
(1976) 09 CAL CK 0015

In the Calcutta High Court

Case No : Full Bench Reference No. 1 of 1974 in Civil Rule No. 6098 (W) of 1972 and Full Bench Reference No. 2 of 1974 in Civil Rule No. 7247 (W) of 1972

Kamal Krishna Bhattacharya and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-09-1976

Acts Referred:

Bengal Municipal Act, 1932 — Section 552, 553, 67A(3)

Citation : AIR 1977 Cal 67 : 81 CWN 128 : (1976) 2 ILR (Cal) 512

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Salil Kumar Roychowdhury, J; Salil Kumar Datta, J

Bench : Full Bench

Advocate : A.P. Chatterjee, Rabilal Maitra and Santosh Chatterjee, in F.B. Ref. Nos. 1 and 2 of 1974, for the Appellant; P.K. Sengupta and S.P. Roychowdhury, (In F.B. Ref No. 1 of 1974) and P.K. Sengupta and S.B. Bakshi, (in F.B. Ref. No. 2 of 1974), for the Respondent

Final Decision : Dismissed

Judgement

Sankar Prasad Mitra, C.J.—This is a Reference made by a Division Bench consisting of my learned brother Mr. Justice Salil K. Roychowdhury and myself on the 2nd July, 1974 under Rule 7, Chapter VII, Part II of the High Court Appellate Side Rules. The reference is restricted to the meaning of the word "such" in Section 67-A of the Bengal Municipal Act, 1932 (hereinafter referred to as "the Act"). No other question can be gone into or decided by this Bench.

2. On the meaning of the word "such" there has been a difference of opinion between two Division Benches of this Court. The relevant decisions have been reported in (1974) 78 Cal WN 988 (State of West Bengal v. Surendranath Mondal) and Sailendra Nath Bhowmik and Others Vs. The State of West Bengal and Others, . The first judgment is a judgment of the Division Bench consisting of Mr. Justice A. N. Sen and Mr. Justice S. K. Hazra delivered on February 4, 1973. The second judgment is of a Division Bench consisting of Mr. Justice A. C.

Gupta and Mr. Justice S. C. Deb delivered on September 25, 1973. It appears that the first judgment was not cited before the second Division Bench.

3. Before we proceed any further it would be relevant to quote Section 67-A and Sections 552 and 553 of the Act.

4. Section 67-A reads: "Appointment, etc. of Executive Officer by the State Government:--

(1) Notwithstanding anything contained in Section 66 or Section 67, if in the opinion of the State Government the affairs of a municipality--

(a) are not properly managed, or

(b) cannot, for failure of a general election or for any other reason, whatsoever, be managed in accordance with law,

and if in its opinion it is desirable in the public interest so to do, it may, by notification, declare that the municipality shall have an Executive Officer for such period as may be specified in the notification:

Provided that the State Government may, if it thinks fit, by notification, extend such period from time to time

(2)

(3) The Executive Officer of a municipality, appointed under this section shall, subject to such directions as the State Government may issue from time to time, exercise such powers of the Chairman or of the Commissioner whether at a meeting or otherwise as may be conferred on him by notification by the State Government and on such notification such powers shall cease to be exercisable by the Chairman or by the Commissioner, as the case may be."

5. We now come to Section 552, This section is in these terms:

"552. Power to dissolve "body of Commissioners.-- If, in the opinion of the State Government, the Commissioners have shown their incompetency to perform or to have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law, or have exceeded or abused their powers, the State Government may, by an order published, with the reasons for making it, in the Official Gazette, direct that a fresh general election shall be held immediately of persons to be Commissioners; and from the date on which the results of such new election and appointment of Commissioners u/s 26 (if any) are published in accordance with the provisions of Section 50 the former Commissioners shall, unless they are re-elected or re-appointed for the purpose of Section 26, vacate their offices:

Provided that the tenure of office of the Chairman of the outgoing body of Commissioners shall continue until that office is vacated in the manner provided by Section 59."

6. The next Section 553 runs thus: "553. Power to supersede Commissioners in case of incompetency, default or abuse of powers.--

(1) If, in the opinion of the State Government, the Commissioners have shown their incompetency to perform, or has persistently made default in the performance of the duties imposed on them by or under this Act or by any other law or have exceeded or abused their powers, the State Government may, by an order published with the reasons for making it, in the Official Gazette, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order:

Provided that except in case of misappropriation of municipal funds or persistent default in the performance of duties by the Commissioners the State Government shall not ordinarily exercise power under this section until action has been taken u/s 552.

