

(1983) 03 CAL CK 0035
In the Calcutta High Court
Case No : Civil Rule No. 3019 (W) of 1966

Pronab Prosad Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Constitution of India, 1950 — Article 166, 258A, 266, 286

West Bengal Fisheries (Requisition and Acquisition) Act, 1965 — Section 2, 3, 4

Citation : (1983) 03 CAL CK 0035

Hon'ble Judges : Sachindra Nath Sanyal, J; Anil Kumar Sen, J

Bench : Division Bench

Advocate : Arun Kumar Dutta, Sekhar Kumar Mustafi, Samir Kumar Banerjee, Prodyat Kumar Pal, for the Appellant; Tarun Kumar Ghosh for Respondent Nos. 2-4, for the Respondent

Judgement

1. The petitioner along with his brother, Respondent No. 5, initially inherited jointly from his father lands in C.S. Plot Nos. 327 and 348 (hereinafter referred to as the said lands) amongst others which are commonly known as Choto Bagir Bheri in Mouza Madurduha within Police Station Tollygunge, now Jadavpur, in the District of 24-Parganas. The Bheri as mentioned hereinbefore would hereinafter be referred to as the said Bheri. It has been stated that since about 1950, by a mutual family agreement with his brother, Respondent No. 5 the petitioner has been in exclusive use and possession of the said Bheri, by rearing and producing fish for business, on the basis of valid license duly issued by the authorities of the State of West Bengal under the provisions of West Bengal Fish Dealers' Licensing Order, 1963 (hereinafter referred to as the said Order). On or about 13th November, 1966, the petitioner was served with a notification u/s 4(1) of the West Bengal Fisheries (Requisition and Acquisition) Act, 1965 (hereinafter referred to as the said Act) and thereby amongst other lands, he was directed to handover and deliver the possession of the said Fishery to the K.G.O., Shri M. Ghosal. The date and time fixed for such delivery of possession was on 13th November, 1966 at 8 A.M. The requisition order under the said Act has been

disclosed as Annexure "A" to the petition and the same was issued by the Collector, 24-Parganas (Land Acquisition) in Case No. L.A. XX/45 of 1966-67. On a reference to the said notification, it would appear that the Collector concerned, was stated to have formed his opinion that the Fishery in question, with or without the adjoining lands, measuring more or less 369.78 acres, was needed or would likely to be needed "for a public purpose viz. the improvement or development of the Fishery / supplying ??.. object declared to be ancillary". It has further been stated that by Notification No. 3852 L.R. dated 2nd March, 1966, the Governor was pleased to authorize the said Collector to exercise powers u/s 4(1) of the said Act. The said notification further disclosed that in exercise of powers conferred u/s 4(1) of the said Act read with the authority as mentioned hereinbefore, the Collector concerned requisitioned the Fishery with or without the adjoining land as mentioned in the Schedule and directed delivery of possession in the manner as indicated hereinbefore.

2. Such notification has been claimed by the petitioner to be not only illegal, void and ultra vires the Constitution, but it has also been stated that the concerned order was impossible to be complied with on the face of the same, as no land could physically be carried to any office nor the abbreviation of the K.G.O. concerned could be deciphered. Such point was taken as in the notification it was mentioned that the petitioner should deliver possession of the Fishery with or without the adjoining lands to the office of the K.G.O., Shri M. Ghosal. It was the case of the petitioner that on the appointed date, the Additional District Magistrate concerned, Respondent No. 3 accompanied by other police personnel and authorities, who were also appropriately armed, came on the said Bheri and announced that possession of the same would be taken on the basis of the notice as mentioned hereinbefore. The petitioner has stated that he could do nothing, but only protested and he handed over a written application as in Annexure "B" to the petition to the said Respondent No. 3. The said application contained his protest against the high handed action or acts on the part of the authorities concerned and also contained a request to consider the objection as preferred. It was also requested, that pending hearing and disposal of such objection, the taking over of possession of the said Bheri should be stayed. That apart, the petitioner has stated that on the date as mentioned above, he had fish worth about Rs.40,000/- apart from other properties in the said Bheri. He has stated that in spite of such objection, the said Respondent No. 3 pretended to take symbolic possession of the said Bheri without making any inventory of the goods or of the accounts and the fish which were available in the said Bheri. It has further been stated that thereafter on or about 16th November, 1966, a further party belonging to the respondents and who were many in number, purportedly acting under order of the Fishing Corporation of West Bengal, Respondent No. 4, arrived at the said Bheri for the purpose of catching and lifting fish, but in view of the protest as lodged, they left the place without any lifting or catching fish. The Respondent No. 4 as mentioned hereinbefore, is a Company incorporated under the Indian Companies Act, having its registered office at 43, Shakespeare

