

Indra Narayan Nandi Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: June 22, 1959

Acts Referred: Constitution of India, 1950 " Article 243(2)
Electricity Act, 1910 " Section 24(1)

Citation: 63 CWN 952

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: Arun Prokash Chatterjee, for the Appellant; Subimal C. Roy, Aradhona Ganguly and Salil Kumar Dutt for Opposite Party No. 2, B. Das and P.K. Banerjee for Opposite Party No. 3, N.C. Chakravarty and S.K. Roy Chowdhury for Opposite Party No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Sinha, J.

The petitioner before me is Indra Narayan Nandi who describes himself as the Alderman of the Chandernagore Municipal

Corporation. The opposite parties are firstly, the State of West Bengal, secondly, the Chandernagore Electric Supply Co. Ltd. and the third and

added opposite party is the Chandernagore Municipal Corporation. The facts are briefly as follows: It is stated that in the year 1938, the

Chandernagore Electric Supply Co. Ltd. entered into a contract with the Municipality of Chandernagore for the supply of electric energy for public

distribution. It is claimed that the present Municipal Corporation of Chandernagore has inherited the rights under the said contract, one of which is

that it would be able to resume the responsibility for supplying electricity, by re-purchasing the undertaking of the said company, after expiry of 15

years. It is stated however that the company has now been granted a licence under the Indian Electricity Act (Act IX of 1910) by the opposite

party No. 1, and thereby the rights of the said Municipal Corporation have been infringed. It is therefore prayed that the license should be

cancelled and the right of the Municipality in that behalf should be declared. As is well-known, the city of Chandernagore in 1938 was a territory

belonging to France. It has now merged in the State of West Bengal. Therefore, in order to examine the rights of the parties it is necessary to

investigate the constitutional position and particularly whether the present Municipal Corporation of Chandernagore has inherited any rights of the

Municipal Council of Chandernagore as it existed in 1938, or whether the Chandernagore Electric Supply Co. Ltd. is subject to any obligations as

claimed. Before I proceed to examine the position, it is necessary to state that there has been strong objection to the maintainability of this

application by the petitioner who is only one of the Aldermen of the Municipal Corporation of Chandernagore. The Municipal Corporation itself

has not made any application nor has it authorised the petitioner to make such an application. However this is a point to which I shall revert later

on. In order to investigate the constitutional position, and the legal rights of the parties, it is necessary to examine certain events chronologically.

The starting point is the 24th March, 1938 when the then "Municipal Council of Chandernagore", granted a ""concession"" to one Engineers"

Syndicate (Bepgal) Ltd., a company incorporated under the Indian Companies Act, and having its registered office at No. 4, Clive Ghat Street,

Calcutta, for the distribution of electric energy in the town of Chandernagore. The said "concession" was approved by the then Government, being

a Government under the sovereignty of France. It was done by a "Decret" of the then Governor of French India, in Privy Council at Pondicherry,

dated, the 14th March, 1939 and was governed by terms and conditions contained in a document, called the ""Cahier Des Charges""; a copy

whereof in its English translation has been annexed to the petition and marked ""A"", as also to the counter-affidavit filed on behalf of the Opposite

party No. 2. and marked with the letter ""A"". Under article 34 of the said conditions, the Engineers" Syndicate (Bengal) Ltd., was given the power

to assign and | or cede the whole or part of the said ""concession"" in favour of a third party, with the authorisation resulting from a deliberation of the

Municipal Council of Chandernagore and approved by the Governor of Pondicherry. The said Engineers" Syndicate (Bengal) Ltd. and the

opposite party No. 2 preferred applications to the Mayor of Chandernagore on the 15th November, 1939 praying for authorisation by the Council

of an assignment by the Syndicate in favour of the company. The authorisation was made, and approved by the Governor of Pondicherry on 17th

June, 1940. Article 21 of the ""concession"" lays down that the duration of the ""concession"" was to be for a period of 25 years from the date when

the ""concession"" was finally approved. Article 22 lays down that during the period fixed for the termination of the contract, the ""commune"" will

have, with a pre-notice of 3 years, an option to terminate the rights of the concessionary and take possession of all the landed properties and

works of the distributor. It will in that event, pay compensation. Article 23 lays down that on the expiry of the period of 15 years, beginning from

the date of the final approval of the concession, the ""commune"" will have the right to repurchase the whole contract with a pre-notice of 2 years. In

that event, the concessionary was to be indemnified in accordance with the principles laid down in the said article. From these facts it will be seen

that the ""concession"" was not a contract in terms of the Indian Contract Act. It was a ""concession"" granted by the public authorities, under the law

of France, which is no longer applicable. On the 7th of November, 1947 the Government of France enacted a "Decret" being Decret No. 47-

