(1955) 05 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Original Order No. 363 of 1953

Ram Jiban Guchait APPELLANT

Vs

The State of West Bengal and Another RESPONDENT

Date of Decision : 25-05-1955

Acts Referred:
Constitution of India, 1950 — Article 19(1)(g), 226, 31(2)

Citation : 60 CWN 273

Hon'ble Judges : Chakravartti, C.J;Lahiri, J

Bench : Division Bench

Advocate : Ranjit Kumar Banerjee, for the Appellant;J. Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—Judgment in this appeal has been delayed, because after the arguments had been concluded, the parties wanted some time to consider for themselves and to confer with each other as to whether it would be possible to settle the dispute between them. After several adjournments, as many as four in number, we were ultimately informed that no settlement could be effected. It then fell to us to consider, in view of certain facts brought to our notice after the conclusion of the arguments, whether it would at all be possible to make any effective order in this appeal, even if we took a view different from that of the learned Judge. After careful consideration of the matter in all its aspects, we have come to the regretful conclusion that it is not possible to make any effective order, even if we agreed with the appellant on the merits.

2. The position is as follows: The appellant moved this Court under Article 226 of the Constitution of India against a directive issued to him under paragraphs 3(3)(15) and 3(5) of the West Bengal Food grains (Intensive Procurement) Order, 1952, to sell to Government at a slated price and deliver to a certain rice mill 769 maunds of paddy. The appellant''s case was that the law under which the directive had been issued was void, inasmuch as it did not either provide for

compensation for the property to be taken or fix the amount of the compensation or specify the principles on which and the manner in which the compensation was to be determined and given. A Rule was issued in the first instance, but at the final hearing the learned trial Judge. Sinha, J, discharged it. He took the view that the law was to be sought not merely in the main Procurement Order, but also in several other subsidiary orders which had been promulgated on the same date and if one took all those orders together, one would find in them, a clear provision for the compensation to be given. In the learned Judge''s view, the main order and the subsequent orders, all promulgated on the same date and published in the same issue of the Calcutta Gazette, were to be treated as simultaneous and as constituting a single body of law.

3. In the appeal before us, it was contended that the learned Judge''s view as regards the simultaneity of the main order and the subsidiary orders was wrong, inasmuch as the subsidiary orders, having been issued under the main order, could only be subsequent to it in point of time. It was further contended that even assuming that the subsidiary orders could be taken as forming part of the total body of the relevant law, the directive was still bad, inasmuch as Order No. 10365 F.D.'' which set out the prices-payable for food grains compulsorily purchased, was invalid, inasmuch as it purported to be an order made under1 clause (e) of section 3(2) of the Essential Supplies (Temporary Powers) Act, 1946, but the concurrence of the Central Government in making the order as required by Notification No. PY 603(2) I, dated the 21st October, 1946, had not been obtained. It was contended in the third place that a very similar provision contained in the Rajasthan Food grains Control Order had recently been declared by the Supreme Court to be void as offending against Article 19(1) (g) and Article 31 (2) of the Constitution.

4. These points seemed to us to require very serious consideration, but at the conclusion of the argument, certain facts were brought to our notice which seemed to us to raise a serious question as to whether it would at all be possible to proceed further with the appeal to any practical purpose.

5. We were informed that while the appeal had been pending, the Procurement Order had been withdrawn. A Rule taken out by the appellant for a stay of the operation of the directive had been made absolute by us in part and we had directed him to deliver 350 maunds of paddy, pending the decision of the appeal. We were informed that the quantity of paddy directed by us to be delivered had in fact been delivered and the appellant had received the price stated in the directive and offered to him by Government. It was also stated before us by the learned Assistant Government Pleader that the Procurement Order having itself been withdrawn Government had no intention to call upon the appellant to deliver the remainder of the paddy and in fact was no longer entitled to do so.

6. These facts, to our mind, created a great difficulty for the appellant in view of the terms in which he had obtained the Rule. Quite inexcusably, the Rule was not included in the paper book, but I have referred to the original records and

ascertained its terms. The Rule directed the respondents to show cause why a writ in the nature of Mandamus should not issue to them, directing them not to give effect to the directive complained of in the petition or why such other or further order or orders should not be made as to this Court might seem fit and proper.

