

(2000) 03 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No. 804 of 1991

Sombharti Guru Damu Bharti	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Bombay Commissioners of Divisions Act, 1957 — Section 3

Citation : AIR 2000 Bom 352 : (2000) 3 ALLMR 453 : (2001) 1 MhLj 914

Hon'ble Judges : N.J. Pandya, Acting C.J.; S.B. Mhase, J; N.V. Dabholkar, J

Bench : Full Bench

Advocate : A.B. Naik, for the Appellant; S.P. Sawant, Govt. Pleader (for No. 1), R.D. Deshpande, (for Nos. 2 to 7), R.D. Mane, (for Nos. 8(a) to 8(d)) and D.V. Tele, (for No. 12), for the Respondent

Judgement

N.J. Pandya, Actg. C.J.

1. We have earlier decided the reference in Writ Petition No. 159 of 1982. In the said reference, the question was confined to validity or otherwise of the action of the State Government to delegate its appellate powers to the Officer on Special Duty, under the provisions of Section 2A of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (hereinafter referred to as the "said Act").

2. We have answered the said reference against the Government holding that the quasi-judicial function of the State Government cannot be delegated in this manner. The reason which has weighed us is that the appeal is provided only in respect of decisions taken by Officer of the State, who is authorised to decide upon all or any of six questions set out in Sub-section (1) of Section 2A of the said Act. If the decision is taken by the State Government, there is no right of an appeal. On the other hand, if the decision is taken by the Officer so delegated, the appeal is to be heard by the State Government.

3. We had before us two judgments of this Court in direct conflict with each other. The view taken in Ganeshrao Kishanrao Deshmukh Vs. Devsingh

Venkatasingh and Others, was withheld, opposite to view in Maruti Pandu v. Babu Narayan 1983 MLR 148. Later case, which was in conflict with the earlier case, was the result of notification issued in pursuance of the provisions of instruction No. 4 of the Instructions regarding the business of the Government, issued under Rule 15 of the Rules made under Article 166 of the Constitution of India, more particularly Sub-article (3).

4. The present matter, more or less is on the same line, but so far as the statutory material is concerned falls on different footing. The question arises whether the Commissioner, appointed by the State Government under the provisions of the Bombay Commissioners of Divisions Act, 1957 can hear these appeals or not?

5. In fact the said Act, in relation to Section 2-A, by notification issued under the Bombay Commissioners of Divisions Act, 1957 has been altered to read, wherever words "State Government" occur, to be replaced by the word "Commissioner" in the entire text of Section 2A. When those words are replaced in the body of Section 2-A, in Clause (6) of Sub-section (1) it would be, "..... the Commissioner or an officer authorised by the Government shall decide the question. " In Sub-section (2) it would be, "Whether any question is decided by an officer so authorised by the Government, any person aggrieved by such decision may file an appeal to the Commissioner, within ninety days from the date of such decision."

6. As decided in the earlier reference in Writ Petition No. 159/1982, the position was that for want of the statutory inroads by way of notification, we dealt with the matter on the basis that the appeal is to be heard by the State Government and whether the State Government, in turn, can delegate its powers or not? Further the result, on delegation of powers by issuing a notification under the Rules of Business (Rule 15) with reference to Article 166 of the Constitution of India or by issuing a notification in exercise of powers of the State under the Bombay Commissioners of Divisions Act, 1957, to us, cannot be different.

7. In both the cases, it is the Executive who is, by issuing notifications bringing amendments in the State Legislation to the extent which could have been brought out by way of regularly amending the Act, by placing before the State Legislative Assembly, which after due consideration may or may not have passed the same.

8. The said provision of the Commissioners of Division Act, 1957 was resorted to in connection with the Land Acquisition Act, 1894 by the State Government and the matter was carried to the Supreme Court, who dealt with the same in case of Arnold Rodricks and Another Vs. State of Maharashtra and Others, . The majority view (3 : 2) has expressed that such powers can be exercised by the Executive in the administrative and revenue matters. Necessarily, therefore, it was the majority view also, that it cannot be allowed to make inroads in the field of quasi-judicial powers. Needless to say that the minority view was clear on the point

that notifications by way of inroads as sought to be made in the Land Acquisition Act, 1894 are required to be struck down.

9. Be that as it may the State Legislative Assembly of its own has come out to enact amendments in the Land Acquisition Act, 1894, it being Amending Act of State of Maharashtra No. 39 of 1972.

10. The view taken by us in the earlier reference is also to the effect that, if at all any amendments are to be made, they should be made in the principal Act itself. The exercise of power by the Executive through the notifications, issued under the provisions of another Statute and through such notifications bringing about the changes in other enactments, to the extent of directly affecting quasi-judicial powers, in our opinion cannot be sustained.

11. The notification at Exhibit "F" (Page 128 of the petition paper book) is therefore, struck down to the extent that it makes inroads in the quasi-judicial power. The change made by this notification in Sub-section (2) of Section 2A of the Hyderabad Abolition of Inams and Cash Grants Act, 1954, with regard to the appeal being heard by the Commissioner, is therefore, struck down. Rest of the notification is sustained.

12. Reference is answered accordingly.