FULL BENCH.

Before S. S. Dulat, Mehar Singh and R. P. Khosla, JJ.

JAGIR SINGH AND ANOTHER,—*Petitioners.* ...

versus

THE SETTLEMENT COMMISSIONER, PEPSU, PATIALA AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 189/P of 1953.

1959

Feb., 2nd

Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act (V of 2007Bk.)—Section 41—Powers of State Government under—Whether could be exercised by the Revenue Minister—Revenue Minister acting under Section 41—Whether acts on Executive side—Order passed by Revenue Minister, under section 41—Whether can be recalled subsequently—Tribunals and authorities empowered to pass orders—Whether possess inherent power to recall wrong orders.

Held, that the powers conferred on the State Government by section 41 of the Pepsu Act V of 2007 Bk. could be exercised by the Revenue Minister so long as the Rules of Business framed under Article 166 of the Constitution authorised the transaction of that business by the Revenue Minister and the exercise of such powers by the Revenue Minister would be an exercise of power by the State Government.

Held, that although the exercise of power by the State Government under section 41 of Pepsu Act V of 2007 Bk., is a *quasi*-judicial function, that does not affect the power of the Revenue Minister to make a decision on behalf of the State Government.

Held, that the State Government is competent in suitable circumstances to recall its invalid or unjust and erroneous order made by it previously, but it is impossible to lay down in general terms what precise circumstances must be established to justify the exercise of that power and that matter must be left to be decided in each individual case.

Held, that the rule that when any authority has power to do a thing and does it, that decision becomes final and the same authority cannot subsequently alter the decision unless it has statutory power of review granted to it is wholly unacceptable as a rigid rule of law. Every tribunal has inherent power to correct its own error, provided, of course, the circumstances are such that the correction of that error is necessary in the interest of justice. Such inherent power is necessarily implied in the setting up of any authority on whom the responsibility of deciding any matter rests, and to deny such power to any tribunal would render that tribunal incapable of properly deciding the matters entrusted to it. In connection with the inherent power of Courts to correct their error the matter has been considered on several occasions and the authorities are uniform that all Courts by their very nature possess inherent power to recall erroneous orders. But it does not imply that every time a Court or any other tribunal happens to make a wrong order, it can subsequently reverse it. This inherent power, which must rest in all tribunals, has to be exercised sparingly and only in circumstances which compel its exercise. If a tribunal, and for that matter any other legal authority, decides to recall an order on the ground that it is invalid, the act of recall cannot be quashed merely on the ground that no such recall is permitted by any express provision of a statute. The question has to be decided in view of all the circumstances attending the recall.

Case referred by Hon'ble Mr. Justice Mehar Singh on 26th November, 1954, to a larger bench for decision of the legal points involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice R. P. Khosla, decided on 2nd February, 1959, the legal questions referred to it and returned the case to the Single Bench for its final decision. The case was finally decided by Hon'ble Mr. Justice Dulat, on 23rd March, 1959, on merits.

Petition under Article 226 of the Constitution of India, praying that a writ, direction or order be issued directing the respondents to prepare a fresh scheme of consolidation under the Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act,

2007, and then to repartition the holdings in accordance with the scheme.

M. R. SHARMA, for DARA SINGH, for Petitioners.

S. M. SIKKRI, for Respondents.

ORDER

Dulat, J.

DULAT, J. In writ petition, *Uttam Singh and another*, v. The State of Pepsu and others (Civil Miscellaneous 83/P of 1955), originally filed in the Pepsu High Court, two questions of law raised before the learned Single Judge and referred by him to us for decision are expressed thus:—

(1) Whether the powers conferred by section 41 of the Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act No. V of 2007 Bk. upon the Government can be exercised by the Government alone or by the authority to whom such power is delegated by Government under section 42 and not by the Revenue Minister?

(2) Whether the Revenue Minister acting under section 41 of the Act is a tribunal or was exercising powers under section 41 on the executive side alone ?

The same two questions arose in a similar petition, *Ram Kishan Dass*, v. *The State of Pepsu and others*, (1), which came up before one of us sitting alone, and the questions referred are stated, as follows:—

(1) Whether the Revenue Minister is the Government within the meaning and

(1) C.M. No. 183-P of 1955

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scope of section 41 of Act No. V of 2007 Bk. and can exercise the powers under that section?

(2) Whether the powers exercisable by the Government under section 41 of Act No. V of 2007 Bk. are merely executive powers or *quasi*-judicial or judicial powers, and even if they are *quasi*-judicial or judicial powers, can the Revenue Minister, if he is the Government according to the provisions of the Constitution and having regard to the provisions in the Business Rules, exercise the powers under the said section ?