Sarani, Calcutta-16, with the object inter alia to promote development and scientifically exploit the Fisheries and other aquatic products in West Bengal and other places and to acquire by purchase, lease, acquisition or by application of fresh enactments, rights and privileges over the banks, rivers, lakes and reservoirs etc. and to carry on the business of development of Fishery and sale of fish and other by-products.

3. Although, the Respondent No. 4 had entered appearance in this proceeding, yet at the time of hearing they did not appear. But, their case appeared from an application, which appeared from the pleadings as filed by them and was that, the entire South Salt Lake area was a derelict basin of the defunct river Bidyadhari and the same was a swamp covered about 9.500 acres and infested with dense grove of vegetation like Hogla, water reeds etc. with stray water patches here and there. They have also stated that there was no developed Fishery due to utter negligence of the owners and possessors. The areas, in question, were lying practically follow in spite of their potentialities for development as highly producted sewage fed Fisheries. It has been stated by them that by such development, the acute fish scarcities of Calcutta and its surrounding areas could be avoided. It was their case that having such aims, and views, the Government had decided, to develop the derelict South Salt Lake area through a master plan, with the help of an autonomous organization viz. the said Respondent No. 4 which was commissioned in March, 1966. The Respondent No. 4 has also stated that the possession of the said lands of the concerned Bheri were taken by Shri N. Mondal, land acquisition kanungo on 13th November, 1966 and thereafter, the same was delivered to them. They have also stated that on such happening, they have spent huge sums of money.

4. It should be noted that the present Rule with the interim order of in injunction was obtained on 23rd November, 1966 and immediately on receiving the information about the issuance of the Rule and injunction, the said Respondent No. 4 made an application dated 17th November, 1967 for vacating the interim order and such application, I am told, on completion of the affidavits, was heard by B.C. Mitra, J. on 7th June, 1967 and the learned Judge refused to make any order on the said application or to allow the prayer as made therein. I am further informed that from such determination, an appeal, being F.M.A. No. 717 of 1967 was taken and ultimately on 31st March, 1982 the said appeal has been dismissed, since no paper book has been filed in terms of the Court's order dated 1st March, 1982 nor such paper book has been served on the respondent. It is only after disposal of such appeal, the present Rule was mentioned for hearing, in terms of an order dated 16th June, 1982.

5. The Respondent No. 4 as mentioned above, also filed an affidavit-in-opposition dated 10th April, 1967. The said opposition would hereinafter be mentioned as affidavit-in-opposition No. 2. There was another affidavit-in-opposition dated 25th April, 1967 (hereinafter referred to as the said affidavit No. 1), filed on behalf of Respondent Nos. 2 and 3.

6. In the affidavit No. 1, the answering respondents have denied the statements regarding the exclusive possession of the said lands by the petitioner or that he had fish worth about Rs.40,000/- in the said Bheri. It has been stated that the possession of the said Bheri was taken and made over to the Fishery Directorate on 13th November, 1966 peacefully and without any protest from any quarters. The Respondent No. 4 in the affidavit No. 2, after disclosing their formation, also claimed that possession of the said Bheri was duly taken and peacefully handed over to them. The fact that the petitioner had fish worth about Rs.40,000/- in the said Bheri, has also been denied.

7. The deponent of that affidavit has also stated that since inventory of fish was not possible and practicable, the same was not done. But, he has stated that there are methods, on the basis whereof, the compensation which may be available to the petitioner, could be ascertained. Both the answering respondents have categorically denied the grounds as alleged or as sought to be taken against the legality, validity or propriety of the notification under the said Act as in Annexure "A" to the petition and it was their case, that steps in the matter were taken duly, bona fide, properly and in appropriate use and exercise of powers, competence and jurisdiction.

8. Mr. Dutta, appearing in support of the Rule, after placing the notice of requisition in Annexure "A" and the provisions of section 4 of the said Act which deals with the form of requisition and to the following effect :-

4(I) If the State Government is of the opinion that any fishery with or without the adjoining lands in any area is needed or is likely to be needed for a public purpose, the State Government may, by order in writing requisition such fishery and all lands within the area and may make such further order or orders as appear to it to be necessary or expedient in connection with requisitioning.

