
(1991) 05 CAL CK 0038
In the Calcutta High Court
Case No : Civil Order No. 3031 (W) of 1990

Gourhari Patra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-05-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (1992) 2 ILR (Cal) 198

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Asok Ganguly and Goutam Dutta, for the Appellant; Bikash Ranjan Bhattacharjee, Arunava Ghosh, Pranab Kumar Dutta and Jayanta Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

Mahitosh Majumdar, J.—The Petitioner No. 1 Shri Gourhari Patra does not want to proceed with the application as is submitted by the learned Advocate for the Petitioner. The writ application is, therefore, dismissed as regards Gourhari Patra.

2. The short point involved in this application is as to whether after approval of the panel followed by the appointment of the Petitioner, as would appear from pp. 35 and 38 of the writ petition. The District Inspector of Schools cannot pass interim direction to the effect that the appointment of the Petitioner be kept in abeyance to the prejudice of the rights of the Petitioner to livelihood and right to work. The orders impugned in the writ application for the sake of convenience are required to be reproduced:

Government of West Bengal

Office of the District Inspector of Schools (S.E.), Midnapur.

Date 16.2.90

Memo No. 595-B

From: The District Inspector of Schools (Secondary Education), Midnapur, To The Secretary,

Kalindi Union High School, P.O. Kalindi, Dist. Midnapur.

Sub: Discontinuation of services of those who were appointed out of the panels approved by the Additional District Inspector of Schools (S.E.)

In this office Memo Nos. 7081-S dt. 22.12.89, 7082-S dt. 22.12.89 and 7083-S dt. 22.12.89.

Ref.: His Memo No. 3/90 date 4.1.90 received in the meeting held in the Chamber of the Addl. Dist. Magistrate, Jhargram, Midnapur on 13.2.90.

In reference to the above he is requested to explain why the newly appointed teachers have been allowed to continue when he was informed in this Office Memo No. 7114-S dated 31.12.89 not to give effect to the approved panel. He is directed not to allow the candidates concerned to continue in their services until further orders.

A report of compliance may please be submitted to this office immediately.

Sd. K. P. Malakar D.I. of Schools (S.E.) Mid.

16.2.90

3. Mr. Ganguly, learned Advocate appearing in support of the writ application, claimed and contended that the Petitioners succeeded in the interview and they are found suitable by the Selection Committee. Accordingly, the panel was prepared. The Petitioners duly reported for duty, as would appear from Annex. "F" series. One of such communication being Annex. "F" is quoted below for the sake of convenience:

To The Secretary, Kalindi Union High School, P.O. Kalindi, Dist. Midnapore Sir; In compliance with your letter of appointment being No. 124/89 dated 28.12.89, I beg to report my joining today the 30th December, 1989, forenoon to serve your institution as an asstt. teacher in Commerce.

Therefore, I pray to your honor to kindly accept my report of joining and oblige thereby.

In this connection it may be noted that I have already obtained B.Ed. degree from the Vidyasagar University in 1989.

Dated Kalindi, the 30th December, 1989. Yours faithfully,

Sd/- Mrinal Kanti Khanra, B. Com. (Hons) B. Ed. Asstt: Teacher, Kalindi Union High School, P.O. Kalindi, Dist, Midnapore

Dated Accepted

Kalindi. Sd/- Subimal Karan 30.12.89.

Decembe Secretary, Kalindi Union High School, 1989. P.O. Kalindi, Dist. Midnapore.

4. The fundamental challenge of the Petitioners is that after the panel being approved the District Inspector of Schools cannot review his own decision nor he is otherwise entitled to hold any discussion in the office of the Additional District Magistrate who has not otherwise empowered to do anything in the matter of preparation of panel nor there could be any deliberation on this aspect in the presence of the Additional District Magistrate who is not otherwise authorized to participate in such deliberations and also the appointment of the Petitioners pursuant to the approved panel.

5. Mr. Ganguly further referred to and relied on Rule 5(d) of the Recruitment Rules which is quoted below:

5(d). The Managing Committee after due consideration shall forward the panel so prepared by the Selection Committee with all relevant papers to the District Inspector of Schools (S.E.) for approval and authorize the Secretary or Administrator to issue letter of appointment in order of the position in the panel after receiving the panel duly approved by the D.I. of Schools (S.E.). The D.I. of Schools (S.E.) will convey his decision ordinarily within a fortnight from the date of receipt of the panel.

The panel will remain valid for one year with effect from the date of approval of the D.I.S. (S.E.) despite any of the empanelled candidate either does not join or leaves the post after serving a short period. Such candidates who do not join within three months from receipt of appointment letter will be removed from the panel.

