

SUPREME COURT OF INDIA

Sidhartha Sarawgi

Vs.

Board of Trustees for the Port of Kolkata

(Gyan Sudha Misra and Kurian Joseph JJ.)

16.04.2014

JUDGMENT

KURIAN, J.:

1. *Delegatus Non Potest Delegare*: A delegate has no power to delegate, is a well-settled principle. Is there any exception and is there any distinction between delegation of legislative and non-legislative powers, are the moot issues arising for consideration in these cases.

2. Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Blacks Law Dictionary as the act of entrusting another with authority by empowering another to act as an agent or representative. In *P. Ramanatha Aiyars, The Law Lexicon*, delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself. Justice Mathew in *Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax and Others*[1], has succinctly discussed the concept of delegation. Paragraph 37 reads as follows:

37. Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as

the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.

3. There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well-settled: the said power cannot be sub-delegated. The Legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct[2]. Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

4. Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy[3]. So long as the essential functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary

delegate as per the delegation, ministerial or clerical tasks may be performed by authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.

5. The issue was considered by this Court in *Jamal Uddin Ahmad v. Abu Saleh Najmuddin and Another*[4] in the context of the procedure for filing of the election petitions under Section 81 of the Representation of Peoples Act, 1951. It was held that the ministerial or administrative functions of the authority on whom the powers are conferred by the statute can be exercised by the authorized officers. It was held that:

13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorization to subordinates unless there be some rule of law restraining such delegation or authorisation. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be delegation as also there can be authorization in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorization may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorization is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions,

which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post- decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the strength

6. Practical necessities or exigencies of administration require that the decision making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim *delegatus non potest delegare*, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority.

7. It would also be useful in this context to refer to the decision of this Court in *Barium Chemicals Limited and Another v. The Company Law Board and Another*[5] wherein it is held at paragraph 36 as follows:

the maxim *delegatus non potest delegare* must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. *Prima facie*, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.

8. The Constitution confers power and imposes duty on the Legislature to make laws and the said functions cannot be delegated by the Legislature to the executive. The Legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the Legislature and laying the guiding policy, the Legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference

between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.

9. Sometimes, in the plenary legislation itself, the lawmakers may provide for such sub-delegation. That is what we see under Section 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.

10. Having analysed the legal position as above, we shall now deal with the factual position in these cases. The challenge is on the judgment dated 28.01.2013 of the Division Bench of the Calcutta High Court. The issue pertains to the determination of leases granted by the Kolkata Port Trust to the petitioners. In the case of Universal Autocrafts Private Limited, they were granted lease of a plot of land for 30 years, on 19.08.1990. The lease deed was executed by the Land Manager of the Kolkata Port Trust. On 05.02.2008, a letter was issued to the said petitioner to demolish an alleged unauthorized construction and eject the sub-tenants from the premises. The petitioner submitted its reply on 02.05.2008. Not satisfied with the reply, on 30.01.2009, a notice terminating the lease was issued. The ejectment notice was signed by the Land Manager. The main contention is that the ejectment notice issued by the Land Manager is illegal and without jurisdiction as he is not competent to issue such ejectment notices. In the case of Siddhartha Sarawgi, the leases were terminated during the subsistence of the renewed period of 30 years, on the ground of sub-letting without consent of the Kolkata Port Trust. In his case also, the ejectment notices were issued by the Land Manager and, hence, it is contended that there can be no eviction on the basis of ejectment notice issued by a person who is not competent to do so, the same being without jurisdiction. The said ejectment notices were challenged by both the petitioners before the Calcutta High Court. In the case of Universal Autocrafts Private Limited, the learned Single Judge of Calcutta High Court allowed the writ petition holding that the Land Manager was not competent to issue the ejectment notice. In the writ petition filed by Sidhartha Sarawgi, the learned Single Judge of the Calcutta High Court found a conflict between two earlier decisions and referred the matter to a Division Bench. The Division Bench vide common judgment dated 28.01.2003 held in favour of the Kolkata Port Trust in the case of both the petitioners, which is challenged in these Special Leave Petitions.

11. The Major Port Trusts Act, 1963 (hereinafter referred to as, the Act) is an Act intended to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith Section 3 of the Act provides for the constitution of a Board of Trustees (hereinafter referred to as the Board). Section 5 provides that:

5. Board to be body corporate.-Every Board constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued.

12. Section 21 of the Act provides for delegation of powers of the Board with the approval of the Central Government on the Chairman and specification of exercise of such powers conferred on the Chairman by the Deputy Chairman or any other officer of the Board. The provision reads as follows:

21. Delegation of powers.-A Board may, with the approval of the Central Government, specify-

a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.

13. Section 34 of the Act provides for the mode of executing contracts on behalf of Board. It is provided therein that every contract is to be made by the Chairman or any other officer of the Board not below the rank of the Head of a Department as authorized by the Chairman, on behalf of the Board. The provision reads as follows:

34. Mode of executing contracts on behalf of Board.-(1) Every contract shall, on behalf of a Board, be made by the Chairman or by any such officer of the Board not below the rank of the Head of a Department as the Chairman may, by general or special order, authorise in this behalf and shall be sealed with the common seal of the Board: Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf. (3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.

