

(1951) 08 CAL CK 0018
In the Calcutta High Court
Case No : Civil Revn. No. 1181 of 1951

Indra Narayan Bera

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 10-08-1951

Acts Referred:

Constitution of India, 1950 — Article 15(1), 19, 19(1), 19(5), 20(2)

Citation : AIR 1952 Cal 61

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : Panchanan Pal and Murari Mohan Mitra, for the Appellant; Chandra Sekhar Sen and Smriti Kumar Roy Choudhary, for the Respondent

Judgement

Das, J.—This Rule was obtained by the petitioner calling upon the opposite parties to show cause why a permit under the West Bengal Food Grains (Movement Control) Order, 1951, should not be granted to the petitioner or why the order complained of in the petition should not be set aside or why a writ in the nature of Mandamus or Prohibition or Certiorari should not issue or why such other or further order or orders should not be made as to this" Court may seem fit and proper.

2. In the petition on which the Rule was issued the petitioner stated that he had a large family-consisting of 60 members and that the paddy of the lands referred to in the petition is entirely consumed by the members of the family and in the payment of the labourers employed by the petitioner for the purposes of cultivation and for incidental expenses. The petitioner stated that he had applied for a permit for moving his paddy about 350 maunds from a cordoned area in the Sunderbans to a place outside the cordoned area. The petitioner further alleged that the permit was refused by the Director and that the action of the officers entrusted to make the enquiry was mala fide. The petitioner also alleged that the Bengal Food Grains (Movement Control) Order 1951 is ultra vires of the Constitution. The petitioner also alleged that the Bengal food Grains (Disposal

and Acquisition) Order is also void of the Constitution. The petitioner therefore prayed for a direction on the opposite parties to grant a permit as prayed for by him. He also prayed for a direction that the directive served on him to sell 25 maunds of paddy was illegal and that the opposite parties might be restrained from giving effect to a statement recorded by his nephew on the back of the directive that in case the petitioner does not get a permit as prayed for the entire remaining stock of paddy in the sunderbans would have to be sold to the local D. P. A. Agent.

3. Two affidavits have been filed on behalf of the opposite parties, one sworn to by the Assistant Regional Controller of Procurement and another by the Junior Assessor, Beneswarpur Union. The petition on which the Rule was issued was sworn to on behalf of the petitioner by his nephew. The further affidavit which has been put in has also been sworn to by the petitioner's nephew Bhupati Charan Bera.

4. Mr. Pal appearing on behalf of the petitioner has first contended that the action of the opposite parties in refusing the permit, applied for, is mala fide. His case is that he is joint with his brothers and that the entire stock of paddy which he gathers is consumed by his labourers and by the members of his family and no surplus is left, that the opposite parties never went to the petitioner's place and the enquiring officer namely Junior Assessor of Banewarpur Union held an enquiry without notice to him at Atteswari Mill about more than a mile away from the petitioner's residence, that the entry of the said officer into the residence of the petitioner in the Sunderbans was without notice and constituted criminal trespass, that the petitioner's nephew was coerced to make an endorsement in the directive as alleged in the petition and that all these facts showed that the refusal of the permit was not made bona fide in exercise of the discretion conferred on the officers under the Bengal Food Grains (Movement Control) Order.

5. I have to decide the question whether the action of the enquiring officers was mala fide or not on the affidavits which have been filed in this Court. It appears from the affidavit filed by the Junior Assessor of Banewarpore Union that the petitioner cultivated 9 1/2 bighas of land within the Union, that the members of his family number only 6 and not 60 as alleged in the petition of that the petitioner and his brothers paid Union rates separately and there was separate assessment of the Union rates, that the petitioner had 8 ration cards for drawing kerosene and sugar, that the enquiring officer examined the dakhilas and on these facts the enquiring officer was satisfied that the petitioner was separate from his brothers. The affidavit of the Assistant Regional Controller of Procurement is based on the enquiry by the Junior Officer aforesaid and on a personal interview with the said officer. In my opinion the fact that the petitioner had his home separately recorded in the Union Board and paid Union rates separately from his brothers and the fact that he had only 8 ration cards for drawing sugar and kerosene are strong circumstances in support of the view taken by the enquiring officer. The petitioner has not pledged his oath in support

of the petition. It has been sworn to by his nephew. In my opinion, it is impossible to say that on the facts appearing from the affidavits filed on either side that the opposite parties acted mala fide in refusing the permit. At the most there may have been an error of judgment on their part but it is difficult to hold that the officer concerned in the matter of the enquiry made locally in Howrah acted mala fide or that the act of the officer in the Sunderbans in serving the directive or in requiring the petitioner's nephew to subscribe to an endorsement on the back of the directive was actuated by any intention other than that of performing their legitimate duties. The officer who served the directive in the Sunderbans is no longer in the service of the State. It appears from the affidavit of the Assistant Regional Controller that the said officer has been retrenched and his knowledge is based on an enquiry made by the present incumbent of that place. I therefore hold that the allegation of mala fides has not been brought home to the opposite parties and that the first contention raised by Mr. Pal must be negatived.

