

(1966) 03 CAL CK 0002
In the Calcutta High Court
Case No : Civil Revision Case No. 4058 of 1965

Gour Hari Mondal	Vs	APPELLANT
St. of W. Bengal and Others		RESPONDENT

Date of Decision : 22-03-1966

Acts Referred:

Constitution of India, 1950 — Article 16, 16(4), 227, 341

Citation : 71 CWN 107

Hon'ble Judges : Bijayesh Mukherji, J

Bench : Single Bench

Advocate : Salil Kumar Dutta and Prasanta Kumar Ghose, for the Appellant; Basanta Kumar Panda, S.N. Ghorai and Bijay Basanta Koley for opposite party No. 5 and Motilal Acharya and Chunilal Ganguli for State and other opposite party, for the Respondent

Judgement

Bijayesh Mukherji, J.—The decision of the rule under article 227 of the Constitution, now depending before me, depends inter alia on the true meaning of the expression: a hereditary patni, occurring in an order upon the Collector, Midnapore, contained in memorandum No. 16132 (15) K.M./1160/58 dated April 2, 1960, of the Board of Revenue, Government of West Bengal, [wrongly stated as No 16132(15) KM. 1160/58 in annexure A to the main petition]. Its contents need not be referred to further than as follows:

For ferries vested in Government under the West Bengal Estates Acquisition Act 1953, 1 of 1954, should be bid by a hereditary Patni, in an auction open to all, be 85 per cent or more pf the highest offer, the settlement is to be made with him in preference to the highest bidder.

Gour Hari Mondal is the petitioner before me. The case he comes to Court with, and on the foot of which he has obtained this rule, is that he, a member of the scheduled castes and a poor man too, has been earning his livelihood in the district of Midnpore as a Patni (ferryman), just as his forefathers did before him. For the ferry in controversy here, the one at Srirampore, his father was the

lessee in 1341 B.S. (1934-35) from the then zamindars. And he continued to be so, "except for short intervals." Then came the vesting in the State Government in or about Baisakh 1, 1362 B. S. corresponding to April 15, 1955. But the lessees continued to be his "family members and near relations", such as his uncle, brother etc. For three years from 1369 B.S. to 1371 B.S. (1962 -63 to 1964-65), he himself was the sole lessee, his having been the highest bid. The trouble began for the settlement in 1372 B.S., corresponding to 1965-66, when the public auction for leasing the ferry registered, for all practical purposes, the following two highest bids:

Jatindra Nath Hait, respondent No. 5. Rs. 4,625.

Gour Hari Mondal, the petitioner. Rs. 4,600.

But this bid of Rs. 25 less than the highest had nothing to dismay him. Because he is a hereditary Patni. 85 per cent of Jatindra's highest bid of Rs. 4,625 comes to Rs. 3,931.25 paise. And his was Rs. 4,600 - Rs. 669.25 paise more than Rs. 3,931.25 paise. He represented so before the Collector, relying on the order of April 2, 1960, and was called upon to deposit 25 per cent of his bid money - which he did.

2. Jatindra, the highest bidder, who had deposited too the entire amount, Rs. 4,625, his bid was for, would not take it lying down. He moved the Commissioner, Burdwan Division, under rule 3 of the Board's Miscellaneous Rules which, amongst other things, empowers the higher authority (here the Commissioner) to modify or reverse, with or without appeal, any order passed by a lower authority (here the Collector). The Commissioner, who heard lawyers, found inter alia:

One, Patni has not been defined anywhere.

Two, the Constitution (Scheduled Castes) Order 1950, by serial No. 36 in Part XIII, refers to Patni as one of the scheduled castes in West Bengal (except Purulia and the territories transferred from the district of Purnea in Bihar).

Three, ergo, a hereditary Patni referred to in the order of April 2, 1930, means one who is a Patni by caste and also a boatman by Occupation.

