
(1967) 01 CAL CK 0017
In the Calcutta High Court

Chandra Sekhar Prosad

APPELLANT

Vs

Kamal Prosad Biswas

RESPONDENT

Date of Decision : 20-01-1967

Acts Referred:

Bengal Excise Act, 1909 — Section 5, 8, 8(1), 8(3)
Constitution of India, 1950 — Article 133(1)(c), 166(3)

Citation : 71 CWN 438

Hon'ble Judges : P.B. Mukharji, J;D. Basu, J

Bench : Division Bench

Advocate : S. Roy and Sudhindra Kumar Kar for the petitioner in SCA 69 of 1966, Sailadhar Choudhury for O.P. No. 1, S.C. Bose for the State, B. Das, S.C. Bose and Harashit Chakravarti for the petitioner in S.C.A.T. 2970 of 1966, for the Appellant; Sailadhar Choudhury for the opposite party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—These are applications under Article 133(1)(c) of the Constitution for the High Court certificate that the case is a fit one for appeal to the Supreme Court. One application is by the Petitioner Chandra Sekhar Prosad. The other application is by the State of West Bengal, the Excise Minister of West Bengal, the Excise Commissioner, of West Bengal, the Deputy Commissioner, Jalpaiguri and the Excise Superintendent, Jalpaiguri. As both the applications, they are taken together for disposal in one judgment.

2. The case is concerned with the Bengal Excise Act and our judgment is reported as (1) Kamal Prosad Biswas v. Chandra Sekhar Prosad and others, 70 CWN 807. The short crucial point involved, as indicated in our judgment there, is if a Minister who has certified a candidate, can himself sit in judgment and adjudge in revision that candidate's fitness and to grant him an excise licence after setting aside the concurrent orders of the Collector and the Commissioner of Excise. The Court held he could not. There is therefore on this essential point no ground to certify that this is a fit case for appeal to the Supreme Court under

Article 133(1)(c) of the Constitution. Indeed it is surprising that a Government or its Minister should think otherwise.

3. The Court came to the conclusion that Minister's order in revision u/s 8(3) of the Bengal Excise Act was in utter breach and disregard of the basic principles of natural justice and fair hearing on such specific grounds as (1) that the order of the Minister u/s 8(3) of the Act was tainted with bias and he should never have decided the said revision case and he was biased on the plain fact that he himself was adjudging a person in whose favour he had granted a certificate; (2) that no copy of the revision petition was allowed to be given to the Petitioner in that case and yet a notice was given to come and resist the said revision petition and the Court held that it was a clear violation of the principles of natural justice and fair hearing; and (3) that the most necessary and vitally interested parties were not even notified of this revision case and were not before the Minister when he was revising the order. The Court also expressed the view that in such a revision the concurrent findings of fact should not as a rule be interfered with unless the findings were based on no evidence and unsupported by facts. The Court further expressed the view that on the language used in Section 8(3) of the Bengal Excise Act the State Government in performing the revisional work for the appellate authority must be regarded as acting at least quasi-judicially. Each one of these points is concluded by a series of authorities of the Supreme Court settling the principles. There is therefore no ground left on which this Court can now certify it as First Information Report for appeal to the Supreme Court under Article 133(1) (c) of the Constitution.

4. The judgment was delivered by the Division Bench in this case on or about the 12th May, 1966. When the judgment was delivered no application orally or in writing was made for this High Court's certificate under Article 133 (1)(c) of the Constitution. Chandra Sekhar Prosad presented this petition on the 14th July, 1966 and the Government filed this petition on the 26th August, 1966. In a case where bias and prejudice were the main grounds and where violation of the principles of natural justice was the finding, and where the Government used no affidavit to dispute any fact, this Court finds the similarity in the pattern of presentation of facts in the two petitions and the paragraphs and in most places in language between the two petitions somewhat disturbing.

