

Molvi Tameez Ud Din v. Federation

Bench of the federal Court:

- Chief justice. Mohammad Munir
- Justice. Mohammad Sharif
- Justice. S.A.Rehman
- Justice. S.M.Akram
- Justice. R.Cornelius



Molvi Tameez Ud Din Khan

Overview

Judiciary plays very important role in the interpretation of the statutes and in the development of law. In Pakistan the superior courts give judgments which became precedents and are binding on the lower courts. There are many leading cases in the history of Pakistan, one of that is the;

“Molvi Tameez Ud Din v. Federation”

Molvi Tameez Ud Din was the prime minister of Pakistan, when governor general Ghulam Muhammad dissolved his assembly. Molvi Tameez Ud Din filed a petition in the Chief Court of Sindh against the governor general's act.

Facts of the case

(i) Dissolution of the constituent assembly:

The governor general of Pakistan dissolved the constituent assembly on 24th day of Oct 1954. The constituent assembly was dissolved due to some clashes between the prime minister and the governor general.

(ii) Dissolution of Cabinet:

Governor General dissolved the cabinet of Khwaja Nazim Ud Din in 1953 before the dissolution of the constituent assembly of Molvi Tameez Ud Din.

(iii) Reconstitution of the council of minister:

After the dissolution of the constituent assembly, the council of ministers was reconstituted.

(iv) Action taken by Molvi Tameez Ud Din:

Molvi Tameez Ud Din who was the head of the constituent assembly filed a writ petition before the Chief Court of Sind. This petition was against the federation of Ghulam Muhammad.

a. Writ Petition:

Molvi Tameez Ud Din filed the writ petition in the Chief Court Sind under section 223.A of the Government of India act 1935.

b. Number of writs filed:

He filed two writ petitions in order to redress his grievance; Writ of Mandamus, and Writ of Quo Warranto

Writ of Mandamus:

A writ of mandamus was filed by the Molvi Tameez Ud Din, in order to restrain the enforcement of the proclamation of the governor general. It was also prayed that the federation and the members of the

reconstituted council of ministers should be prohibited from meddling into the functions of Molvi Tameez Ud Din.

Writ of Quo Warranto:

A writ of quo warranto was also filed by the Molvi Tameez Ud Din demanding that the ministers should be asked as under which authority they were holding the offices.

Arguments of the Government

The federation and the council of ministers gave arguments in respect of writs filed by Molvi Tameez Ud Din-din.

(i) Dissolution of constituent assembly was right:

It was argued that the constituent assembly was dissolved in a right way.

(ii) No writ jurisdiction of the Chief Court:

It was further argued that the Chief Court of Sindh had no jurisdiction to entertain the writ petition.

(iii) Invalidity of the Section 223-A:

Additionally argued by the federation that the section 223-A which was put into the government of India act 1935, was invalid due to non-assent of the governor general which was very necessary for the validity of any law.

Decision of the Chief Court of Sindh

The Chief Court of Sindh declared the actions of Ghulam Muhammad null and void.

Appeal by the federation before the Federal Court

The federation and council of ministers appealed before the federal court against the decision of the Chief Court of Sindh.

Decision by the Federal Court

(i) Governor General's Assent was necessary:

It was observed that the constituent assembly performs its functions as the legislature, and all the laws passed by it require the assent of governor general, this law should also have got the assent of the governor general.

(ii) Section 223-A of the Government of India Act was not law:

Section 223-A of the Government of India act 1935 was not law due to non-assent of the governor general.

(iii) No jurisdiction of the court:

It was further observed that the section 223-A is not a law therefore the chief court did not have any jurisdiction to give decision on the filed writs by Molvi Tameez Ud Din.

(iv) Constituent assembly is not a sovereign body:

According to the federal court constituent assembly is not sovereign but governor general is a sovereign authority.

Effect of the decision

In the effect of this decision, the decision of the Chief Court of Sindh was suspended, due to the above reasons.

Conclusion

The Chief Court of Sindh had decided in favor of Molvi Tameez Ud Din, and considered the actions of Governor General's actions unlawful, the Federation went in appeal to the Federal Court; fortunately the Federal Court gave decision in favor of the Federation, thus the decision of the Federal Court prevailed and the later decision was considered.