Four, no proof there is of Gour Hari Mondal being a Patni by caste or his father having been a hereditary boatman of the Srirampore ferry right from 1957 on the 24th day of June of which year the Board issued a letter containing a direction that the existing leases were to run, pending a decision, as it was found that "the Patnis and other classes of hereditary boatmen mostly belonging to the scheduled tribes and backward classes who used to ply the jerries in the pre-vesting period are being displaced and outsiders are taking ijara of such jerries at much higher rates.

Accordingly, by an order dated June 8, 1965, he directed a remit with a view to ascertaining on such evidence as may be necessary, (i) if Gour Hari Mondal is a

Patni by caste, and (ii) if he is a hereditary boatman. Both these conditions satisfied and it being found that Gour Hari Mondal or his forefathers had been boatmen of this ferry or any other ferry in that area from 1957, the Commissioner concluded, he, that is, Gouri Hari Mondal, should be treated as a hereditary Patni and the ferry would be leased to him; if not the lease should go to Jatindra Nath Hait, the highest bidder.

3. Seized of the matter again after remand, all the Collector did was to record on Oct. 21, 1965 an order in the note-sheets, the material portion of which bears:

...in terms of the Divisional Commissioner's Order dated June 8, 1965, and his interpretation of the words "hereditary Patni", the ferry has to be leased out with the highest bidder Sri Jatindra Nath Hait for the year 1372 B.S.-

and that too in the face of the very reasonable submission in the preceding office-notes of September 18, 1965, endorsed by the appropriate officer on September 20 following, that the Board's instructions should be solicited in order to be sure whether or no a hereditary boatman (who is not a Patni by caste) could get the benefit of the order contained in the Board's memorandum dated April 2, 1960, this judgment opens with.

4. Now it was Gour Hari Mondal's turn to move the Commissioner, under Rule 3 again of the Board's Miscellaneous Rules, against the order of the Collector dated October 21, 1965. And that was what he did. But it came to little. The Commissioner, (the same officer, Shri a. V.S.C. Banarjee, who had directed the remit on June 8, 1965) by an order, namely, order No. 1 dated November 20, 1965, had little difficulty in finding no substance in Gour Hari Mondal's petition, even though the Collector had not recorded his findings on the specific points on which the Commissioner had remanded the matter to him. He, therefore, dismissed the petition moved by Gour Hari Mondal's lawyer against the Collector's order dated October 21, 1965. The petitioner Gour Hari Mondal has, accordingly, come up to this Court for relief under article 227 of the Constitution and obtained a rule.

5. Twenty-three days more, and the year 1372 B.S. (1965-66) for which the ferry has been leased will run out. I have, therefore, been left wondering what practical use of a decision of this rule will be. But I am pressed by the learned advocates appearing for all the parties to render my decision, as the importance of the matter still bulks large; and what is needed even today is an authoritative pronouncement of this Court for the smooth carriage of such deals in future. I, therefore, proceed to deal with the matter at some length.

6. That the Patni is an ancient caste appears to be borne out by the highest authority. According to Brihad Dharma Parana, the Patnis are descended from Rajaka or washarman and a woman of the Vaisya caste. They are antyajas. (See Tribes and Castes of Bengal: Ethnographic Glossary: by Risley, Volume II, 1891, page 170, and the article captioned : A discourse on the Sastric origins of the caste system by Sailendra Nath Sen Gupta, incorporated in Census, West Bengal,

1951, at page 32). Another scholar in the line, Nihar Ranjan Roy, in his well-known book: *Bangali Hindur Varnabhed* (Bhadra 1352 B.S.), refers too to Brihad Dharma Parana according to which all castes, save Brahmans are Sankar: mixed or hybrid ones. Though the popular belief in Bengal reckons 36 castes only (Chhatrish Jat), there are really five more: 41 in all. Of these 41, 20 belong to Uttam Sankar (hybrid of the superior type), 12 to Madhyam Sankar (hybrid of the middling type) and 9 to Adham Sankar or Antyajas (hybrid of the inferior type). Of the last group of 9, Ghattajibi, also called Ghantajibi, is one. And by a Ghattajibi or Ghantajibi is perhaps meant a keeper of the ferry ghat (kheya ghaater rakshak), a ferryman (kheya paraparar majhi) or a modern Patni. Risley in his great work just named records two fictions in the history of the Patnis. One is:

Madhava was ferrying Rama accross a river on his way from Ayodhya to Mithila. Having witnessed the resuscitation of Ahalya, Madhava was afraid to transport the God to the other bank until he had extracted the promise that Rama would sit on the gunwale with his feet in the water. The simplicity of the ferryman was remarkable. When Rama landed, Madhava complained that the cooler of the boat had been changed a hideous yellow, and that he was ruined. The reply was that the ferry hat had been converted into pure gold, and as a punishment for the Patni's stupidity Rama announced that his descendants would always be ferrymen, and that he himself would after his death become the ferryman of the Vaitarini, or Hindu Styx, c.f. that famous poem:

Iswari Penti from Annada Mangal by Raygunakar Bharat Chandra Hoy, 1712-1760, depicting in untranslatable rhyme the fear of the Patni that the crocodile might drag the Goddess Annada, the lone passenger in the boat, by her feet which touched the water and. therefore, imploring her to set her feet on the seonti (bail). The Goddess did as she was asked to. Result * * * * which I turn into English in prose :

So soon as the Goddess keeps her feet on the bail, it changes into gold in no time.

Another is:

King Vallala Sena became amoured of a ferryman's daughter Padmavati and married her. At the feast Pakasparsa, when the bride cooks and the bridgroom for the first time eats from her hands, the Patnis, with inborn obtuseness, and to the great grief of the queen, presented themselves at the end of the festival. For this misconduct they were, by a fiat of the monarch, degraded and enrolled among the Nicha or low castes (Halik Kaivartas, as Sen Gupta puts it in his discourse referred to above).

7. From fictions, let me come to realities. To Risley's great work again. Here are the figures of the total number of Patnis in 1872 and 1881 in the district of Midnapore with which alone this litigation is concerned:

1872/195 1881/842: page 172 ibid-

though I miss any reference to Patnis, unless I have overlooked it, in L.S.S. O'Malley's Bengal District Gazetteers : Midnapore (1911). Much more important than the numbers is the division of the Patnis into five sub-castes - (1) Jat-Palnis who are agriculturists and small traders, usually keeping shop as mudis or grocers; (2) Ghat Patni, Balami or Ghatwal, who work as boatmen or take charge of ferries; (3) Dom-Patnis, Machhwa or Nagarchi, who fish, keep pigs and get casual employment as musicians at weddings and festivals of various kinds, (4) Bans-phor and (5) Dagara, who hunt, manufacture sieves and baskets, of cane and tie the framework of kancha houses : page 170 ibid. As is 1891 by Risley, so in 1931 by Hutton. He listed the castes into 14 groups according to their usual occupations. In the 9th group he placed Gondris, Jalias, Jha-los, Matos, PATNIS, Mallahs, Tiyaars, etc., recording fishing and boating as their main occupation. Referring to this manner of classification, A. Mitra, Superintendent of Census Operations: Census, 1951, a worthy successor of Risley and Hutton, and an authority these days, says in a fascinating preface at page 4 :

Incidentally, this short list which covers the greater part of castes discharging their traditional occupations in society demonstrates how rapidly caste as a function of society - the concept of a particular coin for a particular slot, - is disintegrating.

Cognizant of the historical fact that occupational castes had had their day just on the line of "modern federations and combines:

It looks as if occupational castes had their hey-day in the powerful guilds in the Buddhist period," a fact, which much, much earlier, Dalton had explained as a common-sense proposition in his magnum opus: Descriptive Ethnology of Bengal (1872) at page 307-

Amongst the primitive people, the children naturally take to the trade of their father and we need no further to account for such tribes and castes as oil-pressers, potters, boatmen, goldwashers, fishermen, etc.,-

Mitra continues:

It is only in the course of the last eight years, with rapid and pre natural destruction of traditional skills, designs, markets and patrons, with nothing in their place to offer to castes so long employed in them who suddenly found themselves cast off their moorings, obliged to take to vocations other than their own, that caste lost whatever significance it had on the organization of production. Stripped of its functional content, castes now seemed totally pointless.

