

(1952) 05 CAL CK 0033
In the Calcutta High Court
Case No : Civil Revn. Case No. 2193 of 1951

Haran Chandra Dutt and Another	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 12-05-1952

Acts Referred:

24 Parganas District Board (Dissolution) Ordinance (West Bengal) Ordinance, 1948 — Section 1, 5, 6
Bengal General Clauses Act, 1899 — Section 15, 22
Constitution of India, 1950 — Article 13, 14, 226
Government of India Act, 1935 — Section 88(1)
West Bengal Ordinance, 1948 — Section 5, 6

Citation : AIR 1952 Cal 907

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Nirmal Chandra Sen and Jnanendra Nath Bakshi, for the Appellant;
Hemendra Kumar Das and Smriti Kumar Boy Ghoudhury, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for issue of a writ in the nature of Quo Warranto against the respondent District Board and the members thereof to exhibit the authority under which they purport to exercise the functions and powers and perform the duties of the District Board of 24-Parganas and of the Chairman and Vice-Chairman and the members thereof and also for the issue of an appropriate writ directing the respondent State of West Bengal to. revoke or cancel certain notifications issued under West Bengal Ordinance 3 of 1948 and under West Bengal Act 23 of 1948 and under Act 14 of 1950 and Act 51 of 1950.

2. The petitioners are inhabitants of villages Dhop Dhopi and Dakshin Chatra in the district of 24 parganas and are qualified to vote at elections of members of the District Board of 24 parganas and to stand as candidates for election as members of the said District Board.

3. On 1st October 1886, a District Board known as the District Board of 24-

Parganas was constituted under the Bengal Local Self. Government Act 1885 (Act 3 of 1885). On 28th May 1919, the Bengal Village Self-Government Act 1919 came into force. In 1947, as a result of partition of West Bengal, the area comprised in two police stations, namely Bongaon and Gaighata, came to be annexed to the district of 24-Parganas and as these thanas had no representation in the District Board the Government promulgated an Ordinance being Ordinance 3 of 1948 (the 24-Parganas District Board (Dissolution) Ordinance 1948). This Ordinance was promulgated under sub-section 1 of Section 88, Government of India Act 1935 and was to take effect from 3rd May 1948. Prior to the passing of this Ordinance, an Act known as the Bengal Local Self-Government (West Bengal Amendment) Act 1947 (West Bengal Act 9 of 1947) was passed on 5th January 1948. By this Act of 1947, the offices of the nominated members of the District Board of 24-Parganas were done away with and only the elected members were allowed to function as members of the District Board and to constitute the said District Board.

4. Certain provisions of Ordinance 3 of 1948 are material for the purpose of this case and they may be set out hereunder :

"Clause 3.?The Provincial Government may, if it so thinks fit, by an order published in the official gazette, dissolve the District Board from such date as may be specified in the order.

Clause 5.?Notwithstanding anything contained in the Act, the Provincial Government shall, by notification in the official gazette, constitute the District Board as from the date of dissolution in such manner and consisting of such member or members as it may determine in this behalf.

Clause 6.?The Provincial Government shall, by notification in the official gazette, fix the term of office of members of the District Board constituted u/s 5:

Provided that the term of office so fixed shall not exceed two years."

5. On 10th May 1948 the Government, by a notification issued in exercise of the powers conferred by Clause 3 of the Ordinance, dissolved the District Board of the 24-Parganas on and from 10th May 1948, and further, by another notification issued on the same date under Clause 5 of the Ordinance, the Government constituted a new District Board consisting of 29 members, and it was declared that such District Board would function from 10th May 1948 and one. Prafulla Banerjee was appointed its Chairman. On 12th May 1948, the Government issued another notification u/s 5, read with Section 6 of the Ordinance, whereby it was directed that the District Board would consist of 30 members instead of 29 and one Sri Harendra Nath Mazumdar was appointed as a member of the District Board in addition to the members who were appointed by the notification of 10th May 1948. On 1st June 1948 in exercise of the powers conferred by Section 5 of the said Ordinance the Government amended the notification of 10th May 1948, and appointed the said Sri Profulla Nath Banerjee to be the Chairman of the District Board and authorised him to perform the functions of the Chairman and

Vice-Chairman for carrying on the day to day administration of the District Board.