6. Mr. Pal has next contended that the West Bengal Food Grains (Movement Control) Order, 1951, is void of the Constitution because it contravenes Article 15(1) of the Constitution. It is argued that Article 15(1) has been contravened because the Order discriminates between citizens on the ground of their place of birth. The argument is developed in the following way. It is said that the order discriminates between cordoned areas and non-cordoned areas. The Order prohibits free movement of food grains not merely from one State to another but also from a cordoned area to a place outside the cordoned area except under a permit. It is urged that a person whose place of birth is within the cordoned area is under a special disability because he is precluded by the terms of the Order from moving the foodgrains from his place of birth to a place outside. In my opinion, this argument is based on a misapprehension of Article 15(1) of the Constitution. Article 15(1) requires that a State shall not discriminate against any citizen on the grounds only of religion, race or place of birth or any of them. This means that the privileges which a citizen enjoys under the Constitution cannot be varied merely on the ground that he was born in a particular place. The Order no doubt requires a permit for foodgrains to be moved from a cordoned area to a place outside it but this restriction is not motivated by the fact that a citizen was born at a particular place. The cordoned areas have to be determined because of the fact that in the interest of the general public it may be necessary to forbid foodgrains from being moved out of a cordoned area unless a permit is taken. The delimitation of the cordoned areas is made on entirely different grounds. It is not made merely on the ground that a person is born within a certain area. It is not always true that the lands within the cordoned area belong to the persons resident therein. On all these grounds I am clearly of opinion that there is no substance in the argument that the Order contravenes At. 15 (1) of the Constitution.

7. Mr. Pal has next contended that the Order is void u/s 19 (1) (d) of the Constitution. Section 19 (1) (d) confers on all citizens the right to move freely

throughout the territory of India. It is said that this right of free movement of a citizen is restricted by the fact that the area where a citizen may be residing may be cordoned off from other areas. It is suggested that thereby the right of a citizen within the cordoned, area to move freely with his foodgrains to places outside that area is restricted, and that the effect of cordoning off of the area is to preclude a citizen residing therein to take out his foodgrains from that area to a place outside. The directive under the aforesaid Order may have the effect of restricting free movement of goods. I fail to see however how this has the effect of interfering with the right of a citizen to move freely throughout the territories in India. This Article was obviously intended to permit the right of locomotion of a citizen throughout the territories in India subject to the reservations contained in Article 19(5) of the Constitution. But even assuming that the effect of cordoning off of certain areas may have an indirect effect on free movement of a citizen, the State is empowered under Article 19(5) to enact laws which may impose reasonable restrictions on the exercise of the rights conferred by Clauses (d), (e) and (f) of Article 19 in the interest of the general public. It is well-known that there is grave food deficit in the Union of India brought about by the partition of British India and by the enormous movement of refugees and on account of other economic causes. If the State enacts a piece of legislation with a view to control free movement of goods, I find it impossible to say that such a piece of legislation has not been made in the interest of the general public and that the restriction imposed on free movement of goods is an unreasonable restriction on the fundamental right of the citizen either under Article 19(1)(d) or, under Article 19(1)(f). In my opinion, this argument based on Article 19(1)(d) cannot be accepted.

8. Mr. Pal has next contended that the Order is void because it contravenes Article 19(1)(f) which entitles all citizens to acquire or hold or dispose of property. There is no question that the Order interferes with the right of a citizen to acquire, hold and dispose of property. It affects, to a large extent, his right to possess property, to acquire property and to dispose of the same. The question, however, is whether the Order imposes reasonable-restrictions on such a right in the interest of the general public. I have already said, such an Order is essentially requisite in the present conditions of the country. The restrictions imposed by the Order are eminently reasonable. It is, therefore, not correct to say that the Order is contrary to Article 19(1)(f) of the Constitution. This was the view taken by Bose, J., in "Abhimanya Adak v. State of West Bengal, "Civil Revn. Case No. 691 of. 1951, decided on the 20th of July 1951.

9. Mr. Pal has next contended that the Act is void under Article 19(1)(g) of the Constitution. It is contended that this Order interferes with the right of a citizen to carry on trade. It is pointed out that the Act forbids trading in the free market but this clause is also subject to an exception contained in Article 19(6) which exempts the operation of any existing law in so far as it imposes reasonable restrictions and permit the State from making any law which is in the interest of the general public. As I have already said, the West Bengal Food Grains

(Movement Control) Order imposes restrictions which are reasonable in the interest of the general public. The Order no doubt controls free movement of foodgrains unless a permit is taken. Such movement may be limited under the Order to movement from a cordoned area to another or from one State to another. The Order contains provisions for the grant of a permit which is regulated by certain rules contained in the Order itself. These rules, in my opinion, confer reasonable protections. I am accordingly of the opinion that the West Bengal Food Grains (Movement Control) Order does not contravene either Article 19(1)(d) or Article 19(1)(f) or Art 19(1)(g).