(2) A Collector, when authorized by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1).

(3) An order under sub-section (1) shall be served in the prescribed manner on all owners and occupiers of the fishery and the lands.

(4) If any person fails to comply with an order made under sub-section (1), the Collector or any person authorized by him in writing in this behalf shall execute the order in such manner as he considers expedient and may, -

(a) if he is a Magistrate, enforce the delivery of possession of fishery and the lands in respect of which the order has been made, to himself, or

(b) if he is not a Magistrate, apply to a Magistrate and such Magistrate shall enforce the delivery of possession of such fishery and lands to him, and so also to the schedule thereunder,

and the Rules as framed, being the West Bengal Fisheries (Requisition and Acquisition) Rules, 1965 and more particularly to Form I as prescribed u/s 4(1)

and which prescribes, the form or order for requisition of fishery or lands under sub-section (1) of section 4 of the said Act, claimed that as in the schedule to the said requisition order, it was mentioned "fishery and lands" and no particulars were given, so the notification in question could not effectively serve the purposes of requisition and the same was vague. He, of course, ultimately did not press such point, when he was informed that the description of fishery as given in the concerned schedule would not be vague, but the same would mean the fishery and all its adjacent lands. He also wanted to argue that issuance of the notice by the Collector concerned and in the manner or in view of the description as given or as mentioned in the notice itself, the same should be deemed to be vague and a rolled-up one. While on the question of such vagueness, he wanted to argue, that when the form under Rule as mentioned above, speaks of the formation of the opinion by the Governor, so the notice in Annexure "A" was irregular, improper and void, as the opinion in the same was sought to be formed by the Collector concerned. This point also Mr. Dutta had given up when he was shown Notes 1 and 2 under Form-I of the Rules as mentioned above.

9. Those notes duly point out the portion to be struck off in the notice, when the same is issued by the corresponding authorities. Reading the notice as in Annexure "A" and considering the same in the light of Form 1 as mentioned above, I do not find any deviation in the matter of the issue of the notice as in Annexure "A" and the notice as impeached, in my view, was issued duly and in form. The form or the order as prescribed is to the following effect :-

WHEREAS *(The Governor is of the opinion)/(I am of the opinion) that the Fishery with/without the adjoining lands measuring more or less ??? acres as described in the schedule below in mauza ??.. jurisdiction list No??.. police station ??.. district ???.. is needed of is likely to be needed for a public purpose, the viz. improvement or development of the Fishery/supplying Fish to the public from the Fishery/???. object declared to be ancillary or incidental to the aforesaid objects,

(AND WHEREAS the Governor has, by notification ???.. dated ??.. Published in the "Calcutta Gazette", Part 1 of the ??.. at page ???.. authorised me to exercise the power conferred by sub-section (1) of Section 4 of the West Bengal Fisheries (Requisition and Acquisition) Act, 1965 (West Bengal Act XX of 1965) :-

1. The portion marked *() should be struck off when the order is to be issued by a person authorised by the State Government in this behalf.
2. The portion marked () should be struck off when the order is issued by the State Government.

10. Mr. Dutta, in fact, agreed that in view of the notes under the Rules there was no apparent defect in the notice but he claimed firstly, that as under the Rules of Business of the Government of West Bengal as framed under Article 166(3) of the Constitution of India, the Collector concerned would not be authority in the

