

(1956) 08 CAL CK 0011
In the Calcutta High Court
Case No : Civil Revision Case No. 498 of 1956

Sankari Bhusan Sen

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-1956

Acts Referred:

Constitution of India, 1950 — Article 243

Citation : 61 CWN 181

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Dutt and Nando Lal Pal, for the Appellant; J. Majumdar and Somendra Chandra Bose for the Opposite Parties 1, 2, 4 and 5, Arun Prokash Chatterjee for Opposite Party No. 3, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows. The petitioner was a French subject residing in French Chandernagore in 1942, when he was appointed as a peon in the office of the Collector, Chandernagore. and thereafter as an office bearer in grade 14. We all know that in 1947 India attained independence, and owing to irresistible pressure of world events, the French Government also, in or about November 1947, passed a decree, inter alia, declaring the French possession of Chandernagore as the free town of Chandernagore. Amongst other things, a council of administration was appointed to carry on the administration. It attained some measure of financial and administrative autonomy. In or about 1948, there was an agreement between India and France to pronounce on the future status of French subjects in Chandernagore. In June 1949, a referendum took place and the free town of Chandernagore elected to join the Indian Union. in or about May 1952, the President of the Council of Administration made a decision, amongst other things, that the petitioner who was then a "Planton" (grade 14) was to be promoted to the post of an Assistant Clerk, under grade 10, with a monthly salary of Rs. 52"- plus clearness allowance. Meanwhile, in May 1950. the French possession of Chandernagore passed into the de facto possession of the Indian

Union and an Indian Administrator was appointed. In or about 2nd February 1951 there was a Treaty of Cession executed between France and India with regard to the city of Chandernagore. On the 9th June 1952, Instruments of certification of the Treaty of Cession were exchanged in Paris. In other words, the cession was completed on the 9th June 1952, and the City of Chandernagore passed from French Sovereignty to Indian Sovereignty. On the 13th June 1952, the Council of Administration passed an order promoting the petitioner from the position of a Plan-ton to that of an assistant clerk, as stated above. In June 1952, was promulgated the Chandernagore (Administration) Regulation 1952 (Regulation I of 1952). This was published in the Gazette of India extraordinary. Part II, section 1, dated the 30th June 1952. This was a regulation to make provision for the administration of Chandernagore, and for matters connected therewith, and was promulgated by the President in exercise of power conferred by clause 2. Article 243 of the Constitution. By this Regulation the "appointed day" was stated to mean the 9th day of June 1952, being the date on which the free town of Chandernagore was transferred in full sovereignty to India, under the Treaty of Cession of Chandernagore. Section 3 of the regulation lays down that there shall be an administrator at the head of the administration of Chandernagore, appointed by the Central Government. Section 4 speaks about the constitution of an Advisory Council and section 5 speaks of other functionaries which were then functioning and which would continue to exercise their functions under the new set up. Section 7 of the Regulation is important and is set out below :--

"Rights and obligations:

All rights, liabilities, and obligations of the Government of French Republic or the Municipal Assembly or the Administrative Council in relation to Chandernagore shall as from the appointed day be the rights, liabilities and obligations of the Central Government."

The next section that is important is section 15 which runs as follows: --

"Repeal

---decree No. 47-21 of 7-11-47 cancelling decree Xo. 17-1245 of 30th June 1947 and creating Chandernagore a free town and the subsequent decrees modifying the same are hereby repealed and the Municipal Assembly and the administrative council set up under that decree are hereby dissolved."

2. The whole dispute that has arisen in this case is as to whether the order of the Council of Administration dated the 13th June 1952 is binding on the Indian Union. I might mention here that later on, the city of Chandernagore has merged with the State of West Bengal and the administration of the City now devolve.-- upon the State of West Bengal It is amply clear from the facts that I have stated above, that until the 9th June 1952. the sovereignty of Chandernagore rested on France and that on or after that date, sovereignty passed to the Indian Union. So far as the Council of Administration is concerned,

ii was a creation of French Law, and there can be little doubt that upon the passing of the sovereignty the functions of the Council of Administration ceased, unless it can be shown that they were expressly continued by the new sovereign, Mr. Dutt has emphasised the point that between the 9th June 1952, and the 30th June 1952, when the Council of Administration was dissolved, the Council in fact continued to function, and argues that its orders were not only legal, but binding. He went so far as to say that during that time the council of Administration functioned as a *de facto* sovereign. I am afraid, I am unable to accept any such proposition. As I have mentioned above, upon the passing of the sovereignty, the further continuance of the Council of Administration entirely depended upon the new sovereign. If the new sovereign did not enact any law, but simply allowed the council to continue functioning, it might have been said that the council was functioning, because the new sovereign acquiesced in it. What the new sovereign did however was to promulgate a law, and in that law it has been expressly stated that on and from the appointed date, that is to say. 9th June 1952, the Council will have ceased to have any rights. If that is so, it cannot be said that in spite of such law, it continued to have any right, or that it could in law exercise those rights. It is of course well-known that a sovereign body can legislate retrospectively. There is no question of the Council of Administration being at any time a sovereign body. Sovereignty means want of interference from outside. It is but patent that at any time before the 9th June 1952. the Government of France could have brought the existence of the Council of Administration to an end or have interfered with its administration. In the case of *Union of India v. Man-moll Jain* (1) (59 C.W.N. Page 107) it was held that as and from the "appointed day", the rights which vested in the Municipal Assembly at Chandernagore, vested in the Central Government of the Union of India, by reason of section 7 of the Regulation. In that case, the right in question was the right of litigation. Although not directly on the point, it indicates as to what should be the proper interpretation of section 7. In my opinion, if the rights of the Council of Administration ceased to have effect on the appointed day, it can only mean that as and from that day it could not exercise those rights. Even if you consider that as a body which was allowed to function on sufferance, the Council of Administration continued to exist until 30th June 1952, still the question is as to whether any action of the Council is binding on the Indian Union, or at present upon the State of West Bengal. In view of the facts stated above the answer must be stated in the negative. This I think is the short point involved in this application and it is unnecessary to go into the history of the change of Sovereignty, although Mr. Dutt seems to have made considerable research in the matter, and has argued the matter elaborately before me. At the last hearing, it was thought that the matter had been referred to the Central Government and Mr. Dutt's client offered that he would abide by whatever was decided. It appears, however, that the Central Government has disowned responsibility in this matter, and has pointed out that it is a matter now concerning the State of West Bengal.

3. I have of course to deal with the matter more or less in a technical manner. I am not concerned with the fact as to whether the petitioner is fit to be up-graded or not. The respondents have taken the stand that an order passed by the Council after the "appointed day" was not legally enforceable. This seems to be the position in law. Accordingly, this application cannot succeed and must be dismissed. The Rule is discharged Interim order. if any, is vacated There will however be no order as to costs.