10. Mr. Pal has next contended that Para. 7 of the Order is void because it contravenes Article 20(2) of the Constitution. Article 20(2) lays down that "no person shall be prosecuted and punished for the same offence more than once." Para 7 of the West Bengal Food Grains (Movement Control) Order prescribes certain penalties in case of contravention of the Order. It is said that the Essential Supplies Act also contains certain provisions imposing penalties under circumstances which may come within Para. 7 of the West Bengal Food Grains (Movement Control) Order. This argument merely implies that a person who contravenes the provisions of this Order may be subject to a double penalty. It does not follow from the terms of this Order that the person concerned will be prosecuted and punished for the same offence more than once. If for the same offence a citizen is prosecuted and punished twice, the later prosecution and punishment may be bad and a Statute which contains such a provision would be void of the Constitution under Article 20(2) of the Constitution, but the West Bengal Food Grains (Movement Control) Order does not contain any provision that the person contravening the Order may be prosecuted and punished more than once for the identical offence.

11. It is also argued that Para. 8 of the West, Bengal Food Grains (Movement Control) Order is void or the Constitution under Article 31(1) of the Constitution because this paragraph contains provisions for the forfeiture also of the vehicle carrying the goods. It is argued that the vehicle may be alone to a person other than the person who has contravened the provisions of the West Bengal Food Grains (Movement Control) Order, and as such Para. 8 therefore expropriates a citizen of his right to the vehicle. Article 31(1) of the Constitution states that no person shall be deprived of his property save by authority of law. The provisions of Para. 8 of the West Bengal Food Grains (Movement Control) Order empower a person acting under authority on behalf of the State Government to seize, authorise the seizure of any article in respect of which he suspects that a contravention of this Order has been, is being or is about to be committed, along with the packages, coverings, receptacles or animals vehicles, vessels or conveyance in which such article has been, is being or is likely to be carried. This provision has not the effect of expropriating the owner of these vehicles. It merely provides for seizure as the paragraph itself states. There is therefore no contravention of Article 31(1) of the Constitution.

12. Mr. Pal has also contended that the West Bengal Food Grains (Disposal and Acquisition) Order, 1947, is void of the Constitution because this Order contravenes Article 31(2) of the Constitution. Article 31(2) of the Constitution requires that a piece of legislation which empowers the possession or acquisition for public purposes of any property moveable or immovable, must provide for compensation for the property taken possession of or acquired and either fix the amount of compensation or specify the principles on which and the manner in which compensation is to be determined and given. It is extremely, doubtful whether the Order in question is a piece of legislation empowering possession or acquisition of a piece of property. The Order merely requires a person to sell a certain quantity of foodgrains to the State. But apart from this, Article 31(5)(a) saves the existing law. The Order in question was promulgated in 1947 more than 18 months before the Constitution, the time-limit referred to in Article 31(6) of the Constitution. The contention of Mr. Pal on this head must also be overruled.

13. I have now dealt with all the grounds on which the West Bengal Food Grains (Movement Control) Order and the West Bengal Food Grains (Disposal and Acquisition) Order, 1947, were challenged before me. In my opinion, these two Orders survive the onslaughts made on them and it must be held that the said Orders are not invalid and are not void of the Constitution.

14. It remains for me to consider two other points concerning the paddy in Sunderbans. It is first contended that the directive issued on the petitioner requiring the petitioner to sell 25 maunds of paddy is illegal being in contravention of Section 3 of the Food Grains (Disposal and Acquisition) Order 1947. It is true that in similar cases this Court has interfered with other directives (See the judgments of Bose, J., in "Abhimanya Adak v. State of West Bengal", Civil Revn. Case No. 691 of 1951 and "Bamchandra Pal v. Hirmba Kumar Pal", Civil Revn. Case No. 679 of 1951.) Unfortunately for the petitioner the petition in the present case does not state the terms of the directive. It does not mention that the petitioner was required to sell the paddy at a price not exceeding a certain sum. The petition merely states that the petitioner was required to sell the paddy in question at the Government rate. The further affidavit on behalf of the petitioner does not carry the matter far. On the other hand, it speaks of the price as Rs. 7-8-0. In these circumstances, it is not permissible for me to speculate that the directive in the present case must have been on the same terms as were in question in the two Civil Revision cases disposed of by Bose, J. The contention urged on behalf of the petitioner must therefore be overruled. Mr. Pal has also contended that there should be a direction that the endorsement made on the back of the directive by the nephew of the petitioner is unauthorised and that the opposite parties should be restrained from acting thereupon. Here again, the petitioner is confronted with a preliminary difficulty. The endorsements on the back of the directive have been made by his nephew on behalf of the petitioner. Those endorsements do not bind the petitioner and the rights of the petitioner cannot be impaired by an endorsement made by his nephew on the spot without instructions from or

authority of the petitioner. There is no reason therefore to pass a direction as prayed for on behalf of the petitioner.

15. All the contentions raised on behalf of the petitioner are therefore of no substance. In the view I have taken, I have not dealt with the ambit of the jurisdiction of this Court to interfere u/s 226 of the Constitution nor have I dealt with the question as to the form of the petition under Article 226 of the Constitution nor have I expressed my opinion on the question that such a petition must be sworn to by the petitioner himself. In the result this Rule must be discharged with costs, hearing fee being assessed at five gold mohurs.