

(1974) 02 CAL CK 0018

Calcutta High Court

Case No: Appeal from Original Order No. 97 of 1973

Narendra Nath Tripathy and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 14, 1974

Acts Referred:

- Constitution of India, 1950 - Article 19(1)(f), 19(5), 226(1)

Citation: 78 CWN 448

Hon'ble Judges: Salil Kumar Dutta, J; Alak Chandra Gupta, J

Bench: Division Bench

Advocate: Somendra Chandra Bose and Harasit Chakravarty, for the Appellant; Sachindra Chandra Das Gupta, G.P. and Nani Gopal Das, for the Respondent

Final Decision: Dismissed

Judgement

Alak Chandra Gupta, J.

I have had the advantage of reading the judgment that my learned brother is about to deliver. In the circumstances which I shall presently indicate I agree that this appeal must fail. The appellants are the owners of certain plots of land which were requisitioned under the West Bengal (Requisition and Acquisition) Act, 1948 (Act II of 1948). On behalf of the appellants a point was taken that the order requisitioning their land without giving them a hearing was illegal. The Act does not contain any provision for giving notice to the owner of the land which is requisitioned. But it was argued that the principles of natural justice required that the owners of the land should be given an opportunity to show cause against the order of requisition. My learned brother has held that the statute by necessary implication has excluded the application of the principles of natural justice. A similar view appears to have been taken by a Division Bench of this Court in the case of (6) Sabitri Bagaria v. State of West Bengal (F.M.A. 93 of 1972 decided on December 18, 1973). Singly, I am bound to follow the judgment of the larger Bench. No useful purpose will, be served if I

tried to examine the point for myself. But I find it somewhat difficult to reconcile the view expressed in the judgment of the Division Bench which is shared by my learned brother with the decision of the Supreme Court in the case of (5) AIR 1971 963 (SC) . Regarding the validity of an order of requisition under the very same statute namely, Act II of 1948, the Supreme Court observed :

It is true that there is no express provision to make a representation against an order of requisition, but there is no bar to a representation being made after an order is served u/s 3(2) of the Act. We have no doubt that if the representation raises a point which overrides the public purpose, it would be favourably considered by the State Government or other Government authorities as the case may be.

2. This observation seems to suggest that though the statute does not contain any express provision requiring an opportunity to be given to the owner of the land to make a representation, such a provision should be deemed as implied. If however the statute has by necessary implication excluded the application of the principles of natural justice then the authorities would have no power to entertain any representation that may be made after the service of the order of requisition u/s 3(2) of the Act; unless of course the observation of the Supreme Court is construed not as an expression of opinion on the applicability of the principle of natural justice requiring the person affected to be given a hearing but as an expression of faith in the reasonableness of the executive Government.

3. In any case, if it was open to the appellants to make a representation after they were served with notice u/s 3(2) of the Act, they have not done so. They cannot therefore make a grievance now that they had no opportunity to show cause against the order of requisition.

4. On the other questions that arose for decision in this appeal, I agree with the findings recorded in the judgment of my learned brother.

5. In the circumstances stated above, I concur in the order proposed by my learned brother that the appeal should be dismissed.

6. Salil Kumar Datta, J : -- This is an appeal against a judgment and order passed by Banerjee, J. discharging the rule obtained by the petitioners under Article 226(1) of the Constitution. The petitioner's case, in short, is that a scheme namely Dubda Basin Scheme for excavation of a canal about 500 ft. wide through lands of adjoining villages was approved by the Government of India on the report of the Planning Commission. The shortest route sanctioned and plan prepared accordingly on February 17, 1972 included plots Nos. 572, 573, 574, 575 and many other plots. Some of the plot holders challenged the notification of requisition of the said plots and a rule being Civil Rule No. 1673W of 1972 was obtained for complete closure of the scheme. The local people in collusion with the Irrigation department and the local M.L.A. managed to change the route of the canal through the lands of the petitioners without consultation with or approval of the Government of India or the

Planning Commission. The petitioners received notices of order of requisition made u/s 3(1A) of West Bengal Requisition and Acquisition Act (West Bengal Act II of 1948) dated June 2, 1973 which revealed that the original scheme was changed overnight and a new scheme was framed without considering that the previous route was the shortest one with less loss of property. Under the new scheme large number of dwelling houses including a famous Hindu temple and two primary schools as also area under shallow tube well scheme were affected. By the said order dated June 2, 1972, the Additional District Magistrate, Midnapore requisitioned the lands in dispute u/s 3(1A) of the said Act, which in his opinion was necessary for providing proper facilities for irrigation/drainage viz. for Dubda Basin Drainage Scheme, further directing the owners/occupiers to deliver possession of the lands on June 7, 1972.

