
(1951) 08 CAL CK 0006

In the Calcutta High Court

Case No : Civil Revn. Cases No's. 810 and 1692 of 1951

Bidhu Bhusan Bagchi and Another

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 20-08-1951

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(4), 226, 226(1)

Citation : AIR 1952 Cal 901

Hon'ble Judges : G.N. Das, J

Bench : Single Bench

Advocate : Aswini Kumar Ghose and Amarendra Narayan Bagchi, for the Appellant; Chandra Sekhar Sen, J. Mazumdar and S.K. Roy Choudhury, for the Respondent

Judgement

G.N. Das, J.—This Rule was issued by this Court calling upon the opposite parties to show cause why the order, dated 4-13. 1951, superseding the District Board of Murshidabad, should not be set aside, or why a writ in the nature of Mandamus, Certiorari and/or Prohibition under Article 226(1) of the Constitution of India should not issue restraining the opposite parties from giving effect to the aforesaid order and the orders passed by the Additional District Magistrate of Murshidabad delegating powers to the S. D. O. to administer the said District Board, or why such other or further order or orders should not be made as to this Court may seem fit and proper.

2. The petition on which the Rule was issued purports to have been made by one Bidhu Bhusan Bagchi styling himself as ex-member and second vice-Chairman of the District Board on behalf of himself and other members of the Board. It does not appear, however, that the other members of the District Board joined the petitioner in moving the application. The petition was presented by a learned Advocate of this Court on the strength of a power conferred on the learned Advocate by the said Bidhu Bhusan Bagchi. The petition must, therefore, be regarded as a petition made on behalf of Bidhu Bhusan Bagchi himself. The

opposite parties to this Rule are the State of West Bengal represented by (1) Janab A. Zaman, Deputy Secretary, Local-Self Government Department; (2) the District Magistrate of Murshidabad, and (3) Sri S. P. Banerjee, Senior Deputy Collector of Murshidabad.

3. The other Rule which was heard along with this Rule is numbered as 1692 of 1951. It purports to have been made by Surendra Narayan Sinha, who was described as an Ex-Chairman of the District Board of Murshidabad.

4. The petition in the first Rule was sworn to by a person who states that he is acquainted with the facts of this case. The counter-affidavit in this Rule was sworn to Janab A. Zaman, Deputy Secretary to the Local Self-Government Department. The reply on behalf of the petitioner was sworn to by the petitioner himself and by one Ranendra Nath Pandey who is an ex-member of the District Board.

5. In the connected Rule no. 1692 of 1951, the petitioner himself deposed in support of the petition. There are two affidavits on behalf of the opposite parties, one by Mr. J. C. Talukdar, District Magistrate of Murshidabad, and the order by Janab A. Zaman, Joint Secretary, Local Self-Government Department.

6. I am referring to these facts because assuming that it is competent for me to enquire into the facts which led the Government to pass the order of supersession, reference will have to be made to the affidavits presented on both sides.

7. It will appear from the terms of the Rule which I have set out that the complaint made by the petitioner in these two Rules is directed against an order of supersession of the District Board of Murshidabad which was not notified on 13th April 1951, as also against the order delegating the power to administer the District Board to the S. D. O. of Murshidabad. The annexure appended to the petition is a copy of the resolution No. L. S. G. 3E-13/50 (1), dated 10th April 1951. The said resolution refers to the mismanagement by the District Board in regard to the Radharghat Ferry and the dismissal of the District Engineer, Murshidabad, which was reported by the Commissioner to the Provincial Government, suggesting supersession, or re-constitution of the District Board u/s 131, for incompetence and persistent default in the performance of the duties by the District Board. The resolution then goes on to state that on receipt of this report from the Commissioner, an enquiry was made by the District Magistrate. On receipt of the report made by the District Magistrate, the Government was satisfied that the District Board had not merely abused its powers but had shown incompetence to perform the duties imposed upon it by and under the law.

The resolution then adds that on 12th April 1950, an order was made asking the District Board to show cause why it should not be superseded for the reasons specified in the resolution. The resolution then states the reasons which I shall advert to hereafter. After setting out the reasons, the resolution proceeds to state that after considering the explanation submitted by the District Board, the

Provincial Government was satisfied that the majority of the grounds set forth in the resolution had been proved. The resolution then states that re-constitution of the Board was not possible, because the electoral roll which was prepared in 1947 does not include the names of the female voters who are now entitled to vote and an election on the existing roll would, therefore, be invalid and would also go against the public feeling. The resolution then concludes by stating that the Government has come to the conclusion that the District Board of Murshidabad

"had proved incompetent to perform an 1 has made default in the performance of the duties imposed n it by or under the Bengal Local Self-Government Act, 1885, and that it has exceeded and abused its powers."

