

PUNJAB AND HARYANA HIGH COURT

S. Tara Singh

Vs

Director

(Bishan Narain, J.)

27.12.1956

ORDER

Bishan Narain, J.

1. The petitioner Tara Singh is owner of certain area of land situated in village Jhander, Tehsil Tara Taran, District Amritsar. The State Government by notification declared its intention to make a scheme for consolidation of holdings in this village. There seems to have been some dispute regarding the retention or abolition of a pathway in this village in the course of the proceedings that took place thereafter under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Tara Singh petitioner moved the Government to interfere in the matter under Section 42 of the Act. The Development Minister inspected the records and after hearing the parties in the presence of the Director (Consolidation) passed an order which was communicated to the petitioner by memorandum dated 3-12-1955. Tara Singh has filed this petition under Art, 226 of the Constitution to get this order of the Development Minister, as communicated to him by the Director (Consolidation) on 3-12-1955, quashed. The petitioner's grievance is that the Punjab Government had no original jurisdiction to hear objections of this kind against the scheme of consolidation and that the Government acted in excess of its jurisdiction in passing the order for dismantling the existing road. In this petition it is also alleged that the petitioner was not given opportunity to get the benefit of legal representation before the Minister.

2. This petition is contested by the Punjab State and the other respondents who had moved the Government under Section 42 of the Act, which reads :

"42. Power of Provincial Government to call for proceedings. The Provincial Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit; Provided that no order shall be varied or reversed without giving

the parties interested notice to appear and opportunity to be heard."

The bare reading of this section shows that it is open to Government at any stage of the consolidation proceedings to examine the record and pass any order it thinks fit and proper. The only limitation to the exercise of this power is given in the proviso to this section and it is to the effect that no order shall be passed against a party without giving him adequate opportunity to put his case before the Government. It is true that Section 21 of the Act lays down that an aggrieved party can file objections before the Consolidation Officer and can then appeal to the Settlement Officer and then finally can appeal to the State Government. But Section 42 gives independent power to the Punjab Government to intervene suo motu at any stage of the consolidation proceedings. Section 21 of the Act does not exclude the independent operation of Section 42 of the Act. The mere fact that in the present case the Punjab Government was moved under Section 42 of the Act by the respondents does not affect the position and the power exercised by the Government cannot be held to be invalid on that ground.

3. In the course of arguments a point was urged before me which had not been taken in the petition. It was urged that the State Government has not issued any notification under Section 41 of the Act delegating its powers under Section 42 of the Act to the Development Minister and, therefore, the Minister had no power to pass the impugned order. As this matter went to the root of the case I permitted it to be argued, but after hearing the learned Advocate-General I have come to the conclusion that there is no force in this point.

4. Under our Constitution this country is a Union of States and the executive power of Union vests in the President while the executive power of the State vests in the Governor. In the General Clauses Act, Section 3(60), it is laid down that if an act is done or is to be done by a State Government then it shall mean that the Governor of the State has done or has to do it. Therefore under Section 42 of the Consolidation Act the Governor has to call for the record, examine it and pass any orders he considers fit and proper. The Governor can exercise his power directly or through officers subordinate to him (vide Article 154(1) of the Constitution). It is, however, argued that under Section 42 of the Consolidation Act the Governor exercises judicial or quasi-judicial powers as distinct from executive powers and therefore Article 154(1) of the Constitution has no application and the Governor must either act directly or he must delegate his powers according to the provisions of Section 41 of the Consolidation Act. To my mind this argument confuses the authority with the manner in which that authority has to exercise its power under the Act. Section 42 gives the Supervisory powers to the State Government, or, in other words, to the Governor, to intervene at any stage of the Consolidation proceedings. It is true that under the proviso to this Section no order can be passed without hearing a party against whom it is to be passed, but this restriction does not alter the nature of the power which the Governor is to exercise under this provision of law. The power that he exercises is obviously executive or administrative in nature. The Consolidation Act does not appoint the State Government or the Governor as a judicial authority as distinct from executive or administrative authority. The

proviso merely enjoins upon the executive authority to exercise its power under Section 42 of the Act in a quasi-judicial manner, i.e. impartially and after giving the parties an opportunity of being heard. An executive function does not cease to be executive merely because it is to be exercised impartially and in accordance with principles of natural justice.

