

(1972) 04 CAL CK 0008

In the Calcutta High Court

Case No : C.R. No"s. 2993 (W) , 3001 (W) of 1966

Pashupati Roy and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-04-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31(2)

West Bengal Fisheries (Requisition and Acquisition) Act, 1965 — Section 2(5), 8, 8(4)

Citation : AIR 1972 Cal 366 : (1972) 1 CALLT 330 : 76 CWN 797 : (1972) 2 ILR (Cal) 284

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : P.N. Mitter and B.C. Roy, for the Appellant; P.K. Sengupta, Suprokas Banerjee and S.N. Mukherjee, for the Respondent

Judgement

Chittatosh Mookerjee, J.—The petitioners in these Rules have challenged the validity of the requisition orders made under the West Bengal Fisheries (Requisition and Acquisition) Act, 1965, on the ground that the said Act is a colourable piece of legislation and also in violation of Article 19(1)(f) and (g) and Article 31 of the Constitution of India.

2. The West Bengal Fisheries (Requisition and Acquisition) Act, 1965 was enacted "to provide for the requisition and speedy acquisition of fisheries for the purpose of improvement or development of such fisheries and supplying fish to the public therefrom. u/s 2(3) of the Act fishery means any land whereon water is confined naturally or artificially whether periodically or throughout the year for pisciculture or for fishing and includes a "tank fishery" as defined in the explanation to Clause (c) of Sub-section (1) of Section 6 of the West Bengal Estates Acquisition Act as also fish in such fishery or "tank fishery" does not include a tank not exceeding one acre in area adjoining a homestead and used for purposes of irrigation or domestic purpose".

3. Mr. P. N. Mitra learned advocate for the petitioners 1ms submitted that the Act

purports to requisition also the fish in the fisheries and tank fisheries although such fish is by its very nature incapable of requisition. The property in the fish is such that its requisition would really mean appropriation of the fish itself i.e. acquisition. Mr. Mitra has also submitted that the provisions in the Act for payments of compensation for requisitioned property is illusory. For these reasons, Mr. Mitra has asked me to pronounce the Act as a colourable piece of legislation.

4. Mr. Mitra learned advocate for the petitioner has placed before me the judgment of Mukherjea, J. as he then was, in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, and the later Supreme Court decisions in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, and in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, Mukher-jea, J., as he then was in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, of All India Reporter pointed out that

"the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law.

The idea conveyed by colourable legislation is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears on proper examination to be a mere pretence or disguise". The aforesaid two other decisions give similar meaning to the expression "colourable legislation".

5. I am unable to hold that provision for requisition of the fish along with the fishery comes within the mischief of the aforesaid dicta. After Constitution (Seventh Amendment) Act, "Acquisition and requisitioning of property" have been included in the entry No. 42 of Schedule III of the Constitution. Therefore the West Bengal State Legislature has legislative competence to make laws relating to acquisition and requisitioning of the fisheries. The fish in the fisheries as defined in Section 2(3) of the West Bengal Fisheries (Requisition and Acquisition) Act in question also was a property capable of being owned and possessed. Further, the Act was passed with the object of improvement or development of fisheries and for supplying fish to public therefrom. Therefore, the West Bengal Legislature thought it fit to define the term "fishery" in a wide fashion. Unless both the land wherein water is confined, and the tank fishery together with the fish reared therein be taken possession of, the aforesaid objects of the Act cannot be fulfilled. Further it may not be also quite feasible to acquire or requisition a land wherein water is confined for pisciculture or for fishing or a tank fishery minus the fish contained therein. If only the land and the water be requisitioned the fish therein be excluded, then it may cause serious hardship and loss to the persons interested in the fisheries which might be requisitioned or acquired under the Act. Such persons interested in the fisheries in question may

not succeed in catching all the fish reared in the said fisheries before the Government would take possession of the fisheries or the tank fisheries as the case might be. In that event persons interested in the fisheries in question would be deprived of the fish remaining in such fisheries and they would not also get any compensation for such fish.

6. Further for the purposes of acquisition or requisition there is hardly any similarity between the fish contained in a fishery and money. Such fish is a kind of property and may be owned, possessed and exchanged. Its money value is capable of being estimated. Deprivation of rights of ownership and possession over the fish can be assessed in monetary terms. The fish once caught and removed from the water is no doubt liable to be quickly perished, and also might be consumed. But thereby one cannot hold that the fish is at all not capable of being requisitioned; when State takes possession thereof the ownership continues to remain with the owner of the fishery. In a particular instance the State may not catch any fish from a requisitioned fishery and after developing and improving the fishery might release from requisition the fishery together with the fish therein.

