

PETITIONER:
GULABRAO KESHAVRAO PATIL & ORS.

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT 01/12/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KIRPAL B.N. (J)

CITATION:
1996 SCC (2) 26 JT 1995 (9) 12
1995 SCALE (7) 121

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

Having heard the counsel on both sides and given our anxious consideration to the respective contentions, we propose to dispose of the matter on merits. The only question is whether the appropriate Government under Section (2) of Section 5-A of the Land Acquisition Act 1 of 1894 (for short, 'the Act') has decided the objections raised by the claimants for further action under Section 6 of the Act. The Standing Committee of the Surat Municipal Corporation, authorised by its resolution dated February 27, 1992, the Municipal Commissioner to take appropriate action to acquire the land in question for relieving parking and traffic congestion near Surat railway station. On July 31, 1992, permission was granted by the Town Planning Department to the Corporation to acquire the land in question under Section 78 of the Town Planning Act. A declaration in that behalf was made. Accordingly on October 29, 1992, the Collector had published the notification under Section 4(1) of the Act. It is stated in the declaration that "the District Collector of Surat feels that the lands shown in the attached list may be required for the road and parking for the purpose of public at large by Surat Municipal Corporation". Thereafter, notice under Section 5-A was issued and the appellant had objected to the acquisition in his objections dated 4.1.1993 and 23.2.1993. Later the Land Acquisition Officer duly conducted the enquiry under Section 5A(1) and submitted the report to the Government for appropriate decision in that behalf. Here the dispute arises as to whether the decision has been taken by the State Government to proceed with the acquisition or to stop further action in that behalf. It is seen that the Revenue Department of the State Government to proceed with the acquisition or to stop further action in that behalf. It is seen that the Revenue Department of the State Government had

decided, as reflected in the letter dated 12.7.1993 written by the Section Officer of the Revenue Department that "taking into consideration the objection submitted by the account holder and that taking into consideration the legal position and also the revenue circular dated 20.6.1970, notification under Section 6 cannot be sanctioned. Therefore, the Land Acquisition Officer was requested to do the necessary proceedings accordingly". The Ministry of Urban Development did not agree with the view of the Ministry of Revenue. Consequentially, they moved the Chief Minister to have the issue re-examined. However, before a decision was taken, the Section Officer of the Revenue Department communicated its decision to the Land Acquisition Officer to take further action as indicated above. Since action was not being taken in that behalf, the appellants have approached the High Court for necessary directions under Article 226 of the Constitution. By the impugned order dated 7.12.1994, made in Special Civil Application No.7890/94, the High Court has held that the Government had not taken the decision under sub-section (2) of Section 5-A of the Act. Therefore, the writ petition was rejected. Thus this appeal by special leave.

Shri Harish Salve, the learned senior counsel for the appellant, contended that in view of the communication sent by the Section Officer, referred to hereinbefore, read with the affidavit filed by the Additional Chief Secretary of the Revenue Department which says that "I say that noting made by me in the file that "(I) may be submitted to Government (II) legal position being what it is, it will serve no useful purpose in discussing the issue in formal meeting with Urban Development Department (UDD)" is in agreement to the noting of Shri Shamji Patel, the then Dy. Secretary, Revenue Department as aforesaid." The Minister for Revenue had approved the proposal sent up by the Revenue Department on July 6, 1993 not to take further action under Section 4(1). Therefore, the citizen is made to believe that the Government have taken a decision under its business rules not to proceed with the acquisition. The High Court, therefore, was not right in its conclusion that the decision was not taken. The High Court has noted in the judgment that it had perused the note file regarding the decision taken by the Revenue Minister but nonetheless concluded that it is not a final decision. When the matter came up before this Court on November 2, 1995, this Court after hearing the counsel on either side directed the Government to produce the business rules under which the competent authority required to take a decision so that we can proceed on the legal premise whether Section Officer's letter founded on legal premise. Today, the learned counsel has placed before us the business rules.