7. The petitioners made various representations to the Chief Engineer, Irrigation and Waterways Department, Government of West Bengal and the discontent of the people in the locality was voiced by local newspapers. The petitioners challenged the revised scheme and plan on grounds that no honest opinion was formed as required u/s 3(1) and that more land with dwelling houses would be needed therefor as would be evident from the comparative charts annexed. The real challenge was on ground of violation of the principle of natural justice, as no opportunity of hearing was given to the petitioners before the revised scheme was adopted mala fide and surreptitiously at the instance of interested persons under political pressure. On these allegations and contentions the petitioners moved this court in Constitutional Writ Jurisdiction praying inter alia for issue of a writ restraining the respondents the State of West Bengal, its Chief Engineer, Irrigation Department, the Additional District Magistrate Midnapore and others from proceeding further with the notices u/s 3(1 A) of the Act and for other reliefs.

8. The rule was opposed by the respondents State of West Bengal and its officers and affidavit-in-opposition affirmed by the Land Acquisition Collector, Midnapore on January 6, 1973 on their behalf was filed denying the allegations made in the petition. It was stated that the Planning Commission on or about July 7, 1970 accepted for implementation the Dubda Basin Drainage Scheme as approved by the Technical Committee at an estimated cost of Rs. 268.35 lacs. This scheme did not contain any details thereof, including the actual route of the canal. Working of the scheme was envisaged by the State of West Bengal and was left to the Irrigation and Waterways Department of the Government of West Bengal. No other route than the one which was being executed was ever finally approved or selected by the Chief Engineer of the Government of West Bengal, who is the proper and only authority in consultation with the requisite consultative bodies after several surveys. It was denied in an earlier affidavit relating injunction which was relied upon that no plan passing through the other plots referred to in the petition was ever sanctioned or that the plan was ever revised and at the instance or intervention of any local M.L.A. or revision of alignment was subject to the approval or sanction of the Planning

Commission or that more lands would be affected by the proposed scheme which was already in progress. It was further stated that there was a cremation ground on the bed of the canal and the temple referred to in the petition was a deserted one where no manner of pujas were held and no one was in charge or management thereof. Government was prepared to rebuild a temple outside the canal alignment or if so insisted on by neighbouring villagers the temple would be preserved without any interference to the Puja. Further the plot whereon the school was situated, was not requisitioned. It was reiterated that all provisions of section 3(1) had been adhered to and strictly complied with. There was no violation of the principles of natural justice and the proposed route was the only route sanctioned by the Chief Engineer. For these reasons it was submitted that the rule should be discharged.

9. In the affidavit-in-reply the petitioners reiterated all allegations and contentions made in the petition and there was a supporting affidavit from President Union Board No. 7 P.S. Ramnagar, stating without however any particulars of plots, that a famous Siva temple, 2 primary schools, three cremation grounds fell within the bed of the canal.

10. Banerjee, J. discharged the rule on the finding that there was a valid delegation of power by the State Government on the Additional District Magistrates for formation of opinion and to requisition land on the basis thereof under the provisions of the Act. It was further held that no land used for worship or for school was requisitioned and there was no substance in the contention that the disputed plan was not done by proper authority. The rule was accordingly discharged. The appeal is against this decision.

11. Before we consider the larger question on natural justice argued with great emphasis at the bar, we shall deal with the allegations that the original plan was revised and altered malafide, under political pressure and at the instance of interested parties in collusion with government officers without sanction of the Planning Commission. It has been stated in the affidavit-in-opposition referred to above that there was no other accepted route of the canal except the one under dispute and the Chief Engineer of Irrigation and Waterways Department, who is the final authority, in consultation with the consultative committees and after several surveys and careful consideration of all aspects finally approved the plan and the route of the canal. There was no occasion or necessity for sanction by the Planning Commission which accepted the Dubda Basin Drainage Scheme leaving the scheme for implementation by the West Bengal Government and necessary steps in that behalf had been taken by appropriate authorities. On the face of these averments it is not possible to take into consideration or accept the bare allegations of malafides and about alteration of the route of the canal under pressure without any other material in support and accordingly it must be held that the petitioners have failed to establish that there has been any alteration of the original route to a revised route.