The Government then directs u/s 131 of the said Act that the Board will be superseded from the date of the publication of the notification of the resolution. The notification was published in the Gazette on 13th April 1951.

8. The first petition, which was filed by Sri Bidhu Bhusan Bagchi was moved on 18th April 1951. The connected petition which was filed by Sri Surendra Narayan Sinha was moved on 9th July 1951, Rules were issued as stated already.

9. Mr. Ghose, appearing for the petitioners, has sought to show that the reasons given in the resolution for superseding the Board are not tenable and as such the Government exceeded its powers in making an order of supersession under 8. 131, Bengal Local Self-Government Act, 1885.

10. The learned Senior Government Pleader, appearing on behalf of the opposite parties, has contended that the order of supersession is an administrative act on the part of the State and that it is not open to me to interfere with the order under Article 226(1) of the Constitution of India.

11. The question whether an order like the present one is an administrative order or not requires consideration. A further question has also to be considered viz., assuming that this order is an administrative order, whether this Court has power under Article 226(1) of the Constitution of India to set aside the aforesaid order and even if it has the power, whether it will do so in the facts and circumstances of the present case.

12. The question whether an order is an administrative order, or a judicial or quasi-judicial order is one of some nicety. The reports show a sharp conflict in the application of the tests which have been applied by the Courts in determining this question. The learned Senior Government Pleader referred me to a Bench decision of this Court in the case of Patri Shaw v. R.N. Roy 54 C. W. N. 855. Reference was made to the following passage in the judgment of Banerji J. at page 893 :

"In my judgment, when there is a controversy between two persons raised on arguable objection under the Statute which is to be determined by a third party, there is lis and the proceeding before him is a judicial or quasi-judicial

proceeding."

13. The observations made above were considered by Das J. in the case of the Province of Bombay v. Gobindaram Khushaldas S. Adwani (1951) S. C. R. (Cal. W. N.) 1 (S. C). Das J., after pointing out that the decision of a statutory authority partakes of the character of a quasi-judicial act when there is a lis and the authority is under a duty to act judicially, observed as follows at page 85 :

"If a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties, apart from the authority and the contest is between the authority purporting to do the act and the subject opposing it, the final determination of the authority will yet be quasi-judicial act, provided the authority is required by the statute to act judicially."

14. This shows that in order that a statutory authority may be deemed to act judicially, the lis need not be between two parties other than the authority which purports to make the order. The real test is that there must be a lis, that is, a controversy between the subject and another party which may be the party making the order and that, superadded to it, there must be a further condition that the statutory authority must act judicially.

15. Thus the line of demarcation between an act which is a judicial or quasi-judicial act and an administrative act is difficult to draw. In the case of the Province of Bombay, (1951 S.C.R. (C.W.N.) 1), referred to above, Kania C. J., stated as follows:

"The word quasi-judicial itself necessarily implies the existence of the judicial element in the process leading to the decision . . . where the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari It seems to me that the true position is that when the law under which the authority is making the decision itself requires a judicial approach, the decision will be quasi-judicial."

16. It is clear from the above passage that in order that a decision by a statutory authority may be regarded as a quasi-judicial act, the approach to the decision must be a judicial one. In other words, the conclusion which has to be reached by the statutory authority must require the application of a judicial process in arriving at a decision; that is, a process which involves the application of "a body of rules or principles by the technique of a particular psychological standard". In the present case if this test is applied, it seems to me that the determination of the question whether the District Board should be superseded or not cannot be regarded as a quasi-judicial act on the simple ground that the decision need not be reached by a judicial approach to the decision of the question. Section 131, Bengal Local Self- Government Act, 1885, does not require the Provincial Government to start an enquiry at which the District Board would have a right of

audience. After the amendment of Section 131 in 1932, the only requisite is that the Provincial Government will ask for an explanation from the District Board.

The enquiry which has been made in the present case is merely an informative one undertaken for the purpose of enabling the Provincial Government or the officer concerned to arrive at a conclusion. The fact that an explanation may be called from the District Board does not necessarily show that the decision has to be arrived at by the Provincial Government or the officer concerned by the application of a judicial process. In my opinion, therefore, the order of supersession which has been made u/s 131, Bengal Local Self-Government Act, 1885, is purely an administrative act on the part of the Provincial Government.

