

(1966) 03 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1636 of 1963

Surinder Singh and Another	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 14-03-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114 , 151
East Punjab Urban Rent Restriction Act, 1949 — Section 10, 6(1)

Citation : (1967) 1 ILR (P&H) 184

Hon'ble Judges : R.S. Narula, J;Inder Dev Dua, J

Bench : Division Bench

Advocate : Achhra Singh and I.S. Karewal, for the Appellant; J.N. Kaushal, Advocate-General and M.R. Agnihotri, for the Respondent

Judgement

Inder Dev Dua, J.—The facts giving rise to this writ petition are stated in my referring order, dated 17th December, 1965 and therefore; need not be restated again. That order may, however, be read as a part of this order.

2. The learned Counsel for the Petitioners has today cited in support of his submission a Single Bench decision of this Court by Bhandari, C.J. in Manohar Lal L. Nadarchand Vs. Mohan Lal Gian Chand, , in which it is laid down that the Rent Controller under the East Punjab Urban Rent Restriction Act (3 of 1949) has inherent power to set aside an ex parte order passed by himself. He has also relied on a Bench decision of the Madhya Pradesh High Court in Sunderlal Mannalal Vs. Nandramdas Dwarkadas and Others, . In that case, the Election Tribunal trying an election petition under the Representation of the People Act (1951), was held to possess inherent power to restore a petition dismissed in default ex debito justitiae when sufficient cause has been made out.

3. On behalf of the Respondents, the learned Advocate-General has drawn our attention to a Bench decision of the Patna High Court in Patna Electric Supply Workers Union Vs. A. Hassan and Another, . The Court in that case was concerned with the Industrial Employment (Standing Orders) Act 20 of 1946 and

it was observed that within the four corners of the Act, no specific provision is to be found empowering an Appellate Authority to correct the mistakes in the Standing Orders finally certified by it u/s 6(1) of the Act before the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation, except in the manner provided in Section 10 of that Act that is, except on agreement between the employer and the workmen. The Appellate Authority, according to the decision in the reported case, being an authority of limited jurisdiction and a creation of the Act must be confined to the exercise of such functions and powers as are actually conferred on it. The rule that every Court, in the absence of express provision to the contrary, must be deemed to possess the inherent power in its very constitution, all such powers, as are necessary to do the right and to undo a wrong in the case of administration of justice, which applies to all Courts, cannot apply to an Appellate Authority under that Act. Relying on these observations, the learned Advocate-General has tried to impress upon us that the Pepsu Land Commission in the case in hand cannot be considered to possess inherent power to set aside an ex parte order. *Rameshwar Dayal v. Sub-Divisional Officer* ILR (1961) 2 All. 298, a Bench decision of the Allahabad High Court has also been cited by Shri Kaushal. This decision, according to the learned Counsel, lays down that the inherent power of Court to do justice and to pass any orders which it considers necessary in the interest of justice, irrespective of whether express provisions of the laws of procedure provide for it or not, is also not available to an Election Tribunal, in that, it is not a Court and possesses no common law powers. An election tribunal can pass only such orders as the provisions of that Act under which it is created provide for. In the reported case, the Court was concerned with U.P. Panchayat Raj Act, under which a Sub-Divisional Officer hearing an election petition had declined to grant an interim relief against removal from office of the Pradhan held by the Petitioner (in the Allahabad High Court) on the ground that he had no jurisdiction to stay transfer of charge. The refusal of the Election Tribunal was upheld by the High Court. Our attention has next been drawn by the learned Advocate-General to a recent Full Bench of this Court in *Deep Chand and Anr. v. Additional Director, Consolidation of Holdings, Punjab and Anr.* ILR (1964) 1 P&H. 665 : 1964 P.L.R. 318, in which it has been laid down that the Additional Director of Consolidation is not empowered to recall or* review his earlier erroneous and unjust order, merely because it is discovered later that the error was due to his own mistaken view of the merits of the controversy. The learned Advocate-General has very strongly urged that to set aside an ex parte order is in reality to exercise the power of review which is a creation of statute and therefore, unless the statute either expressly or by necessary intendment confers this power, no Court or a quasi-judicial Tribunal can assume that such a power inheres in it.