Shri Salve contended that under Rule 15 of the Business Rules, the competent authority to take the decision for acquisition of the land is the Department of Revenue. The decision having been taken by the Revenue Department and having been taken by the Revenue Department and having been communicated, as referred to earlier, there is a final decision taken by the Government under its Business Rules and that, therefore, no further action could be taken, pursuant to notification under Section 4(1) of the Act. On the other hand, Shri Poti, the learned senior counsel for the Government, contended that the Urban Development Department had taken decision that the land needed for the above public purpose and acquisition is necessary. The decision taken by the Revenue Department not to proceed with the acquisition is not final. Due to conflict of decisions

between the two departments of the Government, the matter required to be referred to the Chief Minister. The Law Ministry has advised that the view of the Revenue Department does not bind the Chief Minister. The matter required the consideration by the Cabinet in this behalf which has yet to take the decision. Therefore, there is no decision taken by the Government. Shri D.P. Gupta, learned Solicitor General for Corporation, supported the contention of Shri Poti in this behalf. The question, therefore, is whether the Government of Gujarat has taken decision on the objections raised by the appellants for the acquisition of the lands in question.

In R.K. Jain vs. Union of India [(1993) 4 SCC 119] at page 147, this Court held that the Cabinet known as Council of Ministers is the driving and steering body responsible for the governance of the country. The executive function comprises of both, the determination of the policy as well as carrying it into execution. The administration of the affairs of the State including all trading activities, the acquisition, holding and disposal of property and the making of contracts for any purpose. The primary function of the Cabinet is to formulate the policies of the Government in conformity with the directive principles of the Constitution for the governance of the nation. Have it accepted by the legislature and carry the executive function of the State as per the Constitution and the laws. The Cabinet bear collective responsibility. At page 148 in paragraph 33, it was further held that the Cabinet, as a whole, is collectively responsible for the advice tendered to the President and for the conduct of business of each department. In S.R. Bommai & Ors. vs. Union of India & Ors. [(1994) 3 SCC 11 in paragraph 226 at page 192-193, it was held that the Council of Ministers are collectively responsible to the Parliament and accountable to the people.

Under Article 163, the Council of Ministers with the Chief Minister at the head is to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. The Chief Minister should be appointed by the Governor and the other Ministers are appointed on his advice by the Governor. The Council of Ministers under Article 164 shall be collectively responsible to the Legislative Assembly of the State. Under Article 167, the Chief Minister shall hold the duty to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation etc. It would, thus, be clear that the Chief Minister holds the ultimate responsibility to the Governor and accountable to the people of the State for the good governance of the State with the assistance of his Council of Ministers. The executive power of the State is carried on by the Governor with the aid and advice of the Council of Ministers, Chief Minister being the head. In other words, the Cabinet transacts the business of the State and it is discharged by its Chief Minister to whom business of the State on specified subjects are allocated for convenient transaction of the business of the Government.

Article 166(1) and (2) of the Constitution state thus:

"166. Conduct of business of the Government of a State - (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made

and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order of instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor."

In other words, Article 166(1) and (2) expressly envisage authentication of all the executive actions and shall be expressed to be taken in the name of the Governor and shall be authenticated in such manner specified in the rules made by the Governor. Under Article 166(3), the Governor is authorised to make the rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. In other words, except in cases when the Government in his individual discretion exercises his constitutional functions, the other business of the Government required to be conveniently transacted as per the Business Rules made by Article 166(3) of the Constitution. If the action of the Government and the order is duly authenticated as per Article 166(2) and the Business Rule 12, it is conclusive and irrebuttable presumption arises that decision was duly taken according to Rules. The letter of the Section Officer is not in conformity with Rule 12 and Article 166(1) and (2), though under rule 13 he is one of the authorised officer to communicate the decision of the Government. In *Major E.G. Barsay vs. State of Bombay* [AIR 1961 SC 1762], This Court held that If an order is issued in the name of the President and is duly authenticated in the manner prescribed in Article 77(2), there is an irrebuttable presumption that the order is made by the President. Whereby the order does not comply with the provisions of Article 77(2), it is open to the party to question the validity of the order on the ground that it was not an order made by the President and to prove that it was not made by the Central Government. Where the evidence establishes that the Dy. Secretary on behalf of the Central Government made the order a delegate, the order cannot be questioned. Therefore, it is necessary to show whether decision of the Government is according to Business Rules.

