
(1987) 07 CAL CK 0036
In the Calcutta High Court
Case No : C.O. 2068 (W) of 1985

Sankar Banerjee

APPELLANT

Vs

Durgapur Projects Ltd. and Others

RESPONDENT

Date of Decision : 20-07-1987

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 43

Citation : AIR 1988 Cal 136

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : Arun Prakash Sarkar, Sumit Krishna Dutt and Chhabi Chakraborty, for the Appellant; Prabir Kumar Samanta, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Ranjan Roy, J.—Behind its apparently simple facts, the instant writ petition raises a very important issue, namely, whether the State can deprive a worker of a decent standard of life, which under Article 43 of the Constitution the State should endeavour to secure.

2. The petitioner, now an Upper Division Assistant of the Durgapur Projects Ltd., which is "State" within the meaning of Article 12 of the Constitution, joined the Projects initially as a Mate in the year 1960.

3. His mother Smt. Indu Banerjee, since deceased who was Headmistress of the "A" Zone Basic School, was in occupation of rent-free two-roomed quarter at No. FB-9/2 with the kitchen and bath in the Coke Oven Colony under the respondent 1, the Durgapur Projects Ltd.

4. The petitioner, at all material times. has been living with his mother in the said quarter even after he joined the projects in the year 1960.

5. By a letter dt. July 30, 1973 (Annexure "A") the petitioner's mother requested the respondent 4, the Town Administrator, to consider allotment of her quarter to

the petitioner on payment of rent for which she undertook not to claim any accommodation for the rest of her service life.

6. Her request having been acceded to in part, the respondent 4, by his letter dt. Sept. 15, 1973 (Annexure "B") allotted one of the two rooms in the quarter in favour of the petitioner.

7. "On the demise of the petitioner's mother on Feb. 6, 1983, the room in her occupation in the quarter fell vacant, when the concerned authority, the Secretary, "A" Zone Junior Basic Training School by his letters dt. April 26, 1983 and May 19, 1983 (Annexure "C") directed the petitioner to hand over the said room to the school authority.

8. The petitioner's representations dt. May 23, 1983 and Mar. 7, 1984 for allotment of the room to him instead of allotting it loan outsider, failed to yield any result and he was directed to vacate the room, though as a matter of fact, the room since his mother's death was in the occupation of his younger brother Sekhar Banerjee.

9. Ultimately, on June 26, 1984 the petitioner was served with a purported charge-sheet-cum-suspension order for his alleged unauthorised occupation of the quarter (Annexure "H") and by a notice dt. Aug.. 8, 1984 a domestic enquiry into the charge was ordered (Annexure "K").

10. However, at the intervention of the Minister-in-Charge of the Department of Commerce and Industries, the petitioner's brother made over possession of the room to the concerned authority on Dec. 12, 1984, following which the petitioner's suspension order was withdrawn and he was allowed to join his duty (Annexure "N"). The charge-sheet was, however, not withdrawn.

11. The concerned authority thereafter allotted the room, formerly in possession of the petitioner's mother to the respondent 8, a "Shramik" with a large family.

12. Since the said respondent No. 8 was bent upon taking possession of the room to the utter inconvenience of the petitioner, the petitioner came up before this Court under Article 226 of the Constitution praying for a writ in the nature of Mandamus directing the concerned authority not to proceed with the charge-sheet dt. June 26, 1984 and not to take any step or further steps for inducting respondent 8 or any other person or family in the disputed room.

13. There was an interim order directing the respondents not to allot the room to anybody till disposal of the writ petition.

14. The disciplinary proceeding was, however, allowed to continue subject to the condition that the final order shall not be passed.

15. The respondents 1 to 5 in their affidavit-in-opposition have seriously questioned the petitioner's right to get allotment of the room in question in his favour. According to the respondents, the petitioner not having applied for any quarter prior to 1984 and there being also acute scarcity of residential quarters,

the room in question could not be allotted to him. The charge-sheet, according to the respondents, cannot be withdrawn since the petitioner on his mother's demise continued to possess his mother's room without authority and failed to make over possession of the same to the concerned authority in spite of repeated demands.

16. From the facts stated, it will appear that the petitioner is now in the employment of the Durgapur Projects Ltd. (D.P.L. in short) for about the last 27 years, having joined in the year 1960. Presently, he is an Upper Division Assistant and it is not disputed that in view of his official status he is normally entitled to a three-roomed residential quarter subject, of course, to availability.

