

## CIVIL WRIT

*Before Falshaw and Dua, JJ.*

LAKHA SINGH AND OTHERS,—Petitioners

*versus*

DIRECTOR, CONSOLIDATION OF HOLDINGS,  
PUNJAB AND OTHERS,—Respondents

Civil Writ No. 791 of 1957

1958

Sept. 2nd

*Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act (V of 2007 Bk.)—Sections 20(4) and 41—Respective scope of—Whether mutually inconsistent—Powers under section 20(4) delegated—Appeal decided by the delegate—Government whether can revise or review the order under section 41—“Officer”—Meaning of—Whether includes an officer to whom powers of the Government delegated.*

*Held*, that there is nothing inconsistent in sections 20(4) and 41 of Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act. These provisions relate to different functions and jurisdictions. Section 20(4) gives a right of appeal to an aggrieved party which is to be exercised within a specified time. If that right is not exercised according to the provisions of section 20(4) then the party concerned loses all rights to get the order of Settlement Officer set aside. The Government when exercising its functions under section 20(4) is only concerned with the grievance of the appellants and with the comparative rights of the parties impleaded in the appeal. The jurisdiction under section 41 is, however, of a very different type. It enables the Government to interfere with the Consolidation proceedings at any time and to examine the legality and propriety of an order passed by any officer in the proceedings. The Government under section 41 is not confined to the comparative rights of contending parties, but it is open to it to consider all orders of officers under the Act so as to advance the object and purpose of consolidation proceedings.

*Held*, that section 41 is absolute in terms and the Legislature has not made it subject to the provisions of section 20(4) of the Act. Section 41 gives independent power to

the Government to intervene *suo motu* at any stage of the consolidation proceedings. Section 20 of the Act does not exclude independent operation of section 41 of the Act. Taking into consideration the wordings of the two sections, it is neither proper nor in accordance with law that the legislative intent so expressed should be held to be modified by implication on the ground that in some cases it may have the effect of enabling Government to reconsider the previous decision made under section 20(4) of the Act. It is, therefore, open to the Government to pass an order under section 41 of the Act even after its delegate has exercised powers under section 20(4) of the Act.

*Held*, that an "Officer" is a person who performs the duties of a public office. Under section 40(1) of the Act, the Government can delegate its powers or functions only to one of its officers. It, therefore, follows that the Government delegate under section 20(4) is an officer and as he is appointed under the Act and has to perform duties relating to administration of the Act, he must be held to be an officer under the Act.

*Case referred by Hon'ble Mr. Justice A. N. Grover, on 20th May, 1958, to a Division Bench for decision of the points of law raised in the petition. . . . The Division Bench consisting of Hon'ble Mr. Justice D. Falshaw, and Hon'ble Mr. Justice Inder Dev Dua, after deciding the points referred to it returned the case on 2nd September, 1958, to the S.B. for disposal. The case was later on decided by Hon'ble Mr. Justice A. N. Grover, on 15th September, 1958, on merits.*

*Petition under Article 226 of the Constitution of India praying that a Writ, direction, order or a rule nisi be issued quashing the orders of respondents Nos. 2 and 1 dated 14th June, 1956 and 20th April, 1957, respectively.*

D. S. NEHRA, for Petitioners.

S. M. SIKRI, Advocate-General and K. N. TEWARI, for Respondents.

#### JUDGMENT

FALSHAW, J.—The question of the interpretation of certain provisions of the Patiala and East Punjab States Union Holdings (Consolidation and

Falshaw, J.

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.  
—  
Falshaw, J.

Prevention of Fragmentation) Act (Act No. V of 2,007 Bk.) has been referred to Division Bench by Grover, J. in consequence of the fact that his own interpretation of identical provisions contained in the corresponding Punjab Act, expressed in Civil Writ No. 236 of 1957, decided by him on the 28th April, 1958, were found in connection with the present petition to be in conflict with two earlier unreported decisions of Bishan Narain, J. in Civil Writs Nos. 372 and 546 of 1956 decided on 9th April, 1957, and 20th May, 1957, respectively. The relevant provisions of the PEPSU Act are contained in sections 20, 40 and 41. Section 20 reads—

“20(1) The Consolidation Officer shall after obtaining the advice of the land-owners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 19, and the boundaries of the holdings as demarcated shall be shown on the *shajra* which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such orders as he considers proper confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under sub-section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper.

- (4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3) may within sixty days of that order appeal to the Government. The order of the Government on such appeal, "and subject only to such order, the order of the Settlement Officer (Consolidation) under sub-section (3) or, if the order of the Consolidation Officer under subsection (2) was not appealed against, such order of the Consolidation Officer, shall be final and shall not be liable to be called in question in any court."

Lakha Singh  
and others  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others  
—  
Falshaw, J.

Section 40 reads—

- "40(1) The 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 Government, delegate any of his powers or functions under this Act to any person in the service of the Government."

