

(2014) 12 CAL CK 0103
In the Calcutta High Court
Case No : Writ Petition No. 27000 (W) of 2014

Jyotirmoy Mukhopadhyay

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Bengal General Clauses Act, 1899 — Section 15, 22
Constitution of India, 1950 — Article 243, 243R, 243S, 243U
West Bengal Municipal Act, 1993 — Section 13, 14
West Bengal Municipal Election Act, 1994 — Section 12, 14, 29A

Citation : (2015) 2 CHN 244

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Saptangshu Basu, Kishore Datta, Biswaroop Bhattacharya, Reshmi Ghosh, Dipayan Kundu, Tannistha Bandopadhyay and Srijib Chakraborty, Advocate for the Appellant; Abhratosh Majumdar, Ld. G.P., N.C. Bihani and T.M. Siddiqui, Advocate for the Respondent

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioner to issue a writ in the nature of mandamus commanding the respondents to cancel, rescind, withdraw and/or forbear from giving any effect and/or further effect, to the impugned decision contained in notification No. 369/MA/O/C-4/1M-1/2001 dated August 13, 2014. The impugned notification was issued in exercise of power conferred by Sub-section (4) of Section 14 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the said Act, 1993) to appoint Board of Administrators for Rajarhat Gopalpur Municipality, (hereinafter referred to as the said Municipality) until further orders in supersession of notification No. 317/MA/O/C-4/1M-1/2001 dated July 14. Following persons were the members of the above Board of Administrators:--

"(1) Sri Purnendu Basu, Hon'ble Member, West Bengal Legislative Assembly.

(2) Sri Sabyasachi Dutta, Hon'ble Member, West Bengal Legislative Assembly.
And

(3) Sub-divisional Officer, North 24 Parganas (Sadar), North 24 Parganas."

2. The petitioner had been residing in Ward No. 23 of the said Municipality for a substantial length of time. He was first nominated Chairman of the said Municipality consequent upon the municipalisation of the area concerned in the year 1994. Subsequently, the petitioner had contested municipal By-Election of the said Municipality held in the year 2013 and he lost the same.

3. The facts of this case in a nutshell are as follows:

"The last election of the said Municipality comprising of 35 wards was held in the year 2009. The first meeting of Board of Councilors after the above municipal election was held on July 22, 2009. The term of the above Board of Councilors of the said Municipality came to an end with effect from July 21, 2014 in accordance with the provisions of Article 243U of the Constitution of India read with the provisions of Sub-section (2) of Section 14 of the said Act, 1993."

4. The respondent No. 6 sent draft list of polling stations pertaining to part Nos. 1-108 of 115 A.C. and part Nos. 1-164 of 117 A.C. comprising of 35 wards of the said Municipality in connection with forthcoming municipal election of the said Municipality under memo No. 1089/Rht dated June 3, 2014 with a request to publish the same in the notice board of executive officer of the said Municipality on June 4, 2014 for wide publication. The municipal returning officer of the said Municipality published the list of aforesaid polling stations by virtue of a notice dated June 4, 2014 in accordance with the provisions of Section 12 of the West Bengal Municipal Election Act, 1994 (hereinafter referred to as the Election Act, 1994) read with the provisions of West Bengal State Election Commission's Order No. 587-SEC/5P-16/2013 dated May 26, 2014 inviting suggestions and objections, if any, to be submitted by June 19, 2014.

5. Since it had not been possible to hold election of the said municipality before the expiry of 5 years of the Board of Councilors, the respondent No. 6 was appointed as the Administrator of the said Municipality by virtue of notification No. 317/MA/O/C-4/1M-1/2001 dated July 14, 2014 issued by the State Government in exercise of power conferred by Sub-section (4) of Section 14 of the said Act, 1993 till the new Board of Councilors of the said Municipality takes over charge after the election to be held or until further orders, whichever is earlier.

6. By virtue of the impugned notification dated August 13, 2014 issued by the State Government in exercise of power conferred by Sub-section (4) of Section 14 of the said Act, 1993 a Board of Administrators was appointed for the said Municipality consisting of the respondent Nos. 6, 7 and 8 as members of the above Board with immediate effect and until further orders. By virtue of the above notification the respondent No. 6 was directed to act a Chair-Person of the Board of Administrators until further orders.