7. I am unable to accept the contention that under the Act the fish of the requisitioned fishery is bound to be appropriated and that the nature of the fish totally excludes the possibility of its requisition. Further in the event the fish in the requisitioned fishery be depleted and any other damage be caused other than what may have been sustained by natural cause, u/s 8(3)(b) of the Act compensation would be payable to the persons interested.

8. Three of the learned judges in *State of Orissa v. Kameshwar Singh*, AIR 1952 SC 252 were of the view that the provision for the State taking over all outstanding arrears and to refund fifty per cent thereof was unconstitutional. The Supreme Court in its later decision in *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, considered this question again and held that choses in action and money could not be acquired under Article 31(2), *Hegde J.*, gave two reasons. In the first place public purpose under Article 31(2) does not include enrichment of the coffers of the State. In the next place if for every rupee acquired, fifty paise or less is made payable, the violation of Article 31(2) would be patent and the exercise of the powers by the legislature would be a fraud on its powers and the law would be struck down as a colourable piece of legislation. But these observations have no relevance so far as requisition of the fish in a fishery is concerned.

9. I propose to separately examine the provisions relating to payment of compensation in the West Bengal Fisheries (Requisition and Acquisition) Act. But the fish in a fishery is neither a chose in action nor money in specie. The requisition and acquisition of fishery is also not for enrichment of the State coffers but for development and improvement of fisheries etc.

10. A law providing for requisition of fishery including the fish therein was not

beyond the powers of West Bengal Legislature and thereby the legislature did not seek to do anything indirectly which it could not do directly.

11. For the reasons given hereinafter I am also unable to accept the submission that the provisions in the Act regarding payment of compensation for requisition of fisheries is in contravention of Article 31(2) and Article 19(1)(f) and (g) of the Constitution. Therefore I hold that the West Bengal Fisheries (Acquisition and Requisition) Act is not a colourable piece of legislation.

12. Mr. Mitra learned advocate for the petitioners has further submitted in view of the decision in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, a law relating to acquisition and requisitioning of property must be in compliance both with Article 31(2) and Article 19(1)(f) and (g) of the Constitution. Mr. Mitra has placed strong reliance upon paragraphs 56-63 of the majority judgment in case which was delivered by Shah, J., as he then was. In paragraph 62, the learned judge observed.

"We are therefore unable to hold that the challenge to the validity of the provision for acquisition is liable to be tested only on the ground of non-compliance with Article 31(2). Article 31(2) requires that property must be acquired for a public purpose and that it must be acquired under a law with the characteristics set out in that Article. Formal compliance with the conditions under Article 31(2) is not sufficient to negative the protection of the guarantee of the right to property. Acquisition must be under the authority of a law and the expression "law" means a law which is within the competence of the Legislature and does not impair the guarantee of the rights in Part III. We are unable, therefore, to agree that Article 19(1)(f) and Article 31(2) are mutually exclusive."

13. The learned advocate for the petitioners has submitted that the Act allows the State to requisition for any purpose which the State chooses to declare as public purpose. According to the petitioners the Act provides for requisition for purposes which need not be public purpose. Further conferment or arbitrary power upon the State to declare any object as a public purpose was capricious and unreasonable.

14. In my view the above submission proceeds upon a misconception of the definition of "public purpose" given in Section 2(5) of the Act. The said Sub-section lays down:--

"The expression "public purpose" means a purpose having or being connected with, any of the following objects, namely:--

- (i) the improvement or development of a fishery,
- (ii) supplying fish to the public from Such fishery, or
- (iii) any other object which the State may by notification in the official Gazette, declare as ancillary or incidental to the aforesaid objects."

15. The petitioners do not dispute that Clauses (i) and (ii) of Section 2(5) would

be public purposes within Article 31(2) of the Constitution and that requisition of property with the two aforesaid objects or any one of them cannot be questioned on the ground of absence of public purpose. The general words "any other object" in Clause (iii) follow the specific and particular words in the two preceding Clauses (i) and (ii). Further "any other object must be ancillary or incidental" to the objects of improvement or development of a fishery or supplying fish to the public. Therefore, the meaning of this expression "any other object" must be interpreted and its meaning limited according to Eiusdem Generis rule, "any other object" accordingly must mean only those objects which are similar and akin to the objects in Clauses (i) and (ii) and any other object must be also incidental and ancillary to objects enumerated in Clauses (i) and (ii). There is thus sufficient guiding principles in the statute, and no arbitrary or uncontrolled powers have been conferred on the executive.

16. In view of the preponderance of decided authorities the opinion of the State Government about a particular object being a public purpose would not be conclusive and the Courts would have powers to examine the matter. The Section 2(5) does not make the executive determination, of the public purpose final and non-justiciable. As the existence of public purpose within the meaning of the Act would be justiciable, in a particular case when a requisition is purported to be made other than for a public purpose the Court may strike down the individual order, but the statute itself cannot be held to be invalid.

