

Shanti Prasad Agarwalla and others

Vs

Union of India and others

Writ Petition Nos. 13510-13517 of 1983

(A. M. Ahmadi, P. B. Sawant, S. C. Agarwal JJ)

05.09.1990

ORDER

1. The petitioners are the owners of premises No. 31, Shakespeare Sarani, Calcutta, which is in the occupation of the Consulate General of USSR as a tenat. It was leased on 14th December, 1957 for a period of 23 years on a rent of Rs. 8,000/- per month. The period of 23 years was to expire on 14th January, 1981. Before the expiry of the said period, the petitioners served a notice dated 6th July, 1980 intimating the Consulate General that they did not intend to extend the lease any further and demanded possession of the premises. As the possession was not delivered, they desired to sue for eviction and sought the consent of the Central Government to do so as required by S. 86 of the Code of Civil Procedure. The requisition for consent was sent to the Central Government on 5th December, 1980. As no reply was received thereto within a reasonable time, the petitioners filed a Writ Petition in the High Court of Calcutta for a mandamus to command the Central Government to take a decision on their application for consent. In the said Writ Petition, the High Court passed an order on 21st January, 1982 directing the Central Government to dispose of the application in accordance with law, after giving the petitioners an opportunity of being heard, as early as possible, preferably within a period of four months from the date of the order. Despite the passing of the said order as the Central Government failed to dispose of the application within the time allowed, the petitioners filed a second Writ Petition seeking a mandamus to command the Central Government to dispose of their application of 5th December, 1980 in accordance with law. This second Writ Petition was disposed of on 21st June, 1983 with a direction that the application should be disposed of within a month's time. Even that order was not complied with. The petitioners were then constrained to file the present Writ Petition under Art. 32 of the Constitution in this 'Court. During the pendency of this Writ Petition, the Central Government passed an order dated February 1, 1984 rejecting the petitioners' application in the following terms:

"With reference to our correspondence with you regarding your application for permission for legal action against the Consulate General of the USSR, 31, Shakespeare Sarani, Calcutta, under S. 86 of the Civil Procedure Code, I am directed to state that this Ministry is unable to give permission to you on political grounds for such action."

After the receipt of this communication, the petitioners amended the Writ Petition and sought a relief for quashing this communication also.

2. The learned counsel for the petitioners submitted that the aforequoted order cannot be sustained

in view of two decisions of this Court, viz., *Mirza Ali Akbar Kashani v. United Arab Republic*, 1966 (1) SCR 319 : (AIR 1966 SC 230) and *Harbhajan Singh Dhalla v. Union of India*, 1986 (4) SCC 678: (AIR 1987 SC 9).

3. In the first mentioned case, this Court observed as under (at page 236 of AIR 1966):

"The limitation of the liability of foreign States to be sued is two-fold. The first limitation is that such a suit cannot be instituted except with the consent of the Central Government certified in writing by a Secretary to that Government. This requirement shows the anxiety of the Legislature to save foreign States from frivolous or unjustified claims. The second limitation is that the Central Government shall not give consent unless it appears to the Central Government that the case falls under one or the other of Cls. (a) to (d) of S. 86(2). In other words, the Legislature has given sufficient guidance to the Central Government to enable the said Government to decide the question as to when consent should be given to a suit being filed against the Ruler of a foreign State."

4. In the second case the petitioner, an Indian National, had performed general maintenance work at the Embassy of Algeria and at the residence of the Ambassador of Algeria in New Delhi but he was not paid his dues and desired to sue the Algerian Embassy to recover the same. He approached the Ministry of External Affairs, Government of India, for permission to sue the State of Algeria under S. 86 of the Code for realisation of his dues. The Ministry of External Affairs however, refused permission "on political grounds", as in the present case. The petitioner filed a Writ Petition under Art. 32 of the Constitution. Dealing with the ground on which the consent was refused, this Court observed that it was difficult to comprehend what was meant by the bald expression "political grounds" in the absence of further particulars. In paragraph 26 on page 685, this Court summed up as under:

"This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in Court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under S. 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that the decision must be expressed in such a manner that reasons can be spelt out from such decision. Though this is an administrative order in a case of this nature there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered." (Emphasis supplied)

5. In the present case also, it is difficult to comprehend what is meant by the expression "political grounds" used in the impugned order. It is not clear what political considerations necessitated the rejection of the application. The Central Government while considering the application under S. 86 of the Code must decide the application in accordance with the provisions of the section itself and state clearly and intelligibly its reasons for rejecting the application. In the instant case, we are unable to appreciate what political considerations weighed with the Central Government for rejecting the application. We, therefore, have no alternative but to quash the impugned order No.

10245EE/82 dated February 1, 1984 and remit the matter to the Central Government for taking a fresh decision in accordance with law after giving an opportunity to the petitioners of being heard.

6. We may incidentally point out that when this matter came up for hearing before this Court on 23rd July, 1985, this Court observed that it considered the case one which was pre-eminently fit for a settlement. It appears that thereafter no further progress seems to have been made in the direction of arriving at an amicable settlement. We are also told by the learned counsel for the petitioners that in the meantime the Government of India has acquired another land in Raja Santosh Road, Alipur for the Consulate. If that be so, we think that an amicable settlement would not be difficult to reach.

7. In the result, these petitions are allowed and the rule is made absolute to the effect that the Central Government will consider afresh the request of the petitioners for grant of consent under S. 86(2)(c) of the Code at an early date, preferably within three months from today. There will be no order as to costs.

Petitions allowed.

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