6. On 9th June 1948 the Chairman and Vice-Chairman were elected by the members of the District Board. On 7th October 1948, an Act known as the 24-Parganas District Board Dissolution (Temporary Provisions) Act 1948 (Act 23 of 1948) was passed by the West Bengal Legislature. Section 1 (2) of the Act provides:

"It shall come into force on the date on which the 24-Parganas District Board (Dissolution) Ordinance 1948 ceases to operate.

Section 1 (3) - It shall remain in force only upto 9th May 1950."

7. Section 3 of this Act had undergone a slight modification in wording thereof and provided

"The Provincial Government may, if and so often as it so thinks fit, by an order etc. etc."

8. Sections 5 and 6 of the Act" remain practically in the same form as cls. 5 and 6 of the Ordinance but the proviso to Section 6 was worded in the following manner:

"Provided that the term of office so fixed shall not exceed the period during which this Act remains in force."

9. Section 7 of the Act provided that before the expiry of the term of office of the members of the District Board constituted u/s 5, a fresh general election of members would be held in accordance with the provisions of the Local Self-Government Act and the rules made thereunder, and upon the expiration of the office of the members, the District Board would be re-constituted on the result of the election.

10. Section 9 of the said Act provides :

"Any notification issued, or anything done or any action taken in exercise of any power conferred by the Ordinance 3 of 1948, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act, as if this Act had commenced on 3rd May 1948."

11. On 30th April 1949, a notification was issued under West Bengal Act 23 of 1948 amending the second notification of 10th May 1948, and it substituted in place of "one year" the period of "one year 8 months" as the period of office of the members of the District Board.

12. On 9th January 1950, another notification was issued which substituted "two years" for "one year 8 months".

13. On 30th March 1950, an amending Act was passed being West Bengal Act 14 of 1950 which extended the life of West Bengal Act 23 of 1948, up to 15th

December 1950. On 19th April 1960 another notification was issued which substituted the words "for the period from 10th May 1948 to 15th December 1950" in place of "two years" as in the Notification dated 9th January 1950.

14. On 9th November 1950, West Bengal Act 51 of 1950 was passed, whereby the life of West Bengal Act 23 of 1948 was extended upto 31st December 1951.

15. On 28th November 1950, a notification was issued substituting in the 2nd Notification of 10th May 1948 the words "for the period from 10th May 1948 to 30th April 1951" for "for the period from 10th May 1948 to 15th December 1950."

16. On 1st February 1951 another notification was issued which substituted "for the period from 10th May 1948 to 30th June 1951" in place of "from 10th May 1948 to 30th April 1951."

17. On 23rd June 1951, a further notification was issued substituting the words "for the period from 10th May 1948 to 15th December 1951" in place of "from 10th May 1948 to 30th June 1951."

18. On 22nd August 1951 the present Rule was issued at the instance of the petitioners.

19. It is contended by Mr. Nirmal Chandra "Sen, the learned Advocate for the petitioner that the Ordinance 3 of 1948 is ultra vires inasmuch as there was no necessity or occasion for promulgating the Ordinance. Mr. Sen draws my attention to para. 6 of the counter-affidavit, where the circumstances which necessitated the promulgation of the Ordinance are set out and submits that as the object of increasing the number of members of the District Board could be achieved by having recourse to Section 10 (d) of West Bengal Act 9 of 1947 which is a permanent Act, the Governor had no power to promulgate Ordinance 3 of 1948. It appears to me that this argument is based on a misapprehension as to the scope and implications of the provisions of West Bengal Act 9 of 1947. Section 10 (d) merely confers power upon the Provincial Government to alter the number of the members of the District Boards. But these members must be persons of areas which fall within the jurisdiction of the District Board. The Government has no power under this provision to include persons as members who belong to areas which are Outside the territorial jurisdiction of the District Board.

20. The villages of Bongaon and Gaighata were outside the area comprised within the District of 24 Parganas and in order to incorporate these two villages in the District and to secure a representation of these two villages on the District Board the Governor felt the necessity of promulgating the Ordinance. It is the satisfaction of the Governor as to the existence of circumstances for promulgating the Ordinance that is necessary and such satisfaction is conclusive. I am unable to hold that the Ordinance was ultra vires.