7. It is submitted by Mr. Saktinath Mukherjee, learned Senior Advocate appearing

on behalf of the petitioner, that by virtue of the notification dated July 14, 2014, the respondent No. 6 was appointed to discharge the functions of Administrator of the said Municipality in accordance with the provisions of Sub-section (4) of Section 14 of the said Act, 1993 till taking over the above charges by new Board of Councilors after election to be held or until further order, whichever is earlier.

8. According to Mr. Mukherjee, the power of State Government to appoint Administrator in accordance with the provisions of Sub-section (4) of Section 14 of the said Act, 1993 was exhausted after appointment of the respondent No. 6 by virtue of notification dated July 14, 2014. There was no scope to appoint Board of Councilors for the said Municipality by virtue of the impugned notification dated August 13, 2014 in exercise of power conferred by the above provisions of Sub-section (4) of Section 14 of the said Act, 1993 for the second time.

9. It is also submitted by him that according to impugned notification, the State Government felt it necessary to appoint Board of Administrators for running day to day functions of the said Municipality without disclosing the basis of formation of such opinion, if any. According to Mr. Mukherjee, the above decision making process is not sustainable in law.

10. It is further submitted by Mr. Mukherjee that the respondent Nos. 7 and 8 were not the resident of the area concerned. They were not the property tax payers under the said Municipality. So, they were not eligible voters in any area of the said Municipality in accordance with the provisions of Section 29A of the said Election Act, 1994. According to Mr. Mukherjee, the aforesaid facts leads to a conclusion that the respondent No. 7 and 8 were included as members of the Board of Councilors of the said Municipality by virtue of the impugned notification to serve the interests of a political party affiliated them to contest the Legislative Assembly of the State from the area concerned.

11. It is further submitted by Mr. Mukherjee that the interest of the residents of the said Municipality could be served by appointing members of Board of Administrators of the said Municipality from amongst the elected members of outgoing Board of Councilors of the above municipality representing the political parties proportionately.

12. Reliance is placed by Mr. Mukherjee on the decisions of Mohd. Karim Khan and Others Vs. Shyam Sunder Shrivastava and Others and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

13. It is submitted by Mr. Jayanta Mitra, learned Advocate General, West Bengal, appearing on behalf of the respondent Nos. 5 to 8, that the outgoing Board of Councilors dissolved automatically by operation of law as provided in Sub-section (2) of Section 14 of the said Act, 1993. The respondent No. 6 was an officer of the State Government attached to the Administrative functions at Rajarhat Gopalpur which comprise the municipal area of the said Municipality.

14. According to the learned Advocate General, the provisions of Section 15 of the Bengal General Clauses Act, 1899 (hereinafter referred to as the said Act, 1899), any power conferred by any Bengal Act or West Bengal Act made after commencement of the said Act, 1899, unless a different intention appears, might be exercised from time to time as occasion requires. It is also submitted by him that in accordance with the provisions of Section 22 of the said Act, 1899 where a power to issue orders, rules, bye-laws or notifications was conferred by any Bengal or West Bengal Act, that power included a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, bye-laws or notifications so issued. According to him, the power conferred by the provisions of Sub-section (4) of Section 14 of the said Act, 1993 read with the provisions of Sections 15 and 22 of the said Act, 1899, was not restricted to be exercised for one time.

15. According to him, the reason for appointment of Board of Administrators by virtue of the impugned notification dated August 13, 2014 in supersession of the appointment of the respondent No. 6 to discharge the functions of administrator was available in the body of the notification. Once the State Government felt it necessary to appoint Board of Administrators, it was adequate reason in support of issuing the impugned notification.