5. The next point to bear in mind in this connection on the question of the bona fides of these petitions is the significant fact recorded in our judgment at page 819 of the report quoted above which reads as follows:

When the application was opened and at a fairly early stage of the hearing Mr. Bose who was appearing as learned Advocate for the opposite parties (1) State of West Bengal, (2) Excise Minister, (3) Excise Commissioner, (4) Deputy Commissioner and (5) Excise Superintendent, realised the difficulty of maintaining the Minister's order in revision. So also did Mr. S.K. Mukharji learned Counsel appearing for opposite party Chandra Sekhar Prosad. Both Mr. Bose and Mr. Mukharji for the opposite parties, therefore stated to this Court that they

would not oppose the Rule and would submit the Rule being made absolute. This fact must be recorded that the learned lawyers of all the parties conceded to the Rule being made absolute on the facts of this case. The facts, therefore, cannot be reopened. Indeed on behalf of the Government no affidavit in opposition was filed either by the Minister or by the State contesting or challenging any question of facts stated in the petition.

How, therefore, a petition such as this could lie after such a concession is difficult to understand. The difficulty was realised both by the Government as well as by the Petitioner Chandra Sekhar Prosad and therefore an attempt was made to whittle down the concession by saying in the petition that what the Government had conceded was to have the matter reheard. There was no question of rehearing and such was not the concession as recorded in the judgment. This Court cannot help feeling that this embellishment was attempted to be introduced to get out of the concession now and to make this petition.

6. No doubt the case raised important questions of construction of the Bengal Excise Act as well as the constitutional law and that was clearly said in the judgment itself, but the point is that is it today after so many decisions of the Supreme Court settling the point of law any more a matter which can be certified as a fit case for appeal to the Supreme Court. We are satisfied that having regard to the series of decisions, not one but a number of the Supreme Court, clearly expounding and laying down the law, there is no substance in these applications. These cases are elaborately discussed in the judgment and it is no longer necessary to repeat them here.

7. The only point now urged was the nature of revisional jurisdiction u/s 8(3) of the Bengal Excise Act as being a ground for certifying this case to be a fit one for appeal to the Supreme Court. We are satisfied that isn't a ground in this case at all and specially after the authorities that we have considered, for instance (2) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , where the provisions of the Assam statute are in pari materia with the Bengal statute. The other decisions of the Supreme Court, namely, (3) Laxman Purshottam Pimputkar Vs. State of Bombay and Others, , (4) Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others, , (5) Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, and (6) Sadhu Singh Vs. Delhi Administration, , have, in our view, settled this question of the nature of revisional jurisdiction. In particular the latest decision of the Supreme Court on the point in (7) State of Punjab and Another Vs. Hari Krishan Sharma, , in our view, completely concludes this question and settles the principle when at page 1085 Gajendragadkar, C.J., delivering the judgment of the Court observed:

Government has to function either as an appellate authority, or as a revisional authority, for that is the result of Section 5(2) and (3). Government cannot assume for itself the power of the licensing authority which have been specifically provided for by Section 5(1) and (2) of the Act. To hold that the control of the

Government contemplated by Section 5(2) would justify their taking away the entire jurisdiction and authority from the licensing authority, is to permit the Government by means of its executive power to change the statutory provision in a substantial manner, and that position clearly is not sustainable.

8. We are therefore satisfied on the facts and the law that this is not a fit case for granting a certificate for appeal to the Supreme Court. Both the petitions, therefore, are dismissed. The Petitioner Chandra Sekhar Prosad must pay the costs to the Respondent Kamal Prosad Biswas in his petition, whose hearing fee is assessed at ten gold mohurs.