Rule 15 of the Business rules provides that these rules may, to such extent as may be necessary, be supplemented by instructions to be issued by the Governor on the advice of the Chief Minister. Under the Business Rules 33 subjects were allotted to the Revenue Department of which item 15 relates to acquisition of property, principles on which compensation for property acquired for the purpose of the State or for any other public purposes is to be determined and the form and manner in which such compensation is to be 'given'; acquisition of Immovable property for defence purpose etc.

The Urban Development and Urban Housing Department gets allotted 18 items of which item 8 contemplates of Town Planning Scheme and 9 contemplates Town Planning and Valuation Department. It would thus be seen that the two departments are entitled to deal with the lands acquisition and valuation thereof. Urban Planning Scheme in the urban area was allotted to the Urban Development Department and Urban Development and Urban Housing Department and the land acquisition, though part of the Town Planning Scheme, was

equally an allotted subject to the Revenue Department under the subject referred to hereinbefore.

It is seen from the note file that when the proceedings have gone before the Secretary to the Revenue Department, by his note dated July 3, 1993 he stated thus:

"(1) May be submitted to Government.

(2) Legal position being what it is, it would serve no useful purpose in discussing the issue in a survival meeting with U.D.D."

It would appear that initially in the note dated July 2, 1993, there was suggestion to refer the matter to the Urban Development Department but later it was struck off and the above endorsement came to be made. On that basis, the Minister for Revenue had approved the suggestion made by the Secretary on July 6, 1993. It is also clear from the record placed before us that the Urban Development Department after finding that the Revenue Department is not proceeding with the acquisition had taken a decision to approach the Chief Minister who, on receipt thereof, sought legal opinion and the Law Department opined that the view of Revenue Department does not bind the Chief Minister. The question then is who would take the decision in that behalf. It would be appropriate to deal with the instructions issued in this behalf.

Instruction 4 in Part II says that:

"4(1) Except as otherwise provided in these Instructions cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge, who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department."

Instructions 9 and 10 says that:

"(9) When the subject of a case concerns more than one Department no order shall be issued nor shall the case be laid before the Council or the Cabinet until it has been considered by all the Departments concerned unless the case is one of extreme urgency.

(10) If the Department concerned are not in agreement regarding a case dealt with under instruction 9, the Minister-in-charge of the Department may, if he wishes to proceed with the case, direct that the case be submitted to the Chief Minister for orders for laying the case before the Council or the Cabinet."

The instructions are integral part of the scheme of the Business Rules and have constitutional flavour and force to supplement the rules. It would thus be seen that though the Minister-in-charge of the subject is empowered to have the subject disposed of in the manner laid down in the Business Rules and when two Ministers are not in agreement with the manner of the disposal of a matter or decision, then under instruction 10 the concerned subject should be submitted to the Chief Minister for laying the same before the Council or the Cabinet.

The responsibility of Council of Ministers under Article 164 [2] of the Constitution embodies the political responsibility of the Ministry headed by the Chief Minister. Collective responsibility makes each Minister responsible to the Legislature for the acts of himself and other members of

the Council of Ministers. Since the Council of Ministers would stay in office as long as it commands the majority of the Legislative Assembly, the Council of Ministers is politically responsible as one entity. In case it loses its confidence the Ministry as a whole is required to resign. The responsibility to the Governor and accountability to the people collectively by the Council of Ministers is through and by the Chief Minister. It would, therefore, be clear that the decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of clauses [1] and [2] of Article 166 are complied with. Before the action or the decision is expressed in the name of the Governor in the manner prescribed under the Business Rules and communicated to the party concerned it would always be open by necessary implication, to the Chief Minister to send for the file and have it examined by himself and to take a decision, though the subject was allotted to a particular Minister for convenient transaction of the business of the Government. The subject, though exclusively allotted to the Minister, by reason of the responsibility of the Chief Minister to the Governor and accountability to the people, has implied power to call for the file relating to a decision taken by a Minister. The object of allotment of the subject to a Minister is for the convenient transaction of the business at various levels through designated officers. The ultimate object is to secure an impartial, pure and efficient administration as propounded by Dr. Ambedkar in the Constituent Assembly vide Constituent Assembly Debates, Vol. VIII page 546.

