

(2004) 12 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition (L) No. 3185 of 2004

State of Maharashtra and Another

APPELLANT

Vs

Prabhakar S. Thakur

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Legal Services Authorities Act, 1987 — Section 20(3), 20(5)

Citation : (2005) 2 BomCR 35 : (2005) 1 MhLj 658

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : P.D. Anklesaria, S. Shreedharan, A.G.P. and P.M. Mokashi, A.G.P, for the Appellant; A.V. Anturkar, instructed by S. Deshmukh, for the Respondent

Judgement

F.I. Rebello, J.—Rule. By consent heard forthwith.

2. The respondents are aggrieved by the order dated 7-8-2004 and consequential order dated 4-9-2004 passed in Pension Lok Nyayalaya in Pension Matter No. 3 of 2004. The petitioner before the Pension Lok Nyayalaya was a retired employee of respondent No. 2. It was pointed out before the Lok Nyayalaya on behalf of the petitioner that no decision had yet been taken for extending the benefit of pension scheme to the employees of MHADA and that Government had appointed M/s K. A. Pandit to ascertain exact amount likely to be involved which the Chartered Accountant worked out to be 20.49 crores. That report was yet to be considered by the Government. It was also pointed out that the petitioner No. 2 herein cannot independently take decision on its own as the implementation of pension scheme involve huge financial burden and hence, the approval of the State Government is necessary and essential. The Lok Nyayalaya in Paragraph 4 of the earlier order dated 7th August, 2004 observed as under :

"To avoid any such direction been issued by the forum, it is absolutely necessary that the concerned authorities shall take decision before the next date. The Government Pleader is directed to inform their decision to this Court on the next date."

The matter came up before the Lok Nyayalaya on 4-9-2004. It was pointed out to the learned Members of the Lok Nyayalaya that the Government may not be in a position to take decision as Election process has started and certain directions have been issued by the Election Commission not to take any policy decision. This objection was rejected by stating that neither the Court nor the Lok Nyayalaya is prevented from taking any decision only because Elections are announced. After considering the matter; extension of time sought for on behalf of the petitioners herein was rejected and the following directions were issued :

"Therefore, we are giving direction to the Government and MHADA to implement their own decisions taken earlier and to grant pensionary benefits to the petitioners and the persons falling in the same category in accordance with the resolution of MHADA No. 1923 dated 4-6-1991. The Government is entitled to adjust the amount of contributory provident fund to some of the employees have received or are entitled otherwise to receive and the pension be calculated after the said adjustment. We also direct the Government that as a result of the decision in accordance with this order, all the persons entitled to the pension and retirement benefits should get their payments on or before 30th November, 2004 and in case there is further delay, the petitioners have liberty to approach this forum."

3-4. The grievance of the petitioner is that considering the purpose and object of the scheme and more specifically Chapter 6 of the Legal Service Authority, 1987, hereinafter referred to as the Act, the jurisdiction of the Lok Nyayalaya is limited to bringing about settlement between the parties by concessions and if settlement or compromise is arrived at then to so record it. No direction or order can be issued if both parties are not agreeable to the same. It is also pointed out that even though in Chapter VI there are expressions like "determination", that determination is not to decide the dispute but determination for the purpose of enabling the parties to arrive at a settlement or compromise. Reliance is placed on the judgment of the learned Judge in Karnataka High Court in *The Commissioner, Karnataka State Public Instruction (Education), Bangalore and Others Vs. Nirupadi Virbhadrappa Shiva Simpi*, . Even otherwise it is pointed out that the Apex Court in the case of *State of Punjab and Others Vs. Phulan Rani and Another*, has clearly on the construction of the Act laid down the parameters of jurisdiction of the Lok Nyayalaya under the Act. From the Judgment it is clear that it is only when both the parties aggrieved, had come to compromise or settlement is it open to the Lok Nyayalaya to record the same. It cannot in the absence of consent of either of the parties issue any directions.

On behalf of the respondents, their learned counsel states that considering the judgment in the case of *Phulan Rani (supra)* it may not be possible for him to canvass the points which he otherwise might have canvassed considering the language of Section 95, Section 24 and Section 22.

5. The Apex Court in *Phulan Rani and Ors. (supra)* has observed as under :

"The specific language used in sub section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims; by reciprocal modification of demands. As per Terms de la Ley, "compromise is a mutual promise of two or more parties that are at controversy. As per Bouvier it is "an agreement between two or more persons, who to avoid a law suit, amicably settle their differences on such terms as they can agree upon. The words "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender, [See Re NFU Development Trust Ltd. (1973) 1 All E.R. 135.] A compromise is always bilateral and means mutual adjustment. "Settlement" is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of the Writ Petition No. 13555/1994 filed by respondent No. 1 is clearly impermissible."

It will therefore, be clear that the issue of jurisdiction of Lok Nyayalaya is no longer res integra and is covered by the said judgment. If a dispute is not settled by compromise or settlement the Lok Nyayalaya has no jurisdiction to pass order directing parties to implement any direction. In the instant case, admittedly on behalf of the petitioners, their learned counsel had sought time on the ground that the Government was yet to take decision. In other words, the petitioners herein before the Lok Nyayalaya were not agreeable to any settlement or compromise as the State Government had yet to take decision about applicability of the pension scheme to employees of petitioner No. 2. Once that be the case, clearly as there was no compromise or settlement the impugned orders are without jurisdiction.

6. It will be necessary for this Court to add a word of caution. Chapter VI and other provisions of the Legal Service Authorities Act are by way of Alternative Dispute Redressal Mechanism (A.D.R.). There is no jurisdiction in the authority to issue any directions which would result in one party having to suffer the order to which it is not a willing party. The anxiety of the Lok Nyayalaya considering the issue involved is understandable. But at the same time, it ought to have reminded itself that the direction which they have issued really would not fall within its jurisdiction.

It is made clear that the merits of the matter have not been gone into and all issues on merits are left open for the parties to be agitated if in law the petitioners are so entitled before any competent forum.

Rule made absolute in terms of Prayer Clauses (a) and (b). No order as to costs.