
(1968) 12 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Petition No. 185 of 1968

Zalam Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-1968

Acts Referred:

Citation : AIR 1969 Delhi 285 : (1969) 5 DLT 203 : (1985) 2 ILR Delhi 909

Hon'ble Judges : I.D. Dua, C.J;V.S. Deshpande, J;S.N. Shankar, J

Bench : Full Bench

Advocate : R.L. Kohli, for the Appellant; Parkash Narain, for the Respondent

Judgement

S.N. Shankar, J.—The petitioners in this case were tenants of the respondent in occupation of premises bearing No, 8583-86/XV, situated at Ara Kashan Road, Paharganj, Delhi. On an application made before the Rent Controller by the predecessor-in-interest of the present respondents, Shri Wasakha Singh, who died during the pendency of this litigation and whose legal representatives were thereafter brought on the record as respondents, Shri Asa Singh Gill, Rent Controller, Delhi, passed orders of eviction in favor of the landlord against the petitioners. The petitioners have assailed the validity of these orders by this petition and the only ground urged in support of the contention that the impugned orders of Shri Asa Singh Gill are illegal, null and void and without the authority of law is that he had not been validly appointed u/s 35 of the Delhi Rent Control Act, 1958, to act as a Rent Controller. The matter came up for hearing before a Division Bench of this Court. The authentication of the notification appointing Shri Asa Singh Gill was not expressed to be in the name of the President. It was signed by Shri Vajpeyi With the designation of Under Secretary appended to it at the end. Respondents maintained that this was sufficient authentication and the presumption of Article 77 of the Constitution was attracted to the notification. Having regard to the importance of the question and its wide application in the day-to-day conduct of the administration and the issuance of the orders and notifications by the authorities it was con* side red

proper to refer the matter to a larger Bench and this is how this case is now before us for decision.

2. Section 35 of the Delhi Rent Control Act, 1958 (hereinafter called "the Act") provides for the appointment of Controllers and Additional Controllers and lays down that the Central Government may by notification in the Official Gazette appoint as many Controllers as it thinks fit and define the local limits within which each Controller shall exercise the powers conferred by the Act and perform the duties imposed by it. In exercise of these powers, the Central Government by notification dated June 26, 1962, published in the Government of India, Delhi Gazette, Delhi Administration, appointed Shri Asa Singh Gill as Controller with effect from the date he assumed charge of the office. The notification reads as under:--.

"Registered No. D 436

Government of India

Delhi (Seal) Gazette.

Delhi Administration.

Extraordinary

Part IV

Published by authority.

No. 28 Delhi, Tuesday, June 28, 1962/ Asadha 5, 1894.

Government Of India Ministry Of Home Affairs NOTIFICATIONS.

New Delhi, the 21st June, 1962. No. 20/12/ 62-Delhi, 1. In pursuance of Sub-section (2) of Section 35 of the Delhi Rent Control Act, 1958 (59 of 1958), the Central Government hereby appoints :--

(1) Shri Pritpal Singh at present working as Controller as 1st Additional Controller vice Shri Sudershan Aggarwal with effect from the date he hands over the charge of the post of Controller to Shri Asa Singh;

(2) Shri Sudershan Aggarwal, the present Additional Controller as 2nd Additional Controller.

No. F, 20/12/62. Delhi 9 (1). In pursuance of Sub-section (1) of Section 35 of the Delhi Rent Control Act, 1958 (59 of 1958), the Central Government hereby appoints Shri Asa Singh as Controller vice Shri Pritpal Singh with effect from the date he assumes charge of the office and defines all the areas to which the said Act extends as the local limits within which and all the hotels and lodging homes to which the provisions of Chapter V of the said Act apply as the hotels and lodging houses in respect of which the said Controller shall exercise the powers conferred and perform the duties imposed, on Controllers by or under the said

Act,

Sd/-

S.C. Vajpeyi

Under Secretary.

3. The first contention of the learned counsel for the petitioners is that this notification does not comply with sub-clause (1) of Article 77 of the Constitution in so far as it is not expressed to be made in the name of the President. There is little substance in this submission. Firstly, Sec, 35 of the Delhi Rent Control Act, 1958 empowers the Central Government to appoint Controllers and Additional Controllers, While the appointments of such officers by the Central Government is executive action, neither Section 35 nor the Act prescribes any particular form of expression of that executive action. The notification, on the other hand, literally complies with Section 35, inasmuch as in clear terms it says that in pursuance of the powers conferred by Subsection (2) of Section 35 of the Act, the Central Government promulgated the notification and made the appointments mentioned therein.