21. Mr. Sen next contended that as there is no provision for dissolution of the District Board in the Local Self-Government Act 1919. there is no power in the

Governor to provide by an Ordinance for the dissolution of the Board and thus affect the provisions of a permanent Act by an Ordinance, which is a temporary legislation. I do not think that there is any for in this contention. Section 88, Government of India Act 1935, under which the impugned Ordinance was promulgated provides in sub-s. (2) thereof that the Ordinance shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor but it has to be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature. The legislative power conferred on the Governor u/s 88 is very wide and the Ordinance passed is as effective as an enactment of the Provincial Legislature. There is no restriction put on this legislative power except as to its duration. This Ordinance-making power is co-extensive with the legislative power of the Provincial Legislature. It is well settled that an Ordinance can amend an Act of the Legislature. It is therefore difficult to follow why an ordinance cannot affect any provision of a permanent Act of the Legislature.

22. It has been laid down by the Judicial Committee in the case of *Emperor v. Benoari Lal Sarma* 1945 F. C. R. 161 (P. C.) that an Ordinance can repeal or amend the provisions of a permanent Act of the Legislature Viscount Simon L. C. observed at p. 174:

"Assuming that the condition as to emergency is fulfilled, the Governor General acting u/s 72 may repeal or alter the ordinary law as to the revisional jurisdiction of the High Court, just as the Indian Legislature itself might do."

See also the case of *Jananprosanna v. Province of West Bengal* 53 C. W. N. 27 (f. b.).

23. It was further contended by Mr. Sen that as the Ordinance 3 of 1948 was of temporary duration, all acts done under the Ordinance ceased to have effect as soon as the life of the Ordinance expired and consequently the newly constituted District Board ceased to exist and the old District Board revived on the expiry of the Ordinance. This contention appears to me to be equally unfounded. All acts completed during the currency of the ordinance have the same effect as acts done under a permanent statute and they endure permanently notwithstanding the expiry of the Ordinance. It is only the pending proceedings or the unfinished acts which cease to operate or exist with the expiry of the ordinance, unless such proceeding or acts are preserved by appropriate provisions in the Ordinance itself or by other appropriate Acts of the Legislature.

24. In dealing with the effect of temporary Statutes the rule is laid. down in the following words :

"As a general rule and unless it contains special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. Therefore offences committed against temporary Acts must be prosecuted and, punished before the Act expires."

But transactions which are concluded and completed before the Act expires, continue in being, despite the expiry. (Craies on Statute Law, 4th Edn. pp. 347 and 348 and Halsbury, vol. 31 page 513 Hallsham Edition).

25. It is thus clear from these propositions that the dissolution of the old District Board was complete and the expiry of the Ordinance could not have the suggested effect of nullifying the "dissolution and reviving the old District Board.

26. But notwithstanding this result the State Government took the precaution of preserving the life and status of the newly constituted District Board by a saving provision in the shape of Section 9 in the West Bengal Act 23 of 1948, and further extended the life of the West Bengal Act 23 of 1948 by West Bengal Act 14 of 1950 and West Bengal Act 51 of 1950. That such a saving provision is a valid provision is not open to any doubt. See *J. K. Gas Plant Manufacturing Co. (Bampur) Ltd. v. Emperor* 1947 F. C. R. 141 (argument) and pages 163-169.

27. It was also contended by Mr. Sen that the proviso to Section 6 of the Ordinance 3 of 1948 is ultra vires as the Governor had no power by an Ordinance to make a provision which would endure beyond the life of the Ordinance. Consequently the provision that the term of office of members of the District Board may extend upto two years is bad. This argument also appears to me to have no substance. As I have pointed out before, there is no limitation put upon the ordinance-making power of the Governor and so he can legislate by ordinance in any manner in which the Provincial Legislature can legislate subject to this that the duration of the Ordinance shall be limited as prescribed in the Government of India Act.