Last eighty years with throw one's mind back to 1871 relooking from 1951.

8. But in 1965 the Commissioner, whose orders I have been called upon to review in the exercise, of the Court's power of judicial superintendence, would

not go beyond 1950 and would not look either to anything more than the mere mention of Patni as a scheduled caste in serial No. 36, part XIII, of the Constitution (Scheduled Castes) Order 1950. Having done so, he would read in the expression : a hereditary Patni, in the perfectly plain order contained in the Board's memorandum dated April 2, 1960, not only a Patni by occupation but also a Patni by caste. Such an approach cannot stand for more reasons than one :

First: the Patni caste, like any other caste, has been stripping itself of its functional content ever since 1871, as stated by an authority, just mentioned. Five or six years more and this process of disintegration of caste as a function of society will be in operation for hundred years. What to speak of a hundred years, Nirmal Kumar Basu, still another scholar working on the subject, in his book: Hindu Samajer Garan, gives interesting figures of this occupational aspect of castes for thirty years on the basis of census from 1901 to 1931. I quote below only some : 1901 1911 1921 1931

Vaidya:

Profession - to practise medicine Percentage of those who carry on their profession 36.10 20.11 15.02 18.80

Barui:

Profession - to cultivate and trade in Pa: betel leaves. Percentage of those who carry on this profession.... 94.96 61.18 44.15 54.58

Brahman :

Profession - Jajan, Jajan, Adhyapan, etc.: to worship, to serve as a priest and to teach the Sastras. Percentage of those who carry on this profession.... 33.54 21.79 14.57 16.57

Napit:

Profession - to serve as a barber. Percentage of those who carry on this profession..... 60.55 48.41 36.70 45.41

Making due allowance for what Mitra calls "real stumbling blocks and booby traps in the census of which an uninitiated reader is not aware", there can be no mistaking the gradual disintegration of occupational castes. Indeed, we see that every day around us. Once that is that, even if the Commissioner is right in reading a hereditary Patni as a Patni by caste, it by no means follows that such a one must have been tied to the occupation of a ferryman the Patni caste has been taken to denote. So the expression-a hereditary Patni - as interpreted by the Commissioner, does not fit him. He then becomes a Patni by caste but not a Patni (a ferryman) by profession.

Therefore, the Commissioner is not content interpreting a hereditary Patni only as a Patni by caste but also a Patni by occupation. If the order of April 2, 1960, had intended that much, nothing could have been easier for the maker of the

order than to say so in unmistakable terms. Instead, all the order says is : a hereditary Patni - an expression which the Commissioner enlarges to include a Patni by caste, a scheduled caste at that, under the Constitution (Scheduled Castes) Order, 1950 - words which or the like of which are not in the plain order. In the circumstances, to read words which are not there in the statute or a statutory instrument is to offend against the canons of interpretation.

Two, if accent is be placed on a Patni by caste, the expression "hereditary" becomes devoid of meaning. Who has ever heard of a hereditary Brahman or a hereditary Kayastha, as if there exists amongst us a non-hereditary Brahman or a non-hereditary Kayastha. A caste is such that it does attach by birth. So no one can change it by choice. You can change your religion if you will. But caste? Once a Patni, always a Patni. Just so with any other caste. It is with you and in you from birth to death, descending upon your children and children's children as it descended upon you from your forefathers. Why say then a hereditary Patni, if by Patni. is sought to be conveyed the caste element in it? Take it instead in the plain meaning of the word: a ferryman. And at once it becomes full of meaning: once whose occupation is that of a ferryman, a Patni, from generation to generation.

