

(1951) 08 CAL CK 0026
In the Calcutta High Court
Case No : Civil Revision Case No. 1802 of 1951

Bhubaneshwar Prasad Singh	Vs	APPELLANT
Garulia Municipality		RESPONDENT

Date of Decision : 22-08-1951

Acts Referred:

Bengal Municipal Act, 1932 — Section 138, 138(1), 148, 553, 554(1)
Constitution of India, 1950 — Article 226(1)
Specific Relief Act, 1877 — Section 46, 50

Citation : (1953) 1 ILR (Cal) 187

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : Atul Chandra Gupta, Nalin Chandra Banerjee and Arun Kumar Dutt 2, for the Appellant; Apurba Dhan Mukherjee and Tarak Nath Roy, for the Respondent

Judgement

Das, J.—This Rule was issued by Bose J. (sic) on the opposite parties to show cause why a writ (sic) calling up (sic) mandamus and/or certiorari should not issue in the nature of solutions dated January 30, 1951, February 14, 1951, and June 13, 1951 and the assessment based on these resolution should not be cancelled and/or quashed or why such other appropriate writ or writs or directions or orders under Article 226(1) of the Constitution should not issue and why such other or further orders should not be made as to this Court may seem fit and proper.

2. The Petitioner is Sri Bhubaneshwar Prosad Singh on behalf of Messrs. B.P. Singh and Bros. The opposite parties to the Rule are the chairman and the commissioners of the Garulia Municipality.

3. In the petition it is alleged that the Petitioner is a proprietor of the said firm B.P. Singh and Bros. It states that the Garulia Municipality was superseded by a notification published u/s 553 of the Bengal Municipal Act. The notification is dated January 20, 1949. It had the effect of superseding the Garulia Municipality

from January 2, 1949 to December 31, 1950. By another notification the Subdivisional Officer, Barrackpore, was empowered to perform the functions of the chairman and the commissioners of the Municipality u/s 554(1)(6) of the Bengal Municipal Act. The petition states that on a representation made by one Nirmal Ghose purporting to act on behalf of himself and certain other persons addressed to the Minister, Local Self-Government, it was directed that a copy of the said representation be forwarded to the Subdivisional officer for report. Thereupon, certain correspondence passed and it appears that, before the matter was finally disposed of, there was a fresh election of the commissioners of the municipality on December 16, 1950, that thereupon, on January 30, 1951, the chairman and commissioners of the municipality passed a resolution appointing certain persons as members of the assessment committee. Later on, on February 14, 1951, another resolution was passed by the chairman and the commissioners of the municipality appointing an assessor for the purpose of valuing certain holdings in ward No. 1 belonging to the Petitioner. The resolution refers to a letter dated October 12, 1950, received from the Local Self-Government and a memorandum of the District Magistrate regarding revision of all holdings of the Petitioner. Thereafter, on June 13, 1951, the annual value of the said holdings of the Petitioner was confirmed at a meeting of the chairman and the commissioners of the municipality by a resolution purporting to have been passed u/s 138(1)(c) of the Bengal Municipal Act. The resolution stated that the assessment was to take effect from the (sic) second quarter of 1951-52. Thereafter the Petitioner moved this Court and obtained the aforesaid Rule.

4. On behalf the opposite parties, an affidavit has been filed, which was affirmed by the sanitary inspector of the Garulia Municipality. In para 4 of the said affidavit, the deponent states, that he calls, the true facts of this case. These facts, which are set out in detail in para. 4 of the said affidavit, may be summarised as follows: It refers to the constitution of the Municipality prior to its supersession, to which I have already referred. It then says that by a resolution of the Provincial Government, dated January 18, 1950, which was published in the Gazette on January 20, 1950, the Municipality was superseded and by another notification referred to in para. 4(iv), the:

Subdivisional Officer, Barrackpore, was empowered to exercise and perform all the powers and duties of the chairman and the commissioners during the period of supersession.

5. The affidavit then states that the Subdivisional officer appointed an administrative officer "to conduct the executive administration of the municipality". The affidavit then states that the last periodical reassessment was made some time in August 1949, that on January 30, 1950, on a representation made by Nirmal Ghosh, certain correspondence passed and, as a result thereof, the administrator sent a report on August 28, 1950, relating to the reassessment of the holdings of the Petitioner, that the district magistrate made an enquiry into this matter and by an order dated November 28, 1950, directed the official

administrator to have the assessment of the holdings of the Petitioner revised, that, on December 6, 1950, the administrator wrote to the district magistrate concerning the appointment of an assessor, that before the administrative officer could take any final steps in the matter, there was a re-election and, as a result thereof, the administration of the municipality passed on to the chairman and the commissioners of the municipality, who had been newly elected on December 16, 1950. The affidavit then states that on January 6, 1951, the chairman of the newly constituted municipality wrote to the district magistrate regarding this matter of assessment and the appointment of an assessor. This was followed by the resolutions to which I have already referred. It is not necessary to state the other facts which are set out in the affidavit.