Similar questions have been raised in *Amar Dass* v. *Kaka, etc.*, (1). Two similar questions also arose in *Jagir Singh and another* v. *The Settlement Commissioner, Pepsu, and others*, (2), which also came up before one of us sitting alone, but in that case a third question has also been raised and that is:—

Whether an order made by the Revenue Minister acting as the State Government could be subsequently cancelled by the State Government?

The facts in all these cases are not, of course, identical, but it does appear that in each of them the Revenue Minister, Pepsu, for the time being, considered certain matters arising out of consolidation proceedings and made certain orders which are being challenged on the point of jurisdiction. In one of these cases the order made by the Revenue Minister was not given effect to and

(1) C.M. No. 183-P of 1955
(2) C.M. 189-P of 1953

was soon afterwards recalled by the Sate Government.

Regarding the first two questions the main argument is that whenever the State Government exercised its powers under section 41 of Pepsu Act V of 2007 Bk., it was exercising a *quasi*-judicial function, and, therefore, the Minister-in-charge of the Department of Consolidation was not authorised merely by virtue of the Business Rules made under article 166 of the Constitution to decide such a matter, and his decision did not become the decision of the State Government. This has now been authoritatively answered by the Supreme Court in *Gullapalli Nageswara Rao and others* v. *Andhra Pradesh State Road Transport Corporation and another*, (1). The question in that case related to the exercise of certain powers by the State Government under the Motor Vehicles Act. It was contended in that case that the State Government, when considering and disposing of certain objections filed against a scheme, was acting in a *quasi*-judicial capacity. The Supreme Court agreed. It was on that basis contended that the objections being actually disposed of by the Secretary-in-charge of the Transport Department, his decision was not the decision of the State Government. The Supreme Court went into the Rules of Business which were in essential particulars identical to the Rules of Business framed by the Pepsu Government, and found that those rules framed under article 166 of the Constitution did authorise the officer named in the Rules to exercise the powers of the State Government. The objection taken then was that the Rules of Business framed under article 166 of the Constitution could govern the transaction of merely executive business of the Government and could

(1) A.I.R. 1959 S.C. 308

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not relate to the discharge of *quasi*-judicial functions. Answering this objection the Supreme Court observed:—

> "The Rules the Governor is authorised to make, the argument proceeds, are only to regulate the acts of the Governor of his subordinates in discharge of the executive power of the State Government, and, therefore, will not govern the *quasi*-judicial functions entrusted to it. There is a fallacy in this argument. The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedure rules made by the Governor for the convenient transaction of business of the State Government apply also to *quasi*-judicial acts, provided those Rules conform to the principles of judicial procedure."

It is quite clear from these observations that, if the Rules of Business framed by the Pepsu Government authorised the Revenue Minister to dispose of the entire business connected with his Department—and it is admitted before us that the Rules did so authorise him—,then it cannot matter whether in the transaction of that business the Minister exercised *quasi*-judicial functions and his act will remain an act of the State Government. The exercise of power by the Revenue Minister, therefore, under section 41 of the Pepsu Act would be an exercise of power by the State Government We are, therefore, bound to answer the first question by stating that the powers conferred on the State Government by section 41 of the Pepsu Act

V of 2007 Bk. could be exercised by the Revenue Minister so long as the Rules of Business framed under article 166 of the Constitution authorised the transaction of that business by the Revenue Minister.

To the second question our answer would be that, although the exercise of power by the State Government under section 41 of the Act is a *quasi-judicial* function, that does not affect the power of the Revenue Minister to make a decision on behalf of the State Government.

The third question, which arises only in one of these petitions, must ultimately turn on the facts. What appears to have happened is that, after a scheme of consolidation had been framed and confirmed, the Revenue Minister visited that village and heard some complaints against the scheme and, on considering them on the spot, formed the opinion that the scheme had not been prepared on fair and equitable lines. He, therefore, directed a repartition of the entire village to be done afresh. This was on the 13th February 1953. On the 23rd July, 1953, the Under-Secretary to Government issued an order which said:—

> " * * * * that it has been decided that Ex-Revenue Ministers order, dated 13th February, 1953, being legally without jurisdiction and *ultra vires*, be ignored and no repartition *be done de novo*. * * * * * *"

It is contended in support of the writ petition that this second order is invalid because the State Government having once exercised its power through the Revenue Minister, the same State Government could not subsequently reverse that order or recall it. The rule urged in support of