7. It will be seen that the main direction in the Rule is that the respondents should show cause why they should not be required not to give effect to the directive or, in other words, why they should not be ordered to forbear from giving effect thereto. In view of the facts which I have already stated, the directive has exhausted itself and there is nothing now which the respondents can be directed to forbear from. A question would at once arise as to whether an appeal would necessarily be rendered infructuous if during its pendency, the directive issued to the producer was enforced and the Appellate Court refused a stay. I confess that it cannot for one moment be contended that if a producer, served with a directive to sell and deliver a quantity of paddy, is compelled to carry out the direction during the pendeney of the appeal, be cause he fails to obtain a stay order, he must for that reason alone be kept out of the benefit of his appeal, even if the appeal proves to be a well grounded one. The position in the present case, however, is different and the difference has been created by the appellant himself. As I have said, in order that an effective order could be made in the appeal in terms of the Rule obtained by the appellant, it would be necessary that something should remain to be done by the respondents which they could be directed to forbear from doing. If, for example, the appellant did not accept the price offered to him when he delivered the paddy, the price would remain to be paid and if the respondents wanted to pay him at the rate mentioned in the directive, they would be trying to give effect to the directive from which they could be restrained. If such had been the facts, it would be possible to make an order in favour of the appellant, which would have a particular effect in case the appeal succeeded. But the appellant in the present case has accepted the price and that being so, there is nothing left for the respondents to do in pursuance of the directive. In so far as 350 maunds of paddy are concerned, the directive has been carried out and in so far as the balance is concerned, there is no question of enforcing the directive any longer.

8. I do not forget that the Rule had the usual omnibus clause, namely, ''such other or further order or orders as to this Court might seem fit and proper''. We have considered whether on the strength of those words in the Rule, we could, if we agreed with the appellant in his contentions, quash the directive by means of a writ of certiorari. That, however, it is not possible for us to do, because the directive can in no sense be said to be a judicial or quasi judicial order. None of the other prerogative writs seems to be appropriate. Article 226, however, has certain other words, namely, ''directions and orders''. We have considered whether we could give any effective direction or make any effective order, in case we came to the conclusion that, on the merits, the appeal ought to succeed. The only possible direction which would have any practical value would be a direction

to the respondents to pay the appellant the market-price of the paddy sold by him. That seems to have been the order made by the Rajasthan High Court which the Supreme Court upheld, [State of Rajasthan v. Nathmal (1) (1954) S.C.A. 347] but unfortunately the report does not show what the terms of the Rule issued in that case were. In any event, it is not possible for us in this appeal to make an order on the respondents to pay at the market-price, leaving the market price to be determined in other proceedings. Nor is there any material before us upon which we could ourselves determine what the correct market-price would be, as the High Court of Rajasthan did in the case to which I have referred. It seems to me impossible that, in an application under Article 226 of the Constitution of India, the High Court should engage in taking evidence as to what the market-price should be and then make an order for payment at the market price. In any view, this relief was not asked for and no materials are to be found in the paper-book on which any direction to pay the market-price can properly be given. It will appear that no order has been promulgated by Government, fixing the controlled or a ceiling price for food grains, as it appears to have been done at Rajasthan. The Order No. 10365 F.D. does not declare the market-price of food grains under clause (c) of section 3(2) of the Essential Supplies (Temporary Powers) Act, 1946, but really declares the price which, according to the Government, should be payable to persons who might be required to sell and deliver paddy in compliance with the direction issued to them under paragraph 3(3) (b) read with paragraph 3(5) of that Order. It appears that Government did not at all promulgate any order or any proper order under clause (c) of section 3(2) of the Act, and, therefore, we have not even a ceiling or controlled price fixed for the food grains.

9. In the above circumstances, it appears to us that the difficulty which the appellant has created for himself by accepting the price for the paddy delivered to him without, as we are informed, any protest, is insuperable and having regard to the structure of the Rule, as also the fact that the directive is no longer sought to be enforced, it has become impossible to make any effective order in the appeal, even if we held on the merits that the appeal ought to succeed.

10. For the reasons given above; we have reluctantly and regretfully come to the conclusion that no useful purpose would be served by considering the appeal on its merits. We desire to add that nothing said by us in this judgment should be taken as our acceptance of the view taken by the learned Judge or confirmation thereof. The appeal is accordingly dismissed, but there will be no order as to costs.

Lahiri, J

I agree.