4. Secondly, as pointed out by Bose J., in *The State of Bombay Vs. Purushottam Jog Naik*, the order having been made u/s 35 of the Act had to conform to its terms and the order in the present case expressly does so in so far as it mentions that the appointments have been made by the Central Government. According to Sub-clause (b) of Clause (8) of Section 3 of the General Clauses Act, Central Government in relation to anything done after the commencement of the Constitution means the President. If the word "President" is read in place of Central Government in this notification, it is difficult to see how the order can be said not to have been expressed to be made in the name of the President. As Section 35 of the Act in terms conferred the power to appoint on the Central Government, as the authority competent to make this appointment, it was necessary and proper that the appointments in the notification should have been described to have been made not by the President, but by the Central Government. We have, Therefore, no hesitation in rejecting the first contention.

5. The second contention raised by the learned counsel is that this notification is also not in conformity with Sub-clause (2) of Article 77 of the Constitution firstly because it is not a notification made and executed in the name of the President and secondly because it has not been properly authenticated. Therefore, the learned counsel submits that the immunity attaching to an authenticated order or instrument is not available to this notification. While conceding that in the case of properly authenticated order or instrument its validity cannot be questioned on the ground that it is not an order or instrument made or executed by the President, the learned counsel says that this being not the position here, it is open to petitioners to urge that the Central Government in fact did not make the appointment of Shri Asa Singh Gill as mentioned in the notification and, Therefore the eviction orders passed by him are legally bad and unenforceable.

6. In view of what we have said earlier in regard to this notification having been expressed to be made in the name of the President, no further discussion is called for on that aspect. The impugned notification is in full compliance with the provisions of clause (1) of Article 77 of the Constitution. Further in the affidavit filed by Shri K. Srinivasan, Under Secretary to the Government of India, Department of Works and Housing, Ministry of Works, Housing and Supply, New Delhi, in opposition to this petition, Shri Srinivasan has unambiguously sworn that the file relating to the impugned notification was now in his department and that on 15th June, 1962, Under Secretary, Ministry of Home Affairs, passed an order accepting the proposal of Delhi Administration to appoint Shri Asa Singh Gill as a Controller and after that the draft notification was sent to the Ministry of Law for approval which returned the same to the Ministry of Home Affairs after approval and thereafter an order was passed on 20th June, 1962, that the draft as vetted may be issued. The decision for the appointments, it is stated in the affidavit, was not taken by the Under Secretary Shri Vajpeyi in his personal capacity but on behalf of the Central Government, There is no rebuttal to this and we do not see how this notification under these circumstances cannot be said not to have been executed in the name of the President within the meaning of Sub-clause (2) of Article 77 of the Constitution.

7. As for the second ground urged by the learned counsel for the petitioners in support of the second contention, Shri Parkash Narain, appearing for the respondents, has not argued that any evidence aliunde has been placed on the record in this case to show that the appointment mentioned in the notification had in fact been made by the Central Government. He has urged that such evidence was unnecessary because the notification in this case is duly authenticated and as such was covered by Sub-clause (2) of Article 77 so that its validity cannot be called in question on the ground that the appointment mentioned therein was not made by the Central Gov- eminent in compliance with Section 35 of the Act. The only question Therefore that now survives for decision is whether this notification is duly authenticated as required by Sub-clause (2) of Article 77.

8. As stated earlier the notification is signed by Shri S. C. Vajpeyi with the designation of "Under Secretary" added to it at the bottom without specifying that the signatures were appended for and on behalf of the President. The learned counsel submits that this is not sufficient authentication. In support he has placed reliance on *Ghaio Mall and Sons Vs. The State of Delhi and Others*, , where their Lordships held that the letter of the Under Secretary the validity of which was being questioned in that case did not purport to be made in the name of the Chief Commissioner and was, Therefore, not duly authenticated to attract the presumption under Article 166 of the Constitution. The letter in question in this case is reproduced in extenso on page 1438 of the Report. It is a letter from Shri M. L. Batra, Under Secretary, Finance (Expenditure) to Government, Delhi State, to Shri Dalip Singh, Commissioner of Excise, Delhi State, Delhi, in answer to a communication received by the former dated 31st August, 1954, on the

subject of grant of L-2 License. It seeks to inform the addressee that the Chief Commissioner had approved under Rule 5.1 of Delhi Excise Manual Vol. II the grant of L-2 License to Messrs. Gaiinda Mall Hem Raj, New Delhi and was signed by the sender Shri Batra with the designation "Under Secretary, Finance (Exp.) to Government, Delhi State" appended to it. Their Lordships under these circumstances held that this letter was not an order of the Chief Commissioner but was at best a document which conveyed the sanction of the Chief Commissioner and could not be equated with the sanction itself. In the present case, the impugned notification is an official publication in the Gazette Extraordinary Part IV published by authority under registered No. D, 436 and is signed by Shri S. C. Vajpeyi with designation or "Under Secretary" added to it. It is not an interdepartmental letter. *Ghaio Mall and Sons Vs. The State of Delhi and Others*, Therefore, does not help the petitioners. Reliance was then placed on *Major E.G. Barsay Vs. The State of Bombay*, where the question was in regard to the validity of a sanction granted u/s 197 of the Criminal Procedure Code and Section 6(1)(a) of the Prevention of Corruption Act, 1947. The appellant in this case was a public servant within the meaning of Clause (a) of Sub-section (1) of Section 6 of the Prevention of Corruption Act and could not be prosecuted without the sanction of the Central Government. This sanction had been given by the Central Government under the signatures of M. Gopala Menon, Deputy Secretary to the Government of India. Their Lordships held that ex facie the sanction order was issued in the name of the Central Government and signed by the Deputy Secretary to the Government of India but there were special features in this case which did not justify the conclusion. When the dispute was raised as to the validity of the sanction, the prosecution led evidence and produced P. W. 36 Dharmbir, an Assistant in the Ministry of Home Affairs, New Delhi, in respect of this document. In cross-examination this witness admitted that he could not say whether the Deputy Secretary's signatures on this sanction were in his own right or were by way of an authentication of the President's order. With this background their Lordships held that in this case in the face of the statement made by this witness it must be held that the sanction was given by the Deputy Secretary in his own right. The following extract from page 1775 of the Report brings out the point clearly:--