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this contention is said to be this that, when any authority has power to do a thing and does it, that decision becomes final and the same authority cannot subsequently alter the decision unless it has statutory power of review granted to it. Stated in that form as rigid rule of law the proposition, to my mind, is wholly unacceptable. I say this because it seems to me essential to affirm that every tribunal has inherent power to correct its own error, provided, of course, the circumstances are such that the correction of that error is necessary in the interest of justice. Such inherent power is necessarily implied in the setting up of any authority on whom the responsibility of deciding any matter rests, and it seems to me that to deny such power to any tribunal would render that tribunal incapable of properly deciding the matters entrusted to it. In connection with the inherent power of Courts to correct their error the matter has been considered on several occasions and the authorities are uniform that all Courts by their very nature possess inherent power to recall erroneous orders. I need in this respect only refer to a decision of the Allahabad High Court, *Aijaz Ahmad* v. *Nazirul Hasan*, (1), which was followed by this Court in *Assistant Custodian, Evacuee Property* v. *Seth Rattan Chand and others*, (2), Dealing with the matter of inherent jurisdiction, Iqbal Ahmad J. of the Allahabad High Court observed:—

> "It is well settled that a Court has inherent jurisdiction to recall and cancel its invalid orders, and to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. On principle there is no

(1) A.I.R. 1935 All. 868
(2) 55 P.L.R. 336

difference between an order passed by a Court and an order passed by an officer acting judicially. The orders passed by both are judicial orders, and if a Court has inherent power to correct its judicial orders there seems no justification for holding that an officer acting judicially has not similar powers. If a Court has power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court an officer acting judicially must on principle have similar powers."

I am not aware if this rule has never been doubted and the Supreme Court in *Keshardeo* v. *Radha Kishen*, (1), approved of it. I am not of course saying that every time a Court or any other tribunal happens to make a wrong order it can subsequently reverse it, and I am aware that this inherent power, which must vest in all tribunals, has to be exercised sparingly and only in circumstances which compel its exercise. All I am saying is that if a tribunal, and for that matter any other legal authority, decides to recall an order on the ground that it is invalid, the act of recall cannot be quashed merely on the ground that no such recall is permitted by any express provision of a statute. The question has to be decided in veiw of all the circumstances attending the recall.

Mr. Sharma in support of his contention relied on a decision of the Supreme Court in *State of Bihar* v. *D. N. Ganguly*, (2). The facts there were that the State Government had referred an industrial dispute between the Bata Shoe Company Limited and their 31 workmen to an Industrial Tribunal for adjudication. A similar industrial dispute between the same Bata Company

(1) A.I.R. 1953 S.C. 23
(2) A.I.R. 1958 S.C. 1018

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and its 29 other workmen was also referred by the State Government to the same Tribunal. While the proceedings in the two references were pending before the Tribunal, the State Government issued a third notification superseding the two earlier notifications and combining the two disputes and adding the Bata Mazdoor Union to the dispute, and referred it for adjudication afresh. The objection taken was that the State Government had no power to supersede the pending references. The Supreme Court went into the facts and held that the State Government was not competent to supersede the earlier references after the Tribunal had gone on with the proceedings for so time. It will be observed that it was not even suggested in that case that the notifications which were superseded, were in any sense invalid, and it is quite clear that the State Government were not trying to recall any invalid order made by it but were, on the other hand, attempting to supersede two perfectly valid references, so that in those circumstances no question of the exercise of inherent power could possibly arise, as that power can be invoked only to set right an obvious wrong. The decision thus does not assist learned counsel's argument.

In the present case before us we are not going into the facts, nor investigating the circumstances which might or might not ultimately justify the recall by the State Government of its previous decision. That is a matter for the learned Single Judge to decide after he has obtained all necessary information. We are at present only considering learned counsel's broad proposition that the State Government could have in no circumstance recalled its previous order and on that ground alone the act of the State Government should be quashed. I am persuaded both on

principle as well as authority that the State Government is competent in suitable circumstances to recall its invalid or erroneous order, but it is impossible to lay down in general terms what precise circumstances must be established to justify the exercise of that power and that matter, in my opinion, must be left to be decided in each individual case. I would, therefore, say in answer to the third question that the State Government is not debarred from recalling an invalid or unjust and erroneous order made by it previously, and that the further question, whether in a particular case such recall was or was not justified would depend on the circumstances of that case.

There are, we gather, other questions involved in the petitions and the petitions must, therefore, go back to the Single Bench for final disposal in the light of our answers.

Mehar Singh, J.—I agree.

R. P. Khosla, J.—I agree and have nothing to add.

B. R. T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

BHAGAT RAM,—*Appellant.*

versus

AJUDHIA PARKASH AND OTHERS,—*Respondents.*

Regular First Appeal No. 366 of 1950

1959

Feb., 4th

Hindu Law—Debts incurred by father—Decree obtained by creditor—In execution of the decree the property of joint Hindu family attached—Sons filing a suit for declaration that joint Hindu family property was not liable and