28. This very contention was put forward with regard to Section 21 of Ordinance 2 of 1932 but was negative by this Court in the case reported in *Jayendra Chandra v. Supdt. Dum Dum Special Jail* 37 C. W. N. 363. The absurdity of the argument was pointed out in the following words :

"The question is really one of construction, and relates mainly to the construction of Section 72, Government of India Act. Section 21 of Ordinance 2 of 1932 authorizes the imposition of sentences of imprisonment ninety that may extend to two years, and is clearly within the competence of the Indian Legislature to create offences by statute and to make them punishable in this manner : it was, therefore, prima facie within the competence of the Governor General to make and promulgate an Ordinance contain no provisions of this character. The question is whether it was the intention of Parliament in limiting the duration of an Ordinance to six months, to limit also the sentences of imprisonment that might be imposed under any such Ordinance to sentences that would expire with the expiry of the Ordinance. There is nothing in the wording of Section 72 to justify such a conclusion, and, in my opinion Parliament cannot possibly have intended anything so unreasonable. To hold otherwise would be to hold that Parliament intended not only to prevent the Governor General from authorizing the Courts to impose such sentences of imprisonment as "might be

necessary for the purpose; of, dealing effectively with, the, emergency, the . existence of which the promulgation of an Ordinance presupposes-but also that the maximum sentences of imprisonment that the Courts might be authorized to impose should vary from six months" rigorous imprisonment in case of convictions on the elate on which the Ordinance came into force, to imprisonment till the rising of the Court, or something equally futile, in the ease of convictions on the date on which the Ordinance was due to expire. The consequences of such an interpretation have only to be stated for its absurdity to become apparent, and I have no hesitation An holding that the interpretations that the petitioner would have us put on Section 72 cannot possibly be the correct interpretation."

29. Then again in dealing with the question whether rights acquired or penalties imposed under a Temporary Statute survive the expiry of the Statute or not, Patterson J. observed :

"This rule of construction was recognized in England as-far back as the year 1841 in *Steavenson v. Oliver* (1841) 8 M. & W. 234, in which a question similar to the one now under consideration arose with reference to the effect of the expiry of an Act on rights acquired while the Act was in force. The learned Judges who dealt with that case were of opinion that not only rights acquired under a temporary Act, but also penalties imposed thereunder, would survive its expiration. The principle underlying, their decision appears to have been that transactions that have been completed, rights that have been acquired and penalties that have been incurred while a statute is in force, are not (in the absence of an express provision to the contrary) affected by the mere fact of the statute having ceased to be in force, a principle which has since receive 1 statutory recognition in the Interpretation Act of 1989 in the case of express repeal, though not as yet in. the case of expiration by effluxion of time. This rule seems to me to be founded not only on considerations of convenience, but also of reason and justice, and it ought, in my opinion, to be kept prominently in mind in endeavouring to decide the question now under consideration."

30. It was further contended by Mr. Sen that the Notifications, dated 12-5-1948 and 1-6-1948 are invalid inasmuch as having issued two notifications both dated 10-5-1948 by which the old District Board was dissolved and the new District Board was constituted the Provincial Government's power under the Ordinance was exhausted and so the Government could not change the constitution of the Board by adding another member to the Board constituted by 29 members under the previous notification of 10-5-1948. Mr. Sen points out that there are no such words as "if and so often as it so thinks fit" in Section 3 of the Ordinance as in .S. 3 of Act 23 of 1948, and so the power under the Ordinance was exhausted by its exercise when issuing the notifications dated 10-5-1948. This contention does not appear to have any force. An Ordinance has the same force and effect as an Act of the Provincial Legislature and Section 15 Bengal General Clauses Act, 1899 provides that:

"Where by any Bengal Act made after the commencement of this Act any power is conferred on the Government, then that power may be exercised from time to time as occasion requires."

31. Further u/s 22, Bengal General Clauses Act, a power to make a notification includes a power to add to, amend, vary or rescind the Notification.

32. In the present case the power of dissolution was exercised only once and it appears that notification was also issued at the same time constituting the new District Board as from the date of dissolution. The District Board began to function from that date as the District Board of the 24-Parganas. What the notifications of 12-5-1948 and 1-6-1948 did was not to dissolve the District Board or to constitute the District Board but to add another member to the District Board. It may be that this newly added member was not in the District Board from the very beginning of its existence but the fact remains that the constitution of the new District Board took place on the very date of dissolution of the old Board as contemplated by the Ordinance. The fact that Mr. Harendra Nath Mazumdar, the added member, did not function from 10-5-1948 but only from 12-5-1948 could not affect the validity of the constitution of the District Board which was brought into existence in due exercise of the power conferred by the Ordinance. The Notification of 12-5-1948 had the effect of amending the notification of 10-5-1948 constituting the new Board. It was competent for the Provincial Government to do so u/s 15 read with Section 22, Bengal General Clauses Act.