4. In my opinion, the power to set aside an ex parte order made to the prejudice of a party before a judicial or a quasi-judicial Tribunal without hearing him cannot be equated with a power of review such as is contemplated in and provided by

Section 114 and Order 47, Code of Civil Procedure. The kind of power of review with which the Full Bench of this Court in Deep Chand's case was concerned was the power of review on the basis of reconsideration of the merits of a decision whether on facts or in law. The consideration of the operation of the rule of *res judicata* was, therefore, rightly taken into account in considering the question in that case. The power that concerns us is, truly speaking, not a power to directly re-hear the case on the merits and interfere with an order already passed on its re-appraisal, but the power to consider whether there was legal justification for the Pepsu Land Commission to proceed to finally determine a controversy affecting a citizen's rights in his absence and without hearing him when true facts have been disclosed. That relates to something antecedent or anterior to the actual hearing of the controversy on the merits.

5. Such a power, in my view, may well be assumed to inhere in every Tribunal or authority which has to judicially determine anything affecting the rights of the contesting parties before it. This power which from one point of view may also partake of the character of a duty or an obligation designed to serve the ends of justice, inheres in such a Tribunal or authority because it is rooted in the fundamental rules of natural justice which require that every party should be heard before an order to his prejudice is made and also that no act of Court should harm a litigant for no fault of his. If a person is harmed by a mistake of the Court, he is entitled to be restored to the position he would have occupied but for that mistake. This principle is summed up in the maxim *actus curiae naminem gravabit*. These rules of natural justice originally applicable to Courts under the common law have profitably been transplanted without incompatibility from their native judicial soil into the quasi-judicial terrain and they can with equal advantage be transplanted into all parts of the territory of administration as well. Similar power inheres in the Courts in India, as our judicial set-up has its roots in and has been inspired by the English conception and objective of administration of justice. Indeed, Section 151, Code of Civil Procedure, also seems to me to reflect the spirit of the rules of natural justice, for, it extends statutory recognition to the existence of inherent power to act *ex debito justitiae* in the established Courts in this Republic. This inherent power is manifestly broad-based on the larger concept of the rules of natural justice founded on consideration of justice, equity and good conscience. This section, it may be remembered, does not create or confer any new power it merely saves the already existing inherent powers of the Courts to serve the ends of justice and to prevent the abuse of the process of the Court. The object of enacting this section is to clarify and remove all possible doubt that powers expressly conferred on the Courts by the Code do not automatically restrict their inherent power to do complete and substantial justice. Being inherent and underfined, this power must have its limitations circumscribed by law and by considerations of equity and justice: its exercise has accordingly always been carefully guarded so as to prevent its arbitrary or capricious use in contravention of law and equity. Such inherent power of the Courts has under the Rule of law, which pervades the

entire fabric of our set-up, been appropriately extended to the Tribunals like the one which concerns us in the case in hand. The Pepsu Lands Commission must, therefore, for reasons similar to those governing the Courts, be held to possess such inherent power. Of course, in common with the Courts, the exercise of this power rests with the Commission, though it is open to the parties to bring the infirmity to its notice. But being controlled and guided by judicial discretion, this power can neither be exercised nor declined arbitrarily or capriciously. Law reports teem with judicial decisions in which Courts have to serve the ends of justice, set aside under inherent power *ex parte* orders, not covered by other express provisions of the Code. Those decisions are helpful only by way of illustrations and it is neither possible nor practicable to formulate a fixed or rigid rule to serve as a straight jacket in all conceivable contingencies, unrelated to circumstances and time. It is the disciplined judicial sense of the Court or the Tribunal gripped by rules of reason and justice on which primarily depends the satisfactory working of the recognised, though not iron-clad, rules of natural justice in each given case.