17. The petitioners have also urged that the provisions for compensation in the West Bengal Fisheries (Requisition and Acquisition) Act are illusory and these provisions lay down irrelevant principles for determination of compensation. The petitioners have further contended that the Act confers power upon the executive to assess the compensation and the persons interested have no right to move the Civil Court against such award of compensation. Thereby the executive has been made the judge of its own cause. These provisions amount to unreasonable restrictions upon the freedom of the petitioners to own property and to carry on their fishery business.

18. Section 8(1) lays down "whenever fishery or lands are requisitioned u/s 4 of the Act or acquired u/s 5, there shall be paid in the manner prescribed to every person interested, compensation, the amount of which shall be determined by the Collector in the prescribed manner in accordance with the principles hereinafter set out." Sub-section (2) of Section 8 deals with acquisition and the Sub-section (3) , of Section 8 states that compensation for requisitioned fishery or land shall be paid for

(a) the requisition of fishery or land

(b) damages done during the period of requisition except those sustained by natural cause.

When the Collector and the person interested agree as to the compensation, the Collector u/s 8(4)(i) will award the payment of such agreed compensation. When

there is no agreement, the Collector u/s 8(4)(ii) shall award compensation which shall be determined at the rate of the net average annual income from the requisitioned fishery or land and also for damage referred to in Section 8(3)(b).

19. The explanation to Section 8(4) states what "net average annual income" means:

(a) in the case of agricultural land, one-third of the average value of the produce derived or derivable from such land during a period of five years immediately preceding the date of requisition;

(b) in the case of other land, the average income, less two per cent of such income, derived or derivable therefrom during a period of five years immediately preceding the date of requisition:

(c) in the case of a fishery one-third of the average income from the fishery during a period of five years immediately preceding the date of requisition.

20. Mr. P. K. Sengupta learned advocate for the respondents has rightly submitted that the expression "average income" in Clause (c) of the explanation to Sub-section (4) of the Section 8 means the total or gross receipts from a fishery received or receivable during a period of five years preceding the date of requisition. In the present context the said expression "average income" cannot mean net income i. e. after deducting all expenses incurred or liable to be incurred. According to the explanation to Section 8(4) the net income would be determined by finding out the one-third of the average income during last five years. The remaining two-thirds of the total income would presumably represent the expenditure incurred for running the fishery.

21. After the enactment of the Const Million (Fourth Amendment) Act 1955, it was inter alia provided in Article 31(2) that no law providing for acquisition or requisitioning of property "shall be called in question in any Court on the ground that the compensation provided by that law is not adequate. Shah J. (as he then was) who delivered the majority judgment in AIR 1970 SC 501 (supra) in paragraphs 97 to 100 has referred to two lines of decisions given by the Supreme Court regarding the effect of the fourth amendment of the Constitution. Even after the aforesaid amendments in Article 31(2) the Supreme Court pronounced that compensation continued to mean "just equivalent" P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, Union of India (UOI) Vs. The Metal Corporation of India Ltd. and Another, Lachhman Dass v. Municipal Committee, AIR 1969 SC 1125; State of Madhya Pradesh Vs. Ranojirao Shinde and Another,

22. But in the State of Gujarat Vs. Shantilal Mangaldas and Others, The Supreme Court held that the Article 31(2) (after Constitution (Fourth Amendment) Act) guarantees a right to receive compensation for loss of property compulsorily acquired but compensation no longer meant an equivalent of the property acquired. If compensation provided by law is not illusory or is not determinable

by the application of irrelevant principles the law is not open to challenge on the ground that the compensation is inadequate.

23. Shah J. (as he then was) in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, held that the both these lines of cases converge in the ultimate result and support the view that the principle specified by law for determination of compensation is beyond the pale of challenge, if it is relevant to the determination of compensation and is 3. recognized principle applicable in the determination of compensation for the property acquired and the principle is appropriate in determining the value of the class of property sought to be acquired.

24. In my opinion the method of determining the compensation for requisition of a fishery by finding out the net average income is neither irrelevant nor inappropriate. The procedure laid down in the explanation to Section 8(4) of the Act is also a recognized method for deducting expenses from the gross collection or receipts in order to arrive at the net average income. Therefore, the Majority decision of the Supreme Court in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, does not assist the case of petitioners. The provisions of the West Bengal Fisheries (Acquisition and Requisition) Act are not ultra vires of the Article 31(2) of the Constitution.