17. Significantly, at all material times he had been living with his mother Smt. Indu Banerjee in the disputed two-roomed quarter in the Coke Oven Colony, which was allotted to her by the school authority of the D.P.L. as far back in the year 1955.

18. It is quite likely that since the petitioner had been living with his mother, he did not feel the necessary to apply for a quarter in his own name after he joined the D.P.L. in 1960. Had he so applied he would possibly have been in possession of a three-roomed quarter in his own right by this time.

19. It also appears to be likely that the petitioner by continuing to live in his mother's quarter, saves the D.P.L. of the embarrassment to find out a suitable quarter for him.

20. It, however, appears that when on June 7, 1967 the petitioner was appointed to the post of a Roster Clerk, he was offered a "single-seated accommodation" at Durgapur.

21. This will appear from the copy of the relevant order produced before me on behalf of the petitioner and it is also not disputed by the respondents.

22. The petitioner obviously allowed this opportunity to slip since he had been living with his mother.

23. Then, in the year 1973, the mother possibly apprehending the growing shortage of residential quarters and also the difficulty the petitioner might have to face in procuring a quarter on her superannuation, applied to the Town Administrator of the D.P.L. on July 30, 1973 (Annexure "A") to consider allotment of her quarter to the petitioner on the undertaking not to claim any accommodation for the rest of her service life.

24. This was undoubtedly a good gesture since at the material time she had more than ten years of service to her credit (incidentally, she died in harness on Feb. 6, 1983).

25. The petitioner at that time had already completed about 13 years of service under the D.P.L. and it is not the case of the respondents that he was not eligible till then for a two-roomed quarter, he having already been offered a single-

seated accommodation as far back in 1967 when he became a Roster Clerk.

26. And if that is so, the petitioner could have very well been allotted the quarter since it would not have affected anybody else's interest at that time, the allottee, the mother, still having more than ten years of service to her credit.

27. Obviously, the petitioner must have been a consenting party to his mother's application for the allotment of the entire quarter to him and that being so, the mother's application could very well have been treated as an application by the petitioner for allotment of a suitable quarter to him.

28. However, in their wisdom the D.P.L. authorities allotted one single room of the quarter to the petitioner instead of the whole of the subject to its being vacated by the Secretary of the "A" Zone Basic School, though in the same way the whole of the quarter could be allotted to the petitioner without causing any immediate inconvenience to anybody.

29. The petitioner, as it appears, did not object to such allotment of only one room to him since he was in actual possession of the whole of the quarter along with his mother.

30. There can, however, be no denial of the fact that as far back in 1973 there was an application for allotment of the entire quarter to the petitioner and the allotment of only one room to him on the basis of the said application was not on the ground that he was not eligible at that time to a two-roomed quarter.

31. Possibly, the course of action of the D.P.L. in this regard was influenced by the fact that the quarter at the material time was under the administrative control of the School authority.

32. However, since the application was made to the D.P.L. the petitioner, in my view, should have been given priority from the date of the application, i.e., July 30, 1973 in the matter of allotment of a quarter to him.

33. It is true that the petitioner himself made an application for the allotment of his mother's room to him for the first time on May 23, 1983 (Annexure "D"), which was after his mother's demise on Feb. 6, 1983 and then again on Mar. 7, 1984 (Annexure "E"), but these applications, according to me, should not have been treated as fresh in continuation of the previous application dt. July 30, 1973 as made by the petitioner's mother, which for all practical purposes remained pending for the allotment of a full quarter to the petitioner. The subsequent applications, as already seen, were for the allotment of the remaining room in the quarter and not for a whole quarter and as such, were only in continuation of the earlier application though not specifically mentioned as such.

34. I am afraid that the concerned authority while rejecting the petitioner's subsequent applications and directing him to hand over possession of the other room did not view the matter from this angle.

35. According to the respondents, they are presently allotting quarters against

applications made in 1963 according to the age of the applications. But single rooms are being allotted even to persons who applied in 1984, as it has been allotted to the respondent 8. As such, to the petitioner also, the allotment, if made, would have been in respect of one single room to make, of course, a complete whole but, that would have been against his normal entitlement against an application made as far back in 1973. The matter might have been otherwise if it was a question of allotting a complete quarter to the petitioner. But since one of the rooms had already been allotted to the petitioner in 1973 and consequent thereto the entire quarter could not be allotted to a prior applicant, the petitioner under the normal procedure followed by the D.P.L. in the matter of allotment of single rooms, could very well claim allotment of the remaining room on the basis of the application made in 1973 without causing any inconvenience to any prior applicant for a full quarter.

