
(1972) 03 CAL CK 0018
In the Calcutta High Court
Case No : C.R. No. 2122 (W) of 1971

Gobinda Bakshi and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 09-03-1972

Acts Referred:

Bengal Municipal Act, 1932 — Section 24, 24B, 24B(2), 24B(3), 56
Constitution of India, 1950 — Article 226(1)

Citation : 76 CWN 508

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Sankar Prosad Pal, for the Appellant; S.C. Mitter, Prasanta Kumar Bandopadhyay, Monoranjan Bhattacharjee and Hari Narayan Das, for the Respondent

Judgement

Salil Kumar Datta, J.—This Rule under Article 226(1) of the Constitution was obtained by the residents and rate-payers of the Budge Budge Municipality for a writ of mandamus on the respondents directing them to cancel, rescind or withdraw or forbear from giving effect to the resolutions passed by the Commissioners of the Municipality passed during the period from 5.5.71 to 11.5.71 in connection with various municipal affairs. The Rule is also for a writ in the nature of quo warranto calling upon the respondents Nos. 5 to 19 to produce before this Court their legal power and authority under which they had been acting or holding the office as Municipal Commissioners of the said Municipality. The petitioners' case in brief is that the term of the Commissioners expired on May 3, 1969. Thereafter by a notification dated 13.12.68 the term was extended upto 31.12.70. It appears that by a further notification dated 31.12.70 the term was extended upto 3rd May, 1971 both days inclusive. The petitioners' further case is that the Commissioners can hold office, after the expiration of the statutory period of four years, only for a further period of two years in the aggregate as provided in section 56(5) of the Bengal Municipal Act, 1932. Thereafter there was no further notification by the State of West Bengal u/s 56A

of the Bengal, Municipal Act, forming a committee to take charge of the administration. It was accordingly contended that in the eye of law there was no body of Commissioners in the Municipality. But notwithstanding the same, the respondent No. 5 has been discharging his duties purporting to act as the Chairman of the Municipality and has given notice of series of special meetings of the Commissioners of the Municipality and it appears in pursuance thereof that several meetings have been held and resolutions passed by respondents Nos. 5 to 19 as such Commissioners. The copies of the resolutions are marked Annexure "C" and "D" to the petition. The petitioners contended that the respondents are holding office without any authority of law and the State Government is also not taking any steps for holding the election. In the circumstances, the petitioners moved this Court in Constitutional Writ Jurisdiction and prayed for appropriate writs as mentioned above on the respondents. This application was opposed by the respondent State of West Bengal and its officials respondents Nos. 2 to 3 as also respondents Nos. 4 and 5 who have entered appearance in this Rule, On behalf of the State of West Bengal an affidavit has been filed to say that the Commissioners exist even after 3rd May, 1971 by virtue of the provisions of section 24B read with section 56(2) of the Bengal Municipal Act. An affidavit-in-opposition was filed on behalf of respondent No. 5 who also relied on the provisions of section 24B(3) and it was stated that the present body of Commissioners was continuing in office by virtue of the aforesaid provisions. It was further stated that there was a notification issued by the State of West Bengal on June 8, 1971 fixing the date of the next general election of the Commissioners on December 19, 1971. There is an additional affidavit on behalf of the respondent No. 5 stating that by another notification dated June 17, 1971 the State of West Bengal had appointed one Sri B.J. Majumdar, W.B.J.C.S., Magistrate, First Class, Alipore, as the Executive Officer of the said Municipality in addition to his own duties. It is stated that against this notification a Rule was obtained in this Court being C.R. No. 1853 (W) of 1971 and an interim order was passed in that Rule. It is stated by Mr. Hari Narayan Das, learned Advocate for the State that there is an interim order in that Rule whereby the Commissioners have been granted leave to continue in office, but they have not been allowed to discharge any municipal function without the leave of the Court and the municipal functions are being discharged at the moment by the said Executive Officer. An affidavit-in-reply has been filed by the petitioners reiterating their contention as made in the petition.

2. Mr. Sankar Prasad Pal, learned advocate for the petitioners has firstly contended that the Municipal Commissioners have ceased to hold office after the expiry of the extended term of two years following the statutory period of four years. According to Mr. Pal the provisions of section 56(1) and 56(5) are mandatory and sub-section (5) allows a maximum period of two years in aggregate beyond the term of four years provided in sub-section (1) (a). As we have already seen, even the said extended term of two years expired on May 3, 1971, and on the expiry of that date the Commissioners cannot hold office as

such Commissioners in law and accordingly all their acts are without any legal basis. It was further contended by Mr. Pal that there was no further notification after May 3, 1971 and in view of section 56A the Commissioners cannot hold office as Commissioners after the expiry of the said period. Further, section 24B (2) has to be read with sub-sections (1) and (5) of section 56 of the Act so that in any event the Commissioners are not entitled to hold any office after May 3, 1971.

3. Mr. S.C. Mitter, learned Advocate for respondent No. 4 has contended that in view of the provisions of section 24B(2) which have an overriding effect, also section 24B(2) the Commissioners will continue to hold office after the expiry of the term referred to in section 56(1) till a general election is held and the newly elected Commissioners assume office. In this case there has been no such election as yet and till such election is held and office is assumed by the new Commissioners, the existing Commissioners continue to hold their office as Commissioners on the basis of the said provisions of the Act Further, subsection (5) of section 56 has to be read with sub-section (2) which defines the term as inclusive of the period which may elapse between the expiry of the statutory term or extended term and the date of the first meeting of the newly formed body of Commissioners at which a quorum is present. It is further stated that the provisions of Section 56A are not mandatory though the State Government can issue a notification if in their view there was no possibility for holding an election of new Commissioners within a reasonable time. Mr. Das appearing for the State has also adopted the contention of Mr. Mitter and has submitted that the Commissioners are legally holding their office on the basis of the aforesaid provisions.