2121 abrogating the previous Decret and creating the free town of Chandernagore. The Decret No. 47-2121 of 7th November, 1947 recites that

the enacting authority had seen numerous earlier Decrets ranging from 1880 to 1947 and enacted that Chandernagore was to be set up as a free

town vested with financial and administrative autonomy. The town was placed under the direction of a ""Council of Administration"". Its proper

interests were to be administered by an elected assembly known as the ""Municipal Assembly"". The Municipal Assembly was to regulate by its

deliberations, all affairs regarding the financial and administrative management of the free town of Chandernagore. There would be an

Administrative Council"" composed of the President and the Vice-President of the Municipal Assembly. It was to ensure the execution of the

resolutions of the Municipal Assembly. It will be seen that the ""Municipal Assembly"" was not merely a body having municipal duties. It was also to

carry on the administration. There is nothing in the Decret to show that it was the successor of the Municipal Council which existed in 1938, and in

any event it has not been laid down that it had inherited any of the rights and liabilities under the ""concession"" of 1938. In 1948. letters were

exchanged between the Government of India and the Government of France regarding the future of French possessions in India. In June, 1949 the

Government of France consulted, the people of the free town of Chandernagore, and decided to accept the request of the Government of India for

the appointment of an Indian Administrator, as a provisional measure. On the 2nd May, 1950 an Indian Administrator was appointed. In 1950

came into operation the "Chandernagore (Application of Laws) Order of 1950" passed under the Foreign Jurisdiction Act, 1947. Under the

Order, certain Indian laws were made applicable to Chandernagore. On the 9th June, 1952 the Treaty of cession of Chandernagore came into

existence. This was a treaty by which the French Republic confirmed the cession of the territory of the free town of Chandernagore to the

Government of India. Under article VII of the said Treaty, the Government of India succeeded to the rights and obligations resulting from the acts

done by France for public purposes concerning the administration of Chandernagore. From this it will appear that if the ""concession"" mentioned

above be taken as an administrative measure, the rights and obligations under it devolved on the Government of India and not on the Municipal

Corporation of Chandernagore. On the 30th June, 1952 was promulgated the "Chandernagore (Administration) Regulation, 1952 (Regulation I of

1952)". This was done under Article 243(2) of the Constitution of India. Under clause 15 of this Regulation, the Decret No. 47-2121 dated 7th

November, 1947 creating Chandernagore as a free town and the subsequent texts modifying the same were repealed, and the Municipal Assembly

and the Administrative Council set up thereunder were dissolved. Under clause 7 of the Regulation, all rights, liabilities and obligations of the

Government of the French Republic or the Municipal Assembly or the Administrative Council, in relation to Chandernagore, was from the

appointed day, to be the rights, liabilities and obligations of the Central Government. The appointed day was the 9th June, 1952 being the day on

which the free town of Chandernagore was transferred in full sovereignty to India under the Treaty of cession of Chandernagore. Under the

Regulation, an "Administrator" was appointed by the Central Government, as a head of the administration. The Central Government was given the

power to appoint an Advisory Council. Under clause 6 it was declared that all property and assets within Chandernagore which before the

appointed day vested in the Government of the French Republic or the Municipal Assembly or the Administrative Council, vested on the appointed

day in the Central Government. Thus, it will be seen that under the Regulation of 1952, the Municipal Assembly was abolished and all its rights and

obligations vested in the Central Government. The rights and obligations did not vest in the Municipal Corporation of Chandernagore, which

indeed, at that time had not come into existence at all. On the 30th June, 1952 an Administrator was appointed for the city of Chandernagore

under clause 3 of the Regulation of 1952. On the 4th September, 1953 by a notification under clause 11 of the said Regulation, the Central

Government applied the Indian Electricity Act, 1910 which modifications to Chandernagore. Upto this time, the position was that the French