36. According to Mr. Samanta, the learned Advocate representing the D.P.L., single rooms, whenever they fall vacant, are offered to applicants according to the age of their applications and are allotted to those who express their willingness in the matter and here it was allotted to the respondent 8, who had joined the D.P.L. only in 1984 since he had expressed his desire to take the room. The question is why it was not offered to the petitioner.

37. Reference in this connection may be made to para 4 (xiii) of the affidavit-in-opposition where it has been stated that "since the petitioner did not formally apply for accommodation before 7th Mar., 1984, he is not entitled to a room even as per seniority list maintained." Then again in para 9 of the affidavit it has been stated that "the petitioner having not applied for accommodation before the Town Administration ever before, he is not entitled to a two-room quarter at the material time."

38. It is true that the petitioner's application dt. May 23, 1983 (Annexure "D") was addressed to the Managing Director of the D.P.L. and not to the Town Administration, but for that alone his earlier application could not be ignored. Moreover, as already seen, the application made in 1973 by the petitioner's mother to the Town Administration, was still awaiting final disposal so far the allotment of a two-roomed quarter is concerned, to which the petitioner's entitlement in 1973 was not questioned by the Town Administration while allotting a single room to him, whatever the respondents might have stated now in that regard in their affidavit-in-opposition.

39. So at any event, there was at least no valid reason for not offering the room to the petitioner before offering it to the respondent No. 8 a new entrant in service in 1984.

40. It may be mentioned here that the D.P.L. has no rules for allotment of residential quarters but on the basis of the normal practice for such allotment the petitioner, in view of the facts and circumstances disclosed earlier, was entitled to the allotment of the remaining room in the quarter which fell vacant on his

mother's death.

41. The respondents have, however, raised an important issue in this regard, namely, acute dearth of residential, accommodation. It is stated that sharing of rooms in a quarter by different families is now almost a normal practice since due to acute shortage of accommodation it has become extremely difficult to allot independent quarters to all eligible employees of the D.P.L. It is, however, admitted that where accommodation for residence cannot be provided to an employee, he is given house rent allowance according to rules.

42. Viewing the instant case in the above perspective, the petitioner, who till the death of his mother in February, 1983 had been enjoying with his wife and children the benefit of the entire quarter for a large number of years, will now have to share one of the two rooms with a fairly big "Sramik" family and will also have to share the single bath room, single toilet and single kitchen.

43. Theoretically, such a situation may not be inconceivable, but for all practical purposes and particularly for one who has become accustomed to a different mode of living in the same quarter, the proposed arrangement will create a situation which can under no circumstances, be congenial to the mental and physical well-being of either of the two families.

44. It is true that the employees have to be provided with residential accommodations but while doing so, it must be ensured that the accommodations so provided are at least sufficient to live like human beings.

45. Two families occupying one room each of a small quarter and sharing the bath room, toilet and kitchen, may give the administration the satisfaction of having provided each of the two families with residential accommodations, but one may very well question whether it actually fulfils the obligation of the State to secure to all workers "a decent standard of life and full enjoyment of leisure" as Article 43 of the Constitution envisages.

46. The Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, has observed that the sweep of the right to life, conferred by Article 21, is wide and far-reaching. "Life" according to the Supreme Court "means something more than mere animal existence". Similarly, in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, the Supreme Court has observed in para 12 that "the expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Where the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures."

47. To ask a person to live in sub-human conditions by depriving him even of the benefit of two small rooms which is the minimum requirement for a family to

live, and compelling him to live in one single room with his wife and children and to share the bath, toilet and kitchen with another family, if it connotes anything, is mere animal existence and nothing more.

48. It is not a tall difficult to visualise that such a continued drudgery through life will gradually rob the petitioner and his family members of all their finer graces and put their life to complete jeopardy. It would be nothing but naked and crude struggle for human existence every moment, Depriving a person of his life cannot be worse than such an animal existence. And life can be put to such a jeopardy only by law which inheres fair procedure.

49. Thus, if life includes livelihood, since no person can live without the means of living; it shall also include such living conditions without which it is not possible for a person to live a human life or to have a human existence so to say since a man does not live by bread alone and to compel a person to lead an animal existence is worse than taking away his life.

50. The sweep of the right to life, conferred by Article 21 of the Constitution, which, according to the Supreme Court is "wide and far-reaching" should, therefore, include such minimum living conditions without which a human being ceases to be one of the said species.