(2) The State Government may, if it considers it necessary so to do, by order extend or modify the period of supersession."

7. Both the two Division Benches referred to above are of opinion that Sections 67-A, 552 and 553 may operate in the same field. We are, therefore, unable to reopen this question although an attempt was made to do so by the learned Government pleader appearing for the State Government. The difference between the two Division Benches is that in the case of *State of West Bengal v. Surendranath Mondal* ((1974) 78 Cal WN 988), it has been held that all the powers of the Chairman and the Commissioners of a municipality may be conferred upon an Executive Officer u/s 67-A (3). In other words, "such powers" in Section 67-A may mean all powers. In the case of *Sailendra Nath Bhowmik and Others Vs. The State of West Bengal and Others*, , the other Division Bench is of the view that u/s 67-A (3), only certain powers of the Chairman and the Commissioners of the municipality as may be specified can be conferred upon the executive officer appointed under this section, that is to say, that all the powers of the Chairman and the Commissioners cannot be conferred upon such executive officer.

8. It is this difference of opinion between the two Division Benches which we have been called upon to resolve in this reference.

9. Mr. Arun Prakash Chatterjee appearing for the appellants has relied on the dictionary meaning of the word "such" in Webster's International Dictionary, Volume III, page 2283. He has drawn our attention to the following meanings.

"(1) Of a kind or character about to be indicated, suggested or exemplified."

"(2) Having a quality to a degree to be indicated."

"(3) Having a quality already or just specified used to avoid repetition of descriptive term."

"(4) Of the same class, type, or sort, in the same category similar."

10. Relying on the meanings aforesaid, Mr. Chatterjee contends that the words "such powers" in Section 67-A (3) mean powers of the character or quality indicated. The word "such", says Mr. Chatterjee, cannot mean "all" inasmuch as it will render nugatory Sections 53, 68 (1) and 68 (2) of the Act. The relevant provisions of these sections may be quoted at this stage. They are as follows:

"53. Delegation of powers by the Executive Officer.-- The Executive Officer may with the approval of the Commissioners at a meeting delegate all or any of his powers to the holder of any office under the Commissioners.""

"68. Power of the Executive Officer--- (1) The Executive Officer shall be the principal executive officer of the Commissioners and all other officers and servants of the Commissioners shall be subordinate to him. He shall have the same right of being present at a meeting of the Commissioners or of any standing or special committee, and of taking part in the discussions thereat as if he were a Commissioner or a member of such committee and with the consent of the Chairman or the president of the meeting, as the case may be, he may at any time make a statement or explanation of facts, but he shall not vote upon, or make, any proposition at such meeting.

(2) Subject to the provisions of subsection (2) of Section 51 and Sub-section (3) of Section 67-A Executive Officer shall act in respect of all other matters under the direction of the Chairman through whom he shall be responsible to the Commissioners."

11. Mr. Chatterjee has urged that if all the powers of the Chairman and the Commissioners are vested in the Executive Officer appointed u/s 67-A (3), the other sections, he has referred to, would cease to be operative. According to learned counsel Section 67-A assumes the existence of the Chairman and the Commissioners and it cannot be construed to cover cases when the tenure of the Chairman or the Commissioners is at an end u/s 56 and Section 56-A of the Act. Section 56 puts an end to the tenure of the office of the Chairman, Vice-Chairman and Commissioners. Section 56-A provides for the appointment of a Committee in the case of delay in forming new body of Commissioners by reason of an order of Court or for other reasons.

12. To strengthen this argument learned counsel has referred to the relevant provisions of Section 554 which prescribe the consequences of supersession of the body of Commissioners or of failure to assume office or of setting aside of election. The sum and substance of the contention on behalf of the appellants has been that when the Act intends to make the Chairman or the Commissioners altogether ineffective the Act has made separate provisions but when they do not cease to function altogether and some powers are still exercisable by them the Act provides in different circumstances for the appointment of an Executive Officer. Section 67-A (3) provides one of the methods of appointing an Executive Officer keeping alive the functions of the Chairman and the Commissioners to the

extent they had not been taken away by the notification or notifications under the section. In these premises, it is not open to the State Government by an order passed u/s 67 to take away all the powers of the Chairman and Commissioners.