9. So far as the petition of the Government is concerned the Respondent Kamal Prosad Biswas and the learned Counsel for him have contended before us that the Excise Minister in this case must personally pay the costs and not use the public exchequer for this kind of petition for certificate. Mr. Shailadhar Chowdhury for the Respondent Kamal Prosad Biswas contends that there are five Petitioners on behalf of the Government asking for a certificate from this Court. Of these five his contention is that Nos. 1, 3, 4 and 5 are incompetent to maintain this application. So far as Petitioners Nos. 3, 4 and 5, are concerned, namely, the Excise Commissioner, the Deputy Commissioner, Jalpaiguri and the Excise Superintendent, Jalpaiguri, there is a good deal of force in this argument. These Petitioners, namely, the Excise Commissioner, the Deputy Commissioner and the Excise Superintendent are not aggrieved persons at all. In fact it is the order of the Deputy Commissioner and the Commissioner of Excise which has been restored. It is, therefore, difficult to see how they can at all be Petitioners for a certificate for appeal to the Supreme Court against a judgment which affirms their order. So far as the first Petitioner, the State of West Bengal is concerned it is contended for the Respondent Kamal Prosad Biswas that the State of West Bengal is represented there by a Deputy Secretary. Normally where the Minister himself is a party along with the State one should have thought that both law and commonsense would suggest that the Minister should represent the State and not the Deputy Secretary or even if a subordinate of the Minister is to act in the case where the Minister himself is a party then at least his Secretary should be there to represent the Government. Be that as it may, the more serious position is that this Deputy Secretary, Tarun Chandra Dutt who has affirmed this petition in respect of the crucial paragraph 18 of the affidavit where the concession was intended to be hedged round by other riders which were not a fact before the Court, states that his knowledge is "based on information received from Sri J. N. Pal, Special Officer, Excise Department and others". It, therefore, obviously follows that this Deputy Secretary who was chosen to affirm the affidavit of the State of West Bengal does not even know the facts himself and he is relying only on information supplied to him by some other Special Officer of his department and nameless others who have not chosen to affirm the affidavit testifying to the truth of the averment in paragraph 18 of the affidavit of the State affirmed by Sri Tarun Chandra Dutt, Deputy Secretary on the 26th August, 1966. This is all the more regrettable when in the affidavit in opposition

the capacity of Tarun Chandra Dutt to affirm the petition had been challenged. These litigations and judicial proceedings should not be initiated and conducted in this manner by persons who are not aware of the facts and cannot verify or affirm the facts and thus use the public exchequer and public funds for the purposes of such litigation and judicial proceedings in Court. This is waste of public funds. On this ground Mr. Chowdhury for the Respondent Kamal Prosad has urged before us that the Excise Minister should personally pay his costs for these proceedings. We have considered the matter and we have come to this conclusion that while the arguments of Mr. Chowdhury for Kamal Prosad have considerable force in the context of facts in the records of this case we do not make an order for costs against the Minister himself personally. This Court expects that Government will do well to consider this position in respect of initiation of such proceedings by proper and responsible persons before public money is spent and that the Government should not act as an ordinary litigant and should only act in public interest.

10. The order, therefore, is that the Petitioners Nos. 1 and 2, namely, the State of West Bengal and the Excise Minister will pay the costs of this application (S.C.A.T. 2970 of 1966) to Respondent Kamal Prosad Biswas, hearing fee being assessed at ten gold mohurs to be paid within ten week from date.

Basu, J.

11. The question before us is whether there is a fit case for appeal to the Supreme Court in the two applications presented under Article 133(1) (c) of the Constitution. Though there is no catalogue of circumstances [cf. (8) AIR 1944 23 (Federal Court)] under which a case may be certified as fit for appeal to the Supreme Court and the matter lies at the discretion of the High Court from which the appeal is sought to be preferred, it is by this time well established that a case may be certified under this clause only if it raises a question which is of great public or private importance. This is the principle which was laid down by the Privy Council on the comparable provisions of the CPC Code, prior to the Constitution, in the case of (9) Benarasi v. Kashi Krishna, (1901) 23 All 227 (P.C.), and this principle has been followed ever since.

12. It has further been laid down that under Article 133(1) (c), the test to be applied is not the correctness or propriety of the order against which the leave is sought but the importance of the question raised (10) Chunilal v. Century Spinning Company, A. 1963 SC 1314 (1318). We have, therefore, to determine whether there is any question of such importance in this case.