25. I am also unable to accept the submission made on behalf of the petitioners that the Act imposes unreasonable restriction on the freedom of the petitioners to hold property and to carry on their trade and business. The Act which has been made for improvement and development of fisheries and for supplying fish to the public is certainly in the interests of general public. The Act has not left the determination of compensation for requisition of fisheries to the executive authorities. I have already referred to the provisions of Section 8 which lay down the principles for determination of compensation for requisition.

26. The Sub-section (4) of Section 8 enjoins the Collector to pass award on the basis of agreement and in the absence of such agreement on the basis of net average income. u/s 9 the Collector has been given power to apportion compensation. u/s 10 an award made by the Collector would be notified in the manner prescribed. The Section 11 provides for appeal against an award of the Collector, the forum of which would depend upon the fact whether the particular award has been made by the Collector of the district or by any other officer. u/s 17 of the Act, the Collector and the Commissioner for the purpose of carrying out their functions have been vested with the powers of Civil Courts in respect of the matters enumerated in Clauses (a) to (d).

27. The Collector under the Act and the Appellate Authority hearing appeal from an award of a Collector are required to act quasi-judicially and in consonance with the principles of natural justice. The said authorities would be clearly statutory tribunals and subject to superintendence and control under Article 227 and also amenable to jurisdiction under Article 226 of the Constitution. Awards

and appellate decisions would be also appealable to the Supreme Court under Article 136 of the Constitution. Therefore, the ouster of jurisdiction of Courts u/s 15 can have no relevance so far as the exercise of powers under Articles 136 and 226 and 227 of the Constitution are concerned. The Collector and the Appellate Authority in exercising their powers under Sections 8(4), 9 and 11 and 17 would be acting not in their executive capacities but they would function quasi-judicially and as tribunals.

28. Mr. P. K. Sengupta learned advocate for the respondents has drawn my attention to a large number of decisions in which the Courts upheld the validity of law albeit the fact that civil Courts' jurisdiction was ousted and authority was conferred upon special tribunals to adjudicate rights of persons affected. It cannot be said that thereby the executive has been made judge of their own cause in violation of the principles of natural justice. In order that the law for requisition or acquisition may be reasonable it is not necessary that adjudication of compensation must be by a civil Court. If the law lays down principles for determination of such compensation and confers power upon a special agency to determine compensation in an objective manner and after hearing the persons interested, there is no reason why such law should be declared to be in violation of Article 19(1)(f) and (g) of the Constitution. The present Act creates two tier tribunals for adjudication of the compensation according to the principles laid down in the Act. Such tribunals would act subject to the jurisdiction of the High Court and the Supreme Court. Therefore provisions of the Act constituting the Collector and Commissioner as the authorities for determination of compensation are not unreasonable.

29. The observations of the Supreme Court in AIR 1971 963 (SC) do not assist the petitioners. No doubt the Supreme Court in considering whether the West Bengal Land Requisition and Acquisition Act, 1948 was in violation of Article 19 of the Constitution referred to adjudication of claim for compensation by the Court with a right of appeal to the High Court. But thereby the Supreme Court did not mean that adjudication of compensation for requisition or acquisition of properties by special tribunal would amount to unreasonable restriction on fundamental right to property.

30. In this context I may refer to the following well-known observations of Patanjali Sastri C. J. in *State of Madras Vs. V.G. Row*,

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social

philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have in authorising the imposition of the restrictions, considered them to be reasonable."

31. In the instant case it is common knowledge that fish constitutes a very important item in the diet of majority of the inhabitants of West Bengal and that due to scarcity a high price of the fish now prevails. Therefore, the West Bengal Legislature in its wisdom has thought it fit to enact a law for its improvement etc. In this context the provisions for requisitioning of fisheries and land and for assessment of compensation are not in violation of Articles 19(1)(f) and (g) and 31(2) of the Constitution.

32. There is also no substance in the last contention made on behalf of the petitioners that the West Bengal Fisheries (Requisition and Acquisition) Act is violative of Article 14 of the Constitution. The Government has a choice whether fisheries and land should be requisitioned under this Act or under any other requisitioning law. In order to reject this argument it would be sufficient to refer to the recent observations of the Division Bench in *Mihir Kumar Sarkar and Others Vs. State of West Bengal and Others*, Further my attention has not been drawn to any law providing for requisition of fisheries for their improvement and development and for increasing supply of the fish.

33. For the foregoing reasons the petitioners' challenge to the validity of the provisions for requisition contained in the West Bengal Fisheries (Requisition and Acquisition) Act fails.

34. I record that in the instant case I have confined my finding only with regard to the provisions for requisition and for payment of compensation for the same. In the facts of this case I had no occasion to examine the provisions in the Act relating to acquisition.

35. I, therefore, discharge these Rules. There will be no order as to costs.

36. Let the operation of this order remain stayed for three weeks from date.