After referring to the approval of the panel, as would appear from pp. 36, 37 and 38, Mr. Ganguly proceeded to assail the action of the Respondents which culminated in the issue of the orders or Memos. is referred to. The submissions of Mr. Ganguly may be summed up as follows:

6. Once the Petitioner joined his duties by appropriate reporting, his service cannot be adversely affected or discontinued without giving the Petitioner any opportunity of being heard inasmuch as the impugned order, as contained in Aimexs. "G" and "I" of the writ petition undubitably involved civil consequences. Mr. Ganguly in support of such contention referred to a decision of the Supreme Court in the case of State of Orissa v. Binapani Dei AIR 1967 S.C. 1267 , State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta, In re.: H.K. Infant 1967 (2) Q.B.D. 617 and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . While referring to the decisions Mr. Ganguly made a serious grievance that the breach of natural justice being implicit in Articles 14 of the Constitution the actions taken as Impugned in the application constituted a serious inroad into Articles 14, 19 and 21 of the Constitution of India. Articles 14,

19 and 21 of the Constitution, according to Mr. Ganguly, constitute a golden triangle and any action of the State is to be viewed from the perspective of the aforesaid golden triangle that the Petitioners having succeeded in selection before the Selection Committee and their appointment being approved by the District Inspector of Schools followed by their reporting for duties acquired vested rights. The Respondents cannot, in my view, in violation of the constitutional procedure adversely affect their right. The action of the Respondents constitute grounds for judicial review. In other words, Mr. Ganguly tried also to invoke the doctrine of legitimate expectations on the basis of the pronouncement of Lord Denning M.R. in the case of Schmidt v. Secretary of State for Home Affairs (1969) 2 W.L.R. 337 which was relied on by P.B. Mukharji C.J. in the case of Mihir Kumar Sarkar and Others Vs. State of West Bengal and Others,

7. The main emphasis is laid on the right to life which include right to livelihood and right to work which are, according to Mr. Ganguly, integrated and interdependent. The said right cannot be whittled down or taken away without following the legislative process.

8. Mr. Jayanta Das, learned Advocate appearing for the School authorities, openly and frankly admitted that the action of the Respondents cannot be sustained. While considering the case, the Court cannot otherwise overlook a very significant aspect of the matter that the Me mo No. 595-S dated February 16, 1990, issued by the District Inspector of Schools was not served upon the Petitioners by the concerned District Inspector of Schools but was served by one of the teachers members of the Managing Committee. The Panchayat nominee on a proper application has been added as one of the Respondents. Mr. Arunabha Ghosh, learned Advocate, appears for the added Respondents.

9. Let us now consider the totality of the circumstances and also the basic and fundamental challenge of the Petitioners and also the stout resistance of the Respondents effectively. The facts not in dispute are as follows: (i) The Petitioners duly appeared before the. Selection Committee; (ii) The Selection Committee duly found the Petitioners suitable and accordingly panel was prepared; (iii) The panel was sent to the District Inspector of Schools; (iv) The District Inspector of Schools, as would appear from the Annexures as contained in pp.35, 36 and 38 of the writ petition, approved the panel; (v) The Petitioners were not given opportunity of being heard before the issue of the impugned orders; (vi) The District Inspector of Schools sought to revise or review his own decision, as would be evident from the orders impugned in the writ application; (vii) The District Inspector of Schools by the impugned order sought to pass an interim direction which has and had the effect of restraining the school authorities from giving effect to the panel or treating the Petitioners duly appointed.

10. Now let us consider the cases cited at the Bar as regards civil consequences. Learned Judges of the Supreme Court in the case of State of Orissa v. Binapani Dei (Supra) held in the following manner:

It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first Respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first Respondent of being heard and meeting or explaining the evidence. Similar view is taken in the cases of *E.R. Errie (Supra)* and *Mahendra Singh Gill v. Chief Election Commissioner (Supra)*. Lord Denning M.R. in the case of *Schmidt v. Secretary of State for Home Affairs (Supra)* referred to the observations of Lord Parker C.J. in the case in *Re.: H.K. (An Infant) (Supra)*. Lord Denning M.R. in *Schmidt v. Secretary of State for Home Affairs* held:

I quite agree, of course, that where a public officer has power to deprive a person of his liberty or his property, the general principle is that it is not to be done without his being given an opportunity of being heard and of making representations on his own behalf... Some of the judgments in those cases were based on the fact that the Home Secretary was exercising an administrative power and not doing a judicial act. But that distinction is no longer valid. The speeches in *Ridge v. Baldwin*, (1964) A.C. 40, show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or I would add, some legitimate expectation of which I would not be fair to deprive him without hearing what he has to say.

11. The challenge of the Petitioners is founded upon the violation of Articles 14, 19 and 21 of the Constitution be now examined. The right to life includes right to livelihood and right to work. It embraces the wide sweep of Article 21 of the Constitution.

12. The learned Judges of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation (supra)* held in the manner as follows:

If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaning-fullness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to leave leave aside what makes life livable, must be deemed to be an integral component of the right to life.

13. The Hon"ble Supreme Court in *Francis Carolie Mullin v. Delhi Administration*, inter alia, held as follows:

The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival.