instant case and according to him under Rule 2(c) of the West Bengal Rules of Business, such authority must vest with "Secretary", meaning (hereby, Secretary to the Government of the State, which includes an Additional Secretary, a joint Secretary, a Deputy Secretary, and under Secretary and an Assistant Secretary. He also substituted that in terms of Rule 4 of the West Bengal Rules of Business, which lays down that the business of the Government shall be transacted in the department specified in the First Schedule and shall be classified and distributed between those departments as laid down therein, in the instant case, the relevant department would be under that Rules, the department of Fishery and the authority concerned, should be its Secretary. It should be noted under Rule 3 of the West Bengal Rules of Business, it is laid down that the General Clauses Act, 1897, would be applicable for the interpretation of the Rules in so far as the same applies, for the interpretation of the Central Act. On the basis of the Rules as mentioned above, Mr. Dutta, thus, claimed that u/s 4(1) of the said Act, the State Government was the authority for the purpose of making such order as in Annexure "A" and if at all, instead of Government, it may, on due delegation, be issued by the Secretary to the Government. The said Act not being a Central Act, I think, Rule 3 of the West Bengal Rules of Business is not required to be considered. It should be noted that apart from the above, Mr. Dutta claimed that u/s 3(60) which defines "State Government" and sub-Rule (c) thereunder, which lays down that as respect anything done or to be done, up to the commencement of the Constitution (7th Amendment) Act, 1956, shall mean in a State, the Governor, and in a Union Territory, the Central Government; and shall, in relation to function entrusted under Article 258A of the Constitution to the Government of India, include the Central Government, acting within the scope of the authority given to writ under the Article, the act or actions in the instant case should have been taken by the Governor. It was also claimed by him that since the order was to be made by the Governor so the formation of the opinion under the Rules as prescribed or the form thereunder, should be the formation of opinion by the Governor and not the Collector and such evidence being not available or being absent in the instant case, the entire proceeding has become a nullity, apart from being illegal, irregular and improper.

11. Section 2(5) of the said Act postulates that the expression, "public purpose" would mean a purpose having or being connected with, any of the following objects, viz., (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 Government may by Notification in the Official Gazette, declare as ancillary or incidental to the aforesaid object. Such being the position and the requirement of a public purpose, Mr. Dutta claimed on a reference to the notice in Annexure "A", that the same was a rolled-up one, as three things viz., the requirements are mentioned therein and are considered or taken together. That, according to him, shows and establishes non-application of mind or absence of formation of opinion or application of mind. In any event, he stated that the word "or" being after sub-clauses (ii) of section 2(5) so the requirements as mentioned in sub-clauses (ii)

and (iii) may be either or "or" or in the alternative, but they cannot be tagged together with sub-clause (i) and such thing having been done or such mistake having been committed, the notice in question, was also an irregular and void one. 12. Mr. Dutta contended that the note under the Rule as quoted hereinbefore, would have been the part of the said Act and the Rule, if the Rule was promulgated on the same date and simultaneously with the said Act and such being not the admitted position in this case, the Rule would have the effect and character of a subordinate piece of legislation and as mentioned hereinbefore, not a part of the said Act. To establish his submissions as above, Mr. Dutta placed reliance on the determinations in the case of (1) The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, , a case, where the validity of Rules 5 and 6 as framed under the Bombay Sales Tax Act, 1952 were considered and where, on consideration of relevant and different factors, it has been observed that on the date when the tax became leviable under the Act, sales or purchases of the kind described under Article 286(2)(b) and (2) stood in fact excluded from taxation by virtue of Rules 5 and 6 made u/s 45 of the said Act and the State of Bombay cannot be considered to have made a "law imposing or authorizing the imposition of a tax" on sales or purchases excluded under the aforesaid clauses of Article 286. The Act and the Rules having been brought into operation simultaneously, there is no reason why the Rules framed in exercise of the power delegated by the Legislature should not be regarded as part of the "law" made by the State. To establish further, what is subordinate legislation and the effect of the Rules, if framed simultaneously or otherwise, reference was made by Mr. Dutta to the case of (2) Tara Singh and Others Vs. State of Rajasthan and Others, , where, amongst others, it has been observed that notes are promulgated with the rules in the exercise of legislative power. The notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that when rules are silent the notes will fill up gaps. Notes which are appended to rules are of aid not only in applying the rules but also in interpreting the true import of the rules.

13. Mr. Dutta also argued, in view of the determinations in the case of The State of Bombay & Anr. v. The United Motors (India) Ltd. & Ors. (supra), the note as indicated in Form 1 of the Rules and relevant for Rule 3, would not be of any help and assistance to the respondents, when the Rules were incorporated subsequent to the incorporation of the said Act. To further augment his arguments, on the lack of authority of the Collector concerned or to establish that if at all, the notice in Annexure "A" as mentioned above, should have been made or executed by or by order of the Governor of West Bengal, Mr. Dutta referred to Notification No. 2256 A.R. dated 25th August, 1951, which lays down the Rules regarding the making or execution of orders or instruments by or on behalf of the Government of West Bengal, to the following effect. In exercise of the power conferred by clause (2) of Article 266 of the Constitution of India and in supersession of all previous rules made in this behalf, the Governor is pleased

to make the following rules :-

(1) All orders or instruments made or executed by or on behalf of the Government of West Bengal shall be expressed to be made or executed by or by order of the Governor of West Bengal.