14. In exercise of the power under Section 21 on delegation of powers, the Board of the Kolkata Port Trust passed Resolution No. 82 dated 26.05.1988 delegating the power to terminate any lease on the Chairman. The Chairman was also authorized by the said Resolution to issue ejectment notices. The text of the Resolution reads as follows:

.. Resolution No. 82- Resolved to sanction the proposal for delegation of powers to the Chairman by invocation of section 21(a) of the Major Port Trust Act, 1963, the power to terminate leases sanctioned by the Trustees and to authorizing him to issue ejectment notices, subject to the sanction of the Government.

15. It is the contention of the petitioners that the power to terminate the lease having

been specifically conferred on the Chairman, the steps now taken by the Land Manager by issuing the impugned notices for eviction, are clearly without jurisdiction and, hence, illegal and inoperative. On behalf of the Board of Kolkata Port Trust, it is contended that the decision to terminate the lease has actually been taken by the Chairman and the issuance of notice of termination in furtherance of the decision taken by the Chairman alone, has been delegated to the Land Manager. Our attention is also invited to Office Order No. 6480/3/0 dated 22.01.1990, which reads as under: -

CALCUTTA PORT TRUST

No. 6480/3/0 January 22, 1990 OFFICE ORDER

Henceforth ejectment (sic) notices in respect of leases determined with my approval may be signed by any one of the undernoted officers:

Calcutta

1) Deputy Chairman (Calcutta)

2) Land Manager

Haldia

1) Deputy Chairman (Haldia)

2) General Manager (Mas)

3) Manager (I&C.F)

16. The power that is delegated to the Chairman as per Resolution No. 82 is the power to terminate a lease. The decision to terminate has been taken by the Chairman only and there is no dispute in that regard. In implementation of the decision thus taken by the Chairman to terminate the leases, the Chairman has authorized the Land Manager to issue the ejectment notices. The issuance of such notices is a mere ministerial act for the implementation of a decision already taken by the Chairman as delegated by the Board. The Chairman having duly authorized the Land Manager in that regard, it

cannot be said that the ejectment notice issued by the Land Manager is without jurisdiction. It is not a case of sub-delegation. It is merely a ministerial exercise of issuance of a notice in implementation of the decision, as per the specific authorization in that regard.

17. The situation can be viewed from another angle as well. Section 21 of The General Clauses Act, 1897 provides that power to issue would include power to add, amend, vary or rescind. The provision reads as follows:

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

18. Admittedly, in the case of the petitioners, the lease deed has been executed by the Land Manager. The execution of the lease deed is as per the decision by the competent authority. If that be so, the lease can be terminated by the same authority who executed the lease deed, after a decision has been made in that regard by the competent authority. In *P. Saibaba Rao S/o Amruth Rao v. Dr. Dugyala Srinivasa Rao S/o Swami Rao and Dr. N. Sudhakar Rao S/o. Late N. Yethiraja Rao v. Dr. Dugyala Srinivasa Rao S/o Swami Rao and Ors.*[6] High Court of Andhra Pradesh considered the situation of termination of a contract. The contention was that the Superintendent Engineer was not competent to terminate the contract in terms of the guidelines. His authority was only to execute the contract. Negating the same, it was held as follows:

It is very interesting to notice that entry 5(b) of the Government order as above speaks of instruments relating to execution of works including Highways. The officer authorized to execute these instruments among others is SE. Chapter II of PWD Code deals with, "Works". It contains paragraphs 88 to 224. Nowhere has it mentioned any authority, who is conferred with power to terminate/cancel the contract entered into by SE as per Paragraph 159 of PWD Code read with executive instructions. Petitioners have failed to bring any evidence in this regard. Furthermore, in G.O.Ms. No. 2209, dated 24.9.1965, it was clarified

that SE is competent to execute contracts and piece work agreements upto the limit of tenders accepted by the competent authority regardless of whether they were accepted by SE and irrespective of restrictions imposed on the powers of SE in the matter of acceptance of contract. This means that SE is competent to enter into contract and also for terminating/ closing/cancelling the contract. The power to enter into contracts or the authorisation to execute instruments also includes the power to execute contracts or instruments cancelling a contract. It may also be noticed that under preliminary specification Nos. 7 and 8 of APSS, SE is competent to alter the standard specifications for a particular contract. Thus authorization given to SE under G.O.Ms. No. 1632, dated 24.10.1958, is all pervasive and the same cannot be interpreted in a restrictive manner.

We respectfully endorse the legal principle.

19. We do not find any legal infirmity in the impugned notices issued by the Land Manager of the Kolkata Port Trust, as noted by the Division Bench of the Calcutta High Court, in the impugned judgment. The power is exercised only as duly authorized by the Chairman. The Land Manager is also otherwise competent to issue notices after due decision has been taken in that regard by the competent authority since he is the one who executed the lease deed. There is no merit in these Petitions.

20. The Special Leave Petitions are hence dismissed. There is no order as to costs.

[1] (1974) 4 SCC 98

[2] Harishanker Bagla v. State of M.P. “ (1955) 1 SCR 380 (Page 388) Agricultural Market Committee v. Shalimar Chemical Works Limited “

(1997) 5 SCC 516 (Paragraph 24)

[3] Khambalia Municipality v. State of Gujarat “ AIR 1967 SC 1048 (P.1051)

[4] (2003) 4 SCC 257

[5] AIR 1967 SC 295

[6] Election Petition Nos. 1 and 3 of 2004, Judgment dated 30.08.2007.