

(1953) 06 CAL CK 0023
In the Calcutta High Court
Case No : Civil Rule No. 1764 of 1953

Ghrita Mohan

APPELLANT

Vs

Addl. Dist. Magistrate and Others

RESPONDENT

Date of Decision : 29-06-1953

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 31

Citation : AIR 1954 Cal 97 : 57 CWN 798

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Chandidas Roy Chowdhury and Hrishikesh Kar, for the Appellant;
Hemendra Kumar Das and Smriti Kumar Rai Chowdhury, for the Respondent

Judgement

Sinha, J.—This is a Rule issued upon the opposite parties to show cause why a Writ in the nature of Certiorari should not be issued quashing the relevant order of the appellate authority complained of in the petition and why a Writ in the nature of Mandamus should not be issued directing him, the appellate authority, to deal with the matter according to law, and for other reliefs.

2. This is an application arising out of the West Bengal Food Grains (Intensive Procurement) Order 1952 (hereinafter referred to as the "order"). The petitioner has got some paddy lands within Mouza Mularhat, P.S. Jaynagar, in the district of 24-Parganas. Notice was served upon the petitioner in form "A" and he filed his declaration in form "B". On or about 5-2-1953, notice was served upon him in form "C" directing him to sell and deliver to the Government of West Bengal 37 Maunds of paddy as being the available surplus. The petitioner thereafter preferred an appeal under para 5 of the Order, before the Additional District Magistrate, Alipore, 24 Parganas, the appeal being registered and numbered as 1742 of 1952-53. In the Memorandum of appeal the petitioner took 8 grounds, one of which was that the petitioner had let out his lands on money rent to the former owner of the lands and he received no part of the yield and therefore he did not have the paddy demanded of him and that it was impossible for him to

comply with the directive. Besides, he has said that the proper legal deductions were not made and that the order was bad in law and fact and that it was not possible for him to comply with the demand.

3. It appears that the Additional District Magistrate of 24-Parganas dealt with a huge number of appeals, (in one case, as many as 1700) all together. In his judgment he has said that he had heard the lawyers and the main contention was that the estimate of yield of foodgrains had not been fair and had been more than the actual yield. He takes notice of the fact that the average yield was fixed by a committee consisting of experts after considering certain crop cutting experiments. Accordingly he has reduced the demand in certain areas. With regard to those areas where the finding of the committee has been that the amount is less than what has been originally estimated, the directives were set aside and the amount of paddy, that has to be delivered, has been directed to be recalculated according to the result of what has been called the "Crop Cutting Experiment". The appellate tribunal has not considered the various points which were put forward by the various appellants in order to establish that it was not possible for them to comply with the directive, save and except this one point, namely, the rate of yield which was originally estimated by the Director.

Now the position as I conceive it, is as follows. It has now been held that the Order is *intra vires* and therefore the constitutional objections have failed: -- *Atulya Kumar De and Others Vs. The Director of Procurement and Supply and Others, (A)*. I have held that it is open to the Director to estimate the available surplus upon any reasonable or reliable data and that the report of a committee of experts reasonably furnishes such data. It must however not be forgotten that the estimate is on the basis of average yield and not the actual yield of each individual cultivator. As a matter of fact I have pointed out that it was not possible to estimate the yield producer-wise as that would involve such enormous expenditure as would frustrate the object of procurement. But it follows as a necessary corollary that the estimated yield is liable to error. A producer may be subjected to a number of peculiar circumstances which makes his yield less than average. In some cases, I have found that the allegation is that part of the land is water-logged. In other cases, it has been said that no water is available for irrigation purposes. In other cases it is stated that the land is let out to Bhagchasis or adhiars who only deliver part of the produce. Then again, as in this particular case, a point has been taken that the land has been let out to others on money rent. In such a case as the present one, it would be impossible for the producer to deliver any part of the produce.

The producer often states that the exemptions granted by the order have not been correctly calculated. This is often ignored. The granting of a right of appeal can only mean that the producer must be given an opportunity to show that the estimate of the Director is wrong, and consequently the amount that he has been asked to deliver as based on that estimate, is also wrong. It will be for the cultivator to establish that the estimate, or the amount specified in the directive,

was incorrect, or that the exemptions have not been correctly calculated, and he must adduce evidence for that purpose to the satisfaction of the appellate tribunal. I can however find no excuse whatever to justify the findings of the appellate tribunal, ignoring these points that are raised on behalf of the producer. The result of ignoring these points inevitably is to compel a producer, where he in fact has not got the paddy or rice which he has been ordered to deliver or where the exemptions have not been correctly calculated to buy it from the market, perhaps, at a very much higher price, and supply it to the Government. This is not the intention of the Essential Supplies Act or the order, besides being unjust and oppressive.

While therefore the Court will do its utmost to uphold the object and intention of the Act and the Order, it must also hold that it has never been the intention to exclude the producer from having an opportunity of proving that the amount demanded from him is in excess of the actual amount that he has produced or holds. It is quite possible that some frivolous or inflated pleas will be taken and the proceedings unnecessarily prolonged, taut this can be no reason for denying the producer the right that he has, to challenge the directive and/or to ventilate his grievances. As I have said, a large number of these cases have been decided, altogether ignoring many of the points raised by individual producers. The result has been that the Court below has failed to exercise its jurisdiction and to dispose of the cases properly.

4. If the Court below had exercised the jurisdiction properly and had come to an erroneous finding, that is something which would not come within the purview of Article 226. But if it refuses or fails to exercise jurisdiction or if it decides cases without dealing with the points raised by litigants, then, in my opinion, this Court has got ample jurisdiction to intervene and the orders must be quashed by a Writ in the nature of Certiorari and a Writ in the nature of mandamus must issue directing the tribunal to decide the cases according to law. I am glad to find however that the state has taken a very reasonable attitude and the learned Government Pleader has conveyed to the Court the decision of the State not to contest such applications and to have the orders quashed and the matters sent back on remand so that they may be disposed of at an early date.

5. As the Rule has not yet been served, the order will be that the opposite parties waive service of this Rule, and enter appearance. By consent, the rule is made absolute, the judgment below is quashed, and the matter is sent back upon remand. The appellate tribunal will now proceed to hear the case and determine the points raised. I may make it clear that I am not laying down that each and every case will call for an elaborate judgment. As long as it appears that the Court has heard all the points and has come to a decision upon each of them, the order would be quite valid and unexceptionable. I might also point out that the Order lays down how an estimate should be made and great latitude is given to the director in arriving at an estimate. It does not follow however that in other matters also, the appellate tribunal can dispense with the Evidence Act and

rely upon inadmissible evidence.

6. My attention has just been drawn to a decision of a Divisional Bench of this Court in -- Khagendra Nath Vs. Junior Assessor, Procurement P.S. Sonarpur, (B) which was an application under Article 227. The learned Judges have made similar observations with which I respectfully agree. I find no reason why a large number of appeals should be disposed of all together.

7. By consent of parties, the status quo will be maintained for a period of four weeks, after which further stay must be obtained from the appellate tribunal. The allegations in the petition will be deemed not to have been admitted.

8. In view of the attitude of the Government, I make no order as to costs.