5. Since about 100 years the activities of the Government are being extended all over the world so as to convert a State which was known as a Police State into a Welfare State. The social legislation that has been from time to time introduced for this purpose has the tendency of conferring more and more power to exercising judicial functions (functions which would normally be exercised by Courts of law) on executive authorities directly or through tribunals controlled by them. Our country is no exception to this tendency and the statute books of the Union as well as of the State are full of such enactments. This tendency is likely to become more and more pronounced as we progress towards making this country a completely Welfare State on Socialistic pattern. In this context it is not possible to hold that when an executive authority performs some judicial or quasi-judicial function, it ceases to be an executive authority while exercising that power. In this connection, I think it will not be out of place to point out that our Constitution empowers the President and the Governor of the State to grant pardons, suspend, remit or commute the sentences, etc., of any convict (Article 72 and Article 161 of the Constitution). These powers are obviously judicial in nature and they are to be exercised by the President or the Governor in the exercise of executive functions and that also not in accordance with rules of natural justice, i.e. not after hearing the parties concerned. It cannot be seriously urged that when the President or the Governor of a State exercises these powers he is doing so as a Judicial or quasi-judicial authority. Thus it is clear that our Constitution also recognizes exercise of judicial functions by executive authorities.

6. For these reasons I am clearly of the opinion that the State Government exercises its powers under Section 42 of the Consolidation Act in the exercise of its executive and administrative functions.

7. It follows from the above conclusion that under Article 154(1) of the Constitution the Governor may act directly or through his subordinate officers. In the present case he has acted through the Development Minister. The question arises whether he could so act. Obviously the executive authority carries on the business of the Government and part of this business is the power given to the State Government under Section 42 of the Consolidation Act. Under Article 166(3) of the Constitution the Governor can allocate this business to any Minister he likes. It is admitted that he has allocated the matter relating to consolidation to the Development Minister and therefore the Minister had jurisdiction to hear the parties and pass orders under Section 42 of the Consolidation Act. Moreover there can be no doubt that a Minister is subordinate to the Governor. The Governor is the executive head of the State and this position he does not share with the Chief Minister or any other Minister. He allocates his executive duties to various Ministers under Article 166(3) of the Constitution. He appoints a Minister albeit on the advice of the Chief Minister and the Minister holds office during his pleasure. Therefore it is open to a Governor under the Constitution to dismiss an individual Minister at his pleasure. In these

circumstances there can be no doubt that a Minister is to be considered as an officer subordinate to the Governor. It is true that Minister's salaries and allowance are fixed by the State Legislature under Article 164(5) and further that under Article 164(2) the Council of Ministers is collectively responsible to the Legislative Assembly. But these circumstances do not make and cannot make a Minister anything but subordinate to the Governor who has the power of appointing & dismissing him. This view was taken by the Privy Council in *Emperor v. Sibnath Banerji*¹, under the Government of India Act, 1935, and as the language of the 1935 Act has been reproduced in our Constitution, it must be taken that the Constitution makers accepted the correctness of this decision and adopted it. There is no material difference between the provisions of the 1935 Act and the Constitution of India in this respect. I am therefore of the opinion that the Development Minister acted within his power and jurisdiction in making the order under Section 42 of the Consolidation Act which is being challenged by this petition.

8. Finally it was half-heartedly urged that the Development Minister did not give adequate opportunity to the petitioner to put his case before him. The memorandum dated 3rd December 1955 specifically states that the parties were heard before the order in question was passed. The correctness of this statement is not denied in this petition nor in the course of arguments before me. The petition merely states that the petitioner was not given opportunity to get the benefit of legal representation.

It is not the petitioner's case that he made any request for such representation to the Minister. Moreover I am unable to understand the necessity of a legal representation before the Development Minister, taking into consideration the nature of the dispute. The petitioner had merely to convince the Minister that as circumstances existed in the village road in question should not be dismantled. No question of legal representation arises in such a dispute. I therefore hold that the petitioner was given notice and was given adequate opportunity to present his case to the Development Minister under Section 42 of the Consolidation Act.

9. For all these reasons this petition fails and is dismissed with costs.

Cases Referred.

1AIR 1945 P. C. 156 (A)