51. As held by the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, the right to life "does not mean merely that life cannot be extinguished or taken away, as for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but life". An equally important facet of that right, according to me, is the right to live like a human being, which conforms to much lesser degree the State's obligation to "ensure a decent standard of life and full enjoyment of leisure" to all its workmen as provided by Article 43 of the Constitution. Compelling a person to live in sub-human conditions also amounts to the taking away of his life, not by execution of a death sentence but by a slow and gradual process by robbing him of all his human qualities and graces, a process which is much more cruel than sending a man to the gallows. To convert human existence into animal existence no doubt amounts to taking away human life, because a man lives not by his mere physical existence or by bread alone but by his human existence.

52. The D.P.L. indisputably is "State" within the meaning of Article 12 of the Constitution and as held by the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , "as definition of State in Article 12 is for the purpose of both Part III and Part IV of the Constitution, State actions, including actions of the instrumentalities and agencies of the State, must not only be in conformity with the Fundamental Rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy as prescribed by Part IV" (Para III of the Report).

53. But here the action of the D.P.L. in depriving the petitioner not only of the minimum accommodation which is necessary for human existence far less to

speak of a decent living, but at the time compelling him to live an animal life, has not been in conformity with his Fundamental right namely, his right to life as envisaged by Article 21 and had also not been in accordance with Article 43 of the Constitution which appears in Part IV.

54. It is true that the D.P.L. may not by affirmative action, be compelled to provide "a decent standard of life" to the petitioner, but the petitioner having been deprived of his right to a decent living which actually threatens his human existence and which possibly is more valuable than life itself, without any just and fair procedure established by law, he is entitled to challenge the said deprivation as offending the right to life conferred by Article 21. And this is what the Supreme Court has held in *Olga Tellis v. Bombay Municipal Corporation* (AIR 1985 SC 180) (*supra*) which deciding the question whether right to life also includes right to livelihood.

55. Similarly, the Supreme Court in *Randhir Singh Vs. Union of India (UOI) and Others*, has held, while dealing with the Directive Principle of "equal pay for equal work" that it is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be fundamental right. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy.....Directive Principles, as has been pointed out in some of the judgments of this Court, have to be read into the fundamental rights as a matter of interpretation....".

56. In *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , the Supreme Court while giving effect to the Directive Principle of "equal pay for equal work" observed that -- "The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a Court of law should not come from the mouths of the State and State undertakings".

57. In this connection Mr. Samanta's contention that the policy of the State should be to provide accommodation, to more and more of its employees than to ensure decent living to some, does not appear to be quite in consonance with Article 43 of the Constitution. Moreover, such a policy cannot be pursued at the cost of human existence. The solution to accommodation problem if I may say so, cannot be by dividing and sub-dividing the existing accommodations which are just sufficient to accommodate small families and to create pigeon holes where more and more families can be dumped together in utter disregard of their human values.

58. In the instant case the project authority simply closed its eyes to human value and without allotting the other room to the petitioner which would have been the only right thing to do, charge-sheeted and suspended him for not vacating the room, Ultimately, however, the Town Administrator accepted the position that the room was actually possessed by the petitioner's brother Sekhar

Banerjee and by a letter dt. 14-11-1984 (Annexure "L") asked the said Sekhar Banerjee to vacate and made over possession of the room by 21th Dec. 1984. This direction having been complied with by the petitioner's said brother, the suspension order against the petitioner was withdrawn but not the charge-sheet.

59. In my judgment, however, the charge-sheet should also be withdrawn since under whatever circumstances it may be, the Town Administrator ultimately admitted the possession of the petitioner's brother of the room and got back its possession from him. This makes the charge against the petitioner that he was in unauthorised occupation of the room, totally unsustainable. The charge-sheet also loses its force and efficacy in view of the other findings recorded by me.

60. The writ petition, accordingly, succeeds and the respondents are directed by the issuance of a writ in the nature of mandamus not to proceed further with the impugned charge-sheet against the petitioner dt. June 26, 1984, The said respondents are further directed to allot the disputed room in quarter No. FB-9/2 of the Coke Oven Colony of the respondent No. 1 to the petitioner within forty-five days from this date by cancelling its allotment to the respondent No. 8 and till then not to allot it to anybody else.

61. The above respondents are further directed to pay to the petitioner all his arrear emoluments resulting from his suspension or otherwise as well as his other dues within the aforesaid period of 45 days, if not already paid and also to regularise his pay within that period if it is yet to be regularised.

No order is made for costs.