17. The question, however, remains that assuming that the order of supersession is a purely administrative act, whether it is open to this Court to interfere with the order by the issue of prerogative writs as mentioned in the Rule. I shall begin my discussion by referring to the decision in the case of *Errington v. Minister of Health* (1935) 1 K. B. 249, where Maugham L. J., at pages 270-271 observed as follows :

"Are his acts in that respect merely acts of administration in reference to which the ordinary remedy of the subject, if his (the Minister's) powers are improperly exercised, is an application to Parliament, or is he exercising a quasi-judicial function, a function I may observe of a somewhat vague character?"

18. This indicates that the remedy of a subject against a purely administrative order is by an application to Parliament and not by resort to the prerogative writs.

19. In the case of *Ryots of Garabandho v. The Zemindar of Parlakimedi* 48 C. W. N. 18 (P. C.), it was held by the Privy Council that broadly speaking if the act done by the inferior body is a judicial or "quasi-judicial act, as distinguished from an administrative act, certiorari will lie.

20. In the case of the Province of Bombay (1951 S. C. B. (Cal. w. N.) 1), to which I have already referred, Kania C. J., quoted with approval the observations of Atkins L. J., in the case of *The King v. The Electricity Commissioners* (1924) 1 K. B. 171, to the effect that :

"whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The position, therefore, is that before a prerogative writ can be availed of, four conditions must concur. There must be (1) a body of persons, (2) the body of persons must have legal authority to determine the questions, (3) the question must affect the rights of subject, and (4) there must be a duty to act judicially and not in excess of the authority conferred on that body.

21. In the present case, it has not been suggested that the Provincial

Government in making the order of supersession did not conform to the requirements of the statute. What was contended for was that the reasons given for the conclusion which was reached by the Provincial Government are not correct in point of fact. I shall deal with this last contention later on. What I am pointing out is that no suggestion has been made that the terms of Section 131, or the procedure envisaged therein have not been complied with by the Provincial Government.

22. Mr. Ghose, appearing for the petitioners, referred me to the decision of the Bombay High Court in the case of *Emperor v. Jeshingbhai Iswarlal* 52 Bom. L. B. 544 (F. B.). I presume that Mr. Ghose wanted to rely on the following passage :

"Ordinarily, the Court will not exercise its power under Article 226, in a matter which it cannot deal with judicially, nor would it take notice of anything which it cannot take notice of judicially nor would it interfere with the action of an executive officer unless it is satisfied that the executive officer is under an obligation to do something, or to forbear to do something."

23. The latter portion of the passage quoted must obviously be read with what precedes. It must be taken that the Bombay High Court intended to lay down that the mere fact that the executive officer is under an obligation to do something or to forbear to do something does not vest the High Court with power to interfere. There must be a further qualification, namely, that the executive officer must deal with the matter judicially. So far as I have been able to gather, the cases are all one way that in order that the prerogative writ of certiorari may be availed of the act complained of must be a judicial or a quasi-judicial act. A purely administrative-order cannot be interfered with by the issue of a writ of certiorari.

24. The expression "in appropriate cases any Government" only confers on the High Court powers of interference with orders of the Government only in appropriate cases i.e. cases which require the exercise of quasi-judicial powers as the Government. This was necessary because modern legislation have vested Government with large powers of regulating the rights of citizens.

25. It was contended by Mr. Ghose that the terms of Article 226(1) of the Constitution of India are very wide and that this Court may interfere in cases which are outside the purview of the writs specifically mentioned in Article 226. Mr. Ghose suggested that the powers of this Court can be exercised in all cases. I have dealt with this matter in my judgment in *D. Pasraju v. General Manager B. N. Rly.*, Civil Rule No. 1085 of 1951. In my opinion, the expression "for any other purpose" has to be read in the light of the context in which it appears. In the present case the rule was issued for the limited purpose of the issue of writs of mandamus, certiorari or prohibition. In my opinion, the order in question does not call for my interference by the issue of the prerogative writs with a view to quash the order of supersession. If the order of supersession cannot be quashed, this Court cannot restrain the opposite parties from giving effect to the order of

supersession.