6. Adverting to the facts of the present case, on 7th April, 1961, the Petitioners were expected to adduce their evidence. It is alleged that they suddenly fell ill and it is admitted that a telegram was sent by them seeking adjournment on this ground, but the same reached the Lands Commission late, with the result that final orders were passed without hearing the Petitioners. In the return, it is admitted that the telegram was received at 1.15 p.m. on 7th April, 1961, but this was after the announcement of the final order. It is, however, added in the return that "otherwise it is no way of seeking adjournments. It is strange that both the Petitioners fell ill on 7th April, 1961, the date fixed for hearing". On 27th July, 1961, one of the Petitioners applied for reconsideration of the report of the Lands Commission. On this, no action was taken. On 7th September, 1961, another application was submitted by the same Petitioner which was rejected on 25th June, 1962, that is, after nine months, on the ground that there is no power in the Lands Commission to reopen proceedings after such a long time. In our opinion, this was an eminently a fit case in which the Lands Commission should have exercised its inherent power to go into the Petitioners' allegations and judicially arrive at a finding whether or not the Petitioners were prevented from attending the hearing for reasons beyond their control as alleged and whether it was a fit case in which the matter required to be reheard. In fact, I am inclined to think that as soon as the telegram was received by the Commission on 7th April, 1961, in fairness, the Petitioners should have been informed of the decision of the Commission and of the late receipt of the telegram and if considered proper, the Lands Commission may well have fixed a date for the Petitioners to establish the allegation of sickness. In any event, information of the decision and of the late receipt of the telegram would have left the matter to the Petitioners to take suitable steps, as advised, with due diligence to safeguard their rights. Again, when the application was made on 27th July, 1961 and a further application on 7th September, 1961, it is not clear why they were not heard and

disposed of with reasonable promptitude before 25th June, 1962. This delay, which appears to be prima facie inordinate on the facts and circumstances of this case is not easy to appreciate. The factor of delay, which seems to have weighed with the Lands Commission, is prima facie largely due to the delayed hearing given by the Commission itself. It also appears to us that the Lands Commission was fully possessed of the inherent power on these facts to entertain and decide on the merits, the Petitioners' application whether or not they were prevented by some cause beyond their control from attending the Court. To decline to do so on the impression that there is no power in the Lands Commission on account of lapse of time, does not appear to us to be quite correct in law and it does seem to violate the elementary rules of natural justice. Failure to exercise this power is, in our opinion, a clear violation of the established rules of natural justice and it has defeated rather than served the ends of justice. At this stage, reference may appropriately be made to *Dhian Singh v. Deputy Secretary, etc.* 1959 P.L.R. 529, in which it is observed that it is an elementary rule of our Jurisprudence that no suitor should be made to suffer or be denied justice because of the remissness or mistake of the Court or the Tribunal, as the case may be. Justice, according to those observations, is the first and foremost objective which has been secured to the citizens of this Republic as contained in the solemn resolution in the Preamble of our Constitution and this supplies the key-note to our scheme of Jurisprudence and our legal system.

7. We are in the circumstances constrained to quash the impugned orders of the Lands Commission, dated 25th June, 1962 and of the Financial Commissioner, dated 30th April, 1963. This, of course, does not mean that the order of the Lands Commission, dated 7th April, 1961, is being automatically set aside by this Court and the proceedings re-opened. All that we propose to do by this order is to quash the two orders mentioned above and to leave it to the Lands Commission to enquire into the Petitioners' allegation that they were unavoidably prevented from attending the Lands Commission on 7th April, 1961 and adducing their evidence as required. This decision would, of course, be arrived at uninfluenced by the factor of delay caused by the Commission and in accordance with law on the facts established. It is hoped that no further undue delay would now be caused in the disposal of the Petitioners application. Parties are left to bear their own costs in this Court.