16. The attention of this Court is drawn towards the provisions of Clauses (a)(i), (a)(ii) and (a)(iii) of sub-Article (2) of Article 243R of the Constitution, Mr. Mitra to submit that a power was conferred upon the legislator of a State to make law for representation in a municipality of persons having special knowledge or experience in Municipal administration and the Members of Council of States and Members of Legislative Council of the State representing constituencies which comprise wholly or partly the municipal area. According to the statements made in sub-paragraph "k" of paragraph 3 of the affidavit-in-opposition filed by the respondent Nos. 6, 7 and 8, respondent Nos. 7 and 8 were Members of West Bengal Legislative Assembly in respect of the Constituencies at Rajarhat Gopalpur which comprise the municipal area of the said Municipality and that apart the respondent No. 8 also had special knowledge and experience in municipal administration for discharging the functions of Vice Chair-Person of Bidhannagar Municipality. According to Mr. Mitra, the impugned notification was issued appointing the respondent Nos. 6, 7 and 8 to discharge the functions of Board of Administrator of the said Municipality keeping in mind the above provisions of the Constitution of India in the greater interest of public. It is further submitted by the learned Advocate General that the respondent No. 6 was appointed as Administrator of the above Municipality by virtue of the notification dated July 14, 2014. The above respondent was included in the Board of Administrator to discharge the functions of Chair-Person in the above Board of Administrators. According to him, there is no material on record to show his dissatisfaction or grievance with regard to the reasons for appointment of Board of Councilors by virtue of the impugned order. The attention of this Court is also drawn to the provisions of Clause (b) of Sub-section (1) of Section 13 of the said

Act, 1993 to show the scope of nomination of persons having special knowledge or experience in municipal administration in the Board of Councilors. According to the learned Advocate General, petitioner was not entitled to ask for judicial review of the impugned notification.

17. It is also submitted by Mr. Mitra that the provisions of Sub-section (c) of Section 29A of the said Act, 1994 prescribed the eligibility criteria for participating in the election as an elector in relation to municipality concerned. According to Mr. Mitra, Sub-section (4) of Section 14 did not prescribe any eligibility criteria for appointment as administrator or a member of the Board of the Administrators in a municipality.

18. Mr. Mitra relies upon the decisions of Ghulam Qadir Vs. Special Tribunal and Others, and Tashi Delek Gaming Solutions Ltd. and Another Vs. State of Karnataka and Others, in support of his above submissions.

19. The arguments advanced by the learned Advocate General, West Bengal, are adopted by Mr. Abhratosh Majumdar, learned Government Pleader, High Court Calcutta, appearing on behalf of the State-Respondents. Drawing the attention of this Court towards the statements made in paragraph 20 of the writ application, it is further submitted by the learned Government Pleader, High Court Calcutta, that no incidents in support of the appreciation expressed in the above paragraph was incorporated therein.

20. It is further submitted by the learned Government Pleader, High Court Calcutta, that by virtue of the provisions of Sections 15 and 22 of the Bengal General Clauses Act, 1899, when a power is conferred on an authority to do a particular act, it was open to exercise such power from time to time for modification, amendment or cancellation of the earlier notification. According to the learned Government Pleader, High Court Calcutta, the respondent Nos. 7 and 8 were the elected members of State Legislative Assembly and as such they were the live link between the people and the Government. Therefore, there was no error in the decision making process for issuing the impugned notification.

21. The learned Government Pleader, High Court Calcutta, relied upon the decisions of Shree Sidhballi Steels Ltd. and Others Vs. State of U.P. and Others, , Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, , Mutha Associates and Others Vs. State of Maharashtra and Others, and The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, in support of his aforesaid submissions.

22. I have heard the learned Counsels appearing for the respective parties at length and I have given my thoughtful considerations to the submissions made by the learned Counsels appearing for the respective parties.

23. It is a settled proposition of law that the rule of "plain meaning" or "literal" interpretation is the primary rule of interpretation of the statutory provisions.

Addition or modification of the words used in statutory provisions is not generally permissible in law unless it is required to avoid a patent absurdity.

24. Reliance may be made to the decision of G. Narayanaswami Vs. G. Pannerselvam and Others, and the relevant portion of the above decision are quoted below:--

"4. Authority are certainly not wanting which indicate that Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of "plain meaning" or "literal" interpretation, described in Maxwell's Interpretation of Statutes as "the primary rule", could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying: "The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule". (See: Maxwell on "Interpretation of Statutes", 12th Edition, p. 28). It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case (See: Crawford on "Statutory Construction", 1940 Ed., para 157, pp. 240-242). This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all. To these provisions we may now turn."

