he

discountenanced this contention, put forth on behalf of the petitioner.

5. This is sufficient for the petitioner to succeed in the writ petition. Yet, we must record there is another ground of attack, put forth by Mr. A. L.

Somayaji, learned Counsel for the petitioner, and that is, the proceedings commencing from the Resolution No. 102 dt. 31-3-1981 and culminating

in Tamil Nadu Act (36 of 1981) have practically tended to nullify the effect of the pronouncement of this Court in W.P. No. 4072 of 1979 and

individual grievances and rights of the petitioner having been ameliorated and settled by the pronouncement of this Court, the present proceedings

have got to be disregarded and ignored and the pronouncement of this Court must be allowed to stand. There is no need to go into this contention

because we have sustained the primary ground of attack put forth on behalf of the petitioner. Accordingly, we allow this writ appeal; set aside the

order of the learned single Judge in W.P. No. 10943 of 1981 and allow that writ petition. We make no order as to costs, both in the the writ

petition as well as in the writ appeal.

6. Appeal allowed.