14. The Petitioners by reason of the approval of the panel and appointment thus

made in their favour acquired certain constitutional right and the said right constitute, right to livelihood and work which are integrated and interdependent rights. The Court is required to expand the reach and sweep of fundamental rights rather not to attenuate the meaning and content of the said fundamental rights. Reach of Article 21 of the Constitution is that any executive action which has and had the effect of adversely affecting the right to work and livelihood must be supported by authority of law. That the District Inspector of Schools after approving the panel cannot review the matter in the absence of any provisions in the statute. Power of review being a creature of statute the District Inspector of Schools in the absence of such power is wholly incompetent to revise or review the approval of the appointment. The Court cannot allow such arbitrary actions of the District Inspector of Schools which, in my view, transgress the limit of Rule 5(d) of the Recruitment Rules. The District Inspector of Schools, being a creature of statute, is bound to act in terms of the statute and not to act contrary to the Rules and not to take such decision as is wholly impermissible in law. This is a well-settled principle. It is not understood as to how, why and under what circumstances the District Inspector of Schools without issuing a notice calling upon the Petitioner and also upon the school authorities to explain or to show cause why the panel thus approved by him should be kept in abeyance. It is not understood how the District Inspector of Schools could issue the orders impugned in the writ application in clearest breach of the fundamental of audi alterem partem. The Court does not approve of the action of the District Inspector of Schools in issuing the impugned orders without taking recourse to fair procedure as is indicated above. The Court cannot allow legal escapism to transcend the judicial activism. It is appropriate for the Court to remind itself of the observations made by the U.S. Supreme Court. Several years ago Justice Brandies, who looked upon Government as "the potent and omnipresent teacher (that) teachers the whole people by its example" in the case of *Olmstead v. U.S.* held:

If the Government becomes a law-breaker, it breeds contempt for law, it invites every man to become a law unto himself.

Following Justice Brandies the American Supreme Court said in *Mapp v. Ohio* 367 U.S. 643. 659 (1961):

There are those who say, as did Justice (then Judge) Cardoso, that under our constitutional exclusionary doctrine the criminal is to go free because the constable has blundered. In some cases, this will undoubtedly be the result. But as was said in (a later case) there is another consideration the imperative of judicial integrity. The criminal goes free, if he must, but it is the law that sets him free.

Nothing can destroy a Government more quickly than its failure to observe its own laws, or worse the disregard of the character of its own existence.

15. The action of the District Inspector of Schools, in my view, cannot be

supported by any reason nor the same disclose the grounds for passing such order which on the face of it being de hors Rule 5(d) of the Recruitment Rules is wholly ultra vires Article 14 of the Constitution.

16. At a late stage of hearing Mr. Arunabha Ghosh, learned Advocate, sought to reinforce the basic stand of the added Respondent, the Panchayat nominee, who now ceased to be a member of the Managing Committee, by contending, inter alia, that the action taken by the District Inspector of Schools is valid and proper. I wonder, how such a stand can be taken up by the added Respondent in a case where incurable infirmities are writ large on the face of the orders. The impugned orders, in my view, for the following reasons set forth hereunder cannot be sustained.

(a) The order involves civil consequences.

(b) Complete absence of the essence of fair play in action.

(c) Absence of authority of the District Inspector of Schools to issue such an order.

(d) The order has had the effect of adversely affecting the right of the Petitioners to livelihood and work under Article 21 of the Constitution.

17. Before parting with the case, it is fit and proper to record the observations of the Supreme Court in *Central Inland Transport Corporation v. Broja Nath Ganguly* AIR 1986 S.C. 156 relevant portions are set out hereunder:

Law should move forward in tune with the changed ideas and ideologies of the society; Courts must adapt the law to the changing needs of society. He asserts the law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of society, it must keep time with the heartbeats of the society and with the needs and aspirations of the people.

18. In another case *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, Supreme Court held:

There is no need to minimize the scope of arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is true to say that individuals are not and do not become wise because they occupy high posts of power, and good sense, circumspection and fairness does not go with the posts, however, high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can

conveniently and easily be covered by the rule of law.

The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is imperiled.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

19. The impugned order, therefore, stands quashed. The Petitioners shall be allowed to join their duties and they should be allowed to discharge their functions. The Petitioners shall be paid all the salaries and other benefits, if not already paid, within a period of two months from the date of communication of this order. The functioning of the Petitioners shall not be disturbed in any manner whatsoever. Approval of the appointment of the Petitioners shall be accounted within a period of two weeks from date.

20. This order shall not otherwise prevent the State Respondents from proceeding in the matter provided such power is reserved to the State Respondents. In the event the Respondents have such power to initiate any proceeding The Petitioners shall be at liberty to challenge such proceeding.

21. The writ petition is thus allowed. There will be no order as to costs.

22. Let a plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocate for the Petitioner on his usual undertaking to apply for and take delivery of the certified copy of this order upon depositing the necessary requisites.

Application allowed.