Three, has the earlier directive contained in the Board's letter dated June 24, 1957, influenced the Commissioner in coming to the conclusion he does? Under that directive, the existing leases of the ferries shall run, pending a decision, as it has been found that the Patnis and other classes of hereditary boatmen mostly belonging to the scheduled tribes and backward classes and used to plying the ferries in the pre-vesting period are being displaced by outsiders with offers of higher bids. If the collocation of words in the expression -Patnis and other classes of hereditary boatmen - leans a little in favor of an inference that Patnis as a caste are hereditary boatmen as a matter of course, that is negated by the history. All Patnis are not ferrymen. To Risley again." A Patni, the other variants being Patuni. Patauni and Dom-Patni, is "a low boating, fishing, basket-making, trading and cultivating caste of East Bengal. In Rangpur, and throughout the valley of the Bramaputra, they are still designated as Dom-Patnis. And in Bengal, this is applied to them as a term of abuse": page 170. Sen Gupta in his discourse referred to above refers to Patnis who have taken to agriculture and to the claim put forward by them in 1910 as Kaivarta Mahisyas - a claim which was supported by pundits like Kamakshya Nath Tarkavagisa, Pramatha nath Tarkabhusn and Rajendra Nath Vidyabhusana. Such Patnis will have nothing to do with Ghat Patnis or ferrymen. As years rolled on, they pitched their claim higher and higher. In 1930, they claimed to be Halik Kaivartas, Halik Mahisyas or Lupta Mahisyas. In 1940, they claimed to be Adi Mahisyas - which the Mahisyas vehemently protested against: page 32, Census, West Bengal, 1951. Then with so many as five sub-castes amongst the Patnis (paragrah 8 ante), it becomes impossible to say that one, Patni by caste, must necessarily be a ferryman. A Ghat Patni may very well be that; but not the other four sub-castes. It may be presumed in safety that the maker of the order dated April 2, 1960, was not unaware of all

this. More, the order of 1957 is all out to protect the interests of ferrymen - Patnis or not Patnis by caste. So, when the order of April 2, 1960, addressed to the Collector of Midnapore where Patnis as a caste are insignificant conferred a privilege on a hereditary Patni, what the order really intended was protection to a hereditary Patni: a hereditary ferryman mostly belonging to the scheduled tribes and backward classes. Gour Hari Mondal is just that: a hereditary ferryman belonging to the backward classes too. He is a Namasudra. The history of castes, as narrated above, goes to show the fission in every caste from its function. Surely, the maker of the order dated April 2, 1960, was not "up and about" undoing this history by ordering fusion of the two: the caste and function associated with it in the past: the concept of a particular coin for a particular slot, to quote the picturesque expression of Mitra. The order, therefore, meant and could only mean a ferryman, irrespective of caste, in the expression it used : a hereditary Patni. And that is the popular and plain meaning of the word Patni (more of which in paragraph 12 infra).

9. Thus, I see in the impugned orders an error of law, not a mere technical or formal error, but a fundamental one, apparent on the face of the record, turning upside down the plain meaning of the common words : a hereditary Patni - words which mean, and can only mean, a ferryman from generation to generation; words which cannot mean a hereditary Patni by caste without bringing the whole matter to the verge of ridicule and absurdity. And an error as this attends the interpretation of the order dated April 2, 1960, which is virtually a veritable instrument of title for the petitioner, Gour Hari Mondal. So the error becomes an error of law all the more. On such an error of law manifest on the record, it is within my powers of superintendence under article 227 of the Constitution to interfere with the orders (which are without doubt of a quasi-judicial nature, if not of a judicial nature) recorded by the tribunal below, namely, the Commissioner. (See paragraph 13 infra). So, I hold, rejecting the contention to the contrary advanced on behalf of the respondents.

