

PUNJAB AND HARYANA HIGH COURT

General S. Shivdev Singh

Vs

The State of Punjab

(G Khosla, C.J. S Dulat and A Grover, JJ.)

03.09.1958

JUDGMENT

A.N. Grover, J.

1. The question for determination is whether the State Government could by notification dated 12-2-1958 delegate its powers which it exercises under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, to the Additional Director Consolidation with effect from a prior date, namely, 17-6-1957.

2. The facts are not in dispute. The proceedings relating to consolidation of holdings started in village Amlasinghwala, District Sangrur, on 25-11-1954 under the Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act, 2007 Bk. (which will be referred to as the Pepsu Consolidation Act). On 17-4-1955 a draft scheme was published. The tenants raised certain objections which were dismissed, and the scheme was duly confirmed. The holdings were repartitioned according to the provisions of the scheme. The Boundaries were demarcated on the shajra which was published on 19-9-1955 and possession of the new holdings was transferred to the petitioners in June 1956. A notice had been published on 19-9-1955 by which objections were invited against the repartition. On 26-9-1955 the tenants filed their objections which were dismissed by the Consolidation Officer. An appeal was preferred by the tenants under Section 20(3) of the Pepsu Consolidation Act against the order of the Consolidation Officer This appeal was dismissed on 25-5-1956 by the Settlement Officer. Against the order of the Settlement Officer the tenants filed an appeal before Shri Balvinder Singh, Settlement Officer, Faridkot, to whom powers had been delegated of hearing appeals under Section 20 (4) of the Pepsu Consolidation Act. The said officer made a reference to the Settlement Commissioner who exercised the powers of the State Government under Section 41 of that Act.

The Settlement Commissioner remanded the case to the Settlement Officer for making an enquiry on the spot. On 7-2-1957 the Settlement Officer, Faridkot, submitted a report to the Director Consolidation of Holdings, Punjab. The Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (which for the sake of brevity will be referred to as the Punjab Consolidation Act), was extended to the territories comprised in the erstwhile State of Pepsu by the Punjab Laws (Extension No. 1) Act, 1957, in April, 1957.

On 21-7-1957 the Additional Director, Consolidation of Holdings, Punjab, made an order in exercise of powers under Section 42 of the Punjab Consolidation Act by which he revoked the

scheme which had been previously confirmed and directed that the proceedings should be taken afresh from the evaluation stage. He made certain other directions as well. Admittedly on 21-7-1957 the aforesaid officer could exercise powers of the State Government under Section 21(4) of the Punjab Consolidation Act only, as the same had been delegated to him, but was not competent to exercise the powers under Section 42. A petition under Article 226 of the Constitution was filed by Shivdev Singh and others, Biswedars of village Amlasinghwala, on 11-11-1957 in which the aforesaid order dated 21-7-1957 was challenged inter alia on the ground that the Additional Director had not been empowered to exercise the powers of the State Government under section 42 and his order was without jurisdiction and void. This petition was admitted to a hearing on 19-11-1957 and further proceedings were stayed. On 12-2-1958 the following notification was issued:

"No. 283-DIV-5S (CH)/1167. In exercise of the powers conferred by Sub-section (1) of Section 41 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Governor of Punjab is pleased to notify that with effect from 17-6-1957 the powers of the State Government under Section 42 of the Act have also been delegated to the Additional Director, Consolidation of Holdings, Punjab, P. S. MULTANI Under Secretary to Government Punjab, Forests and Game Preservation Department."

The State did not file any written statement prior to 12-2-1958 and it was only after the notification had been issued that it was filed. The position taken up by the State was that the Additional Director had been delegated the powers of the State Government under Section 42 with effect from 12-6-1957 and that this order of 21-7-1957 was perfectly legal and valid. On behalf of the petitioners it is maintained that such a delegation of powers cannot be made so as to have retrospective operation resulting in the validation of an order which was a nullity when it was made.

3. It is necessary to set out the relevant provisions of the Punjab Consolidation Act. Section 42 runs as follows:

"The State 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 except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

Section 41, which deals with delegation of powers, is as follows:

"41 (1) The State Government may for the administration of this Act, appoint such persons as it thinks fit, and may by notification delegate any of its powers or functions under this Act to any of its officers either by name or designation.
(2) A Consolidation Officer or a Settlement Officer (Consolidation) may, with the sanction of the State Government, delegate any of its powers or functions under this Act to any person in the service of the State Government."