12. There is also no ground for holding that the notice issued by the Additional District Magistrate Midnapore is otherwise not according to law, as by notification dated December 26, 1963, the Governor in exercise of the powers conferred by Sub-section (1A) of section 3 of the West Bengal Act II of 1948, authorised the Additional District Magistrate of the districts including Midnapore, to exercise the powers conferred on the State Government under sub-section 3(1) thereof. There is no reason or material to hold that such power was exercised by the Additional District Magistrate mala fide and without taking into account all relevant considerations. There is also no material to hold that in accepting the route of the canal, the Chief Engineer acted otherwise for improper purpose or considered irrelevant materials. On the contrary it has been reiterated that for working out the scheme several surveys were made the result of which had to be very carefully considered from the point of view of ultimate benefit to be achieved by the Scheme by the requisite consultative bodies and the scheme under execution was the one finally approved by the Chief Engineer. For these reasons it appears that no grounds of mala fide in the matter of issue of the requisite notification or of the acceptance route of the canal has been made out against the Government or its officers, decision in respect whereof must necessarily remain with the Government and its high officers.

13. The formidable contention raised by the petitioners relates to the failure in observance of the principles of natural justice before issuing the order of requisition. It may be mentioned that the petitioners have stated in their affidavit that they have no objection to the Dubda Basin Drainage Scheme but the objection relates to the alteration of the route of the canal from the original route. We have seen that the Government's case, which we accept on the materials on record, is that there has been only one route of the canal finally accepted by the Chief Engineer and there has been no deviation from any original route as contended. The petition on the face of the grounds taken therein loses its force and is liable to be rejected.

14. Mr. Somendra Chandra Bose appearing for the petitioner has submitted that the petitioners as the owners of the plots covered by the route or otherwise interested therein were entitled to a reasonable opportunity of making representation and hearing before their lands could be requisitioned. He has contended that though the relevant statute does not contain any specific provision as required by the principles of natural justice, such provision must be deemed implicit in the statute as was held in (5) AIR 1971 963 (SC) in which it was observed in considering the West Bengal Act II of 1948:

We are, therefore, of the opinion that it is difficult to hold that the restrictions imposed by the impugned Act are unreasonable. Fair compensation has been provided for requisitioning, which if determinable by a Civil Court and ultimately by the High Court or the Supreme Court. Regarding the necessity for requisitioning it

must necessarily be left to the State Government. It is true that" there is no express provision to make a representation against an order of requisition but there is no bar to a representation being made after an order is served u/s 3(2) of the Act. We have no doubt that if the representation raises a point which overrides the public purpose, it would be favourably considered by the State Government or other Government authorities as the case may be.

You

The question whether the West Bengal Act II of 1948 is ultra vires the Constitution under Article 19 (1) (f) read with Article 19(5) was accordingly answered in the negative.

15. Mr. Bose also referred to the decision in (3) [Daud Ahmad Vs. The District Magistrate, Allahabad and Others](#), in which the Court was considering the U.P. (Temporary) Control of Rent and Eviction Act (hereinafter referred to as the U.P. Act) which gives power to the District Magistrate to requisition any accommodation for public purpose and to direct possession thereof to be delivered to him within period specified. The exercise of this power is subject to the proviso that no building or part thereof exclusively used for religious worship shall be requisitioned and no accommodation shall be requisitioned unless the District Magistrate is further of opinion that suitable alternative accommodation exists for his needs or has been provided to him. The Supreme Court observed;

.....The principle of natural justice has been applicable to administrative enquiries or quasi judicial enquiries. It is the nature of the power and the circumstances and conditions under which it is exercised that will occasion the invocation of the principle of natural justice. Deprivation of property affects the rights of a person. If under the Requisition Acts, the petitioner was to be deprived of the occupation of the premises the District Magistrate had to hold an enquiry in order to arrive at an opinion that there existed alternative accommodation for the petitioner or the District Magistrate was to provide alternative accommodation.....It will not be correct to say that without holding an enquiry and. giving an opportunity to the petitioner in that behalf the District Magistrate will be in a position to ascertain as to whether alternative accommodation exists.....That is why the principle of audi alteram partem is attracted. The opinion as to alternative accommodation is not an impersonal obligation. It is a determination of a fact.....The District Magistrate did not hold an enquiry and failed to comply with the principles of natural justice by finding out the requisite condition to the exercise of his powers that alternative accommodation existed for the petitioner. The order of requisition is illegal and unwarranted.