13. So far as the private applicant, Chandra Sekhar Prosad, is concerned, he is the person who was refused licence by the Collector and the Commissioner of Excise but was directed to be granted a licence by the Minister of Excise, acting in revision. It should be noted that the licence in question could enure for a period of one year only under the provision of Rule 58 of the Rules framed under the Bengal Excise Act, 1909 and that year, in the instant case, in all probability,

was the financial year 1964-65, though the Excise authorities did not make that clear, as they ought to have. That period has long expired and there is no bar to the Petitioner for applying again for the next year for which the shop in question may be advertised for settlement in the like manner, or for the Excise authorities from reconsidering his case on the merits, having regard to considerations relevant to the statutory power. The test of private importance again has been said to be an importance not to one of the parties but to both the parties vide (11) *Batala Engineering Company v. Custodian, Evacuee Property*, AIR 1951 P&H 412; (12) AIR 1943 266 (Oudh) ; (13) *Buckingham and Carnatic Co. Ltd., Madras Vs. Buckingham and Carnatic Mills Staff Union and Another*, , in the litigation, e.g. a question relating to caste or family rights; nature of a tenancy, or whether a property is secular or religious. In a case like this, involving one year's licence, it is obvious that any importance can be alleged only by the applicant who is disgruntled by our judgment and not the other party.

14. Needless to say, the private Petitioner cannot possibly raise any question of public importance in this case. In that context, we have got to consider the question from the stand-point of the State of West Bengal and the Excise Minister in their application for the certificate. Mr. Das, appearing on behalf of these applicants, has drawn our attention to the statement made in paragraphs 9-11 of their application that there are point on which Government intends to seek an authoritative pronouncement of the Supreme Court for their guidance. Upon an examination of these grounds it will be evident at once that they are of no substance.

15. It is urged, firstly, that there is no prescribed period of limitation for filing a revision application, while my learned brother is supposed to have said to the contrary. But a look into the relevant paragraphs 11, 12 and 15 of our judgment reported in (1) 70 CWN 807 will make it clear that it was never stated that the application for revision in question was filed beyond any period of limitation. My learned brother simply pointed out the delay after which the revision application was presented to the Excise Minister and the manner in which that delay was exonerated by the Excise Minister. In paragraph 15, it was further pointed out that the pre-emptory order of the Excise Minister to grant the licence to the Petitioner instead of sending the case back to the statutory authority, was founded on the ground of delay, - upon which ground the revision petition should have properly been dismissed. The point of delay, in short, was referred to by my learned brother only by way of demonstrating how the bias of the Excise Minister operated in the different aspects of the case.

16. Secondly, it is maintained in paragraph 9 of the instant application that under the Rules of Business. Government does not hear a revision application, but the Minister-in-Charge, and it was argued by Mr. Das that the Government sought to have this practice sanctioned by the Supreme Court. In fact, however, there is nothing in our judgment to disturb this practice. In paragraph 53 of my judgment, in particular, it has been categorically stated that the statutory

functions u/s 8(3) of the Act before us, can be delegated to the Minister under the Rules of Business framed under Article 166(3).

17. Thirdly, paragraph 10 of the application seeks to support the fact that the Petitioner in revision addressed his application direct to the Minister-in-Charge instead of the State Government by saying that there is no Rule nor form prescribed under the Bengal Excise Act and that it was done in accordance with a practice sanctioned by usage. The relevant observation in the judgment of my learned brother is at paragraph 11 at page 813 of (1) 70 CWN. The fact of the Minister-in-Charge of Excise being addressed directly was referred to in the judgment as one of the elements showing the confidence of the Petitioner in revision in the Excise Minister, which had to be read together with the Excise Minister's interest in that Petitioner as evinced by the certificate granted in his favour by the Minister previously. It is in the interest of orderliness and purity of public administration that the application invoking quasi-judicial jurisdiction should be addressed to the State Government instead of the Minister concerned, just as a petition invoking judicial power is to be addressed, impersonally, to the Court and not the Judge. It is difficult to imagine, therefore, what public interest would be served by taking this matter to the Supreme Tribunal of the land with any reasonable expectation on the part of the State Government, the custodian of public morality in this State that the supreme Tribunal would give its sanction to such a practice, if there be any such practice.