Section 41 reads—

- "(41) The 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

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.  

---

Falshaw, J.

reversed without affording the parties interested an opportunity of being heard."

In the case an appeal was filed to the Settlement Officer under sub-section (3) of section 20 against the order of the Consolidation Officer passed on certain objections and against the order of the Settlement Officer the parties who are the petitioners in the writ petition filed an appeal under section 20(4) which was decided by the Settlement Commissioner, Patiala, to whom apparently the powers of Government to hear appeals under sub-section (4) had been delegated. The order of the Settlement Commissioner was reversed and the order of the Settlement Officer restored by the Director of Consolidation of Holdings, Punjab, (integration having taken place in the meantime), apparently exercising the powers of the Government under section 41 of the Act.

The question involved is whether the Government under section 41 can revise or review its own order passed in second appeal under the provisions of subsection (4) of section 20, or in other words, whether the word 'officer' in the phrase order passed by any officer under this Act' contained in section 41 can be said to include an officer to whom the powers of the Government under subsection (4) of section 20 have been delegated.

In the earlier case decided by Grover, J., he had taken the view that this could not be so in the following words:—

"It was therefore not open to any other officer or even the State Government to exercise power under section 42 of the Act and set aside the previous order made in appeal under section 21(4)

which had become final. (These are the numbers of the corresponding provisions of the Punjab Act). Section 42 confers powers on the State Government to call for and examine the record of any case pending before or disposed of by any officer for the purpose of satisfying itself as to the legality or propriety of any order passed by such officer. It is quite clear that the State Government has powers under section 42 to examine the legality and propriety of an order made by any officer and not by the State Government itself. The use of the expression 'officer' by necessary implication means that the officer should have exercised powers as such and not by virtue of the delegation made by the State Government. In the present case the powers which were exercised by the Assistant Director, Consolidation of Holdings, in disposing of the appeal under section 21(4) were exercised by him as delegate of the State Government. In other words the decision which was being given was one of the delegate to the State Government and not of any officer, and, therefore, it was not open to the Director, Consolidation of Holdings, who himself was also exercising the powers of the State Government, to set aside the previous order. Moreover, the powers given under section 42 are meant to be exercised only when there is no previous final order under the provisions of section 21(4) of the State Government itself. If once the State Government or its delegate has passed orders under section 21(4) of the

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.

—  
Falshaw, J.

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.  
—  
Falshaw, J.

Act, then there can be no review of the same under section 42 as the latter provision does not give any power of review to the State Government and the only power which is conferred by section 42 is in the nature of a revisional power which the State Government cannot exercise with regard to its own decision.”

On the other hand there are in fact more than two earlier decisions by Bishan Narain, J., in which a contrary view has been expressed. From these cases I select his exposition of his views delivered in Civil Writ No. 546 of 1956 decided on the 20th May, 1957. After setting out the relevant provisions of the Act he proceeds—

“Exercising this power under section 40(1) the Government has delegated its powers under section 20(4) of the Act to a Settlement Commissioner. The question arises whether a Settlement Commissioner can be said in exercising this power to be an officer under the Act within section 41 of the Act.

Now the expression ‘officer’ is not defined in the Act although a Consolidation Officer appointed under section 14 including his delegate and also a Settlement Officer appointed under section 19 including his delegate are described as ‘officers’ in this Act. This, however, does not mean that a Settlement Commissioner is not an officer. To my mind an ‘officer’ is a person who performs some public duties under Government orders. It is well-established that an ‘officer’ is a person who performs the

duties of a public office or a person who is invested with the Government's authority to perform duties of a public office. Under section 40(1) the Government can delegate its powers or functions only to one of its officers. It, therefore, follows that the Government's delegate under section 20(4) is an officer and as he is appointed under this Act and has to perform duties relating to administration of this Act he must be held to be an officer under this Act. That being so, the order of the Settlement Commissioner under section 20(4) comes within the purview of section 41 of the Act and can be subject of scrutiny under it. This contention of the petitioner accordingly fails.

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.  
—  
Falshaw, J.

The next contention is that the order passed under section 20(4) by whomsoever passed is in substance an order passed by Government and the Government cannot reconsider its own decision whether directly or through its delegate under section 41 of the Act. Section 41 confers supervisory powers on the Government to interfere at any stage with consolidation proceedings with a view to further the object of the Act. This is conceded, but it is urged that section 41 can be invoked only in those cases in which the parties concerned have not availed of the right of appeal under section 20(4) of the Act. The argument is that once section 20(4) has been invoked the Government is *functus officio* and cannot act under section 41 to reconsider its own decision under section 20(4).



Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.  
—  
Falshaw, J.