"The statement made by this witness in the cross-examination is not inconsistent with that made by him in the examination-in-chief. The Deputy Secretary may have power to make some orders in his own right and also may have the power to authenticate other orders issued in the name of the President. But in this case, this witness has clearly deposed that the Deputy Secretary had power to accord sanction in his own right and when the order giving the sanction ex facie shows that he did not authenticate it by order of the President, we must hold that he gave the sanction in his own right."

9. This case again does not, Therefore, assist the petitioners. There is nothing on this record to show and indeed there is not even a suggestion that Shri Vajpeyi, Under Secretary, could make any appointment like the one mentioned in the

notification in exercise of his own rights.

10. The last case cited by the learned counsel for the petitioners is that of P.B. Pardasani Vs. The State, . Here again the dispute related to the validity of the sanction and the Court held that the sanction order showed that it was written by the Deputy Secretary in his own right and that it was not proved on the record that a valid sanction had been granted for the prosecution of the accused under the provisions of Prevention of Corruption Act. Petitioners' case is not in any way advanced by this authority either.

11. What has in fact to be seen in such cases is the substance of the order or the instrument with all its attending circumstances and not merely its form. Provisions) of Article 77 are not mandatory. They are directory and keeping this in view any half splitting in construing these provisions would not be justified. Authentication according to Webster's New International Dictionary means to render authentic, to give authority to, by the proof, attestation or formalities required by law or sufficient to entitle to credit, as the document was authenticated by a seal. According to Shorter Oxford English Dictionary this word means "to give legal validity to; establish the validity of, to establish the genuineness of. It is in this common sense that the word "authenticated" has been used in Sub-clause (2) of Article 77 of the Constitution. In The State of Bombay Vs. Purushottam Jog Naik, , their Lordships have said that the Constitution does not require a magic incantation which can only be expressed in a set formula of words. Article 77 essentially relates to the form in which the particular executive action is to be expressed and being a matter of form and not of substance, its provisions are merely directory and not mandatory. The appointment or Controller and Additional Controllers by the Central Government u/s 35 of the Act is an administrative function and what has to be seen is whether in effect there has been a substantial compliance with Article 77 or not.

12. Sub-clause (2) of Article 77 provides that orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in the rules to be made by the President. In exercise of the powers conferred by this clause, the President has framed rules called "the Authentication (Orders and other Instruments) Rules, 1958." Rule 3 of these Rules provides as under :--

"Orders and other instruments made and executed in the name of the President shall be authenticated-

(a) by the signature of a Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India, or

(b) (c) (d) (e) (f) (g) (h) (i) (j) (k)
(l) (m) (n) (o) (p) (q)

13. No precise word or manner except the signatures of the officials named in clause (a) of Rule 2 has been prescribed for purposes of authentication. That

being so nothing has been pointed out to us to show why the signatures of Shri S. C. Vajpeyi with the designation "Under Secretary" added to it should not be taken in this Gazette notification to be a sufficient authentication within the meaning of Sub-clause (2) of Article 77 of the Constitution.

14. To bring out the point in clear contrast, our attention was drawn to the rules made by the Governor of Bihar for the authentication of the orders and other instruments made and executed in the name of the Governor. These rules were framed under Sub-section (2) of Section 59 of the Government of India Act, 1935, and provided that all orders and instruments made or executed by order on behalf of the Government of Bihar shall be expressed to be made by order of the Governor of Bihar. No authentication in terms of these Rules should be complete until it was so expressed. No such condition has been laid down in the present Authentication Rules referred to earlier and which it is not disputed apply to the instant case. We have, Therefore, no hesitation in holding that the impugned notification falls within the ambit of Article 77 of the Constitution and cannot be called in question on the ground that the appointment of Shri Asa Singh Gill was not made by the Central Government.

15. No other point has been pressed before us.

16. Under these circumstances, we do not find any merit in this petition and the same is dismissed but the parties are left to bear their own costs.

17. Petition dismissed.