16. Mr. Bose also referred to the decision in (4) [Madan Gopal Agarwal Vs. District Magistrate, Allahabad and Others](#), where again the Supreme Court was considering the U.P. Act. It was observed:

The section (3 of the U.P. Act) consists of three parts: the main part and the two provisos. Evidently it does not contain an express provision for notice and hearing before the making of the requisitioning order. But it appears to us that such a provision is to be read there by necessary implication. The object of the provision is to requisition an immovable property. Requisitioning of the property deprives the owner of the property of the right to hold and enjoy the property as he likes. The right to hold and enjoy the property is a cherished right.....We find it difficult to assume that the legislature would have intended to deprive him of his cherished right without a hearing.

The Court referred to, with approval, the following observations in (1) [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others](#), :

.....The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it.....If the purpose of the rules of natural justice is to prevent miscarriage, one fails to see why those rules should be made in applicable to administrative enquiries.....

17. Strongly relying on the above decisions, Mr. Bose contended that the West Bengal Act was saved from unconstitutionality as the Court held that the opportunity for representation by the aggrieved party was implicit in the Act. The decisions under the U.P. Act further make it a condition precedent for the issuance of the order of requisition that opportunity for such representation has to be given and wordings and provisions under both the U.P. Act and the West Bengal Act relating to proviso to section 3 in both Acts regarding places of religious worship are in similar terms. If the question affecting citizen's right is to be objectively determined, personal hearing, on the above authorities, must be given.

18. Mr. S.C. Das Gupta Government Pleader appearing for the respondents contended on the other hand that the application of the principles of natural justice may be excluded by statute as in the present Act and in view of the scheme itself, it is not possible to afford an opportunity for representation to persons affected by the order of requisition. The decisions in connection with the U.P. Act have no application to the requisition under consideration and it is not in dispute that the requisition is for a public purpose namely for providing proper facilities for irrigation and drainage for the Dubda Basin.

19. The owner has indisputedly the right to hold and enjoy the property as he likes. This right is protected by Article 19(1) (f) of the Constitution, subject to the operation of any existing law or any law as may be made by the State imposing reasonable restrictions on the exercise of such rights in the interest of general public. Such right again is a right cherished by every owner who should not be deprived of the same without hearing which, as a rule of natural justice, is intended to secure justice and

prevent miscarriage of justice. As has been pointed out in Kripak's case, the rules operate only in areas not covered by any law validly made and they do not supplant the law but supplement it. In (7) [Union of India \(UOI\) Vs. Col. J.N. Sinha and Another,](#) , it was observed :

It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice.

The Act we are concerned with provide as follows :

3. (1). If the State Government is of opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by construction and reconstruction of dwelling places for people residing in such areas, the State Government may, by order in writing, requisition any land and may make further orders as appear to it to be necessary or expedient in connection with the requisitioning.

Provided that no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.

20. Sub-section (1A) of section 4 provides that the State Government may acquire any requisitioned land by publishing a notice in the official Gazette that such land is required for public purpose. Under sub-section (2) of section 4, upon such publication the land shall vest absolutely in the State Government free from encumbrances.

21. The Act is intended to provide for the requisition and speedy acquisition of land for certain purposes, inter alia of maintaining supplies and services essential to the life of the community for providing proper facilities for transport, communication, irrigation or drainage. A perusal of the relevant provisions of the Act indicate that there is no express provision for hearing before an order of requisition is made. The application of the principle of natural justice also appears to be excluded by necessary implication before an order of requisition is passed by the appropriate authorities. As has been pointed out by the Supreme Court, the Court must not ignore the mandate of the legislature and import principles of natural justice where the legislature in its wisdom did not provide for any hearing before requisition. This was so held also in a Bench decision of this Court in (6) *Sabitri Debi Bagaria v. State*

of West Bengal (F.M.A. No. 93 of 1972 decided on 18.12.73) in connection with a requisition under the same Act II of 1948.

22. It has however been contended that the decisions under the U.P. Act referred to above indicate in clear terms that before the order for requisition is made a hearing must be given to the owner. The U.P. Act, as we have seen, is concerned with the requisition of an accommodation and accommodation means lodgings or quarters which may have been in the occupation of any person. The West Bengal Act is, on the other hand, concerned with the requisition of land for maintaining services and supplies essential to the life of the community or for providing facilities for transport, communication, irrigation or drainage or for creation of better living conditions. In essence West Bengal Act thus contemplates requisition of land in grander scale, affecting larger number persons than the requisition contemplated under the U.P. Act.