(2) Save in cases where an officer has been specially empowered to sign an order or instrument of the Government of West Bengal, every such order or instrument shall be signed by either a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of West Bengal and such signature shall be deemed to be the proper authentication of such orders or instruments.

Explanation : In this rule the reference to a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary and an Assistant Secretary shall include respectively references to an Additional Secretary, an Additional Joint Secretary, an Additional Deputy Secretary, an Additional Under Secretary and an Additional Assistant Secretary. On the basis as above, it was further claimed by Mr. Dutta that the State Government was the competent authority in this case, to issue the notice and not the Land Acquisition Collector concerned.

14. As all the necessary requirements for requisition have been mentioned in the notice and the inappropriate and inapplicable parts or portions have not been struck off. Mr. Dutta claimed the order to be a rolled-up one and not permitted in law. In support of such submissions, he referred to the determinations in the case of (3) Pramatha Nath Mukherjee and Others Vs. St. of W.B. and Others, . In that case the printed form which was signed by the Collector reproduced all the alternative purposes for which the relevant statute enabled an order to be made and the Collector did not consider it necessary to determine which of these alternatives was applicable to the case before him and from a reading of the concerned order in its entirety, it has been observed that nobody can ascertain whether the requisition is being ordered for the purpose of drainage, irrigation, road construction or transport. It is therefore clear that the Collector did not apply his mind while issuing the impugned order. On the question of a rolled-up order, it has also been observed in the case of (4) Krishna Narayan Das and Others Vs. Additional District Magistrate etc. and Others, , that such order would be bad for non-application of mind and such rolled-up order, containing all the purposes or the irrelevant purposes not having been scored through, could not serve the purposes of the said Act.

15. There would be no defect in the notice (Annexure "A"), if the Collector concerned in this case, would be the authority under the Rules of Business or he comes within the term, "Secretary" u/s 2(c) of the said Rules of Business or he is appropriately authorized under the West Bengal Fisheries (Requisition and Acquisition) Rules, 1965. "Collector" under the said Act includes any officer not below the rank of Sub-Deputy Collector appointed by the State Government to carry out all or any of the functions of a Collector under the said Act. Thus, under

the said Act Collector concerned would be an appropriate authority and no objection to the notice in question could be entertained or entertainable, if the notice, on due authorization, was issued by the Collector. The authorization in this case cannot be denied or disputed, since the same appeared from the notice itself and no contrary evidence was available. The Rules of Business have been framed under Article 166(3) of the Constitution of India, which authorizes the Governor to make Rules for the more convenient in transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. Such being the basis of the Rules of Business, the same, in my view, in the case of requisition like the present one, would have no application and such requisition would be governed by the terms of the Rules as framed, viz. The West Bengal Fisheries (Requisition and Acquisition) Rules, 1965 and as such, the Collector concerned cannot be said to be not duly authorized and as such he had and has authority to issue the notice.

16. But even in spite of my findings and observations as above, the notice itself, because of its rolled-up nature and character and more particularly when the immaterial, irrelevant and unintended parts have not been scored through, cannot be sustained, in view of the cases cited at the Bar and also in view of the determinations in the case of (5) Sailendra Nath Ray Vs. State of West Bengal, , whereof the purpose for which the land was sought to be acquired, was declared to be provisions of proper facilities for transport and it was also recorded that the alternative purpose was maintenance of the supplies and services essential to the life of the community. The action in that case, was purported to have been taken for the settlement of the displaced small traders and it was observed that since such settlement of small traders was neither connected with nor incidental to either of the purposes as mentioned above, the action as impeached, was improper. In view of the above and various determinations of this Court, it was expected of the authorities concerned in this case, to strike off unwanted, unintended and immaterial purposes from the notice in Annexure "A", to give the same a legal character and such not having been done, the argument of Mr. Dutta at least on such rolled-up manner of the notice, should succeed.

17. In view of the above, I make the Rule absolute, only on the point as indicated above and keep it on record that the other points of Mr. Dutta have failed, the Rule is, thus, made absolute. There will be no order as to costs.

If so advised, the authorities concerned would be at liberty to issue fresh notice and make appropriate determination in accordance with law.