I have already reproduced the two provisions of law in the earlier part of this judgment. It appears to me that there is nothing inconsistent in these two provisions. These provisions relate to different functions and jurisdictions. Section 20(4) gives a right of appeal to an aggrieved party which is to be exercised within a specified time. If that right is not exercised according to the provisions of section 20(4), then the party concerned loses all rights to get the order of the Settlement Officer set aside. The Government when exercising its functions under section 20(4), is only concerned with the grievance of the appellant and with the comparative rights of the parties impleaded in the appeal. The jurisdiction under section 41 is, however, of a very different type. It enables the Government to interfere with the consolidation proceedings, as I have already said, at any time and to examine the legality and propriety of an order passed by any officer in these proceedings. The Government under section 41 is not confined to the comparative rights of contending parties, but it is open to it to consider all orders of officers under the Act so as to advance the object and purpose of consolidation proceedings. The changes in allotments in consolidation proceedings often produce a claim of reactions and affect a number of persons and the rights of parties cannot always be satisfactorily adjusted in an appeal under section 20(4). In such cases section 41 is the only provision

which can be utilized to achieve this object. It is not difficult to conceive of a case in which a party has been successful in his appeal under section 20(4) against another party, but later on it transpires that according to over-all conditions prevailing in the village the successful appellant should not be allowed to retain the allotment made in his favour in appeal under section 20(4). In such a case all that can be done is to correct the position by resorting to section 41 of the Act. If in some cases the exercise of power under section 41 has the consequence of enabling the Government to review or reconsider its own previous order under section 20(4), then I see no insurmountable difficulty in the Government having this power.

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.

Falshaw, J.

“After all section 41 is absolute in terms and the legislature has not made it subject to the provisions of section 20(4) of the Act. Section 41 gives independent power to the Punjab Government to intervene *suo motu* at any stage of the consolidation proceedings. Section 20 of the Act does not exclude independent operation of section 41 of the Act. Taking into consideration the wordings of the two sections it appears to me that it is neither proper nor in accordance with law that the legislative intent so expressed should be held to be modified by implication on the ground that in some cases it may have the effect of enabling the Government to reconsider its previous decision made under section 20(4) of the Act. To obviate any anomaly and inconvenience I have

Lakha Singh  
and others.  
v.  
Director, Con-  
solidation of  
Holdings, Punjab  
and others.  

---

Falshaw, J.

noticed that Government generally delegates its powers under section 20(4) of the Act to an officer and more often than not it also delegates its powers under section 41 to a different officer. This course cannot be held to be improper or illegal. I am, therefore, of the opinion that it is open to Government to pass an order under section 41 of the Act even after its delegate has exercised powers under section 20(4) of the Act.”

Here we have two conflicting opinions of learned Judges of this Court both, if I may say so, clearly and cogently expressed though it may be remembered that the views of Grover, J., were expressed in ignorance of the earlier decisions and it is for us to decide which we consider to be the more correct view. For my own part I find that although on first impression I was inclined to take the view expressed by Grover, J., that an ‘officer’ in section 41 could not be said to include an officer exercising the delegated powers of the Government under section 20(4), but on maturer consideration I have come to the conclusion that the view expressed by Bishan Narain, J., in which the wider aspects of the matter have been discussed, is more likely to be the correct view.

The first point which inclines me to take this view is that the terms of section 41 “may call for and examine the record of any case pending before or disposed of by such officer” are all-inclusive and I should have expected that if case decided under section 20(4), were meant to be excluded from the purview of this section, this intention would have been given expression in terms. The words “any order passed by any officer under this Act” may perhaps be little ambiguous—they could be interpreted as meaning “passed by any officer appointed

under this Act"—and it might be argued that this would not include an officer not otherwise mentioned in the Act to whom the Government had delegated any of its powers, but in my opinion the words have a wider meaning which might have been better expressed if the order of the words had been "any order passed under this Act by any officer" which would then mean "any order passed under any provision of the Act by any officer having power to pass any order under the Act" and in my opinion this is what is really meant.

As was pointed out by Bishan Narain, J., the powers of delegation of the Government in section 40(1) are only to its officers either by name or designation and in my opinion the powers conferred under section 41, although they may include what are generally described as powers of revision, also include powers of review, and in my opinion the use of the term "revision" in this section, which is simply headed "Power of Government to call for proceedings", has been deliberately avoided.

My conclusion is, therefore, that it was intended that the Government should have powers of review even of orders passed in its name by an officer with delegated powers under section 20(4). In the circumstances I do not consider that it is necessary for me to repeat all the arguments set out by Bishan Narain, J., and I think it is sufficient to state that I am generally in agreement with his reasons and his conclusion in the matter, and it must therefore be held that the order of the Director of Consolidation of Holdings in this case was not without jurisdiction.

The case may now be sent back to a Single Judge to deal with any other point which may arise out of the writ petition.

DUA, J.—I agree.

K.S.K.

Lakha Singh  
and others.

v.

Director, Con-  
solidation of  
Holdings, Punjab  
and others.

Falshaw, J.

Dua, J.