26. Now I shall deal with certain constitutional points which were raised by Mr. Ghose. Mr. Ghose contended that the act was void of the Constitution inasmuch as it affected the rights of the members of the "Board to form associations under Article 19(1)(c) of the Constitution. In the first place, Article 19(1)(e) which speaks of the right of a citizen to form associations or unions refers to the ordinary right which is enjoyed by all citizens. It has no reference to a right which is conferred by a particular statute to act as members of a body which is the creation of the statute itself. But even assuming that the members of a District Board have the fundamental right to form an association and to become members of the Board, unhampered by the terms of the Bengal Local Self-Government Act, which created that body, the right referred to in Article 19(1)(c) of the Constitution is subject to the provisions contained in Article 19(4) of the Constitution, which states that nothing in sub-cl. (c) shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause. The order of supersession of the Board on the terms set forth in Section 131, Bengal Local Self-Government Act, 1885, cannot be regarded as an unreasonable restriction on the right conferred by Article 19(1)(c) of the Constitution. The supersession has obviously been made in the interest of public order in order that the affairs of the District might not be managed by an incompetent Board.

27. It was also contended that the order of supersession would have the effect of interfering with the rights of the members of the defunct Board from exercising their electoral right. Reference was made to section 27 of Act 43 of 1950. The order of supersession was passed on 10-4-1951, and by the terms of Section 132, Bengal Local Self-Government Act, 1885, the members of the Board vacated their office on the date of publication of the notification which was made on 13-4-1951. Therefore, the members of the Board vacated their seats on 13-4-1951. It appears, however, that the electoral roll of the special constituency referred to in Act 43 of 1950 relates to 1-4-1951 or an earlier date. The members of the Board were, therefore, enrolled as members of the constituency before the order of supersession was made. But assuming that their franchise would be lost by the order of supersession and the right to vote in the electoral college envisaged in the said Act would be taken away by the order of supersession, it cannot be said that thereby the Members of the Board are deprived of any of the fundamental rights referred to either in Article 19(1)(c) or Article 19(1)(g) of the Constitution to which reference was made. In my opinion, there is no substance in this contention.

28. I shall deal with the last part of the Rule later on after I have dealt with the questions of fact which were argued before me. In the view I have already taken, the decision on these questions of fact is not strictly relevant. But as the matter has been argued at length, I propose to consider the question how far on the

affidavits before me it could be said that the action of the Provincial Government or the officer concerned was arbitrary or unreasonable.

29. In the petition on which the Rules were issued, of the reasons mentioned in the resolution to which I have adverted already, reference was made principally to three items, namely, the matter pertaining to the settlement of the Radharghat Perry, the dismissal of the District Engineer, and the imperfect nature of the enquiry by Sri Asoke Mitter, District Magistrate. I shall deal with them along with other matters which were referred to in the resolution.

30. In the resolution, the first matter adverted to is the dismissal of the District Engineer. The facts as they appear from the affidavit of Janab A. Zaman are that certain charges of a serious character were made against the District Engineer with the result that the District Board suspended him on 13-8-1948. Later on the District Engineer was reinstated on 11-4-1949. He was dismissed again on 21-11-1949. The counter-affidavit states that the charges which were made against the District Engineer on the second occasion were much less serious than the charges on the first occasion. The District Board thought it fit to reinstate the District Engineer after condoning his conduct as regards the serious charges levelled against him. On the second occasion, it is pointed out, though the charges were not serious, the District Engineer was dismissed from service as the result of the clique of a group of members who were not well disposed towards the District Engineer. In the explanation it is not disputed that the charges which were levelled against the District Engineer on the first occasion were more serious than those which were led against him on the second occasion. It is pointed out, however, that the order of dismissal was passed by a resolution of a majority of the members. It is not possible to say that this is not a relevant consideration which taken along with other considerations justified the Provincial Government to pass the order of supersession.

31. The second matter referred to concerns the sale of a jeep and trailer belonging to the District Board. The jeep was sold for Rs. 515 and the trailer was sold for its. 2,005. It is the allegation of the Provincial Government that the prices paid for the jeep or the trailer were not credited immediately after the sums were paid. In the explanation it is suggested, so far as the jeep is concerned, that the payment was made in driblets. So far as the trailer is concerned, it is stated that the sum was not received before 3-12-1949, though the sale took place on 27-10-1949. Both these facts show that there was some mismanagement in the realisation of the price of the jeep and the trailer which were both sold in auction.

32. The third reason given is that the jeep was not insured by the District Board. It was alleged that the insurance money of RS. 70/- was paid by the District Engineer to the Bagla Motors. The latter however denied receipt of the premium. Although the attention of the District Board was drawn to this fact the District Board did not start any enquiry. There is no explanation offered as to why this was not done.

