STATE OF ORISSA AND ORS. A

v.

GOPINATH DASH AND ORS.

DECEMBER 9, 2005

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.] B

Administrative Law:

Policy decision taken by State—Judicial review—Scope of—Held: Court not to interfere with or sit as an appellate authority over the administrative action of State. C

The question which has arisen for consideration in the present appeal is whether High Court was justified in holding that the policy decision taken by the State in the matter of allotment of quarters to the Armed Police Personnel by rotation basis was illegal. D

Allowing the appeal, the Court

HELD: 1.1. While exercising the power of judicial review of administrative action, the Court is not appellate authority and the Constitution does not permit the Court to direct or advise the Executive in matter of policy E **or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the Executive, provided these authorities do not transgress their constitutional limits or statutory power. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus,** F **the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere. [701-G-H; 702-A-B]**

Ashif Hamid **v.** *State of J and K,* **AIR (1989) SC 1899 and** *Shri Sitaram Sugar Co.* **v.** *Union of India,* **AIR (1990) SC 1277, relied on.**

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1.2. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should

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not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government. [702-D-E]

Metropolis Theatre Company v. *City of Chicago,* **(1912) 57 L Ed 730, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2272 of 1998.

From the Judgment and Order dated 8.8.96 of the Orissa High Court in O.J.C. No. 3193 of 1992.

Jana Kalyan Das for the Appellants.

Aruneshwar Gupta (N.P.) for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the judgment rendered by a Division Bench of the Orissa High Court holding that the policy decision taken by the State in the matter of allotment of quarters by rotation basis was illegal.

Adumbrated in brief the factual background as projected by the appellants is as follows:-

An executive order was passed by the Deputy Inspector General of Police vide his D.O. letter No.4322/SAP in furtherance of a policy decision that quarters were to be allotted to all the Orissa State Armed Police Personnel for a minimum period of three years. This order was passed keeping in view the dearth of family accommodation which at the relevant point of time was an acute problem for the Orissa State Armed Policy Battalion. It was also done with a view to ensure that every police personnel enjoyed the facility of rent-free accommodation and that is why it was done on rotational basis. The practice had continued uninterruptedly for a long time. Military police establishments normally function in a separate camp where provisions are made for all the personnel to be given residential accommodation. Therefore, the system was developed to ensure that the employees are provided with quarters for a given period and after completion of that period they are required to vacate the quarters. This would enable other employees who are deprived of quarters can get quarters so vacated. Contractual agreements

were entered into between the employer and the employees when they were given government accommodation. Questioning legality of the orders the respondents along with one Kirtan Behari Swain who has expired in the mean time filed an Original Application before the Orissa Administrative Tribunal (in short 'the Tribunal'). The same was registered as OA No. 758/1989. Challenge in the application was to the system of allotment of quarters by rotation. Subsequently, another application was filed challenging the system of allotment of quarters. The same was numbered as OA 1250 of 1991. The Tribunal dismissed OA No.758/1989 holding that it had no jurisdiction to consider the matter as the same was a dispute related to allotment of quarters which is not covered by the Special Accommodation Rules as provided in the Orissa Service Code (in short 'Service Code'). In Original Application No.1250/ 1991 after appreciating that the rotational system of allotment of quarters was in the interest of the employees, the Tribunal dismissed the application in view of the dismissal of the other Original Application. It was held that since quarters were allotted by contractual allotments, the Special Accommodation Rules do not apply. Thereafter 21 persons filed writ petition before the High Court which was registered as O.J.C No.6383 of 1992. One of the writ petitioners was Panchu Sahu who was also one of the applicants in O.A. No. 1250/1991. After dismissal of O.A. No. 758/1989, the applicants before the Tribunal filed writ petition O.J.C. No.3193 of 1992. The writ petition No. 6383/1992 was dismissed as withdrawn on 7.7.1994. It was noticed by the Division Bench that since the Bench was not inclined to entertain the writ petition, the writ-petitioners wanted to withdraw the petition. In writ petition no. O.J.C. 3193/ 1992 the High Court by its impugned judgment dated 8.8.1996 held that the policy decision of allotment of quarters on rotational basis was contrary to and inconsistent with justness and fair-play.

In support of the appeal, learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. It failed to notice that the policy decision of the government is not to be lightly interfered with. The High Court did not indicate any justifiable reason to quash the policy decision.

There is no appearance on behalf of the respondents. Operation of the impugned judgment was stayed by this Court by order dated 8.5.1997.

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize

A any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid* v. *State of J. & K.*, AIR (1989) SC 1899, *Shri Sitaram Sugar Co.* v. *Union of India* AIR (1990) SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory B provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

C The correctness of the reasons which prompted the Government in decision making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can D adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court E cannot interfere even if a second view is possible from that of the Government.

The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company* v. *City of Chicago,* (1912) 57 L Ed 730. "The problems of Government are practical ones and may F justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review.

G The conclusions of the High Court for granting relief, so far as relevant are as follows:

> "4. Very patiently we have heard the contentions made by the petitioners and the learned Government Advocate appearing in support of the contentions of the opposite parties. The scarcity of house H accommodation is not in doubt or dispute. The policy to allot quarters

only for three years is whether pragmatic, fair and rational we are to examine judicially. It is not appreciated by us as to why if there is scarcity of quarters, the allotment must be made serially and as would be made available, taking into consideration the eligibility criteria and such allotment to be for a limited period notwithstanding the continuity of the posting of the person concerned at the same place. A person may be transferred, he may immediately be asked to vacate the quarters. A person retires and/or his service ceases, it may be appreciated that he should immediately vacate the quarters. But when a person remains posted, to vacate the quarters after three years notwithstanding his continuity, is certainly not fair, justifiable or rational. On repeated query no satisfactory explanation has been given to us. What is the ultimate goal behind this policy is in order to avoid discontentment or to please very body. Such a policy does not fulfil the test of fair play and justness.

5. Having gone through the detailed averments and also considering the allegations and counter allegations, we find that the grievance of the petitioners is genuine. If the petitioners remain posted at Cuttack and if they are provided with the quarters after considering their eligibility, they cannot be asked to vacate their quarter, unless their services cease or they are transferred elsewhere. This rotation allotment appears to be contrary to and inconsistent with the justness and fair play."

Considering in the background of the legal principles set out above, the conclusions of the High Court do not appear to be defensible, muchless for the reasons indicated by the High Court.

In the circumstances, the judgment of the High Court is set aside. If there has been any change in the policy decision, notwithstanding the present decision, same shall be operative.

The appeal is allowed with no order as to costs.

D.G. Appeal allowed.