

(1956) 08 CAL CK 0003
In the Calcutta High Court
Case No : Civil Revision Case No. 1282 of 1956

Howrah Nagarik Samity and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 02-08-1956

Acts Referred:

Calcutta Municipal Act, 1923 — Section 540, 541
Government of India Act, 1919 — Section 80A

Citation : 60 CWN 1045

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Nani Coomar Chakravarty and Mrs. Dipti Kana Bose, for the Appellant; N.C. Chakravarty, D.N. Basu for Opposite Party No. 1, Bholanath Ray and S.K. Rai Chaudhury for Opposite Parties Nos. 2-4, for the Respondent

Judgement

Sinha, J.—The Petitioner No. 1 in this case is the Howrah Nagarik Samity. It is stated to be an association of rate-payers of the Howrah Municipality. It is not, however, a registered society. Petitioners Nos. 2 to 33 are members thereof and have their respective holdings situated in Ward No. 9 in the said Municipality. The Howrah Municipality has recently increased the valuation of holdings for the purpose of the imposition of rates. This has affected the petitioners Nos. 2 to 33, the valuation of whose holdings have been increased by about 300 to 400 per cent, causing a proportionate increase in the rates. The Calcutta Municipal Act 1923 (Bengal Act III of 1923) was passed by the Bengal Legislature after obtaining previous sanction of the Governor-General as required by Sec. 80A of the Government of India Act 1919. Section 540 of the said Act is as follows :

The Local Government may, by notification published in the Calcutta Gazette and in such other manner as they may determine, declare, their intention to extend to the Municipality of Howrah or to any other municipality in the neighbourhood of Calcutta, or to any part thereof, subject to the modifications and restrictions (if any) specified in such notification, all or any portions of this Act which do not already apply thereto

When such a notification is published. Section 541 enables the Commissioners of the Municipality of Howrah, or the municipality concerned, or any inhabitants or rate-payers thereof, if they object to the declaration contained therein, to submit their objection to the Local Government, and such objections are to be considered by the Local Government.

2. In exercise of the powers conferred upon it under sections 540 and 541 of the Calcutta Municipal Act, 1923, the Provincial Government by a Notification numbered 260M dated 18th January, 1932, published in the Calcutta Gazette, extended the operation of the Calcutta Municipal Act 1923, to the Municipality of Howrah with modification and restrictions as appearing therein. The said Notification *inter alia* stated as follows :

Howrah- No. 260M,-18th January, 1932--In exercise of the power conferred by sub-section (2) of section 541 of the Calcutta Municipal Act, 1923 (Bengal Act III of 1923), the Government of Bengal (Ministry of Local Self-Government) are pleased to extend to the municipality of Howrah the following provisions of the Calcutta Municipal Act, 1923, subject to the modifications and restrictions specified therein, which are shown in antique type.

3. Since then, the Municipality of Howrah has been governed by the; Calcutta Municipal Act, 1923, with its restrictions and modifications as made by Government as aforesaid. Previous to the extension of the Calcutta Municipal Act to Howrah, the Municipality of Howrah was governed by the provisions of the Bengal Municipal Act (Bengal Act XV of 1932). It is" a matter for consideration as to whether the extension of the Calcutta. Municipal Act. 1923, to Howrah resulted in completely replacing the Bengal Municipal Act or whether the said Act continued to apply, in so far as its provisions had not been affected by the extension. As will be observed, power has been granted to Government to extend the whole of the Calcutta Municipal Act or any portion thereof to the Municipality of Howrah or any neighbouring Municipality. Where, of course, the whole Act is extended, it would imply that the existing law governing the Municipality had been completely replaced. But where only a part of the Act is extended, it must be held that the intention was to make a partial replacement only, that is to say, the provisions of the Bengal" Municipal Act, in so far as it has been unaffected by the replacement would continue to be in operation. In the present case, it would appear from the Notification mentioned above, that only some of the provisions of the Calcutta Municipal Act, 1923, were extended. The result is that portions of the Bengal Municipal Act continued to be in operation. Section 553 of the Bengal Municipal Act gives power to Government to supersede a Municipality. In exercise of this power, the Government of West Bengal, by a notification containing resolution No. 3344/MIM-175/58 dated 20th April, 1954, published in the Calcutta Gazette (Extra-ordinary) dated 20th April, 1954, superseded the Commissioners of the Howrah Municipality for a period of two years. By another notification of the same date, Shri R.S. Trivedi, I.C.S.. was appointed Administrator of the Howrah Municipality and was invested with all

powers and duties as were exercised and performed by the Chairman and the Commissioners of the said Municipality, whether at a meeting or otherwise. By notification No. 6006|M2A-18|54 dated 8th July, 1954, the previous notification was amended in the following manner:

Alter the words "Shri R. S. Trivedi, I.C.S., Special Officer, Enforcement and Anti-corruption, and ex-officio Secretary to the Government of West Bengal, Home Department, in addition to his own duties" add the words "and Shri Priya Nath Bose, retired Subordinate and Assistant Sessions Judge

4. By further notifications, Shri R. S. Trivedi was replaced by Shri A. Mitra, I.C.S. and Shri H.N.Roy, I.C.S. By the Bengal Municipal (Amendment) Act. 1955, (West Bengal Act XXVII of 1955) Section 554 of the Bengal Municipal Act has been amended, introducing a proviso to clause (b) of section (1), to the effect that when the State Government directs more than one person to exercise any powers; and perform any duties, it shall, by order, allocate such powers and duties between the several persons appointed in such manner as it thinks fit. By notification No. 3429|M.I.M.--11|55 dated 19th April, 1956, the Government of West Bengal have allocated the powers and duties relating to the administration of the Municipality of Howrah, between Shri A. Mitra, Shri H. N. Roy and Shri Priyanath Bose. On the 1st August, 1955, a notice was issued purporting to have been issued by the "Administrator, Howrah Municipality" acting u/s 137 of Calcutta; Municipal Act. 1923 as extended to the Municipality of Howrah, to the effect that the valuation of lands or bustees had been completed and will take effect from the 1st October 1955. It was further stated that the valuation list was open to inspection and that special notice will be given individually u/s 188 to the owner or occupier of premises wherever the valuation of any premises had been increased or fixed for the first time. A list of some of the assessments so effected has been given in the Schedule annexed to the petition marked "A". It appears that there has been an increase of about 300 to 400 per cent in the assessment. Thereafter, notices; u/s 140 were issued by the said Shri Priyanath Bose describing himself as "Additional Administrator, Howrah Municipality." Four such notices have been annexed to the petition and marked with the letter "D". Three of them have been issued in January, 1956, and one in March, 1956. It appears from the said notices that objections had been preferred against the assessments and notice was given that the objections would be heard by the Additional Administrator on certain specified dates.

5. This Rule was issued on the 8th May, 1956, and calls upon the respondents to show cause why, the assessment in valuation made in Ward No. 9 of the Municipality of Howrah should not be rescinded and/or recalled, together with the notices served in relation thereto, and or the respondents should not forbear from giving effect to the same. Leave was granted under Or. 1 rule 8 of the Code of Civil Procedure.

6. Mr. Chakravarty on behalf of the petitioners has taken the following points : Firstly he says that the power granted under sections 540 and 541 of the

Calcutta Municipal Act, 1923, to the local Government to extend the said Act to another Municipality "subject to modifications and restrictions". is bad inasmuch as it constitutes a delegation of legislative function. In other words, he argues that it may be permissible to give Government the power to extend an Act to an area which is not governed by any such law. But in substituting one law for another in a particular area, and in being given the power not only to extend the Act but to modify or restrict it, Government has been granted powers which are nothing but legislative. The second point made by Mr. Chakravarty is based on Section 140 of the Calcutta Municipal Act, 1923, as applied to Howrah Municipality. According to this, objections and valuations are to be made to a committee consisting of not less than five Commissioners, to be called the "Assessment Appeal Committee", to be appointed annually by the Commissioners at a meeting. It is this Committee which can hear and decide the objections. It is argued that Shri Priyanath Bose could not constitute himself as such Committee, and in any event, the notices issued by him alone describing himself as the Additional Administrator are bad because at the time that they were issued, the duties were not allocated between the several Administrators and this particular duty was not allotted to Shri Bose.

7. The question as to whether the legislature can delegate to a non-legislative body the power to extend a particular statute to an area to which it did not apply originally, and also the question as to whether there can be such a delegation, not only to extend the statute, but to modify its provisions, are questions of some complexity. As I shall presently show, the question does not really arise in this case. I shall, however, discuss the point since it has been argued by the relevant authorities placed before me. If it was a matter of first-impression, I would be inclined to hold that the mere power of extension of a statute by a non-legislative body to an area not previously governed by any such law was valid, but that the power to substitute one statute for another in a given area, or to modify or restrict its contents, are purely legislative acts and could not be delegated to a non-legislative body. The point is, however, covered by authority. The first case to be cited is AIR 1949 175 (Federal Court) . Section 1 (3) of the Bihar Maintenance of Public Order Act, 1947, provides that it shall remain in force for a period of one year from the date of its commencement. It has a proviso in the following term :

Provided that the Provincial Government may, by notifications, on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that this Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notification.