Republic had ceded the city of Chandernagore to the Indian Union. On the 2nd of October, 1954 was passed the "Chandernagore (Merger) Act

of 1954" being an Act of Parliament, No. 36 of 1954. u/s 3 of the said Act, as from "the appointed day", Chandernagore became part of the State

of West Bengal and the boundaries of that State were to be so altered as to comprise within them the territory of Chandernagore. u/s 13, all

property and assets within Chandernagore which, immediately before the appointed day, were vested in the Central Government for the purposes

of the administration of Chandernagore, as from that day, vested in the State Government, unless the purposes for which such property or assets"

were held immediately before that day, were Union purposes. u/s 14, all rights, liabilities and obligations of the Central Government arising out of,

or in relation to, the administration of Chandernagore, as from the appointed day, were to be the rights, liabilities and obligations of the State

Government, unless such rights, liabilities and obligations were relatable to Union purposes. u/s 17, all laws, which immediately before the

appointed day extended to, or were in force, in the State of West Bengal, generally extended to or came into force in Chandernagore. u/s 18. any

law in force in Chandernagore immediately before the appointed day stood repealed.

2. On the very same day, that is to say the 2nd day of October, 1954 came into operation, the "Chandernagore (Assimilation of laws) Ordinance,

1954". being West Bengal Ordinance No. IX of 1954. By section 3 of the said Ordinance, all laws which, immediately before the appointed day

extended to or were in force in the State of West Bengal, generally extended to or came into force in, Chandernagore. u/s 4, the corresponding

laws in force in Chandernagore were repealed. Thus, the Indian Electricity Act, 1910. came into operation in the same way as it did in the rest of

the State. It would be observed that under neither of them the Municipal Corporation of Chandernagore inherit any rights, liabilities or obligations

of the old Municipal Assembly. On the 21st March, 1955, the Ordinance above named was replaced by the "Chandernagore (Assimilation of

Laws) Act, 1955". Finally, we come to a piece of legislation, which for our purpose is the most important. This is the "Chandernagore Municipal

Act, 1955, being the West Bengal Act XVIII of 1955. It is dated 11th June, 1955 and was to come into force on such day as the State

Government might by notification in the Official Gazette appoint. Under sub-section (1) of section 2. "'the Administrator of Chandernagore'" means

the person who immediately before the day of the commencement of the Act had been in charge of the municipal affairs of Chandernagore. Under

sub-section (2) of section 2 of this Act, "'Chandernagore'" mean "'Chandernagore'" as denned in the Chandernagore (Merger) Act, 1954 and

includes any contiguous area which had been added thereto by the State Government by notification in the Official Gazette. Under sub-section (3),

"Bengal Act" means Bengal Municipal Act of 1932 as applied to Chandernagore u/s 6 and schedule I. Under sub-section (4), "'Corporation

means Municipal Corporation of Chandernagore established u/s 4. Section 4 of the Act is important and must be set out:-

4(1) For the purpose of the administration of the municipal affairs of Chandernagore there shall be established from the date of commencement of

this Act a Corporation in Chandernagore. and such Corporation shall by the name of the "Municipal Corporation of Chandernagore" be a body

corporate and have perpetual succession and a common seal, and shall be in the said name, sue and be sued.

(2) The properties mentioned in Schedule II along with all rights therein of whatsoever description used, enjoyed or possessed by the

Administrator of Chandernagore immediately before the date of commencement of this Act shall, on and from such date, become vested in the

Corporation.

(3) All rights, liabilities and obligations of the Administrator of Chandernagore in relation to any matter provided for in or under this Act shall, in so

far as they were subsisting immediately before the date of commencement of this Act, be enforceable by or against the Corporation.

3. The properties mentioned in "schedule II consist of the municipal office building, certain parks, markets, bazars, burning ghat, water works etc.

But it contains no reference to the electric installation of the Opposite Party No. 2 and in fact, does not contain any mention of any property

relating to the electric supply of the City of Chandernagore. In April, 1956 notice was published in the Calcutta Gazette that the Opposite Party

No. 2. namely, the Chandernagore Electric Supply Co. Ltd. had applied under the Indian Electricity Act for grant of a license under the Indian

Electricity Act, 1910. When this Rule was first issued, licence had not yet been granted to the Opposite Party No. 2, but, during the pendency of

this application a licence has been granted on or about 30th August, 1956. By an order dated 4th January, 1957 the petition has been amended by

introducing a statement to that effect in a paragraph, being paragraph 13(a). The prayer portion has also been amended by asking for withdrawal

or cancellation of the licence, if already granted.