10. The laconic order dated October 21, 1965, of the Collector after remand by the Commissioner by his order dated June 8, 1965, has been noticed: paragraphs 3, 4 and 5 ante. It records no findings on the specific points on which the Commissioner had directed the remit and that too, after taking evidence, if necessary. What the order records simply comes to this: the Commissioner's interpretation of the expression - a hereditary Patni - is there; and by virtue thereof the lease must be granted to Jatindra Nath Hait. This is hardly the way of recording an order - judicial or quasi-judicial. This is really abdicating in favour of the Commissioner without anything like a judicial approach anywhere. This is no better than saying "I order so, because the Commissioner in a manner has directed me to do so" - just the opposite of how a judicial matter or a quasi-judicial matter should be decided. Confining myself to the order only after remand, the position is undoubtedly so. But there is something behind the order of the Collector after remand. He received the order of the Commissioner after remand dated June 8, 1965, on June 14, 1965: vide Commissioner's memo No.

292 Appl. of that date. After that "the matter was inquired into locally", "inquiry over, the Collector (Shri S. S. Chatterjee) wrote a long demi-official letter to the Commissioner (Shri Banerjee) on August 17/18, 1965; vide Annexure I to the affidavit in opposition by the Subdivisional Officer, Samirendra Nath Roy, respondent No. 4. The points Shri Chatterjee's demiofficial letter makes are:

1. The words "hereditary Patnis" were taken to mean, in the context of previous orders including the one dated June 24, 1957 (paragraphs 3 and 9 ante), hereditary boatmen belonging to backward classes.

2. Patni as a section of the scheduled caste is rare in West Bengal. In 1871, the number of the Patnis was no more than 195, as returned in the Census Report: paragraphs 8 and 9 ante.

3. Gour Hari Mondal is a hereditary boatman and a member of the scheduled caste too.

4. So, of the three points listed by the Commissioner in his order of remand, two are satisfied. One, he is a hereditary Patni. Two, he and his forefathers have been ferrymen of this very ferry and other ferries in the vicinity from 1957 and even earlier. The remaining point in the Commissioner's order of remand is satisfied to, but in part. Gour Hari Mondal is not a Patni by caste. He is a namasudra, also a scheduled caste, but a hereditary Patni, that is to say, a ferryman from generation to generation.

5. The Commissioner's instructions were sought whether Gour Hari Mondal would continue as a lessee or Jatindra Nath Hait would step in as a new one.

The Commissioner made short work of this demi-official letter by his reply dated September 15, 1965 : vide Commissioner's memo No. 539 E.A. of that date, asking the Collector to dispose of the matter in terms of his remand order dated June 8, 1965, and pointing out that no instruction could be issued from his end, "as the matter has been a subject to appear before the Commissioner." Probably, what was meant was that the matter was likely to appear before him as an appellate tribunal or a higher authority under rule 3 of the Board's Miscellaneous Rules. This is as it should be. But when the matter did come up before him, with no findings recorded by the Collector on the specific directions given, he made no point of it and dismissed Gour Hari Mondal's petition, presumably reading the findings contained in the demi-official letter of the Collector as part of the order moved against. Even so, the same error of law comes full-circle back: reading the words - a hereditary Patni - in a statutory instrument to mean not only a Patni by occupation, but also a Patni by caste. Gour Hari Mondal is a Namasudra by caste but a Patni by occupation from generation to generation and therefore a hereditary Patni. Jatindra Nath Hait is not a Patni by caste either. He is a Mahisya, as he himself admits in the 8th paragraph of his petition before the Commissioner under rule 3 of the Board's Miscellaneous Rules - a petition on the basis of which the Commissioner had remanded the matter on June 8, 1965. He claims, however, to be a bona fide boatman living in the locality with a few boats

of his own: paragraph 13 *ibid.* Grant, this is so. Still, on his own showing, no hereditary Patni in the sense of a ferryman is he. But his adversary Gour Hari Mondal is just that. To say so is to say that there is something more than an error of law manifest on the record : the finding is perverse.

