Faridabad Glass Works (P) Ltd., *v.* The Presiding Officer, Industrial Tribunal, Punjab and others

Pandit, J.

the other hand, the case of the Bhargava Union, is that no workman of this Establishment is at present the member of the Ceramics Union. This matter will be decided by the Industrial Tribunal and those workers, who are found to be the members of the Ceramics Union, will not be considered to be parties to the industrial reference so far as dispute No. 2, is concerned and the award of respondent No. 1, will not be binding on them. The Establishment will get the arbitration agreement signed by the President of the Ceramics Union and if that is done, then the Government is directed to publish the same in the official gazette.

The result is that this writ petition succeeds and the order, dated 17th August, 1964, of respondent No. 1, *qua* the workmen, who are proved to be the members of the Ceramics Union, is hereby quashed. There will, however, be no order as to costs. It is, however, understood that if the Establishment fails to get the arbitration agreement signed by the President of the Ceramics Union within a reasonable time to be fixed by respondent No. 1 or the Ceramics Union is unable to prove to the satisfaction of respondent No. 1, that any of the workers of this Establishment are its members, then the impugned order of respondent No. 1 would stand.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

TEJ PARKASH SINGH, AND ANOTHER,—*Petitioners.*

versus

THE DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB, JULLUNDUR, AND OTHERS,—*Respondents.*

Civil Writ No. 2791 of 1964.

1965

March, 11th.

East Punjab Holdings (consolidation and Prevention of Fragmentation) Second Amendment and Validation Act (XXV of 1962) -S. 11(a)-Petitions pending before delegate of State Government under S. 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) at the time of the coming

into force of Act XXV of 1962—Whether can be decided by the delegate—Interpretation of Statutes—Rules as to unambiguous provisions of statute.

Held, that the language of section 11(a) of the Punjab Act XXV of 1962 restricts its operation to the orders already passed and it does not deal, with the power or jurisdiction of the Director to validly dispose of pending petitions on the date of the amendment. The Act, *inter alia*, merely clothed with validity certain orders already passed by the Director under an erroneous view of law.

Held, that the Court is not at liberty to amplify an unambiguous enactment so as to include within its ambit matters which, upon the plain meaning of the statutory language, cannot be considered to be included, even though fully convinced that the omission was inadvertent and in all probability undesigned. To do so would virtually mean re-writing the statute or legislation in the guise of construction which, quite clearly, is not open to the Court.

Petition under Article 226 and 227 of the Constitution of India praying that a writ of mandamus or any other appropriate writ, order or direction be issued quashing the order of the Assistant Director, Consolidatoin of Holdings, dated the 30th October, 1959.

P. S. MANN, ADVOCATE, for the Petitioner.

M. J. SETHI, FOR THE ADVOCATE-GENERAL AND H. S. WASU, ADVOCATES, for the Respondents.

ORDER

DUA, J.—This writ petition relates to the consolidation proceedings in village Saloh, Tehsil Nawanshahr, District Jullundur, and it is alleged that the consolidation officer concerned had made the block of the land of the petitioners in repartition according to the provisions of the scheme, which was upheld by the Settlement Officer, (Consolidation). Respondents Nos. 4 to 6 took the matter on appeal and the Assistant Director, Consolidation by his order, dated 30th October, 1959, allowed the same. The order of the Assistant Director is alleged to have made certain adjustments in the area allotted to the petitioners contrary to the provisions of the scheme. Feeling aggrieved by his order, the petitioners took the matter to the Director, Consolidation of Holdings, under section 42, of the East Punjab Holdings (Consolidation and Prevention of Fragmentation)

Dua, J.

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Act and on 17th June, 1964, the Director declined to go into the merits of the petitioners' grievances on the ground that as a result of the Supreme Court decision in *Roop Chand* v. *The State of Punjab* (1), the present petition was in competent because an order of the Assistant Director had been passed under Section 21(4) of the Consolidation Act, as a delegate of the State Government.

Dua, J.

