
(2019) 03 UK CK 0061

In the Uttarakhand High Court

Case No : Writ Petition No. 2924, 3366, 3368, 3470, 3539 Of 2018 (M Of S)

THDC India Limited & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 12-03-2019

Acts Referred:

Bombay Tenancy And Agricultural Lands Act, 1948 — Section 42, 76A
Industrial Disputes Act, 1947 — Section 10A
Limitation Act, 1963 — Section 5
Constitution Of India, 1950 — Article 136, 136(1), 227

Citation : (2019) 03 UK CK 0061

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Shobhit Saharia, Anurag Bisaria

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. Short Counter affidavits as filed by respondent No. 4 in all connected writ petitions are taken on record. Miscellaneous Applications made therefor are accordingly allowed.
2. Since the controversy involved in the writ petitions is identical, as such, they are being disposed of by this common judgement. The matter is taken for final adjudication with the consent of the parties to the bunches of petitions.
3. The petitioner, Tehri Hydro Development Corporation Limited is a statutory Corporation, vested with the upkeep, maintenance and operation of the said project. For the purposes of establishment of the said project, the petitioner had to undertake massive acquisition proceedings to acquire the land of the neighbouring villages, which were likely to be submerged with the rise of water level of the said project dam or were effected in any manner by the project. The acquisition process, as well as, the rehabilitation of displaced person was

scheduled to be done phase wise, depending upon the rise of the water level of the reservoir and available of land for rehabilitation. In this entire process, the inhabitants, whose land was acquired i.e. the petitioner itself of all connected petitions with the project often used to face certain minor difficulties, which were sought to be eradicated by a Cell which was constituted by the Hon'ble Apex Court vide its order dated 24.04.2007 as rendered in SLP No. 22894 of 2005, N.D. Jayal and Another v. Union of India and Others. While considering the Miscellaneous Application 7124 of 2004 when the order was passed by this Court in WP(PIL) No. 1287 of 2003, summarizing the controversy, the Hon'ble Apex Court had issued the following directions:-

"Going by the averments made by the petitioners, we find that there are series of minor complaints by the PAFs that they are not being paid reasonable compensation, and also not being paid money for relocating their families and there is also a complaint to the effect that these families are not being paid for the structures such grocery shop, cattle shed erected by them. These complaints could be looked into by the District Magistrate and to have a fair settlement of these complaints, we suggest that services of a retired District Judge can be made available so that he can work along with the District Magistrate and sort out all these complaints. The Chief Justice of the Uttaranchal High Court would suggest the name of a retired District Judge and also fix the honorarium and the same shall be communicated to the concerned District Magistrate and the THDC on or before 18th May, 2007. A copy of this order may be sent to the Chief Justice of the High Court of Uttranchal."

4. On a rationale interpretation to the purpose and the reason why the Cell was constituted, and why and to what extent the power was vested with the District Magistrate he was to be assisted by the Land Acquisition Officer in undertaking the process it was aimed to overcome the minor difficulties, which were being faced by the land looser(s), the Corporation itself and the Administration, and also to overcome the minor complaints which were being received by the District Magistrate in relation to the determination of compensation, quantum of compensation being paid and various such other interconnected minor spheres of controversy as has been dealt with by the Hon'ble Apex Court in its order dated 24.04.2007.

5. In order to facilitate the decision making process, the Hon'ble Apex Court by the order dated 24.04.2007 had introduced a retired District Judge to be made as one of the members of the Cell who was to be nominated by the Chief Justice of Uttarakhand High Court. It is needless to say that once a conscious decision was taken by the Hon'ble Apex Court with regard to the purpose and the reason for which the Cell was constituted and the very fact that the District Judge was introduced as one of the members, what Hon'ble Apex Court aimed at was to facilitate the rationale decision making process in the determination of the reasonable compensation payable to the land looser(s) and the various other such allied minor complaints which were being raised by the land looser(s) whose

land have been acquired for the said purpose. The introduction of the District Judge was aimed at to attach fairness in the decision making process on the various allied issues as observed by the Hon'ble Apex Court.

6. The grievance, which has been raised by the petitioner in the present writ petition is emanating from the impugned orders dated 22.02.2018 and 24.03.2018, as passed by the Cell constituted by Hon'ble Apex Court by its order dated 24.04.2007, which are impugned in the writ petition. Before venturing to the veracity of the impugned orders, two aspects which has been candidly required to be dealt with at this stage itself is, that this Court is of the view that the Cell thus constituted by the Hon'ble Apex Court was a Body constituted to discharge an administrative function to enable a rightful determination of compensation to the persons or the tenure holders who have been deprived of their holdings and to assist in decision making process with all fairness over trifling issues. The constitution of the Cell was intended to arrive at a rightful compensation and that is why the services of a retired District Judge taken and he also included in it.

