
(1994) 07 MP CK 0068
In the Madhya Pradesh High Court
Case No : First Appeal No. 51 of 1983

State of M.P.

APPELLANT

Vs

Miland Joshi and Others

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Constitution of India, 1950 — Article 23, 31C

Citation : (1994) JLJ 495 : (1994) 2 MPJR 335

Hon'ble Judges : U.L. Bhat, C.J.;T.S. Doabia, J;A.S. Tripathi, J

Bench : Full Bench

Advocate : R.D. Dubey, General, for the Appellant; R.D. Jain, R.K. Shinde, M.G. Khedkar, R.K. Sharma and B.M. Shitole and P.L. Dubey, General, for the Respondent

Judgement

U.L. Bhat, C.J.

T.N. Singh, J. has referred to a Larger Bench the question whether decision of a Division Bench in Ganpat Rao and Anr. v. The State of M.P. Misc. Petition No. 1403/83 is contrary to an earlier Division Bench decision in Dr. Anant Rao Vs. State of Madhya Pradesh and Others, and Article 23 of the Constitution. We have heard learned Advocate General, Shri P.L. Dubey and learned Counsel for the Respondents, Shri R.D. Jain.

Respondents are the legal representatives of the original Plaintiff. According to the Plaintiff, his father obtained Siledary and Darakhdari grants from the then Maharaja of the erstwhile Gwalior State and on his death, the right devolved on the Plaintiff. Plaintiff initially obtained mutation which was later on cancelled. He, therefore, filed a suit for a declaration of entitlement to these rights and declaration that the cancellation order is illegal. The State and its officers raised several contentions. During the pendency of the suit, M.P. Act No. 11 of 1983, for short, the Act, was enacted to abolish certain gratuitous cash grants and certain service cash grants. On the basis that Siledari and Darakhdari grants attract the definition of "service cash grant" in Section 3(f) and the operation of Section 5 of

the Act, the lower Court came to the conclusion that these grants stood terminated statutorily but granted a declaration that Plaintiff and his successors were entitled to these rights till 18.2.1983 when the Act came into force. The trial Court held that the grants did not survive the Act. The State and its officers have challenged the decree by way of this first appeal.

During the pendency of the first appeal, in M.P. No. 1403/83, a Division Bench of this Court, by order dated 10.4.1987 held that Section 5 of the Act is ultravires as it is confiscatory in nature and not just, fair or reasonable and is not protected by Article 31C of the Constitution since Presidential assent had not been obtained, the State Legislature has no legislative competence to enact the law and the Act as a whole is ultravires. During the hearing of the first appeal, this decision was pressed into service on behalf of the Respondents. Learned Judge felt that the "service" required under the two grants may attract Article 23 of the Constitution. Learned Single Judge also felt that the decision in Ganpat Rao's case (supra) requires consideration in the light of decision in Anant Rao's case (supra).

The Act was struck down by this Court vide order dated 10.4.1987 in M.P. No. 1403/83. The State did not feel aggrieved by the decision and did not challenge the same by way of an appeal and did not seek review of the order. So far as the State is concerned, the decision in Ganpat Rao's case (supra) has become final. It is, therefore, not open to the State in a subsequent proceeding to contend that the Act is intravires or that the earlier decision requires reconsideration for any reason.

We also do not see any conflict between the two decisions referred to above. The decision in Anand Rao's case (supra) considered the provisions and not the vires of Madhya Pradesh Abolition of Jagirs Act, Samvat 2008. It only referred to Article 23 and indicated that the conditions of the grant may offend Article 23 of the Constitution.

An aspect which may survive for consideration is whether the enforcement of the terms of grants which will be the natural consequence of the declaration in favour of the Plaintiff would violate Article 23 of the Constitution. This is not an aspect referred to the Larger Bench and, therefore, can as well be considered by the appropriate Bench which has to hear the first appeal.

The question is answered by holding that there is no conflict, as suggested between the decisions in Ganpat Rao's case and Anand Rao's case. The reference is closed. The case will go back to the appropriate Bench.