In Dand Ahmad's case it has been observed that:

it is the nature of the power and circumstances and conditions under which it is exercised that will occasion the invocation of the principle of natural justice.

23. The above observation was quoted in the (4) Madan Gopal's case with approval. The application of the principles of natural justice thus will depend also on circumstances attending the requisition. If a contemplated requisition in public interest is on a vast scale affecting innumerable persons it may not be possible nor practicable to afford any opportunity for hearing before requisition except at the cost of frustrating the scheme which is the basis of requisition. It will thus appear that as the invocation of the principles of natural justice is dependent on the circumstances attending requisition, in cases when requisition is in considerably large scale affecting sizable number of persons, application of the principles of natural justice has necessarily to be excluded and ruled out. There may again be cases when there is an emergency relating to maintaining services and supplies essential to community or for providing facilities of transport communication, irrigation or drainage or for creation of better living conditions in the locality. In such cases there will be no scope for affording any opportunity of hearing before requisition which by reason of attending circumstances will rule out the application of the principles of natural justice. In (6) Sabitri Debi's case, the emergency relating Water Supply Scheme for Kotrang Municipality, also ruled out the observance of the principles of natural justice. Circumstances referred to above are merely illustrative and there may as well be other circumstances which will render invocation of the principles of natural justice an impossibility except defeating the purpose of requisition.

24. The magnitude of the scheme under our consideration is obvious from the affidavits which relates Dubda Basin comprising an area of about 188 sq. miles, and, its low lying areas flooded every year causes huge crop losses. If properly drained

the area would yield crop valued at about Rs. 78.40 crores. The scheme for drainage was prepared by technical experts and the scheme itself involves an enormous expense of Rs. 268.35 lacs. It is further stated that 46.12 acres of requisitioned lands had been long taken possession of and the execution of the scheme was in full progress. There is hardly any dispute that the scheme is of large magnitude and will be of great public benefit. In these circumstances it is obvious that the petitioners or other owners cannot as of right invoke the application of the principles of natural justice for a hearing before the order of requisition is made.

25. Mr. Bose however referred again to the decision in the U.P. Act wherein it has been laid down the order of requisition can only be made after hearing. We have seen that in view of the magnitude of the scheme affecting large number of persons it will not be possible to give hearing to affected persons. The decision in the U.P. Act must accordingly be taken as confined to the requisition of accommodation and can have no application to requisition intended under the West Bengal Act. Similar view was taken by A.K. Sen, J. in (2) *Basumati Bag v. Collector, Howrah and others* 78 C.W.N. 29.

26. Mr. Bose's further contention that by the decision in (5) *S.M. Nandy's case* (supra), the Act was saved from unconstitutionality on the finding that the opportunity for representation before requisition was implicit in the Act, is however not warranted by the said decision. It has been expressly observed therein that the necessity for requisition must necessarily be left to the State Government and it is not stated that the opportunity for representation is a *sin qua non* before an order requisition could be passed. Accordingly it cannot be said on the above authority that requisition without an opportunity for representation or hearing is unconstitutional or otherwise untenable in law. Even after service of the order of requisition, though there is no express provision, it is observed, there is no bar to such representation being made to the appropriate Government or authorities raising a point that the requisition overrides public purpose. If the representation raises such point, the Supreme Court has expressed the hope, that such representation would be considered favourably and this may lead to the derequisition of the land under requisition. Even so it has not been laid down that failure to consider such representation would render the requisition invalid in law or be violative of the fundamental rights guaranteed under the Constitution.

27. There is no case before us that the disputed requisition overrides the purposes of the Act. In the affidavit-in-opposition it has been stated that one of the disputed plots being No. 422 where a deserted temple is situate, has vested in the State and it has not been requisitioned. It was further stated therein that if it is so insisted, Government is prepared to rebuild the temple outside the canal alignment or the proposed canal may flow by the two sides of the temple without any interference with the members of the public intending to offer Puja. Plot No. 23 where the school is situate or Plot No. 446 have not been requisitioned while other plots belonging to

the school are "jail" and "nal" lands not used for purposes of the school. The remaining plots referred to in the petition do not raise any such question.

28. It thus appears that there is no illegality in the requisition impugned in the connected rule and there has been no violation of law or of the provisions of the Constitution or the principles of natural justice. The appeal accordingly fails and is dismissed and all interim orders are vacated. There will be no order for costs.