4. The final position, therefore, is that Chandernagore has become a part of the State of West Bengal and all laws applicable therein have become

applicable to that City, including the Indian Electricity Act. It is under the Chandernagore Municipal Act of 1955 that ""the Municipal Corporation

of Chandernagore"". of which the petitioner is an Alderman, has been created. As a statutory body, its rights and obligations are to be found within

the four corners of the Act. Mr. Chatterjee appearing on behalf of the petitioner, having realised this, has argued that the Administrator of

Chandernagore, whose rights had devolved on the Corporation did inherit the rights and liabilities under the "concession" of 1938. He argues that

as a result of sub-section (3) of section 4, such rights and obligations had devolved on the Municipal Corporation of Chandernagore. To start with,

it is not correct to say that the rights and obligations under the "concession" of 1938 ever devolved on the Administrator of Chandernagore. If it

devolved at all, it had devolved on the Central Government, and nothing has been shown to me whereby such rights and obligations were re-vested

in the Administrator of Chandernagore by the Central Government. But even assuming that such rights and obligations had vested in, or were

delegated to, the Administrator of Chandernagore, still the petitioner must fail because of the wordings of sub-section (3) of section 4. Under this

sub-section, only such rights, liabilities and obligations of the Administrator of Chandernagore became enforceable by or against the Corporation,

as related to "any matters provided for in or under" the said Act, before the day of the commencement of the Act. The particular rights or

obligations that are being agitated in this application, are the rights and obligations that arise under the "concession" of 1938. That "concession

related to the granting of the right of public distribution of electric energy to the city of Chandernagore for all kinds of uses. It is true that under the

"concession", the concessionary was to have the sole right to use the public roads within the municipality for supply of private lighting. But that does

not affect the question under consideration. The "concession" granted the right to set up system of distribution of electric energy, and to supply the

City with electric energy, at rates and tariffs mentioned therein. Incidentally, it was contemplated that it should also supply light for public roads. All

over the line of distribution, the concessionary was bound to supply electric energy, on conditions provided in the "concession", to any person who

asked for it, and was prepared to make the necessary payment. I have already mentioned that the "concession" contained a provision for re-

purchase of the contract upon pre-notice. In short, this meant that the "commune" could pay off the electricity company and acquire its assets, as

also its rights of distribution of electric energy. It is plain that the "commune" mentioned in the "concession" has little resemblance to the Municipal

Corporation of Chandernagore as it now stands. Previously the word. "Municipality", "Municipal Council" or "Municipal Assembly", meant bodies

which had not only jurisdiction over municipal affairs but also had a political existence, and were in various ways entrusted with the administration

of Chandernagore. The present Municipal Corporation, however, is a purely municipal body with municipal functions, and has nothing to do with

the administration of the City, which is in the hands of the State Government. The matters that are provided for in the Chandernagore Municipal

Act of 1955 are matters that relate only to municipal affairs. u/s 6 of the Chandernagore Municipal Act of 1955, the provisions of the Bengal

Municipal Act of 1932 have been made applicable to Chandernagore mutatis mutandis, subject to modifications and exceptions specified in

schedule I and other provisions of the said Act. u/s 7, all rules made by the State Government under the Bengal Municipal Act of 1932 were also

applicable mutatis mutandis to Chandernagore. It follows, therefore, that the rights, liabilities and obligations of the Administrator of Chandernagore

in relation to any matter provided for under the Chandernagore Municipal Act of 1955, the Bengal Municipal Act of 1932, or the rules made

thereunder, would be the matters which would vest by reason of subsection (3) of section 4 of the Chandernagore Municipal Act of 1955, in the

Municipal Corporation of Chandernagore. In none of these Acts or Rules is there any provision for entering into any contract with any electrical

undertaking for the supply of electric energy to members of the public, for all purposes. All that Mr. Chatterjee has been able to point out to me is

clause (c) of sub-section (1) of section 278 of the Bengal Municipal Act of 1932. That clause provides that it shall be lawful for the Commissioners

of every municipality to cause public streets to be sufficiently lighted. There is provision in the said Act for the levy of the lighting-rate. In my

opinion, that does not affect the question at all. The municipality has a right under the Bengal Municipal Act, 1932 to cause the public streets to be

sufficiently lighted. There is nothing in the said Act to show how it should be done, that is to say. whether by electricity or in any other way. The

Bengal Municipal Act, 1932 extends to whole of West Bengal and there are numerous municipalities which have no recourse to electrical energy.