8. By an order of the Governor of Bihar, the said Act was extended to the Chhota Nagpur Division, and to the Santhal Parganas District. The Bihar Legislative Assembly and the Bihar Legislative Council having passed resolutions to extend the Act for a further period of one year, under the order of the Governor of Bihar, a notification was published in the Government Gazette, stating that in exercise

of the power conferred by the proviso to sub-section (3) of section 1 of the said Act, the Governor was pleased to direct that the said Act shall remain in force for a period of one year with effect from 16th March, 1948. Subsequently it was further extended. It was argued that the proviso to Section 1(3) of the said -Act quoted above was bad because the power to extend the life of an Act beyond the prescribed period or to modify the same was a legislative power and the Provincial Legislature had no power to delegate this power to the two Houses of Legislature so as to extend the life of the Act or modify the same simply by a resolution. Kania, C.J., said as follows :

The power to modify an Act of a Legislature, without any limitation on the extent of the power of modification, is undoubtedly a "legislative power. It is not a power confined subject to any restriction. limitation or proviso (which is the same as an exception) only

9. Mahajan, J., said as follows :

It may be asked, what does the proviso purport to do in terms and in substance. The answer is that it empowers the Provincial Government to issue a notification saying that the Provincial Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notification. As stated in the earlier part of this judgment, unless the power of the Provincial Government is co-extensive with the power of the Provincial Legislature, it is difficult to see how it can have the power to modify a statute passed by that Legislature. Modification of statute amounts to re-enacting it partially. It involves the power to say that certain parts of it are no longer parts of the statute and that a statute with X sections is now enacted with Y sections. In the act of modification is involved a legislative power as a discretion has to be exercised whether certain parts of the statute are to remain in law in future or not or have to be deleted from it. The power to modify may even involve a power to repeal parts of it. A modified statute is not the same original statute. It is a new Act and logically speaking, it amounts to enacting a new law. The dictionary meaning of the word "modify" is to make something existing much less severe or to tone it down or to make; partial changes in it. What modifications are to be made in a statute or whether any are necessary is an exercise of law-making power and cannot amount merely to an act of execution of a power already conferred by the statute. The extent of changes is left to external authority, i.e. the Provincial Government

10. It was held that the impugned provision of law was bad.

11. The same point was dealt with in a decision of the Supreme Court-- In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, , which has been explained in a subsequent decision, Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, . After analysing the views of the learned Judges in the earlier case. Bose, J., states as follows :

In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy.

12. In the earlier case, Mukherjea, J. stated that the word "modification" did not mean or involve any change of policy but was confined to alteration of such a character which kept the policy of the Act intact and introduced such changes as were appropriate to local conditions of which the executive Government was made the Judge. In Rajnarain Singh's case Bose J., proceeded to say as follows :

Now what exactly does section 3(1) (f) authorise? After its amendment it does two things : First, it empowers the delegated authority to pick any section it chooses out of the Bihar and Orissa Municipal Act of 1922 and extend it to "Patna"; and second, it empowers the Local Government (and later the Governor) to apply it with such "restrictions and modifications" as it thinks fit.

In the Delhi Laws Act case the following provision was held to be good by a majority of four to three :

The Provincial Government may.... extend with such restrictions and modifications as it thinks fit... any enactment which is in force in any part of British India at the date of such notification.

Mukherjea and Bose JJ., who swung the balance, held that not only could an entire enactment with modification be extended but also a part of one;.... But Mukherjea and Bose JJ., both placed a very restricted meaning on the words "restriction" and "modification". and, as they swung the balance, their opinions must be accepted as the decision of the Court because their opinions embody the greatest common measure of agreement among the seven Judges.... But even as the modification of the whole cannot be permitted to effect any essential change in the Act or an alteration in its policy, so also a modification of a part cannot be permitted to do that either. If that were not so, the law, as laid down in the previous decision, could be evaded by picking out parts of an Act only, with or without modification, in such a way as to effect an essential change in the Act as a whole. It follows that when a section of an Act is selected for application, whether it is modified or not, it must be done so as not to effect any change of policy, or any essential change in the Act regarded as a whole. Subject to that limitation we hold that section 3(1) (f) is ultra vires, that is to say, we hold that any section or sections of the Bihar and Orissa Municipal Act of 1922 can be picked out and applied to "Patna" provided that does not effect any essential change in the Act or alter its policy.

