SUPREME COURT OF INDIA

Gurdit Singh Aulakh

Vs.

State of Punjab

C.A.No.2062 of 1970

(A. N. Ray, C.J.I. and K. K. Mathew, J.)

16.08.1974

JUDGEMENT

MATHEW, J.:-

1. Governor of Punjab constituted the Sikh Gurudwaras Tribunal with effect from April 1, 1962 and one Gurdit Singh Aulakh ('Aulakh' for short) was appointed as a member of the Tribunal. He was removed from the membership by an order dated September 10, 1965 and one Shri S. S. Kahla ('Kahla' for short) was appointed to the vacancy so created. Aulakh challenged the validity of his removal in a writ petition filed before the HIgh Court of Punjab. The petition was ultimately allowed in letters patent appeal and the order removing Aulakh from the membership of the Tribunal was quashed. That was on October 13, 1966. An application for leave to appeal to this Court against the decision of the Letters Patent Bench was rejected. So also an application before this Court for special leave to appeal. Thereafter, a notification was issued on October 26, 1966 stating:

"In exercise of the powers conferred by sub-section (1) of Section 12 of the Sikh Gurudwaras Act,

1925, the President of India is pleased to direct the dissolution with immediate effect of the Tribunal constituted vide the Punjab Government Notification No.432-OP dated the 26 April, 1962".

This notification was challenged by Aulakh in a writ petition. Aulakh died on July 18, 1969 and the appellants were impleaded as his legal representatives. They confined their claim to the emoluments alleged to be due to the writ petitioner from September 11, 1965, till the date of his death. The High Court dismissed the petition and this appeal, by certificate, is from this decision.

2. Mr. Garg, appearing for the appellants, submitted that the notification dissolving the Tribunal was issued for a collateral purpose, viz., to circumvent the effect of the decision of the High Court quashing the order removing Aulakh from the membership of the tribunal and, therefore, the dissolution was bad. In support of this contention, counsel relied upon the note written by the Deputy Advocate General after the writ petition filed by Aulakh was allowed. In that note he said:

"If Mr. Aulakh is to be considered to be a member of the Tribunal then the very working of the Tribunal will become impossible. Now there are 4 members instead of 3 contemplated by law".

He, therefore, recommended the dissolution of the Tribunal by a notification issued under S.12(1) of the Act and its recommendation on the same day by another notification.

3. Counsel contended that when the High Court allowed this writ petition filed by Aulkh on the ground that his removal was bad in law, there was no legal vacancy to which an appointment could have been made and for that reason the appointment of Kahla as a member of the Tribunal was void and, therefore, the Government should have allowed the Tribunal to function with Aulakh as its member in place of Kahla and thereby given effect to the judgment of the High Court instead of circumventing it by dissolving the Tribunal under S.12(1).

4. On the other hand, counsel for the State of Punjab urged that u/S.12(5) of the Act, it was not competent for the Government to remove a member once appointed except on the grounds specified therein and the fact that the High Court declared that the removal of Aulakh from the membership of the Tribunal was bad would not have warranted the removal of Kahla from the membership of the Tribunal under that provision. To put it differently, the contention of the counsel for the State of Punjab was that S.12(5) provides for all cases of removal of a member of the Tribunal once appointed and since the removal of Kahla would not have been justified on any of the grounds mentioned in that section, the State Government could not have removed him from the membership and, therefore, an impossible situation was created which justified the dissolution of the Tribunal under S.12(1) of the Act.

5. We think that the contention urged on behalf of the State of Punjab must prevail. From the fact that the judgment of the High Court declared that the removal of Aulakh was bad in law, it would not follow that the appointment of Kahla in the vacancy by the removal of the Aulakh was void. Assuming that the appointment was void, it was void only as against Aulakh. There is nothing strange in the notion of the appointment being void as against Aulakh only, for, it was his rights that were affected by the appointment of Kahla and as Aulakh did not challenge the validity of the appointment, the appointment became valid, even on the assumption that it was originally void. The appointment of Kahla, however void in the eyes of a Court will prevail unless Aulakh challenged it successfully. Unless the law upheld the challenge, Aulakh must accept whatever the Government had done as valid and effectual. The fact that Aulakh successfully challenged the order removing him from the membership as against the Government is of no consequence as Kahla was not bound by that decision. The validity of his appointment was not challenged in the writ petition filed by Aulakh; Kahla was not even made a party to that writ petition. His appointment, therefore, remained unchallenged. That apart, he was functioning as a member of the Tribunal and was participating in the decision of cases. Section 12 (1) of the Act provides for the constitution of one or more Tribunals by the State Government for deciding claims made in accordance with the provisions of the Act. The Tribunal so constituted should consist of a President and two other members appointed by the State Government. Therefore, it was essential that on the removal of Aulakh, there should be an appointment to the vacancy as the business of the Tribunal could not have been carried on without filling the vacancy created by the removal. We, therefore, find it difficult to hold on the ground of practical expediency also that the appointment of Kahla as a member of the Tribunal was void and, therefore, non est in the eye of law. Kahla having been appointed as a member of the Tribunal, he could have been removed only in accordance with the provisions of Section 12 (3). That section provides:

"The local Government may be notification remove any member of a Tribunal, other than th President-

(i) If he refused to act or becomes in the opinion of the local Government incapable of acting, or unfit to act, as a member or

(ii) If he has absented himself from more than three consecutive meetings of the Tribunal, or

(iii) If he is an undischarged insolvent".

The High Court has considered the question whether the sub-section was in force on the relevant date and its conclusion was that it continued to be operative notwithstanding the purported repeal. The provisions of the sub-section did not contemplate a removal in the contingency created by the

facts of the case and so the State Government had no power to remove him under the sub-section. The Tribunal could not have functioned with both of them as members in the teeth of the provisions of Section 12(2). The grounds for dissolution of the Tribunal are not enumerated in the Act. We, therefore, agree with the view of the High Court that the dissolution of the Tribunal was not for a collateral purpose.

6. The other contention raised by Mr. Garg to the validity of the notification dissolving the Tribunal was that the notification dissolving the Tribunal was that the notification was issued by S. K. Chibber, Secretary, Home Department, and not by the Governor.

7. At the relevant time, Punjab was under the President's Rule and according to Mr. Garg, the only person competent to issue the notification in question was the Governor. In support of this contention, he relied upon the Governor's Secretariat Order dated July 6, 1966, which allocated the business of the Government among various functionaries. In paragraph 3 of that Order, it was provided that the Secretaries to the Government would dispose of the business relating to their respective Departments except cases which, under the Rules of Business of the Government of Punjab, 1953, were required to be submitted to the Governor, the Council of Ministers or the Chief Minister, and as the business in question should have been submitted to the Chief Minister before issuing orders, the Governor alone was competent to sanction the issue of the notification. Counsel relied on Rule 26, sub-rule (1) (xxii) of the Rules of Business which reads:

"28 (1) The following classes of cases shall be submitted to the Chief Minister before the issue of orders:

(xxii) Proposals for the creation, for a period exceeding six months or abolition of any public office, the maximum remuneration of which is between Rs.800 and Rs.2,000/-."

8. We do not think that the notification dissolving the Tribunal abolished any public office of the description specified in the sub-rule. The Tribunal was not abolished. It was only re-constituted. There was no abolition of any public office. Abolition means, "to destroy, extinguish, abrogate or annihilate". We, therefore overrule the contention of the counsel.

9. The result is that the appeal has to be dismissed and we do so with costs.

Appeal dismissed.