When the State Government delegates the powers which it can exercise under Section 42, the act

of delegation is executive or administrative in its nature. By no stretch of reasoning can it be said that such a delegation involves any exercise of subordinate legislative functions. The distinction between exercise of legislative and executive functions is well-known and needs no discussion. The reason why this distinction has to be borne in mind is that it is only open to a sovereign legislature to enact laws which may have retroactive or retrospective operation. Parliament alone possesses the power to legalise past illegality (Wade and Phillips' Constitutional Law, 5th Edition, page 39). Even when the Parliament enacts retrospective laws, such laws are -- in the words of WilleS J. in Phillips v. Eyre, (1871) 40 LJ QB 28 at p. 37-

"no doubt prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law."

Thus, the rule has been firmly established that the Courts will not ascribe retrospective force to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative powers within recognised limits and when we speak of delegated legislation the term is used of (a) the exercise of a legislative power delegated by Parliament, or (b) the rules or regulations passed as the result of the exercise of a delegated legislative power (Wade and Phillips Constitutional Law, 5th Edition p. 351). Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. In Civil Writ No. 53 of 1951, D/-28-9-1951 by Khosla and Falshaw JJ., it was observed as follows by Khosla J.:

"It seems to me that the rule-making power is in the nature of legislative power within certain limits and as long as the rule is framed within limits it can be made to take effect retrospectively."

In Civil Writ No. 191 of 1951, decided by Weston C. J., and Harnam Singh J., on 13-5-1952 a doubt was expressed with regard to the power of the rule-making authority to make a rule which could be given retrospective effect. Weston C. J. was of the following view:

"I must confess that I can see no justification for the proposition that an authority to whom rule-making powers have been given can proceed to make rules and to direct that the operation of those rules shall have effect not from the time they are made but for all previous time whether or not earlier rules have up to that time been in force."

In Modi Food Products v. Commissioner Sales Tax, AIR 1956 All 35, and M. L. Bagga v. Murhar Rao, (S) AIR 1956 Hyd 35, there are certain observations which support the view of Weston G. J. But it appears that there is also authority for the view that if a clear intention is expressed in a rule it can operate retrospectively (See American Jurisprudence, Vol. 42, Section 101). In the instant case, no question arises of any rule having been made with retrospective effect and it is unnecessary to decide which view is correct.

4. The notification of 12-2-1958 by which powers were delegated to the Additional Director does not fall within the category of a rule or regulation. The words "rule" and "order" when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be

valid, must be general in scope and undiscriminating in its application. An order is specific and limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made: (Words and Phrases, Permanent Edition, Vol. 37A, p. 619). The point that has been canvassed on behalf of the State is that although no express powers have been conferred by Section 41(1) of the Punjab Consolidation Act on the State Government to delegate its functions with retrospective operation, such powers should be implied as they are necessary for the exercise of the power of delegation, which is general in its nature. On the other hand it is contended on behalf of the petitioners that in the absence of express powers the State Government could not clothe the Additional Director with jurisdiction with effect from a prior date, as that will mean validation of orders which were admittedly without jurisdiction when made. Indeed in America, according to Cooley (Constitutional Law at p. 401), it is a well-settled principle that the legislature can never, by retrospective proceedings, cure a defect of jurisdiction in the proceedings of courts. The reason is manifest. Such proceedings being utterly void, they would acquire vitality as judicial acts, if at all, by the legislative act exclusively, and the curative act must therefore be in its nature a judgment. But mere irregularities in judicial proceedings may always be cured retrospectively. Cooley proceeds to observe at p. 402 that with regard to administrative proceedings the same principle applies;

"For example, irregular proceedings in taxation may be made good retrospectively, but subject to this limitation, that there must originally have been in the officers jurisdiction to impose the levy; and they must have made it in accordance with the general principles which underlie the power to tax."

Even if Cooley's view is not strictly applicable here and it is possible to validate judicial proceedings which are without jurisdiction by legislative enactment, such a power inheres in the legislature alone and cannot be attributed to the executive unless it has been unequivocally and expressly conferred. Even in respect of such a legislation according to Griffith C. J. in *Federated Engine Drivers and Fire-men's Association of Australasia v. The Broken Hill Proprietary Co., Ltd.*, (1913) 16 CLR 245 at p. 259, it would indeed require very clear and explicit words to validate retrospectively supposed judicial proceedings which were wholly null and void when taken.