25. The above settled proposition has been repeated and reiterated time and again by the Hon"ble Supreme Court. Reliance may be made to the decision of Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, and the relevant portions of the above decision are quoted below:--

"7. Now, if there is one principle of interpretation more well settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases...."

26. In accordance with the provisions of Section 15, in case of promulgation of

an act after commencement of the Bengal General Clauses Act, 1899 conferring a power to exercise may be exercised from time to time as occasion requires unless a different intention appears in such enactment. According to provision of Section 22 of the Bengal General Clauses Act, 1899, when a power is conferred to issue orders, rules, bye-laws or notifications by any Bengal Act or West Bengal Act, then that power includes a power exercisable in the like manner to add to, amend, vary or rescind any orders, rules, bye-laws or notifications so issued subject to the like sanction and conditions, if any. The aforesaid provisions are quoted below:--

"15. Powers conferred to be exercisable from time to time.--Where, by any Bengal Act or West Bengal Act made after the commencement of this Act, any power is conferred then, unless a different intention appears that power may be exercised from time to time as occasion requires."

"22. Power to issue to include power to add to, amend, vary or rescind orders, etc.--Where, by any Bengal Act or West Bengal Act, a power to issue orders, rules, bye-laws, or notifications is conferred, then, that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, bye-laws or notifications so issued."

27. For the purpose of interpretation of the provisions of Sub-section (4) of Section 14 of the said Act, 1993 the same is quoted below:--

"14. Constitution of Board of Councilors. -

(1)...

(2)...

(3)...

(4) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of five years specified in Sub-section (2), the Board of Councilors shall stand dissolved on the expiration of the said period [and all the powers or functions vested with the municipal authorities under this Act or under any other law for the time being in force shall be exercised or performed, as the case may be, by such person or persons to be designated at Administrator or Board of Administrators as the State Government may, by notification, appoint.]"

28. After considering the provisions of Sub-section (4) of Section 14 of the said Act, 1993, I am of the opinion that according to the above provision the Board of Councilors of the said Municipality stood dissolved by operation of law on expiration of a period of five years with effect from July 21, 2014. In accordance with the above provisions the State Government was empowered to designate person or persons as Administrator or Board of Administrators, as the case might be, by notification for exercising the powers or functions vested to the authorities

of the said Municipality. There was no ambiguity or confusion with regard to "plain meaning" or "literal" interpretation of the above provision. There was no restriction in Sub-section (4) of Section 14 of the said Act, 1993 for exercising such power more than once.

29. Therefore, taking into consideration the provisions of Sections 15 and 22 of the Bengal General Clauses Act, 1899, there was no restriction to issue the impugned notification dated August 13, 2014 in supersession of the notification dated July 14, 2014. Therefore, there is no scope for interfering with the impugned notification dated August 13, 2014 on the above ground.

30. After further consideration of the impugned notification, I find that the same was issued for the reason that it had been felt necessary to appoint Board of Administrators for running of day to day functions of the said Municipality. No material is produced before this Court to form a different opinion. The respondent No. 6 was appointed as Administrator of the said Municipality by virtue of the notification dated July, 14, 2014. In the Board of Councilors constituted and appointed by virtue of the impugned order, the respondent No. 6 was appointed to act as Chair-Person of the above Board. Therefore, in my opinion, assigning of further reason or reasons with regard to the same was not necessary.

31. The impugned order is taken up for consideration of the allegation of arbitrariness in appointing the respondent Nos. 7 and 8 as members of the aforesaid Board of Administrators of the said Municipality. It was not in dispute that the aforesaid respondents were members of the State Legislative Assembly elected from the area concerned. Necessary to point out that Part- IXA of the Constitution of India was incorporated by the Constitution (seventy fourth amendment) Act, 1992. The provisions of Article 243R of the above Part are relevant for deciding the above allegation and those provisions are quoted below:--

"243R. Composition of Municipalities.--(1)...

(2)... (a)... (i)...

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of Art. 243S;

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality."