18. Lastly, in paragraph 11 of the present application, it has been stated that there are no rules framed under the Bengal Excise Act requiring the service of a copy of the revision application on the Respondents. The relevant observations in the judgment of my learned brother on this point are contained in paragraph 16 at page 816 of 70 CWN. In the instant case, it was not merely one of revising the order of the inferior statutory authority. What the Excise Minister did was to substitute that order and to himself exercise the function of the licensing authority by directing that the licence might be granted to the Petitioner who was not even on the panel of the candidates who might be considered for the purpose. If this had happened in the normal course of business before the statutory licensing authority, the Petitioner could not be heard at the back of the rival candidates. If the Excise Minister choose to exercise the function, how can he claim to do it, free from the obligation of giving notice to the other parties interested who would be immediately affected by such order? Here also there is nothing of substance on which a contrary proposition could be urged before from a superior Tribunal, as a matter of great public importance.

19. Paragraph 22 of the application, which summarises the reasons why the State Government wants to proceed in appeal to the Supreme Court, rests on the averments made in paragraphs 9-11, just referred to be me. It has been sufficiently demonstrated by me that there is no substance in these pleas. If these pleas are gone, then we have got to discover why the State Government or the Excise Minister still intends to prefer an appeal against our decision. Our

judgment in question quashed the decision of the Excise Minister on the ground that his function u/s 8(3) was quasi-judicial and that since he was tainted with bias, he was disqualified to act in that capacity and his decision was accordingly invalid. So far as the factum of bias is concerned, it cannot be overlooked that, apart from the surrender at the hearing, there was no counter-affidavit filed on behalf of the Minister or, in fact, on behalf of any of the Respondents in the proceeding where the bias had been alleged. It has been reiterated by the Supreme Court in numerous cases that here there are allegations of fraud, malice, bias or the like which can be controverted by a counter-affidavit, it must be affectively contradicted by the person against whom such allegation is made, however big he may be (14) S. Pratap Singh Vs. The State of Punjab, ; (15) R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others, ; (16) C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, ; (17) Mineral Development Ltd. Vs. The State of Bihar and Another, ; (18) The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, , and, in fact, some of these decisions relate to persons in the position of Ministers of various States. If, therefore, the allegations of bias on fact were not contradicted and if nevertheless, upon an independent examination of the materials before us we had come to the finding that there was bias it can hardly be urged now that there is a public importance on that question of fact being decided afresh by a superior Tribunal, which has already pronounced the cited decisions.

20. We have, therefore, to see if there is any question of law of public importance involved. Since the question of bias comes in because the function is quasi-judicial, as we have held, it is urged in the present application (Ground A), that the revisional power of the State Government u/s 8(3) of the Bengal Excise Act, 1909, was not quasi-judicial. It is true, of course, that the question of fitness under Article 133(1)(c) is not directly concerned with the question whether it involves a substantial question of law, but whether it involves a question of great importance on the issue raised. But at the same time, it can hardly be said that merely because a question may be raised occasionally or that it affects different persons that the parties aggrieved have got a right to approach the highest Tribunal every now and then, even though the question of that very Tribunal. In our judgment in 70 CWN, both of us have referred to a long series of decisions of the Supreme Court where it has been held that the statutory function of revision is quasi-judicial in the same manner as the statutory function of appeal even though the appellate or the revisional authority is not a Court but an administrative body (2) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, ; (3) Laxman Purshottam Pimputkar Vs. State of Bombay and Others, ; Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, ; (4) Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others, . Mr. Das, however, urged that the provision u/s 8(1) of the Bengal Excise Act, as it stands after the amendment in December, 1965, says that the State Government has got a right of "control"

over the Excise authorities set up by the statute. It is further urged that because of the power of revision which is conferred by Sub-section (3) may be exercised administratively without proceeding in a quasi-judicial manner. It was pointed out that the word "control" did not exist in the Assam Act which was reviewed by the Supreme Court in (2) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and that made all the difference. This argument, however, does not stand in view of the observations made by the Supreme Court in the latest case of the (7) State of Punjab and Another Vs. Hari Krishan Sharma, . The relevant statute in that case was the Punjab Cinemas (Regulation) Act, 1952. Sub-section (20 of Section 5 gave similar power of control to the State Government over the licensing authority and Sub-section (3) gave to the Government the power of appeal against the decision of the licensing authority. It was urged before the Supreme Court that without proceeding quasi-judicially the Government might itself act as the licensing authority in exercise of its power of control conferred by Sub-section (2). But the Supreme Court negated this contention (even though there was no express provision relating to revision as we have in Sub-section (3) of Section 8 of the Act before us), with the observation:

Government has to function either as an appellate authority or as revisional authority; for that is the result of Section 5(2) and (3).

21. In the case before us, the statutory provision is even more stringent: Even though the State Government is conferred a general power of control by Sub-section (1) of Section 8, there is express provision in Sub-sections (2) and (3) of that very section for appeal and revision by means of which the order passed by a Collector or an Excise Commissioner may be set aside or revised by the State Government. The power of revision conferred by Sub-section (3) being a statutory power, it is clear from the various decisions already cited that it can be exercised only quasi-judicially and not administratively under the general power of "control" conferred by Sub-section (1). The question as to the nature of the statutory power u/s 8(3) of the Bengal Act is, therefore, no longer a moot question.

22. If all the grounds which are mentioned in the application of the Government-Petitioners are eliminated, the question arises as to the bona fides of this application, the circumstances relating to which have been dealt with by my learned brother. Mr. Das, appearing on behalf of the Government-applicant was candid enough to admit that where an application under Article 133(1)(c) is not bona fide, it could not be urged that there was public importance still underlying such application. It would not be going far away from the records if one comes to the conclusion on the materials before us that the present move to prefer an appeal to the Supreme Court is prompted by things which are not apparent on the face of the applications before us. It is true that the finding of bias isn't wholesome but the function being statutory and also being quasi-judicial, this Court had to point out that the maxim that "Judges, like Caesar's wife, should be

above suspicion", is not confined in its application to the Judges alone, but to anybody who professes to exercise any function, simulating the judicial, - which is, in technical language, called, a "quasi-judicial function". There is no doubt that some difficulty of adjustment may arise when such judicial function is conferred upon the holder of an office which is otherwise administrative. But the principle cannot evaporate because of that fact, as has been repeatedly held by the Supreme Court down to (18) The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, . There is no doubt that the Executive have got absolute power in the matter of policy-making or in the sphere which may be called "political", unfettered by any statutory or other legal limitations, or in matters which are non-justiciable. The Courts have no business to intrude upon that sphere, but when the power to be exercised is statutory, it can be exercised only subject to the statutory conditions and limitations and in case of transgression thereof in any case whatever it falls upon the Court as an umpire in a contest between the State and the aggrieved individual, to call out a "foul". When the statutory function to be exercised by a member of the Administration is quasi-judicial, a further obligation is interposed, namely, the obligation to adopt a judicial approach and the reach of judicial review extends property tanto. Of course, it may take a little time for all of us to appreciate the ramifications of the concept of limited Government as it has been introduced in our land after Independence. But the fact remains that whatever vestiges of unlimited power by way of prerogative, reservation, discretion and the like existed during an Imperialistic regime, have been done away with by the written Constitution of this land, except in so far as there are express provisions in the Constitution itself, for instance, under articles 361-3. In the justiciable sphere, a power which is conferred upon the Government under the Constitution, is not a power to do "as we like", but the power to do "as we are enjoined by the laws and the Constitution." In the exercise of the statutory function of appeal or revision, therefore, the same considerations as might go uninterfered within the political or purely administrative sphere, cannot be tolerated to operate, without retroverting the concept of Rule of law and Limited Government on which the political and legal system of the country rests after Independence. These are the primary concepts which we are appoint to forget, but we can do that only at the peril of the entire structure, and if the State Government seriously believes that to urge the contrary is a matter of great public importance, we do not know where we stand.

23. So far as this Court is concerned, the contention cannot but be rejected. I, therefore, agree that these applications must be dismissed with costs, as proposed by my learned brother.