5. The order which the State Government makes under Section 42 of the Punjab Consolidation Act is quasi-judicial and the powers under it have to be exercised in a quasi-judicial manner. It was so held by me in *Fauja Singh v. Director, Consolidation of Holdings*¹ It is urged on behalf of the petitioners that by the exercise of the aforesaid powers it is possible to affect vested rights of the right holders whose lands are being consolidated. It is suggested that the petitioners had been allotted certain lands on repartition in pursuance of a scheme which had been duly confirmed, and possession had passed to them. These lands became their property under the law. The Additional Director by making the order on 21-7-1957 revoked the scheme which had the effect of depriving the petitioners of the lands the proprietary rights in which had lawfully vested in them. It is further submitted that even if vested rights of the petitioners are not affected, the power of delegation conferred by Section 41(1) cannot be extended either by necessary implication or otherwise as that can lead to undesirable and unjust results. Thus, it would be open to the State Government to validate illegal and void orders made by one of its officers at its whim and caprice. It is true, as pointed out by Craies in Statute Law, that one of the first principles with regard to the effect of an enabling provision is that if the legislature enables something to be

done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view, "on the principle," as Park B. said in *Clarence Rly. v. Great N. of England Rly.*², , "that ubi aliquid conceditur conceditur otiam id sine quo res ipsa non esse potest."

But the Courts while deciding what may be done under statutory powers will always take into consideration the objects for which the statutory powers have been conferred (page 260 Craies). The object of Section 41(1) simply is to enable the State Government to authorise some officer or officers to exercise its powers and functions as the State Government may find it difficult and cumbersome to exercise all those Powers and functions itself. This object can be fully achieved by delegating powers in the ordinary way by a notification which will be effective from the date it is issued. It is not necessary for the exercise of such powers that the State Government should be enabled to issue a notification with retrospective effect which will have the effect of validating illegal and void orders.

6. A reference to the provisions contained in the Punjab General Clauses Act which would govern the present case will be helpful indeed. Section 12 provides that where, by any Punjab Act any power is conferred, then that power may be exercised from time to time as occasion requires. Section 13 lays down that where, by any Punjab Act, any power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office. Section 14 is to the effect that where, by any Punjab Act a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority by it in exercise of that power. Sections 18 and 19 are in the following terms:

"18. Where, by any Punjab Act, a power to issue any notification, order, scheme, rule, form or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act, conferring the power."

"19. Where, by any Punjab Act, a power to issue notifications or make 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 or made."

It is significant that specific provisions had to be made in the General Clauses Act with regard to powers which can be exercised under statutory enactments. Section 19 in terms relates to the power to issue notifications etc., and the legislature has clearly laid down the ambit and content of that power. It would follow that the legislature did not consider that the aforesaid specific powers were included in the general power by necessary implication. The power to give retrospective effect to any notification or order etc., is of a more serious nature and cannot be said to be included in the general, power, and there is nothing in the General Clauses Act to suggest that it was ever within the contemplation of the legislature that an authority to whom power to issue notifications or orders has been given should be able to exercise that power with retrospective effect which normally only a legislature can exercise. No authority has been cited on behalf of the State to show that such a power of delegation as has been conferred by Section

41(1) of Punjab Consolidation Act has ever been exercised" with retrospective effect. On the other hand the ratio of the decision of the Supreme Court in *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union*³, and the observations made therein support the view that no such powers have been conferred on the State Government under Section 41(1) as are claimed by them. In that case the Governor of Uttar Pradesh had referred an industrial dispute to the Labour Commissioner or a person nominated by him with the direction that the award should be submitted not later than April 5, 1950. The award, however, was made on April 13, and on April 26, the Governor issued a notification extending the time for making the award up to April 30. Section 6(1) of the U. P. Industrial Disputes Act, 1947, provided that the adjudicator "shall, within such time as may be specified, submit its award to the State Government." The question was whether the State Government had authority to extend the time after having specified it once, and whether the award was a nullity having been given after the adjudicator had become functus officio. Before their Lordships the counsel for the respondents relied on the provisions of Section 14 of the U. P. General Clauses Act, 1904, (which is in the same terms as Section 14 of the Indian General Clauses Act, 1897, and Section 12 of the Punjab General Clauses Act, 1898), which provided that where, by any Uttar Pradesh Act, any power was conferred on the State Government, that power might be exercised from time to time as occasion required, and it was contended that the Governor had the power to enlarge the time for making of the award even after the award had actually been made. This contention was repelled" with the following observations:

"Under Section 14 of the U. P. General Clauses Act the State Government may exercise the power conferred on it by Sections 3, 4 and 6 that is to say, it can from time to time make orders referring dispute to an adjudicator and, whenever such an order of reference is made, to specify the time within which the award is to be made. This power to specify the time does not and indeed cannot include a power to extend the time already specified in an earlier order."

Another argument that was addressed on behalf of the State of Uttar Pradesh in that case, which was based on Section 21 of the U. P. General Clauses Act, 1904 (equivalent to Section 21 of the Indian General Clauses Act and Section 19 of the Punjab General Clauses Act), was rejected thus:

"It is true that the order of April 26, 1950, does ex facie purport to modify the order of 18-2-1950, but in view of the absence of any distinct provision in Section 21 that the power of amendment and modification conferred on the State Government may be so exercised as to have retrospective operation the order of 26-4-1950 viewed merely as an order of amendment or modification, cannot, by virtue of Section 21, have that effect. If, therefore, the amending order operates prospectively, i.e., only as from the date of the order, it cannot validate the award which had been made after the expiry of the time specified in the original order and before the date of amending order, during which period the adjudicator was functus officio and had no jurisdiction to act at all."