11. Such error of law and perversity apart, I see the impugned orders resting on no materials whatever upon which a prudent man can conclude that the order of April 2, 1960, had meant a scheduled caste Patni, as mentioned in Serial No. 36 of the Part XIII of the Constitution (Scheduled Castes) Order, 1950, when it granted protection to a hereditary Patni for the farming out of this ferry. The order itself militates against such an interpretation. No one speaks of a hereditary caste, as pointed out already. Furthermore, the history of the matter only confirms this conclusion. The memorandum dated June 24, 1957, emanating from the Board of Revenue expressed Government's concern about the Patnis and other classes of hereditary boatmen belonging mostly to the scheduled castes and backward classes being displaced by outsiders of means, and directed the existing leases to continue, pending further orders: vide Memo No. 10271 (2)-G.E./302/57 of that date to Additional Collector, Estates Acquisition. On July 18, 1957, the Deputy Land Reforms Commissioner requested the Additional Collector, Estates Acquisition, to give full publicity to the contents of the previous order "particularly in areas where the interests of the Patnis or other hereditary boatmen are concerned": vide Memo No. 11931(13) G.E. (L.R.C.) -398/57, of that date. Then came the order of April 2, 1960, containing the final decision of the Government which was to confer the privilege noticed on a hereditary Patni - a compendious expression referring to both the classes referred to earlier - Patnis and other classes of hereditary boatmen - in the collocation of words, Patni necessarily meaning hereditary Patnis too. A change as this in language from 1957 to 1960 only emphasizes that a Patni, simply because he is a Pattni, whether by caste or by occupation, will not get the privilege conferred. Who will then get it ? Only a hereditary Patni, that is, one who and whose forefathers have been Patnis or boatmen, no matter what caste they belong to. To hold other wise will be to say that the order favors only those hereditary ferrymen who are Patnis by caste, and not other ferrymen belonging to the scheduled tribes and backward classes, even though they are hereditary boatmen. So, where does the question of caste come in? And how ? If the maker of this order had intended the scheduled caste Patni, as mentioned in the Constitution (Scheduled Castes) Order, 1950 of which he must be taken to have been aware in 1960, surely he would have said so. Thus, the finding come to by the Commissioner about Patni caste rests on no material. And that again gives me jurisdiction to upset it in the exercise of my power of superintendence under article 227 of the Constitution.

12. Nothing that I have heard from Mr. Panda on behalf of Jatindra Nath Hait or Mr. Acharyya on behalf of the State, the respondents to this rule, can shake the conclusion I have come to. I notice the points in their address seriatim:

(i) It is said that there are no rules by which such vested ferries can be governed. But Rule 12 of the West Bengal Estates Acquisition Rules, 1954, read with section 13 of the parent Act, does provide inter alia that the rules for the time being in force for the management of the Government Estates shall govern such estates of which the vested ferries constitute a species. Such rules for the time being in force are the West Bengal Government Estates Manual, 1953. So the rules are very much there.

(ii) Rule 12 *ibid* provides further that such estates shall be governed not only by the said rules but also by "such directions as may, by general order or, in special circumstances, by special order, be issued from time to time by the State Government in this behalf." This fosters the contention that the order of April 2, 1960, is the order of the Board of Revenue, not of the State Government. But it is overlooked that the order is the order of the State Government, only the agency of communication having been the Board of Revenue. To bring the point home, the orders have to be gone over again. The order of June 24, 1957, directing inter alia to keep the status quo intact, pending a final decision, opens with the words :

It has been brought to the notice of the Government....

So, it is the Government who is moving, anxious to secure justice for Patnis and other classes of hereditary boatmen, mostly belonging to the scheduled castes and backward classes. Thus, the long hand of the Government is too prominent to be missed. The order of July 18, 1957, states it clear and loud that "the undersigned (Deputy Land Reforms Commissioner) is directed to request "full publicity of the previous order." Directed by whom? In the context, by Government again. Such too is the order dated April 2, 1960 : "A.....the undersigned is directed to say etc." Who, in the context, again, will the undersigned, namely, the Secretary, Board of Revenue, be directed by, save by the State Government ? If anything, language as this makes it clear that he who writes so is himself a thing of naught, forming merely a conduit along which the direction of the State Government goes out.

