

(1960) 08 CAL CK 0032
In the Calcutta High Court
Case No : Civil Revn. No. 1524 of 1960

Bidyadhari Spill Matsyajibi Samabaya Samity	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision : 03-08-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1961 Cal 214 : (1961) 1 CALLT 146 : 65 CWN 685

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Alak Gupta and Manas Nath Roy, for the Appellant; J. Majumdar, for Opposition Parties (Nos. 1 to 3), Rabindra Nath Bhattacharji and Mukunda Deb Bhattacharjee for Opposite Party (No. 4), for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows : The petitioner is a co-operative society registered under the provisions of the Bengal Cooperative Societies Act. It was originally registered as far ago as 1929 and from time to time it took settlement of the fisheries in the Bidyadhari Spill Area. It is stated in the petition that the Society has developed these fisheries into planned and ideal fisheries. The last settlement taken by the petitioner society was to expire on the 31st March, 1960. The total area under settlement to the petitioner covered about 4000 bighas of land in the Bidyadhari Spill Area. It consisted of several settlements, including the four fisheries of the area of 246 bighas mentioned in Paragraph 3 of the petition. In the petition however, all mention of the remaining area has been left out. This application purports to be in respect of the settlement concerning these four fisheries, of an area of approximately 246 bighas. In all, the licenses issued to the petitioner, which expired on the 31st March, 1960 there was a clause to the effect that upon the expiration of the license, the licensee, meaning the petitioner, shall give up peaceful possession of the fishery to the Executive Engineer, Canals Division, or to a person authorised

by him. If on the expiration of the term, the licensee was found to be in occupation, he shall be treated as a trespasser and liable to criminal proceedings being taken against him. It also laid down the amount of compensation that was to be paid for such unauthorised occupation. In contemplation of the expiration of the licenses, the petitioner society applied, on or about the 14th December, 1959 for a fresh lease. In the petition it is stated that the petitioner did not hear anything from Government with regard to the said application until the period of the existing license was over, but that on or about the 4th April, 1960 the petitioner society suddenly got a notice from the Sub-Divisional Officer, Irrigation, Tolly's Nulla, to the effect that it must give up possession of the fisheries referred to in paragraph 3 of the petition, immediately. Thereupon, the petitioner society pointed out that its application for a new license had not been dealt with, and thereafter it was allowed time till the 30th April, 1960 to vacate the area in question. It is about this time that the petitioner society learnt that the fisheries were going to be leased out to another society, namely, the Eastern Fishermen's Co-operative Society Ltd. for the year 1960-61.

2. The complaint made in this application is that the rules require that the Registrar of Cooperative Societies should be consulted as to a desirable society that should take up the lease, and although in this case the Registrar was consulted and he recommended the petitioner and did not recommend the last-mentioned society, yet the petitioner was passed over in favour of the said society, to whom ultimately the license has been issued. This version of the facts however, is not strictly accurate. As I have stated above, the petitioner society had been holding 4000 bighas of fisheries in the Bidyadhari Spill Area. The Government consulted the Assistant Registrars of the Co-operative Societies concerned, about the respective applicants, and thereafter taking all matters into consideration, Government granted a settlement of about 3750 bighas to the petitioner society and only 245 bighas to the respondent No. 4. By letter dated the 26th March 1960 the petitioner society was informed by Government that about 3720 Bighas of fisheries in the said area would be granted to the petitioner and. on the 4th April, 1960 the petitioner society was directed to hand over possession of about 259 bighas out of which 245 bighas were settled with respondent No. 4. To this notice, the petitioner society by its letter dated the 6th April, 1960 asked for three months' time for transferring their stocks from the said area. A copy of that letter is annexure "U" to the affidavit in opposition affirmed by Sukhada Kanta Ray on the 23rd May, 1960. In that letter, no objections such as have been made in this petition were ever taken. It was simply stated that the society had a huge stock of fish in the area concerned and at least three months' time should be granted for making over possession. After enquiry into the matter, time was granted till the 30th April, 1960 on payment of a certain amount, as it was considered by the authorities that this was quite a sufficient period for removing the stocks. The petitioner society complied with the directions without any protest at the time, and on the 6th April, 1960 the petitioner society accepted the terms and conditions of the settlement of 3720

bighas mentioned above. Not being content with the settlement of this large area, an application has now been made to the effect that Government should have granted a settlement of the entire area to the petitioner society.

3. The first ground which has been made in the petition is that the respondent No. 4 is not a society fit or worthy of being granted a settlement. It is pointed out that the said society is very small and had limited resources and therefore was not in a position to conduct the fishery with the same efficiency as the petitioner. That however is a matter in which the Court can scarcely interfere. The fishery belongs to Government and it is for the Government to consider how best it should be administered. Secondly, the point taken is that rules 272 and 273 of the West Bengal Government Societies Manual 1953 apply and that Government has made this settlement in favour of the respondent No. 4 Contrary to the "provisions of these rules. As to whether the West Bengal Government Societies Manual contains rules which are statutory rules or merely departmental orders is a vexed question. In the case of Gopal Dutt Pandey v. State of West Bengal, C. R. No. 1706 of 1958, D/- 20-8-58, which was cited before me, I proceeded on the footing that these were merely departmental orders and not statutory rules. It may be that Rule 20 of the West Bengal Societies Acquisition Act has made a difference. But this aspect of it was not argued before me. In the affidavit in opposition herein, it has been stated that the West Bengal Societies Manual does not come into the picture at all because the fisheries in question are not administered by the Board of Revenue but by the State of West Bengal through the Irrigation and Waterways Department. It does appear from the record that it is the Irrigation and Waterways Department which deals with these fisheries and grants permit. It does not appear that the Board of Revenue is in any way concerned. The learned Advocate for the petitioner also proceeded upon the footing that the proper authority to administer the fisheries was the Irrigation and Waterways Department of the State of West Bengal.