In *Bachhittar Singh v. The State of Punjab* [(1962) Supp. 3 SCR 713] a Constitution Bench of this Court was to consider whether the order of the Revenue Minister could not be reviewed and set aside by the Chief Minister. In that context it was held that the order must be expressed in the name of the Governor as required by clause [1] of Article 166 and then it has to be communicated. Until such an order is drawn up by the State Government in accordance with Article 166 [1], the State Government cannot be regarded as bound by what was stated in the file. The business of State is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities. The action must be taken by the authority concerned in the name of the Raj Pramukh. The Minister is no more than an advisor and as head of the State the Governor or the Raj Pramukh has to act with the aid and advice of the Council of Ministers. Until the advice is accepted by the Governor, whatever the Minister or the Council of Ministers may say with regard to a particular matter, does not become the action of the State until the advice of the Council of Ministers is accepted by the head of the State. Until order is drawn up in the manner indicated by Article 166 [1] and communicated to the person who would be affected by the order it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication, the order cannot be regarded as anything more than provisional in character. Even if the rule does not contemplate that the Chief Minister would be entitled to pass an order but when the rule envisages that he is entitled to call for the file for issue of order, it clearly implies that he has the right to interfere and make such order as he may deem appropriate. The Chief Minister may call any file and deal with it himself. The order passed by the Chief Minister even though it is a matter pertaining to the portfolio of the Revenue Minister will be deemed to be an order of Council of Ministers. So deemed, its contents

would be the Chief Minister's advice to the Governor for which the Council of Ministers would be collectively responsible. This view was reiterated by a larger Bench of seven Judges of this Court in *State of Karnataka v. Union of India & Anr.* [AIR 1978 SC 68]. In paragraph 46 this Court held that the object of collective responsibility is to make the whole body of persons holding ministerial office collectively or if one may so put it, vicariously responsible for such acts or the other as are referable to their collective volition so that even if an individual may not be responsible for it he will be deemed to share the responsibility with those who may have actually committed the wrongful act. In paragraph 48 the Court observed that responsibility to Parliament only means that the Minister may be compelled by convention to resign. Out of this responsibility arose the principle of collective responsibility. The Government has to be carried on as a unity rather than by a number of advisers of the Sovereign acting separately.

In *Kedar Nath Bahl v. State of Punjab & Ors.* [AIR 1979 SC 220] a Bench of three Judges held that expression of the order in the name of the Governor as required by Article 166 of the Constitution and communication thereof to the party affected thereby are conditions precedent for the order to bind the Government. It that case the order though initially was made by the Minister, the order of confirmation was cancelled by the Chief Minister before it was communicated. This Court upheld the order to be legal.

The same view was reiterated in *State of Kerala v. A. Lakshmikutty & Ors.* [AIR 1987 SC 331]. It would thus be clear that before an order or action can bind the Government it must be drawn in the name of the Governor as envisaged in Article 166 [1] and [2] read with the Business Rules and must be communicated to the affected person. Until then, the action of the Government is not final. Before it is duly done, Chief Minister has power to call for any file and would have it re-examined and decision taken.

It would thus be seen that the decision of the Revenue Minister on July 6, 1973 is not final because the Urban Development Department did not accept or agree to the decision taken by the Minister for Revenue. As stated earlier, when the matter was brought by the Ministry of Urban Development and Housing Department to the notice of the Chief Minister, who holds ultimate responsibility and duty to report to the Governor and accountable to the people, the Chief Minister, in light of instruction 10, should place the decision necessarily before the Council or the Cabinet, as the case may be, and then may be decided by the Chief Minister. It is seen that no decision has been taken by the Chief Minister under instruction 10. Therefore, under Section 5-A(2), no decision was taken to proceed further under Section 6 or to drop the acquisition proceedings. The High Court, therefore, was right in rejecting the writ petition as being not proper for interference.

The appeal is accordingly dismissed. No costs.