(iii) Denial of equality of opportunity is seen. Is seen too infraction of article 16 of the Constitution, the highest bidder, as Jatindra Nath Hait is, being struck down, even though he is the highest bidder. Assuming article 16 in terms applies, though it does not, the reservation made for one like Gour Hari Mondal, certainly a fellow citizen of ours of the backward classes, is saved by article 16(4), no less by article 341 read with the Constitution (Scheduled Castes) Order, 1950. For the purposes of the Constitution, such a one shall be deemed to be a scheduled caste, entitled to this little of a favoured treatment which Jatindra Nath Hait, a member of the advanced classes, grudges in vain.

(iv) The impugned orders are said to be departmental orders recorded by an executive officer. If that is so, they are beyond the reach of article 227. But that is not so. Indeed, that cannot be so. What goes before: hearing by the higher

authority, a forum in the nature of an appellate tribunal, the order directing a remit, the taking of evidence, if necessary, a judgment, as it were, recording a decision as to the valued rights of the parties - and that too after hearing lawyers - make the orders judicial or quasi-judicial recorded by a tribunal clothed with powers, judicial or quasi-judicial too. (1) Sri Dwarka Nath Tewari, & ors. v. State of Bihar & ors., AIR 1959 SC 249, pronounces article 182 of the Bihar Education Code to be, not law, but a circular which the preface to the Code by the Director of Public Instructions openly says it is. So, this decision cannot be translated here, rule 12 of the West Bengal Estates Acquisition Rules making the order of April 2, 1960, a statutory instrument.

(v) Concurrent findings of fact by the Collector and the Commissioner are seen. I see nothing like that. I see instead dissonance of findings, the Commissioner going one way and the Collector going just the opposite way. Murkier still, that is followed by the Collector surrendering before the Commissioner in stead of recording an order of his own. From such an order "made to order", no concurrent findings of fact can be spelt out.

(vi) Futile has been the reference to (2) Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, , with a view to keeping Article 227 away. On the contrary, this decision supports the view have taken. One of the infirmities which, according to the law laid down here by the Supreme Court, confers jurisdiction on me to interfere under Article 227 of the Constitution is the recording of findings on no material or the findings having been otherwise perverse - just what I have found above.

(vii) The fact that Gour Hari Mondal did not come up to this Court against the Commissioner's order dated June 8, 1965, has been made a point of. The short answer is : "Why should he ? It was no final order. He was not, therefore, obliged to come at that stage."

(viii) The occupation of Tarani Mondal, father of the petitioner Gour Hari Mondal, has been described in the Kabuliyat of 1341 B.S. for this very ferry as chasadi. It is, therefore, said that he was no Patni by occupation. Nothing can hinge on such a description put in by a professional deed-writer, which he is so prone to do as a matter of course; the more so for two reasons : one, a ferryman may well include the occupation of a Patni. Surely, a ferryman does not cease to be a ferryman if he has a little cultivation of his own here and there. Two the records of the tribunal below, which Mr. Acharyya has been good enough to hand over to me, demonstrate that the men on the spot found Gour Hari Mondal not only to be a Patni by occupation but also a hereditary Patni. It is not for me, seized of an application under article 227 of the Constitution, to lay my hands on such a finding.

13. I owe it to Mr. Datta, the learned Advocate for Gour Hari Mondal, to record that the way in which I have dealt with the various contentions in the preceding paragraphs are somewhat, (though not wholly) on the line of his arguments.

14. In the result, the rule must be and is hereby made absolute. This is a case where justice demands that the petitioner should get his costs. I order so. About the application by the respondent Jatindra Nath Hait for vacating the injunction issued by this Court on November 30, 1965, no order appears to be called for. The reason is plain. Jatindra got into the ferry on November 17, 1965 - some 13 days ahead of the issue of the injunction order by this Court. So that order has been an idle one.