7. This Court is of the view that when the Hon'ble Apex Court vide its conscious decision dated 24.04.2007 had constituted the Cell it had in its mind the claim of 454 such families which were spread over 26 villages and which was gradually to increase with the increase of water level of the reservoir upto 835 meters in relation to the families, who were made as a subject matter to be considered by the Cell to eradicate their minor difficulties.

8. The grievance agitated by the petitioner is that under the garb of the constitution of the Cell by the order dated 24.04.2007, even those tenure holders whose right finally stood settled much earlier by the processes adopted by the THDC, Rehabilitation Directorate, or under the Land Acquisition proceedings, they too had filed a Review Petition before the Cell thus constituted by the order of Hon'ble Apex Court on 24.04.2007 along with Delay Condonation Application and the Cell thus constituted by the impugned order had entertained the Review and condoned the delay and had entertained the Review preferred by the tenure holders. The consequential effect of condonation of delay and entertainment of the Review would result to magnify the powers and the ambit within which the Cell was supposed to exercise its power vested by the Hon'ble Apex Court, which could not have power to de novo look into all those proceedings which stood already settled by various orders passed much earlier, when they themselves were brought into existence by the order passed by the Hon'ble Apex Court only on 24.04.2007. Hence under the garb of review the Cell could not have looked into the matters already settled finally prior to their coming into existence.

9. In addition to what has been observed above, it has also been argued by the learned counsel for the petitioner that even those claimants have also included themselves by filing review with delay condonations, whose claims otherwise stood settled and rejected by the Rehabilitation Cell even after the constitution of the Cell itself in pursuance of the order passed by the Hon'ble Apex Court.

Though the controversy may apparently seems to be very elaborate, but this Court has also to visualize it from the view point as to when a Cell is created administratively by a judicial order passed by the Hon'ble Apex Court, whether it could exercise the powers of review which is otherwise a creation of statute as held out by the Full Bench of Allahabad High Court in a judgement as reported in ALR 1997 (31) 681, Smt. Shivraji and others v. Dy. Director of Consolidation, Allahabad and others.

"19. In the case of Patel Chunibhai Dajibhai v. Narayanrao Khanderao Jumbekar and Anr.: AIR 1965 SC 1457, the Supreme Court held that the orders passed by the Collector under Section 76A of the Bombay Tenancy and Agricultural Lands Act (67 of 1948) in the exercise of his revisional powers were quasi judicial and were final; that the Act does not empower the Collector to review an order passed by him under Section 76A; that in the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkari's order, A similar view was taken by the Supreme Court in the case of Harbhajan Singh v. Karam Singh and Ors.: AIR 1966 SC 641, in which the Court, referring to several decisions of different High Courts, Anantharaju Shelly v. Appu Hegade AIR 1919 Mad 244 and of the Supreme Court, held that since there is no provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act granting express power of review to the State Government with regard to an order made under Section 42 of the Act hence the subsequent review order of the Director is ultra vires and without jurisdiction.

20. In the case of Patet Narshi Thakershi v. Pradyumansinghji Arjunsinghji :AIR 1970 SC 1273, the Apex Court categorically ruled that the power to review is not an inherent power; it must be conferred by law either specifically or by necessary implication. Construing the provisions of Saurashtra Land Reforms Act, 1951 (25 of 1951) the court observed that no provision in the Act was brought to its notice from which it could be gathered that the Government had power to review its own order and if the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The court further observed that the question whether the Governments order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the order cannot be ignored and the subordinate tribunals have to carry out that order.

21. In the case of Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur and Ors.: AIR 1987 SC 2186, the court held:

"It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any

power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing the order dated January 24, 1986 by her order dated March 7, 1987. The said order of the Vice-Chancellor dated March 7, 1987 was a nullity."

25. The question that remains to be considered is whether the Deputy Director of Consolidation as a Court or Tribunal has an inherent power of review and in exercise of such power, he can reconsider the previous order passed by him? A further question that arises ancillary in this connection is whether the Deputy Director of Consolidation is a Court and, therefore, has inherent power of review? In the case of *Associated Cement Company Ltd.v. P.N. Sharma and Anr.*: AIR 1965 SC 1595, the Supreme Court, construing the meaning of 'Tribunal' for the purposes of Articles 136(1) and 227 of the Constitution, held that judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on consideration of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. The court further observed that it is really not possible or even expedient to attempt to describe exhaustively the features which are common to the Tribunals and the courts and features which are distinct and separate; that the basic and fundamental feature which is common to both the Courts and the Tribunals is that they discharge judicial functions and exercise Judicial powers which inherently vests in a sovereign State. In considering the question about the status of any body or authority as a Tribunal under Article 136(1) the main test to be applied is whether the body or authority has been constituted by the State and has been clothed with the State's inherent judicial power to deal with disputes between parties and determining them on the merits fairly and objectively. In order to be a Tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a Tribunal acting under Section 10A of the Industrial Disputes Act, 1947, does not satisfy the test of a Tribunal within meaning of Article 136. It matters little that such a body or authority is vested with the trappings of a Court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10A of the Act with many of such trappings, and yet, such bodies and authorities are not Tribunals. The Supreme Court further held that the word 'Tribunal' in Article 227 of the Constitution also has the same meaning as in Article 136.