33. Mr. Sen relied on the decision of a single Judge of the Nagpur High Court reported in *Gopal Jairam v. State of Madhya Pradesh* A.I. R. 1951 Nag. 181, in support of his contention that the amendment is not permissible as the conditions prevailing on 10-5-1948 did not exist on 12-5-1948 or at any subsequent point of time, because constitution of the new Board had to be done on the date of dissolution of the old Board and the notification of 12-5-1948 had, according to him, the effect of reconstituting the District Board on 12-5-1948. In the Nagpur case, the amendment was sought to be effected in regard to the duration of the period of supersession of a Municipality after the lapse of about two years from the date of supersession of the circumstances obtaining at the time of the order of supersession, and on the basis of which the period of supersession was fixed had ceased to exist, and, consequently, it was held that the amendment extending the duration of the supersession for a further period of six months was not valid. In this case the addition of the new member takes place only two days after the constitution of the new Board. Moreover, it appears to me that what 8. 22, Bengal General Clauses Act, means is that if the exercise of the power is hedged round by any conditions or restrictions the power of amendment will also be subject to similar conditions or restrictions. The section does not mean that the same state of affairs which prevailed at the time when the power was first exercised must prevail also at the time of the exercise of the power of amendment, before the power of amendment, can be validly exercised.

34. Now, assuming that the contention of Mr. Sen is correct, it is clear that the notification of 12-5-1948 could be validly made by virtue of Section 15, Bengal General Clauses Act, without having recourse to Section 22 of the Act at all. The power to constitute the Board could be exercised from time to time as occasion required or in other words a Board once constituted could be reconstituted if the Government thought it necessary. The power u/s 15 does not suffer from the same infirmity as the power u/s 22, and no conditions are laid down for exercise of the power u/s 15. The conditions prevailing at the time of the first exercise of the power u/s 15 need not exist at the time when the power is exercised subsequently to meet the exigencies of the occasion.

35. Further it may be noted that it has been held by the Supreme Court and the different High Courts that Article 226 of the Constitution is not retrospective in operation, and so the petitioner cannot have recourse to the article for challenging the validity of the notifications which were issued before the Constitution came into force.

36. Mr. Sen also relied on this Nagpur case (A. I. R. (1951) Nag. 181) for challenging the notifications issued in 1950, extending the term of office of the members of the District Board from time to time. The observations made by me with regard to the notifications of 1948 apply also in respect of these notifications, and therefore these notifications must be held to be valid notifications,.

37. These notifications have long ago spent their force, and the District Board, constituted and continued under these notifications, has ceased to exist, and a general election has been held and a new District Board has been constituted as a result of such election. This new District Board has functioned as such and has done various acts in exercise of its powers and functions vested in the Board under the provisions of the Bengal Local Self-Government Act. To undo all these acts, even if they are invalid, is the last thing which a Court will be inclined to do under Article 226 at this distance of time. Any interference at this stage will put the affairs of the District Board in a State of utter chaos and confusion.

38. The members of the new District Board who have been recently elected are not parties to this application.

39. Further, I understand that a similar application based on the same grounds challenging the validity of the notifications and the constitution of the District Board that functioned between 10-5-1948 and the date of recent election was moved before Starker J during the last long vacation with the object of stopping the election but Sarkar J. dismissed this application, though no reasons for this order have been given.

40. It is true that only one of the two petitioners, who have moved the present application had made the application before Sarkar J., but, as the subject-matter is practically the same in both the applications, the petitioners cannot be allowed to agitate the grounds over again before this Court after having failed before

Sarkar J.

41. It was also urged by Mr. Sen that the ordinance 3 of 1948 and the Acts that followed t are pieces of discriminatory legislation as they single out only the District Board of 24-Parganas and make provision for its dissolution whereas other District Boards are not subjected to any such process of dissolution, It may be pointed out that events that had taken place upon partition of Bengal, namely, annexation of two new villages of Bongaon and Gaighata to the District of 24-Parganas, necessitated the promulgation of the Ordinance. Such considerations did not arise in the case of other District Boards. This contention of Mr. Sen has therefore no force.

42. There is a suggestion of mala fide in the petition but the charge has not been established.

43. In the result this petition fails. The Rule is discharged. The petitioners will pay the costs of the contesting respondents. Hearing fee is assessed at five gold mohurs.