6. In the petition, on which the Rule was issued, stress was laid upon the fact that the action of the chairman and the municipal commissioners was mala fide and that the resolutions which were challenged in the petition should be set aside on this ground. Mr. Gupta, learned advocate appearing on behalf of the Petitioner, has not pressed this part of the Petitioner's case. He has, however, contended that, in the absence of anything to show that the chairman and the commissioners exercised their own judgment in arriving at the conclusion whether or not there should be a reassessment of the annual value of the holdings of the Petitioner as required by Section 138(1)(c) of the Bengal Municipal Act, the resolutions complained of in the petition should be set aside. It was contended that these resolutions were motivated by a direction received from the Government. The chairman and the commissioners never exercised their own judgment in this matter. The effect of Section 138(1)(c) may be to supersede an existing assessment and the section clearly implies that the chairman and the commissioners should exercise their own judgment before they initiate proceedings for reassessing the annual value of the premises in question. Reference was made to a judgment of Bose J. in the case of Gayadin Ram v. A.D. Khan (1951) 55 C.W.N. 667, 673, where reliance was placed by the learned Judge on the observations of Lopez L.J. in the case of Queen v. Bishop of London [1889] 24 Q.B.D. 213, 243 to the effect that an arbitrary or capricious exercise of discretion would be no exercise of discretion at all.

7. An examination of the different clauses of Section 138(1) show that the discretion should be exercised at a preliminary stage.

8. Mr. Mukherji, appearing for the Respondent, does not contest this position, but he has contended that the discretion u/s 138(1)(c) of the Act was properly exercised by the officer appointed by the Provincial Government u/s 554(1)(b), which vested such officer with all the powers and duties which may, under the provisions of the Bengal Municipal Act or any Rule or bye-law made thereunder, be exercised and performed by the chairman and the commissioners, whether at a meeting or otherwise, during the period of supersession. It was contended that, as the officer appointed by the Provincial Government was Vested with the powers of the chairman and the commissioners at a meeting, this implied that

the discretion which was vested in the chairman and the commissioners u/s 138(1)(e) of the Act could also be exercised by such an officer and his exercise of that discretion was a substitute for an exercise of the discretion by the chairman and the commissioners vested in the latter u/s 138(1)(c).

9. Mr. Gupta, appearing for the Petitioner, disputed this submission and submitted that, unless the assessment is complete, the chairman and the commissioners are required to exercise their own judgment in this matter before the procedure u/s 138 can be further proceeded with. In my opinion, on the facts of this case, it is not necessary to decide upon those contentions, because a perusal of the counter-affidavit affirmed on behalf of the opposite parties clearly shows that the Sub-divisional officer, Barrackpore, who was appointed by the Provincial Government to perform the functions of the chairman and the commissioners, never exercised his own judgment and arrived at a conclusion, as required by Section 138(1)(c) of the Act. It does not also appear that the administrative officer also came to any decision of his own in this matter. The affidavit states that a certain order was passed by the district magistrate but it does not reveal whether the administrative officer formed an opinion of his own. But even assuming that the administrative officer did form an opinion, in my opinion, this will not meet the requirements of the statute because the opinion which was required to be formed u/s 138(1) must be formed either by the chairman and the commissioners of the municipality or when the municipality was superseded, by the officer appointed by the Provincial Government in this behalf. The affidavit states that it was the Subdivisional officer who was appointed by the Provincial Government and the administrative officer was appointed by the Subdivisional officer only for performing the executive functions of the municipality. In this view of the matter, the resolutions complained of, are unauthorised by the statute and are in excess of jurisdiction. The resolutions referred to in the petition, with regard to which the Rule was issued and the assessment based thereupon must, therefore, be vacated.

10. Mr. Mukherji, towards the close of his argument, raised certain preliminary points. He first contended that the petition, on which the Rule was issued, does not specifically state that there was a demand of justice and a refusal thereof. It was also pointed out that the Petitioner has moved the chairman and the commissioners by way of an appeal against the assessment u/s 148 of the Municipal Act. So far as the first branch of the contention is concerned, I fail to see what specific allegations were necessary in order that the Petitioner might claim relief by way of a mandamus as he has done. The petition clearly implies that the Petitioner was denied the relief which he claims in this Rule. In this Rule, the Petitioner seeks to set aside these resolutions on the ground that they are unauthorised actions on the part of the municipality. Moreover, Section 50 of the Specific Relief Act, as adapted by the Adaptation of Laws Order, 1947, states that nothing in Ch. VIII which includes Section 46 would affect the powers of this Court u/s 226(1) of the Constitution. In my opinion, the demand of justice and a refusal thereof, which was referred to in Section 46 of the Specific Relief Act and

has been enunciated in several judicial decisions, should not stand in the way of this Court exercising its powers u/s 226(1) of the Constitution in facts similar to those with which I am concerned. This contention must, therefore, be overruled.

11. It was next contended that this Court has (sic) Article 226(1) of the Constitution to interfere w(sic) which are referred to in the petition. I do n(sic) this contention. The Petitioner's allegation is that these resolutions are in excess of the powers conferred by the Bengal Municipal Act. Section 138(1)(c) of the Bengal Municipal Act vests in the municipality the power to alter an assessment already made by the municipality. It affects the substantive statutory rights of the subject. In order that those rights may be taken away, it is essentially necessary that, the chairman and the commissioners or in case of superseding the officer appointed by the Provincial Government, as the case may be, should exercise their own independent judgment in the matter of altering the existing assessment and substitute therefore a fresh assessment. The remedy u/s 148 of the Bengal Municipal Act is not an adequate substitute for the remedy which is prayed for in this petition. In these circumstances, I am clearly of opinion that on the facts of the present case, where the legality or otherwise of the matter involved is apparent on the face of the papers before me, this Court should exercise its powers under Article 226(1) of the Constitution and give the Petitioner the relief to which he is entitled.

12. I, accordingly, make this Rule absolute and direct that the resolutions of January 30, 1951, February 14, 1951 and June 13, 1951, passed by the chairman and the commissioners of the municipality and the assessments based thereupon, referred to in the petition, should be cancelled. The Petitioner is entitled to the costs of this Rule, hearing fee being assessed at five gold mohurs.