13. The result is that if this test is applied to sections 540 and 541 of the Calcutta Municipal Act, 1923, those provisions would not by themselves be bad, but the modifications and/or restrictions made under them must be limited to

non-essential alterations only. It is therefore necessary to consider as to whether the Calcutta Municipal Act, 1923, as applied to Howrah, contains any essential alterations. Mr. Chakravarty has referred me to several of its provisions as being alterations which are essential or in any event alterations which cannot be said to be inessential. I will briefly refer to the main points that he has indicated :--

(i) In section 131, the period after which there can be a general re-valuation, that is to say, a revision of assessment has been decreased from 6 years to 5 years.

(ii) In section 140, the Chief Executive Officer has been substituted by a Committee of 5 Commissioners called "the assessment appeal committee".

(iii) In section 141, appeal has been allowed not to the Court of Small Causes, but to the Subordinate Judge, Howrah.

(iv) In section 221, the use of filtered water has been allowed for street watering, flushing of municipal drains etc., whereas in the original Act the use of filtered water was prohibited for such purposes.

14. In my opinion, most of these points are without substance. The use of filtered water instead of unfiltered water is not an essential modification but was a necessary modification because in Howrah there is no supply of unfiltered water. The substitution of the "Assessment appeal committee" in the place of the Chief Executive Officer, is also a necessary modification for the simple fact that the Howrah Municipality has no Chief Executive Officer. But as regards section 131, it is obvious that there has been a change which is upon an essential matter, that is to say, it is a material change. The period during which a rate-payer's valuation should remain constant, may be said to be a valuable right which he enjoys. It is well known--and I think, known to an extent which would justify the Court to take judicial notice of it, that the land value in the city of Calcutta and its environment has risen enormously. It also appears from the increase in the assessment of the ratepayers, as set out in the Schedule to the petition, that there is a contemplated increase of 300 to 400 per cent. Thus, the period during which the previous valuation should not be disturbed, is an extremely valuable right to the rate-payer and a diminution of that period cannot be said to be an inessential matter or a matter which does not affect the policy of the Act. This is a matter which has affected the petitioners directly because if the period had been six years, then the assessments would not have been increased, as it has been done in the present cases.

15. In my opinion, however, it is unnecessary to consider this aspect at all, because of the following reason. The Calcutta Municipal Act, 1923, has now been replaced by the Calcutta Municipal Act, 1951. This new Act is an Act passed by the West Bengal Legislature, being West Bengal Act XXXIII of 1951 and came into operation from the 14th February, 1952. u/s 2(1) of the said Act, the Calcutta Municipal Act of 1923 was repealed. Sections 611 and 614 of the said Act are, however, grouped under Chapter XXXVIII, which contains what is called

"Transitory Provisions." I must set out below the two sections mentioned above :--

Sec. 611. The provisions of this Chapter shall have effect notwithstanding anything to the contrary elsewhere in this Act

Sec. 614. The provisions of the Calcutta Municipal Act, 1923, as extended to the Municipality of Howrah under that Act and in force immediately before the commencement of this Act shall continue to be in force until the provisions of this Act are extended to that Municipality under this Act.

16. Had it been the fact that the Calcutta Municipal Act, 1923, was in force, in the Municipality of Howrah simply as a result of the order of the Provincial Government (now the State Government), then it would be one thing. It can now be said, however that the Legislature has enacted that the provisions of the Calcutta Municipal Act, 1923, as extended to the Municipality of Howrah under that Act was to be in force until the provisions of the Calcutta Municipal Act, 1951, were extended to that Municipality. There has been no such extension as yet. Thus, there has been legislative recognition of the extension of the 1923 Act with the modifications, and it must be said at the present moment that the said Act as extended to Howrah, was in force, not by executive fiat but by Legislative enactment. If that is so, the infirmities mentioned above at once disappear. There is then no question of any modification being essential or non-essential, since the Legislature has the right and authority to modify, alter or repeal any law, to any extent.

17. This really disposes of the main argument advanced in this application. On the facts and circumstances stated above, the petitioner is not entitled to any relief at the present moment. So far as the other points of Mr. Chakravarty are concerned, they can be easily disposed of. Firstly, when Shri Priyanath Bose was appointed as an Administrator, there was no provision of law to allocate duties between different administrators, and it cannot be said that in the absence of such allocation, the Administrators had no duties to perform. On the other hand, the Administrators, and each of them were clothed with all the powers which previously vested in the Chairman and the Commissioners. Therefore, there is no substance in this point. In view of this, I do not see why the notices issued by Shri Priyanath Bose are invalid. So far as the question of the appeal committee is concerned, since there has been supersession, the rights of all the Commissioners are vested in the Administrators and therefore naturally there cannot be any appeal committee, and the Administrators are the persons who have to hear the objections. For the reasons given above, no ground has been shown for my interference. The application fails, the Rule is discharged and all interim orders are vacated. There will, however be no order for costs.