4. It has been pointed out in the affidavit in opposition that the procedure of settling these fisheries is not according to the Government Societies Manual framed by the Board of Revenue but by executive orders issued by the Government of West Bengal in its Department of Irrigation and Waterways and the relevant executive order is annexure "S" to the said affidavit. By the said executive orders, it has been laid down that before setting a fishery the Executive Engineer concerned shall fix the fair rent and seek the assistance of the Assistant Registrar of the Co-operative Societies concerned, to find out a suitable Co-operative Society of fishermen who may agree to take a settlement of the fishery on the fair rent so assessed. In case, more than one such society offer to pay the fair rent, settlement shall be made with one or more of them in consultation with the Assistant Registrars of the Co-operative Societies. It is argued that these executive orders amount to statutory rules and Government is bound to follow them, and since these rules have not been followed, the settlement made in violation of the rules should be set aside. Reference has been made to a Supreme Court decision in Commissioner of Police, Bombay Vs.

Gordhandas Bhanji, . Under Rule 250 of the rules framed under the City of Bombay Police Act, 1902, the Commissioner was given the power in his absolute discretion to cancel or suspend any license granted under the said rule. What actually happened was that the Commissioner of Police, instead of exercising his own discretion, made an order simply because Government directed him to do so. It was held that this was not permissible. The question arose as to whether the Commissioner of Police could be compelled to exercise his discretion by proceeding u/s 45 of the Specific Relief Act, because it was argued that u/s 45, only such duties could be enforced as must be performed "under any law for the time being in-force". Bose, J., held that the word "law" here did not necessarily mean statute law. From this it is argued that these executive orders are also to be considered as law, although they are not statutory rules.

5. In my opinion, the facts of the present case have no analogy to Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . The present case is nearer to the facts in the case of Abdulla Rowther v. State Transport Appellate Tribunal Madras AIR 1959 SC 896. Section 43A of the Motor Vehicles-Act enables the State Government to issue administrative or executive orders or directions. The application was made for the issue of a writ of certiorari in respect of such executive orders, and upon a complaint of non-obedience thereof. It was held that these executive instructions were not in the nature of statutory rules, having the force of law. The breach of such orders might follow in disciplinary action being taken, but even if any of the directions contained in such an order is found to have been ignored or misapplied, the applicant for a permit could not claim any relief by way of a writ of certiorari. They have no force of law. Their mis-construction could not be said to be an error of law and their disobedience would not justify the issue of a writ of certiorari. Other decisions of the Supreme Court may also be mentioned as establishing this principle. In Raman and Raman Ltd. Vs. The State of Madras and Others, it was held that orders or directions issued u/s 43A of the Motor Vehicles Act, could not be said to constitute law but only administrative directions. In Dwarka Nath Tewari v. State of Bihar AIR 1959 SC 249, the question arose as to whether the recognition or non-recognition of the Managing Committee of a school under Article 182 of the Bihar Education Code, could be the subject matter of a petition under Article 32 of the Constitution. It was held that such matters constituted administrative orders or rules and were not based on any statutory authority or other authority which could give them the force of law. In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, it was held that executive orders issued under the Excise Act were only for the guidance of officers concerned and have no statutory force.

6. It therefore appears to me that the consensus of opinion is to the effect that executive orders made by Government in respect of the administration of its own properties cannot be considered as statutory rules and are not justiciable under Article 226 of the Constitution. Government can own property and deal with it in any manner that is permissible under the law. If there is any statute which

imposes a restriction or if there are any statutory rules which compel a certain procedure to be followed, that is another matter, and Government would have to follow them. Otherwise however there seems to be no reason why Government cannot treat and administer its own property in the way it considers beneficial. I have expressed the same opinion in *Dhirendra Kumar Vs. State of West Bengal and Another*, and in *Alfred Morris Deane Vs. Commissioner of Police, Calcutta and Others*, . In my opinion therefore, the executive order set out in annexure "S" to the affidavit in opposition cannot be considered as a statutory rule and any violation thereof does not give rise to a legal right which can be agitated in an application under Article 226 of the Constitution.

7. Mr. Majumdar has also drawn my attention to the fact that in this case justice has been done. It is not as if the petitioner has been deprived of all the fisheries under its charge but while a huge area has been resettled with the petitioner, a chance has been given to a small society and that this was in furtherance of the accepted principle that all monopolies should be avoided by a welfare State. It seems that on the whole the executive directions have not been ignored. The Assistant Registrars of Co-operative Societies have been consulted. After all the settlement has not to be done with their consent. They only act in a consultative capacity. The learned Advocate on behalf of the petitioner tried to take me through a document which was discovered to be in the file where the Registrar of Cooperative Societies has written to certain Assistant Registrars to the effect that in exercising their consultative functions, the Assistant Registrar in whose jurisdiction the fishery is situated, should not be ignored. I do not see how it is relevant to consider such a circular,

8. Upon a consideration of all these matters, it appears to me that this application is misconceived and there is no reason for this Court to interfere. Accordingly, this application must be dismissed.

9. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.

10. The prayer for an interim stay of the operation of this order to enable the petitioner to prefer an appeal is refused.