
(1998) 03 CAL CK 0048

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A. No. 179 of 1997

Sk. Kausar Ali

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Panchayat (Amendment) Act, 1994 — Section 51
West Bengal Panchayat Act, 1973 — Section 2(5), 213B, 213B(1), 213B(3)

Citation : (1998) 2 CALLT 39

Hon'ble Judges : Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : Mr. Sadananda Ganguly and Mr. P.C. Ghosh, for the Appellant; Mr. Sumitra Dasgupta, for the Respondent

Judgement

1. In this appeal, a short question as to whether the District Magistrate would include Additional District Magistrate, being a prescribed authority within the meaning of section 2(5) of the West Bengal Panchayat Act, 1973, falls for consideration.

2. In view of the question involved in this appeal, it is not necessary to deal with the fact of the matter in great details, suffice it to say that certain allegations of misappropriation of money, criminal breach of trust, gross negligence of duty etc., had been made against the appellant. Enquiries were made in relation to the aforementioned allegations in terms of an order passed by the Assistant Director of Panchayat, whereafter a notice to show cause was served upon the appellant as to why he shall not be removed from the post of Pradhan of Paranpur Gram Panchayat. In the said proceedings, an order of suspension was passed. As against the said order, the appellant preferred an appeal before the District Magistrate, Malda. An interim order of stay was granted therein. The District Magistrate also directed him to appear on 16.12.96 for hearing of the appeal- The said appeal, however, was heard by the Additional District Magistrate, Malda. on 3.1.97. and the Additional District Magistrate affirmed the

order of suspension. Questioning the said order, a writ petition was filed by the appellant. A learned Judge of this court, by reason of the impugned order, dismissed the said application inter alia, holding that in view of the definition of "District Magistrate" as contained in section 2(5) of the Act, the order impugned in the writ application is valid in law. The said decision is since reported in CLT 1997(2) HC 308.

3. Mr. Ganguly appearing on behalf of the appellant, apart from adverting to the questions raised by the learned trial Judge, has also sought to raise various questions raised in the writ application and further has sought leave to file an application for grant of leave to amend the writ petition questioning vires of section 213B of the said Act. Keeping in view the fact that the said contention has not been raised in the writ application, we have not granted leave to the appellant to amend the writ application and the memo of appeal.

4. West Bengal Panchayat Act, 1973 was enacted to reorganised Panchayats in rural areas in West Bengal and to provide for matters connected therewith. Interpretation clause contained in section 2 begins with the words in this Act, unless there is anything repugnant in the subject or context," Section 2(5) provision provides "District Magistrate* to includes Additional District Magistrate and other officers named therein. Section 213B was inserted by section 51 of the West Bengal Panchayat (Amendment) Act. 1994, being West Bengal Act. XVIII of 1994. Section 213B reads thus :

"213B. Suspension of Members of Panchayats.-

Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, the prescribed authority for such Panchayat as may be specified by notification, may, after giving an office-bearer or member of such Panchayat an opportunity to show cause against such action as may be proposed to be taken against him, place such office-bearer or member under suspension if he-

(i) has, prima facie, been found to be guilty of criminal breach of trust or criminal negligence or gross financial irregularity or impropriety in an inspection report on audit of accounts and his suspension is necessary to prevent any likely, delay in further investigation or any tampering or destruction of records, or

(ii) has, in an inspection held by a competent authority, prima facie, been found guilty of criminal breach of trust, financial irregularity, misuse or abuse of power for wrongful gain or gross negligence of duty requiring penal action by a competent authority and his suspension (s necessary to prevent any likely delay in further investigation or any tampering or destruction of records.

(2) When an office-bearer is placed under suspension under sub-section (1), the Panchayat shall elect another office-bearer in his place to exercise the powers, perform the functions and discharge the duties of such office-bearer during the period for which such suspension continues.

(3) Any office-bearer or member, who is placed under suspension under sub-section (1), may within thirty days from the date of the order of suspension, prefer an appeal to such authority as the State Government may appoint in this behalf and thereupon the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the prescribed authority and after giving the appellant an opportunity of being heard, modify, set aside or confirm the order.

(4) The order passed by the authority as aforesaid on such appeal shall be final."