4. Now turning to the respective contention it appears that sections 24B (2) and 24B (3) provide as follows :

Section 24B(2) : "Where the Commissioners have continued in office after the expiry of the term referred to in section 24 on account of?

(a) a general election not having taken place within the time referred to in that section, or

(b) a general election having been set aside before the assumption of office by the newly elected Commissioners, or

(c) the Commissioners elected at a general election not having been able to assume office for any reason,

then notwithstanding anything contained in this Act or in any judgment, decree or order of any Court,?

(i) the Commissioners so continuing shall be deemed to be and to have been validly continuing in office,....

Section 24B(3) : "The Commissioners continuing in office under the provisions of

sub-section (2) shall continue to hold office until the first meeting of the Commissioners elected at a general election, at which a quorum is present."

5. Sub-section (2) provides that it will have effect notwithstanding anything contained in this Act, so that by virtue of this sub-section it will appear that the Commissioners will hold office in the eventualities contemplated in sub-section (2) notwithstanding anything contained in the Act. In subsection (3) it has further been provided that such Commissioners will be continuing to hold the office until the first meeting of the Commissioners elected at a general election at which the quorum is present. It is therefore obvious that on the basis of these two sub-sections the existing Commissioners will be holding their respective offices as such Commissioners and continue to do so even after the expiry of the statutory term or extended term till the new Commissioners elected at the general election hold their first meeting at which a quorum is present. In view of the admitted position that no election has taken place, there is little doubt that the Commissioners on the basis of these provisions are holding their office till the first meeting of the newly elected body of Commissioners at which a quorum is present.

6. These provisions would be sufficient answer to the Rule obtained by the petitioners as they clearly indicate that the Commissioners are holding their office on the authority of law.

7. In view of the other points which have been urged by the petitioners I feel that they also should be dealt with in this Rule. u/s 56(1) it has been provided that the term of the Commissioners shall be for four years and under sub-section (5) of this section it has also been provided that such term can be extended for an aggregate of two years beyond the statutory term of four years. Sub-clause (2) of section 66 defines the words "term of four years or extended term" and it has been provided as follows :

Section 56(2) : "The term of four years referred to in sub-section (1) or if the said term is extended under sub-section (5) then the term as so extended, shall be held to include any period which may elapse between the expiry of the said term or of the extended term as the case may be, and the date of the first meeting of the newly-formed body of Commissioners at which a quorum is present.

8. It will appear from an examination of the provisions that the original term of four years or the extended term would include also any period which may elapse between the expiry of the said term or of extended term as the case may be and the date of the first meeting of the newly-formed body of Commissioners at which a quorum is present. It will further appear from this sub-section that it controls and is not controlled by sub-section (5) so that in considering the word "term" original or extended, regard will have to be paid to the period as referred to in sub-section (2) in respect of the period which has been provided in subsections (1) and (5). That being the position, in my opinion, it cannot be said

that sub-section (5) controls subsection (2) so that it will not be correct to say that there can never be any extension beyond the aggregate of two years over the original period of four years. The position is otherwise as we have seen above.

9. Mr. Pal has further drawn my attention to section 56A which was inserted by Bengal Municipal (Second Amendment) Act of 1969 which came into force on 16.9.69. By this amendment a new section as section 56A was inserted providing for the appointment of a committee in case of delay in forming new body of Commissioners by reason of order of Court or for other reasons. The section also provides that if there is no likelihood of new body of Commissioners being formed within a reasonable time to take over the municipal administration, the State Government, if it thinks fit so to do in the public interest, can by an order appoint a committee consisting of the same number of members as the Commissioners of the Municipality to take charge of the administration of the affairs of the municipality in accordance with the provisions of this Act and the Rules and bye-laws thereunder. It has further provided that on such appointment of the Committee the Commissioners of the Municipality continuing in office by virtue of sub-section (2) of section 56 shall be deemed to have vacated as such Commissioners. There is no dispute that no such committee has been formed as yet and according to Mr. Pal there is no reasonable prospect of a general election in near future which is also made a grievance by him. There may be an inaction on the part of the State Government for not taking steps for holding an election but for that the residents of the Municipality or its rate-payers or voters have other remedy which is not within the scope or ambit of this Rule. It would further appear that there has been in fact a notification for election to be held on December 19, 1971. It is stated that no election was held but we are not aware of the reasons. Neither we are concerned with the same at the present moment for the reasons already indicated. The provisions of this section are directory and not mandatory as appears from the wordings of the section. I am of opinion that the Commissioners are holding their office by virtue of and under the authority of the provisions of section 24B(2) and (3) read with section 56(2) of the Bengal Municipal Act. Another grievance was made by Mr. Pal to the effect that after the last notification extending the period of the Municipality upto May 3, 1971, there has not been any further notification by the State Government. In my opinion, there is no necessity for any further notification, nor it is competent for the State Government to issue such notification in view of the provisions of section 56(5). In view of the provisions of section 56(2) as also of section 24B(2) and (3), as we have also seen, the Commissioners are holding office by the force of the said provisions and no further notification was necessary even if it was competent on the part of the State to do so. As all contentions on behalf of the petitioners fail, this Rule is discharged. There will be no order for costs. Interim orders, if any, are vacated.