Within such municipalities, street-lighting is done by kerosene lamps. Even in the City of Calcutta, which is governed by the Calcutta Municipal

Act, 1951, part of the lighting of the streets is done, not by electricity but by gas. That this must be so arises from the very nature of things. Now

that the municipal Corporation of "Chandernagore is only concerned with the municipal affairs of the City, it has nothing to do with the providing of

electrical energy to the public at large. It may, and does, purchase its requirements of electricity from the Opposite Party No. 2. just like any other

consumer. Now, however, the Indian Electricity Act, 1910 applies to the city of Chandernagore as it does to the rest of West Bengal, and the

supply of electrical energy can only be made by licensees who have taken out licenses under the said Act, and according to the provisions thereof

Such a licensee may be a local authority. That is to say the Municipal Corporation of Chandernagore might apply for and become a licensee under

the Act for the supply of electrical energy. Otherwise, however, it has nothing to do with the supply of electrical energy to the town. As I have

stated above, the Opposite Party No. 2 has now applied, under the Indian Electricity Act, being Central Act IX of 1910, and it has been granted a

license. The right of the said company to produce and distribute electrical energy in the city of Chandernagore does not now depend on any

concession"" or contract. It depends on its license, and its obligations are the obligations imposed by the Indian Electricity Act and the license

issued thereunder. It is clear, therefore that it is unnecessary for our purposes to go beyond the provisions of the Chandernagore Municipal Act,

1955, which is the statute of incorporation so far as the Municipal Corporation of Chandernagore is concerned. No rights and obligations under

the ""concession"" of 1938 have devolved on the Municipal Corporation, the Opposite Party No. 3 in this application and there is no question of the

said Corporation exercising such rights and either terminating the ""concession"" of the Opposite Party No. 2 or acquiring compulsorily its assets. In

fact, the ""concession"" is long defunct and neither the Chandernagore Municipal Corporation nor the petitioner, one of its Aldermen, has anything to

do with it. The same conclusion has been arrived at by P.B. Mukharji, J in an unreported judgment (1) being Civil Order No. 103 of 1958 dated

28th February. 1958 Municipal Corporation Of Charderngore and Another Vs. Chandernagore Electric Supply Co Ltd and Others, . This was an

application made by the Municipal Corporation of Chandernagore and its Mayor against the Electric Supply Co., the Chief Electric Inspector and

the State Government of West Bengal. It appears that the Municipal Corporation had failed to pay the electricity bill of the Electric Supply

Company, and the company threatened to disconnect the supply according to the provisions of section 24(1) of the Indian Electricity Act, 1910. In

that case, the Corporation relied on an agreement dated 17th September. 1947 between the company and the then Colony of French India, in

respect of the supply of electric energy to the pumping station at Boro, and the water works at Gondalpara. The learned Judge came to the

conclusion that the petitioners were not the successors of the Colony of French India. The learned Judge pointed out that any such rights, liabilities

and obligations devolved on the Central Government or the State of West Bengal but never devolved upon the Municipal Corporation of

Chandernagore and in any event the Chandernagore (Merger) Act did not apply to a private agreement or private contract. The application was

dismissed with costs. Lastly, Mr. Roy appearing on behalf of the Opposite Party No. 2 has argued that the devolution of any contractual right from

1938 upto the present day is such a complicated matter that in any event it could not be decided without taking evidence. I think that this argument

is also one of substance. Mr. Chatterjee appearing on behalf of the petitioner has cited before me a number of "Decrets". some of which he was

able to obtain in a translated form and others he could not. There is nothing to show that the translations are correct. It is impossible to go into

these questions of fact, ranging from 1938 upto now, in an application where most of the facts in the affidavits are disputed. If there is any

devolution of rights, that can only be determined upon the taking of evidence. From the materials before me, and for the reasons stated above. I

am of the opinion that the Municipal Corporation of Chandernagore has no right of the nature mentioned in the petition and this application is

entirely misconceived. In this view, it is unnecessary to decide as to the maintainability of this application by the petitioner. For the reasons

aforesaid this application should be dismissed. The Rule should be discharged. Interim orders, if any, should be vacated. There will be no order as

to costs.