35. Any Tribunal exercising judicial or quasi-judicial power, which is not vested with power of review under the statute expressly or by necessary implication, has an inherent power of review of its previous order in any circumstances. In our view, the decisions only lay down the proposition that a Tribunal exercising

judicial or quasi-judicial power has the inherent power to correct a clerical mistake or arithmetical error in its order and has the power to review an order which has been obtained by practising fraud on the court, provided that injustice has been perpetrated on a party by such order. Therefore, these decisions should not be construed as laying down any proposition of law contrary to the well-settled principle of law that any order delivered and signed by a judicial or quasi-judicial authority attains finality subject to appeal or revision as provided under the Act and if the authority passing the order is not specifically vested with power of review under the statute, it cannot reopen the proceeding and review/revise its previous order."

10. In Smt. Shivraji (supra), it has been provided that even the Courts which are created under the Statute cannot exercise the power of review until and unless it is vested in them by the Act itself by virtue of which they have come into existence or created. Since the power of review is a statutory power, created under an Act, at least, the Administrative authorities, who were supposed to determine the compensation or solve petty issues as pointed out in pursuance of the directions issued by the Hon'ble Apex Court, they could not have had exercise the powers of entertaining state matter, or closed matters by entertaining the review and condoning the delay by the impugned orders under challenge before this Court.

11. Another argument, which has been extended by the learned counsel for the petitioner is to the effect that when the Tehri Hydro Development Corporation, itself have sought review in some of the matters by moving an appropriate application before the same Cell, who has passed the impugned order that Cell itself has rejected their application for review on the pretext that the Cell, since being created in pursuance of the judgement passed by the Hon'ble Apex Court, is exercising an administrative power, therefore they are not vested with the power of review and consequently, the review application of the THDC was rejected. In such a circumstances, where the Cell thus constituted has taken altogether a stand holding of by their own order dated 28.03.2011 that they have not been vested with the power of review the same Body could not have taken a somersaulted stand by entertaining the review application of private persons belatedly, even of those tenure holders whose right otherwise stood rejected by the Rehabilitation Directorate way back on 23.03.2010.

12. Besides this, this controversy has to be looked from another aspect also as to whether the Cell had the power to condone the delay apart from the fact that this Court is of the considered view that the review itself is not maintainable. Power to condone a delay is a statutory power which is contemplated under Section 5 of the Limitation Act to be read with the provisions contained therein. The power to condone the delay has been vested with the Statutory Authorities, i.e. the Courts created under law and not with the Administrative Authorities until and unless it is specifically provided to them under the Policy, Law, Rules or Order which governs their conditions of functioning. The Cell, at the present

juncture, since being a creation in pursuance of the order passed by the Hon'ble Apex Court their right to exercise the power cannot be widened up in any manner whatsoever than what has been vested with them by the directions given by the Hon'ble Apex Court. Hence, the review application, as filed by the tenure holder is being held to be not maintainable and no delay could have been condoned by the Cell, which was created specially for a purpose on the orders passed by the Hon'ble Apex Court on 24.04.2007.

13. There is yet another aspect of the matter which is necessarily required to be taken into consideration is that the main issue which was pending before the Hon'ble Apex Court by virtue of which the Cell came into existence, itself has now been settled down and has ended by the judgement dated 19.02.2016 and the SLP by virtue of which the Cell came into existence that itself finally stands adjudicated. Hence under the simple principle of merger, as soon as the Hon'ble Apex Court has finally adjudicated upon the controversy by the judgement dated 19.02.2016, all interlocutory orders would stand merged with the final order, passed by the Hon'ble Apex Court, until and unless it is saved by the Hon'ble Apex Court, in its final adjudication. Apparently, looking to the order dated 19.02.2016, the life of the Cell, its ambit of functioning has not been extended or permitted to be continued by the judgement dated 19.02.2016 as rendered by the Hon'ble Apex Court, hence also, subsequent to the final decision being taken by the Hon'ble Apex Court on 19.02.2016, no review application could have been entertained thereafter by the Cell created by the interlocutory order dated 24.04.2007 passed by the Hon'ble Apex Court.

14. Consequently, the writ petitions are allowed. The impugned orders dated 22.02.2018 and 24.03.2018 as passed by respondent No. 3 (Grievance Redressal Cell through District Magistrate, Tehri Garhwal) are hereby quashed.

15. However, there would be no order as to costs