In the instant case, there being no distinct provision in the Punjab Consolidation Act conferring powers on the State Government to delegate its functions and powers with retrospective effect, I must hold that the notification dated 1-2-1958 was ultra vires and illegal to the extent that it purported to delegate powers to the Additional Director with retrospective effect, i.e., from 17-6-

1957.

7. On behalf of the State reference was invited to another decision of the Supreme Court in *Edward Mills Co. Ltd. v. State of Ajmer*^AR In that case the term of a committee appointed by the Government under Rule 3 of the Rules framed under Section 30 of the Minimum Wages Act, 1948, was extended after the term originally fixed had expired. It was held by their Lordships that the extension was not bad, but it is clear that there were a number of reasons for coming to that conclusion which are quite distinguishable from the instant case. There the committee had not functioned at all and did no work after 16-7-1952 and before 21-8-1952 when its term was extended. The report was submitted after the extension had been made. Their Lordships have observed at page 33 that assuming that the order of 21-8-1952 could not revive a committee which was already dead, it could certainly be held that a new committee was constituted on that date and even then the report submitted by it would be a perfectly good report. Moreover, the committee was only an advisory body and the Government was not bound to accept any of its recommendations. Consequently, the procedural irregularities could not vitiate the final report which fixed the minimum wages. In the instant case, it is not disputed that the Additional Director could exercise the functions and powers of the State Government under Section 42, after the notification of 12th February was issued. The question, however, is whether the Additional Director could exercise such powers on 21-7-1957 when the impugned order was made. To such a situation, the facts and the decision in the Straw-board Manufacturing Co. case, 1953 SCR 439: (AIR 1953 S. C. 95), are more apposite.

8. The Deputy Advocate General did not appear to rely much on the decision of Bishan Narain J. in Civil Writ No. 520 of 1956, D/-10-5-1957 (Punj) for the obvious reason that this point was not examined at any length by the learned Judge. In that case the respondents had relied on a notification issued by the Rajpramukh of Pepsu on the 26th October, 1956 by which the status of the Managing Director of the Patiala State Bank had been fixed as that of a Secretary for the purposes of issuing a certificate under the Patiala Recovery of State Dues Act, 1945. The notification had been made specifically retrospective in effect. Bishan Narain J. was of the view that the aforesaid notification was obviously an executive order and had been issued by the Rajpramukh as executive head of the State and that there was no reason why the notification should not be held binding on all persons concerned even though it was retrospective in operation. Moreover, the facts in that case were different and the learned Judge proceeded on to decide that matter on other grounds as well.

9. It has been contended on behalf of the State that even if the Government could not delegate its powers so as to have retrospective Operation, the principle of ratification should be applied and it should be held that the exercise of the Government's powers by the Additional Director from 17-6-1957 was duly ratified by the State Government, which should be regarded to be the principal, the Additional Director being the agent, to use the terminology of the Law of Agency. As stated in Halsburys Laws of England (Lord Simonds' Edition, Volume I, at page 173), under certain conditions a contract or other act which at the time it was entered into or done by an agent lacked the authority, express or implied, of the principal, may by his subsequent conduct become ratified by him and made as effectively his own as if he had previously authorised it. But it is stated further in the same book that a ratification may be of one act or a series of acts; and as a general rule every act may be ratified, whether legal or illegal, if it was not void in its inception, provided that it was capable of being done by the principal himself. In the present case, however, the notification of 12th February 1958 does not purport to ratify any act of the Additional Director

but it only confers powers of the State Government under Section 42 of the Punjab Consolidation Act on him in general terms and there is no mention of any unauthorised act or acts which were being ratified. Delegation of powers is something quite distinct and different from an act of which ratification is permissible under the Law of Agency.

10. For all the reasons given above, I would; unhesitatingly answer the question in the negative.

11. Counsel agree that no other point arises for decision in the petition and therefore it can be disposed of without being remitted to the learned Single Judge. The petition is consequently allowed and the impugned order quashed. There wilt no order as to costs.

G.D. Khosla, J.

12. I agree.

S.S. Dulat, J.

I agree.

Cases Referred.

1AIR 1958 Punj 305

2(1845) 13 M and W 706 at p. ,721

31953 SCR 439: (AIR 1953 SC 95)

4 AIR 1935 SC 25