5. A bare perusal of the aforementioned provision would, therefore, make the position explicit that the same contains a non-obstante clause. Upon reading of the aforementioned provision, the intention of the legislature becomes clear in view of the fact that a Judicial power is sought to be conferred upon certain authorities prescribed therefore, which was not the normal function of an authority under the said Act. Although it may be true that normally the definition incorporated in the interpretation clause should be adhered to, but the same, as indicated hereinbefore, in view of the interpretation clause itself, must be construed in a manner which would not be repugnant to the subject or context. Furthermore, in terms of section 2(5) of the Act, the power of the District Magistrate may be delegated to the authorities named therein for the purpose of discharging of all or any of the functions of a District Magistrate under the Act. The power of the prescribed authority in terms of sub-section (3) of section 213B of the Act was not conferred upon the District Magistrate as one of the functions under the Act, but such functions are to be performed under the Notification. The executive of the State in exercise of its power could confer the Jurisdiction to hear the appeals upon any other authority. Furthermore, when a Judicial power is exercised by a particular authority, who is otherwise under the Act is to perform executive powers, conferment of such powers must be held to be confined to the said authority alone and not to others. In *C.S. Balarama Iyer and Another Vs. Krishnan Kunchandi*, a Full Bench of the Kerala High Court, *inter alia*, held that Additional Subordinate Judge does not come within the purview of Subordinate Judge. In *Broom's Legal Maxims*, 10th Edition at page 571, while discussing with the functions of the delegated authority, it is stated : "Nor can an individual, clothed with Judicial functions, delegate the discharge of these functions to another, unless, as in the case of a County Court Judge, he be expressly empowered to do so. "By reason of section 2(5) of the said Act, the District Magistrate has not been expressly empowered to delegate his judicial functions to the Additional District Magistrate or any other authority. From the definition of District Magistrate, it will be seen that the same may mean to include any other Magistrate appointed by the State Government to discharge all or any of the functions of a District Magistrate under the Act, which could not have been the intention of the legislature while enacting section 213B of the Act. Furthermore, the words "prescribed authority" have been defined separately in section 2(19) to mean an authority appointed by the State Government by notification for all or any of the purposes of the Act. Thus, the words "prescribed

authority" have to be given the full effect and meaning in view of the provision contained in section 213B of the said Act. If an authority has been prescribed to discharge a particular function in his capacity as a prescribed authority, he alone has to discharge such function and the question of delegating his power in terms of section 2(5) of the Act, would not arise only because the prescribed authority happens to be the District Magistrate. There is no provision for delegation of power by a prescribed authority. In F.M.A.T 315B of 1995 (Jadab Chandra Mukhopadhyay v. State of W.B. & Ors.) disposed of on 14.3.95, a Division Bench of this court held that Additional District inspector of Schools is not District inspector of Schools.

6. Mr. Dasgupta appearing on behalf of the State, however, has submitted that the prescribed authority has to act within the four corners of the statute. There cannot be any doubt whatsoever that an authority created by an Act must act within the four corners of the statute but It is also beyond any cavil of doubt that an authority prescribed to discharge judicial functions. Is entitled to exercise certain other judicial discretions which may not be strictly within the provisions of the said Act. As for example, the prescribed authority being a court of limited Jurisdiction may lay down procedures for discharging such functions unless the same is wholly arbitrary or repugnant to the context of the Act. By way of example, we may state that admittedly, the District Magistrate has exercised certain ancillary functions which are inherent in the discharge of duties of an authority discharging Judicial functions, as for example, grant of adjournment, dismissing matter for default or restoration of the same, although such procedures are not provided for under the said Act. This would clearly bring about a distinction between function as a prescribed authority to discharge a Judicial function and functions provided for under the Act.

7. In , upon which Mr. Dasgupta has placed strong reliance, the apex court had merely laid down a law that in absence of any legislation, the executives can issue executive instructions. There can not be any law opinions about the said principle. The said principle has no application in the instant case. For the self-same reason, the decision of the Supreme Court of India reported in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., which provides that the executive instructions can supplant the law but cannot supplement the same, cannot be said to have any application In the facts and circumstances of the case. Mr. Dasgupta has further submitted that in a case where there exists a conflict between the Act and the Rule, the Act shall prevail. There is no dispute about such proposition, but in the instant case no such conflict exists.

8. In view of our findings aforementioned, we are of the opinion that the learned trial Judge was not correct in holding that the District Magistrate could delegate his power to the Additional District Magistrate in terms of section 2(5) of the Act as a prescribed authority within the meaning of section 213B of the Act as defined in section 215 thereof. The matter may now be disposed of afresh by the

District Magistrate on its own merits. The appeal as also the writ application are allowed and the order impugned in the appeal is set aside. We, however, make it clear that we have not entered into the other questions, and it would be open to the appellant to raise all contentions, if and when occasion arises therefore.

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9. Appeal allowed