The learned counsel for the petitioners has argued that by virtue of section 11 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Second Amendment and Validation Act, 1962, (Punjab Act No. 25 of 1962), where the State Government or an officer to whom powers of the State Government under section 42, have been delegated, has passed an order against an order of the Assistant Director of Consolidation passed by him under sub-section (4) of section 21 of the Consolidation Act, as a delegate of the State Government, then the order under section 42, shall be, and shall be deemed always to have been valid and would not be open to question on the ground that it could not be made under section 42 against the order of the delegate of the State Government. This validating provision, according to the argument, overrides every other law, judgment, decree or order of any Court or other authority. The counsel has in all seriousness argued that according to this provision, even after the amendment, it would be open to the Director to pass a valid order on applications pending before him under section 42 of the Consolidation Act on the date, of the amendment. This position is sought to be supported by the submission that section 11 of the amending Act does not restrict its operation to the orders passed before the date of amendment. I am wholly unable to accede to this contention. The very language of section 11(a), in my opinion, restricts its operation to the orders already passed and it does not deal with the power or jurisdiction of the Director to validly dispose of pending petitions on the date of the amendment. To accede to the argument advanced on behalf of the petitioners' learned counsel would really amount to holding that the Supreme Court decision is wrong and, therefore, to overruling the Supreme Court decision which the amending Act did not even purport to do. The Act, *inter alia*, merely clothed with validity certain orders already

(1) 1963 P.L.R. 576 (S.C.).

passed by the Director under an erroneous view of law. May be that the Legislature has by an oversight failed to make provision for the disposal of applications under section 42 of the Consolidation Act pending with the State Government or the Director to whom powers of State Government may have been delegated, against orders passed by the Assistant Director under section 21(4), but that by itself cannot justify a strained or forced construction of section 11(a) of the amending Act. The Court, it may appropriately be pointed out, is not at liberty to amplify an unambiguous enactment so as to include within its ambit matters which upon the plain meaning of the statutory language, cannot be considered to be included, even though fully convinced that the omission was inadvertent and in all probability undesigned. To do so would virtually mean re-writing the statute or legislation in the guise of construction which, quite clearly, is not open to the Court. And except for the bald submission, the petitioners' learned counsel has not been able to support his contention either by precedent or by principle. I am, therefore, unable to accede to the contention.

The counsel has then submitted that this Court should in fairness consider in the present proceedings the validity of the order of Assistant Director, dated 30th October, 1959. I think the counsel is justified in making this prayer on the facts and circumstances of this case. We have been taken through the order of the Assistant Director and the grounds of grievance contained in paragraph 3 of the petition, but it has not been possible to discern any error apparent on the face of the record justifying interference on writ side. The criticism levelled by him really pertains to the merits of the controversy which requires adjudication on facts, which quite clearly is not the scope of the jurisdiction conferred on this Court by Articles 226 and 227 of the Constitution.

Before finally closing, it is fair to state that at the time of admission of this writ petition, it was represented that this petition raised a point in common with the one raised in Civil Writ No. 2818 of 1964 and, therefore, both petitions were ordered to be heard together, we have just disposed of Civil Writ No. 2818 of 1964 and the point raised in that petition has accordingly not been pressed in the present petition.

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Dua, J.

For the foregoing reasons, this petition fails and is hereby dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

AMAR NATH GUPTA.,—*Petitioner.*

versus

SUB-DIVISIONAL OFFICER (CIVIL) FARIDKOT,—*Respondent.*

Civil Writ No. 135 of 1965.

1965

March, 11th.

Punjab Agricultural Produce Markets (Election Market Committee) Rules, 1961—Rule 8—Interpretation of—Receipt of security deposit—Whether must be attached with the nomination paper.

Held, that a plain reading of rule 8 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, would show that every candidate at or before the time of the delivery of his nomination paper is required to deposit a sum of Rs. 20 either with the Returning Officer or in the office of the Committee of the notified market area. A further duty is cast upon him to produce a receipt for the said deposit along with the nomination paper. The rule also states that no candidate shall be deemed to be duly nominated unless such deposit has been made. In other words, the actual deposit of the security and not the attaching of the receipt therefor is the condition precedent for the proper nomination of a candidate. The essential condition for a valid nomination is the actual deposit of the security before the filing of the nomination paper. The production of the receipt therefor is only to prove that such deposit has been made. By its mere non-production, therefore, a nomination paper cannot be rejected. There is a substantial compliance with this rule if the said deposit has actually been made, though the receipt therefor has not been attached along with the nomination paper. In this respect the rule is merely directory and not mandatory and if a Returning Officer has any doubt in his mind about the deposit of security by a candidate, he should give him reasonable time to produce the receipt.

Petition under Article 226 of the constitution of India praying that an appropriate writ, order or direction be issued quashing the order of surrender, dated the 4th [illegible] 1963 [illegible] nomination papers filed by the petitioner be declared as valid and proper.