13. It seems to us that to ascertain the true scope and meaning of the word "such" in Section 67-A (3), it is necessary to take into consideration the object of that section and the objects of Sections 552 and 553. The object of Sections 552 and 553 is to dissolve the body of Commissioners or to supersede the body altogether. The object of Section 67-A is to keep the Chairman and the Commissioners in office, to be re-installed if thought necessary with their full powers. Section 67-A gives to the State Government an emergency power for exercise in special circumstances for specified period. It does not take away the office of the Chairman or the Commissioners. They would remain in office. They have been only deprived of exercising the powers given to them under the Act which are specified in notifications u/s 67-A. This power of the State Government can be used when in its opinion either the affairs of a municipality are not properly managed or the affairs of a municipality cannot, for failure of a general election or for any other reason, whatsoever, be managed in accordance with law and if the State Government is of opinion that it is desirable in the public interest to exercise the power.

14. In our opinion, an Executive Officer appointed u/s 67-A may be armed either with some of the powers of the Chairman and the Commissioners whether at a meeting or otherwise or all powers of the Chairman and the Commissioners. When all powers are conferred the Chairman and the Commissioners remain in suspended animation for periods specified in the notification or notifications under the sections. On the expiry of such period or periods the Chairman or the Commissioners may assume the powers they are deprived of and the municipality is allowed to function in the normal way through them.

15. The view we have taken would be supported to some extent by the judgment of the Supreme Court in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, . In this case the Supreme Court was considering the provisions of Sections 53-A and 57 of the C. P. and Berar Municipalities Act (2 of 1922). It would "be useful to set out the provisions of these two sections. They run thus:

"53-A. (1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State Government may, by an order stating the reasons therefore published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order.

(2) Any executive officer appointed under Sub-section (1) shall be deemed to be an officer lent to the committee by Government under Sub-section (3) of Section 25.

(3) When under Sub-section (1) an executive officer is appointed for any committee, the State Government shall determine from time to time which powers, duties and functions of the committee, president, vice-president or secretary under this Act or any rule or bye-law made thereunder shall be exercised and performed by such officer, in addition to, or to the exclusion of, their exercise and performance by the said committee, president, vice-president or secretary.

(4) The secretary of the committee shall be subordinate to the executive officer.

(5) The executive officer shall have the right to attend all meetings of the committee and any joint committee or sub-committee and to take part in the discussion so as to make an explanation in regard to the subject under discussion, but shall not move, second or vote on any resolution or other motion."

"57. (1) If a committee is not competent to perform, or persistently makes default in the performance of, the duties imposed on it or undertaken by it under this Act or any other enactment for the time being in force, or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefore published in the official Gazette, dissolve such committee and may order a fresh election to take place.

(2) If after fresh election the new committee continues to be incompetent to perform, or to make default in the performance of, such duties or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefore published in the Official Gazette, declare the committee to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and supersede it for a period to be specified in the order.

(3) If a committee is so dissolved or superseded, the following consequences shall ensue:--

(a) all members of the committee shall, as from the date of the order, vacate their offices as such members;

(b) all powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such person or persons as the State Government may appoint in that behalf;

(c) all property vested in it shall until the committee is reconstituted vest in the State Government.

(4) On the expiration of the period of supersession specified in the order, the committee shall be reconstituted, and the persons who vacated their offices under Sub-section (3), Clause (a), shall not, by reason solely of such

supersession be deemed disqualified for being members.

(5) No order under Sub-section (1) or Sub-section (2) shall be passed until reasonable opportunity has been given to the committee to furnish an explanation.

(6) Any person or persons appointed by the State Government to exercise and perform the powers and duties of a dissolved or superseded committee may receive payment, if the State Government so directs, for his or their services from the municipal fund."

16. In construing the provisions of these two sections the Supreme Court at page 113 of the Report in paragraph 7, *inter alia*, observes:

"The effect of an order made u/s 57 is, therefore, extremely drastic and puts an end to the very existence of the committee itself and, in view of the grave nature of the consequences that will ensue, the legislature presumably thought that some protection should be given to the committee before such a drastic action was taken and accordingly it provided, by Sub-section (5) of that section, that no order should be passed until reasonable opportunity had been given to the committee to furnish an explanation-- a provision which clearly indicates that action u/s 57 can only be taken after hearing and considering all the explanations furnished by or on behalf of the committee. The legislature did not think fit to provide a similar safeguard in Section 53-A presumably because the order under the last mentioned section was of a temporary duration, was not very drastic and did not threaten the very existence of the committee. A cursory reading of the two sections will also indicate that the conditions precedent to the exercise of the powers under both sections overlap to some extent, namely, that action can be taken under both if the committee "is not competent to perform the duties imposed on it....." To the extent that the requirements of the two sections overlap the State Government has the option of taking steps under one section or the other according to its own assessment of the exigencies of the situation. The position, therefore, is that if a committee is not competent to perform the duties imposed on it the State Government has to make up its mind as to whether it should take any action at all and, if it thinks that action should be taken, then it has further to decide for itself as to which of the two sections it would act under. If the State Government considers that the incompetency does not run to a grave extent and the exigencies of the situation may be adequately met by appointing an Executive Officer for a short period not exceeding 18 months with certain powers to be exercised by him, either in addition to or in exclusion of their, exercise by the committee, the president, vice-president or the secretary, the State Government may properly take action u/s 53-A. On the other hand if the State Government considers, having regard to all the circumstances of the case, that the incompetency is much too grave to permit the committee, its president, vice-president or the secretary to function at all. it may take action u/s 57 and dissolve the committee and direct fresh election to take place. In other words incompetency on the part of the committee gives to