32. After considering the above provisions, I find that a power was conferred to the legislature of the State to enact law for inclusion of the Members of House of people and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area concerned for representation in the Board of Councilors. For the purpose of examining the statutory provision of the said Act, 1993 in the light of enabling provision of the Constitution of India, the provisions of Sub-section (1) of Section 13 of the said Act, 1993 is quoted below:--

"13. The Municipality.--(1) The Municipality established for a town shall mean the Board of Councillors charged with the authority of municipal government of the town, and shall consist of -

(a) such number of elected members as there are wards within the municipal area, and

(b) persons having special knowledge or experience in municipal administration as may be nominated by the State Government from time to time, provided that such persons shall not have the right to vote in the meetings of the Municipality."

33. The aforesaid provisions prescribed the mode of to Constitution of Board of Councilors. The above provisions of the said Act, 1993 had to nexus with the constitution of the Board of Administrators. The authority of the State was not under obligation to appoint members of Board of Administrators taking into consideration the above provisions save and except consideration of persuasive value of indicating the intention of the legislature for entrusting the responsibility of discharging the functions of a municipality to the persons having special knowledge or experience in municipal administration, amongst others. Therefore, I am of the opinion that there was no arbitrariness in appointing the respondent Nos. 6, 7 and 8 as members of the Board of Administrators of the said Municipality.

34. In view of the above I do not find any substance in the submissions made in course of the reply that in absence of any provision to appoint members of Legislative Assembly of the State from the are concerned, the State authority was not empowered to include the respondent Nos. 7 and 8 as members of Board of Administrators of the said Municipality. At the cost of repetition let it be recorded that in absence of any condition imposed with regard to the special knowledge or experience, the competent authority was entitled to appoint any person in the Board of Administrator taking into consideration the intention of the legislature to constitute the Board of Councilors for the purpose of running the affairs of a municipality. Further, the respondent No. 6 had knowledge and experience in municipal administration of the are concerned.

35. However, I do not agree with the submissions made by the learned Advocate General, West Bengal that the petitioner was not entitled to ask for judicial review of the decision making process of issuing the impugned notification in view of the admitted fact that the petitioner had been residing in the area

comprising the said Municipality and the functioning of the affairs of the municipality had effects on the petitioner.

36. For the purpose of applicability of the provision of Section 29A of the said Act, 1994, the aforesaid provision is quoted below:--

"29A. Qualifications for membership of a Municipality.--A person shall not be qualified for being chosen to fill a seat in a Municipality unless,--

(a) in the case of a seat reserved for the Scheduled Castes or the Scheduled Tribes, such person is a member of the Scheduled Castes or the Scheduled Tribes, as the case may be, and is an elector in relation to that Municipality;

(b) in the case of a seat reserved for a woman, such person is a woman, and is an elector in relation to that Municipality;

(c) in the case of any other seat, such person is an elector in relation to that Municipality."

37. Considering the above provisions, I am of the view that the above provisions prescribed the eligibility criteria of a person to participate as an elector in relation to the municipality concerned having no nexus with the appointment of Board of Administrators in the circumstances discussed hereinabove.

38. I am of the opinion that the subject matter of consideration in the decision of Mohd. Karim Khan (supra) was arbitrariness in the matter of nomination of administrative committee under the provisions M.P. Municipalities Act, 1961. There was no scope to take into consideration the provisions of Article 243 of Constitution of India as also those of the said Act, 1993. It is the settled principles of law a decision is not an authority for a proposition which did not fall for its consideration. Reliance may be made to the decision of Punjab National Bank Vs. R.L. Vaid and Others, and the relevant portions of the above decision is quoted below:--

"5. We find that the High Court has merely referred to the decision in R.K. Jain case without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. There is always peril in treating the words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks the path of justice, but you must cut out the dead wood and trim off the side branches else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents. The impugned order is certainly vague."

39. The decision of Mahindar Singh Gill (supra) does not help the petitioner for the reason that no development subsequent to publishing the impugned notification is taken into consideration hereinabove.

40. In view of the above, this writ application is dismissed.

41. There will be, however, no order as to costs.

42. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Later:

24.12.2014

43. A prayer is made on behalf of the petitioner to stay the operation of this order.

44. There is no scope to stay the operation of an order of dismissal of this writ application. Therefore, the above prayer is rejected.