33. The next matter is the irregularity in the preparation of the Budgets for the years 1947-48, 1948-49 and 1949-50. It is a serious irregularity. Under the rules the Budget has to be prepared by the 15th December of the previous year. In the present case the Budget for 1947-48 was not adopted till 23-1-1948. The Budget for 1948-49 was not adopted till 8-6-1948. The Budget for 1949-50 was not adopted till 9-9-1949. I have read the explanations given by the District Board in para. 4 of their statement explaining their conduct to the Provincial Government. As regards the Budget for 1947-48, the explanation concludes by saying ; "Henceforth every attempt will be made to consider the Budget in time." The explanation for non-presentation of the Budget for the three years in my opinion, is not quite satisfactory and the Provincial Government was, in my opinion, justified in considering this as an irregularity in the conduct of the affairs by the District Board.

34. The next reason given is mismanagement as regards the construction of the Sijgram Dispensary and the indulgent treatment accorded to the acting overseer, Sadar. No attempt has been made in the petition to refute (sic) these matters.

35. Another reason given is that the lease of Digha and Kalu Khali Fishery which was granted by the previous Board was cancelled. It is stated in the explanation that the previous sanction by the Board was subject to confirmation and the Board exercised its power lawfully in cancelling the previous settlement. It is also pointed out that as a result of this cancellation, the bid went up higher. This may be so, but it is a matter for consideration whether the cancellation of a contract made by a previous Board by a succeeding Board would inspire confidence in the minds of people who take settlement from the Board. As regards the lease of other fisheries it is pointed out on behalf of the State that notice of auction was not given in spite of the fact that the Chairman's attention was drawn to this fact. I do not find that this matter has been satisfactorily explained by the District Board.

36. The next matter relates to the lease of fishery right in the side lands of Radharghat Kandi Road. In the affidavit filed on behalf of the State, it is pointed out that though these were transferred to the Works and Buildings Department, the District Board assumed powers of letting out these lands. It is pointed out in the explanation that the lease was granted before the formal transfer. The explanation does not clear up the position whether at the time when the settlement was made, the proposal for transfer was mature or not, although the actual transfer might not have been taken place.

37. The next item concerns the sinking of Tubewells in the premises of the members of the Board and the employees of the Board. I have read the explanation given. I do not think that the grounds suggested in the explanation, para. 8, are sufficient to absolve the Board from all blame attached to the Board in this matter.

38. The next reason refers to the payment to the sons and relations of certain

members of the Board in the absence of allotments and estimates sanctioned by the Board. The only explanation, given is that the charge is generally denied as incorrect. This is not very satisfactory. The Board must have had papers in their possession and must have ascertained what was meant by the Provincial Government when they referred to this matter.

39. As regards the Eadharghat Ferry, in the affidavit filed on behalf of the State, it appears that the Board, in spite of orders passed by the Commissioner, did not transfer the Ferry to the State Department concerned. The affidavits filed on behalf of the petitioners, even if they are correct, show great laches in the matter of compliance with the orders passed by the Government.

40. In my opinion, the reasons given in the resolution, when read in the light of the affidavits filed by the parties and the explanation submitted by the Board to the Provincial Government, have been amply made out in this case so as to justify the Provincial Government in assuming powers u/s 131, Bengal Local Self-Government Act, 1885.

41. The only matter which remains to be considered is the nature of the enquiry started by the District Magistrate. It is pointed out on behalf of the petitioners that the District Magistrate did not complete the enquiry as he was transferred from the place and appointed as a census commissioner. In the affidavit filed on behalf of the State it is stated that the enquiry was not complete. The report itself indicates that the final aspect of the matter could not be gone into. It does not follow however that the enquiry made by Mr. Asoke Mitter, District Magistrate, was imperfect so far as it went. It may have been incomplete at the most, but the enquiry, in so far as it was made by the officer concerned, was a complete enquiry, on those matters which were referred to in the report. There is no substance in the complaint made on this point.

42. The second part of the rule was not argued by Mr. Ghose.

43. In the result, even if the objective standard has to be applied and this Court is competent to enquire into the question as to whether the reasons given in the resolution were sufficient to justify the Provincial Government in making the order complained of in my opinion the petitioner has failed to establish that the action of the Government was unauthorised.

44. In the result, these Rules are discharged with costs, hearing-fee being assessed at five gold-mohurs in each case.