the State Government an option to apply one of two remedies under the Act, if, that is to say, it considers it necessary to take action at all."

17. It is true that the wordings of the two sections the Supreme Court was considering are not the same as the wordings of the three Sections 67-A, 552 and 553 of the Act which we are considering. But there appears to be no doubt that Section 67-A is less drastic than Section 552 or 553. That is why when power is exercised u/s 552 or 553 it is expressly stated that the State Government has to give its reasons for doing so but when power is exercised u/s 67-A no such reason need be stated. This shows that power u/s 67-A can be exercised in an emergency for temporary periods only and when the emergency comes to an end and the municipality can be put back on its feet the Chairman and the Commissioners would resume their normal function. In meeting an emergency the State Government may take away only some of the powers of the Chairman and the Commissioners or may take all the powers of the Chairman and the Commissioners. They would depend on the nature and circumstances of each case depending on public interest to restore the municipality to its normal position. In these circumstances, we are of opinion that the word "such" in Section 67-A (3) ought not to be given a restricted meaning

18. Mr. Chatterjee also wanted to argue before us that Section 67-A is violative of the principles of natural justice inasmuch as the power under that section can be exercised without giving an opportunity to the Chairman and the Commissioners of being heard. On this point, Mr. Justice Gupta and Mr. Justice Deb in *Sailendra Nath Bhowmik and Others Vs. The State of West Bengal and Others*, . have observed:

"It was further contended on behalf of the appellants that the Commissioners of the municipality were entitled to a notice before steps were taken u/s 67-A. This it was argued, was a requirement of the principle of natural justice. On a reading of the provisions of Section 67-A it appears that the State Government has been given the power to act under this section once it has formed an opinion that circumstances exist for the appointment of an executive officer. This is an opinion which does not have to be justified by stating reasons. It seems therefore that the section by necessary implication excludes the rule of natural justice requiring notice to be given to the persons affected."

19. This point was also taken before the Division Bench of Mr. Justice A. N. Sen and Mr. Justice S. K. Hazra in *State of West Bengal v. Surendra Nath Mondal* ((1974) 78 Cal WN 988). Mr. Justice Sen in paragraph 32 at page 1004 has refused to go into the question of violation of the principle of natural justice in the absence of proper materials. But Mr. Justice Hazra in paragraph 56 at page 1011 is clearly of opinion that there is no violation of the principles of natural justice when the statute does not require any reasons to be given or any opinion to be formed. The requirement of the principles of natural justice, according to Mr. Justice Hazra, must depend, inter alia, upon circumstances of the case, and also on the rules under which the Tribunal is acting. Mr. Justice Hazra says that

Section 67-A, Sub-section (3) of the Act does not provide that notice should be given to the Chairman or the Commissioners before conferring powers on the Executive Officer under the notification.

20. It appears therefore that there is no difference of opinion on the question of applicability of the principles of natural justice between the two Division Benches. And this Bench is not competent to determine the question in these circumstances.

21. We therefore express the view that the words "such powers" in Section 67-A (3) of the Act may include "all powers" of the Chairman or the Commissioners. In view of this finding the application is dismissed and the Rule is discharged. There will be no order as to costs.

22. The interim orders, if any, are vacated.

Full Bench Reference No. 2 of 1974 in Civil Rule No. 7247 (W) of 1972:

23. In view of the judgment delivered by us in Civil Rule No. 6098 (W) of 1972 (Kamal Krishna Bhattacharya v. State of West Bengal) above, this application is dismissed. The Rule is discharged. There will be no order as to costs.

24. The interim orders, if any, are vacated.

Salil K. Datta, J.

25. I agree.

Salil K. Roychowdhury, J.

26. I agree.