

(1984) 01 CAL CK 0014

Calcutta High Court

Case No: Civil Rule No. 97 (W) of 1982

Samarendra Nath
Bose

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Jan. 25, 1984

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 226, 32, 356

Citation: 88 CWN 494

Hon'ble Judges: Amitabha Dutta, J

Bench: Single Bench

Advocate: S.N. Bose and K.K. Chakravarti, for the Appellant; P.K. Ghosh and Uma Roy for the Respondent Nos. 2 and 3 and A.P. Sarkar and S.K. Basu for the Respondent No. 4, for the Respondent

Judgement

Amitabha Dutta, J.

This writ petition is for Mandamus directing the respondents not to give effect or further effect to their decision to rename Bosepara Lane, a public street in ward Nos. 7 and 8 of the Corporation of Calcutta as Ma Saradamoni Sarani to perpetuate the memory of the consort of Sri Ramakrishna. The petitioner is a ratepayer and a permanent resident of Bosepara Lane. The respondent No. 1 is the State of West Bengal. The respondent No. 2 is the Corporation of Calcutta and the respondent No. 3 is the Administrator, Corporation of Calcutta and the added respondent No. 4 is the Chairman, (road renaming) Advisory Committee referred to in Section 349(2) of the Calcutta Municipal Act 1951.

2. The petitioner's case may be briefly stated. The petitioner is a descendent of the famous Bose family which started residing in an area in North Calcutta (Bagbazar) and as a result of its continued residence the said area came to be known as Bosepara Lane. The name of the public street as Bosepara Lane came to be

associated with the birth of the famous poet Mahakabi Girish Chandra Ghosh and the first visit of the great saint Thakur Sri Ramakrishna to Calcutta in 1877 when he came to the house of Kalinath Bose and set his holy feet on Bosepara Lane. Sister Nevedita world famous disciple of Swami Vivekananda resided at Bosepara Lane and her residence was the centre of her social religious and political activities. She founded the historic girls school named Nevedita Girls School at No. 16 (then No. 17) Bosepara Lane. Swami Vivekananda who made the teachings of Sri Ramakrishna, a world force by his famous speeches in the Parliament of Religion at Chikago in 1893 used to visit that place as the spiritual master to Sister Nevedita. Out of 17 direct disciples of Thakur Sri Ramakrishna three named Hari, Tulshi and Gangadhar who later were known as Swami Turiananda, Swami Nirmalananda and Swami Akhandamanda were residents of Bosepara Lane and two of them were born there. These facts are mentioned in several books and publications. The respondents did not comply with the provisions of Section 349 of the Calcutta Municipal Act in renaming Bosepara Lane without examining the cultural and historical aspects of the matter although the name of the street Bosepara Lane has such glorious association. In all other cases of renaming of public street in Calcutta the Corporation of Calcutta issued public notices inviting written objections from the public through daily newspapers, but in the case of the impugned renaming of Bosepara Lane no such public notice was issued. Thus the petitioner has been deprived of his right of being heard through written objection and placing materials for consideration by the Advisory Committee referred to in Section 349(2) of the said Act. The antiquities and the cultural and religious activities of famous men and women in a glorious epoch of Bengal which are inextricably associated with Bosepara Lane were not considered at all as the petitioner and other members of the public were not given opportunity to place relevant materials before the Advisory Committee which purported to recommend the renaming of the said public street as Ma Saradamoni Sarani. The respondents acted in violation of the petitioner's fundamental right under Article 14 of the Constitution of India by depriving him of his right to make written representation against the proposed renaming of Bosepara Lane and the decision of the respondents is also arbitrary, discriminatory and malafide.

3. The respondents Nos. 2 and 3 jointly and the added respondent No. 4 have appeared through separate counsel to oppose the writ petition. The respondent Nos. 2 and 3 have filed several affidavits-in-opposition in answer to the writ petition and supplementary affidavits filed by the petitioner. Their case is that there is no provision in the Calcutta Municipal Act requiring Corporation of Calcutta to invite objections from the public before renaming a public street. In the instant case the Advisory Committee duly constituted by the State Government in its meeting held on 25.11.81 after considering the fact that Ma Saradamoni lived for sometime at 16, Bosepara Lane as stated by the Commission of the Calcutta Corporation adopted a resolution recommending that the name of the said public street be changed to Ma

Saradmoni Sarani. The Administrator accepted the recommendation on 8.12.81 and the said renaming was made accordingly and it was given effect to immediately by correction of the relevant assessment book before the petitioner's written objection dated 21.12.81 reached the Corporation's office. The Advisory Committee has absolute power and unfettered discretion to recommend the name of a public street and alter its name. Whenever the said committee in its wisdom feels that the opinion or reaction of general public regarding a proposed name of a public street should be ascertained, the committee resolves to that effect and accordingly public notice is issued inviting objections. In cases in which in the opinion of the Advisory committee there is no need to invite objection it makes its recommendation without public notice. In four cases names of public street or roads were changed without public notice between January 1979 and January 1982. The Corporation is not responsible for any discrimination or unequal treatment against the petitioner as complained of or at all. There was no violation of Article 14 of the Constitution on the part of the Corporation, The petitioner has no locus stand to maintain the writ petition.

4. Before considering the submissions made on behalf of the parties it is necessary to set forth the provisions of Section 349 of the Calcutta Municipal Act, 1951 which are as follows :

349. Public streets and squares vested in the Corporation and power to the Corporation to name such streets and squares.- (1) All public streets and squares (both being the property of and kept under the control of Government, the Commissioners for the Port of Calcutta, the Board of Trustees for the Improvement of Calcutta) including the soil, sub-soil, and the side drains, foot ways, pavements, stones and other materials, of such streets and squares, and a erections, materials, implements and other things provided for such streets squares, which are situated in Calcutta shall vest in and belong to the Corporation.

(2) Whenever the Corporation intends to determine the name b(sic) which any public street or square is t(sic) be known or change the name already (sic) determined, it shall refer the propose to an Advisory Committee appointe under sub-section (3), for its cons deration.

(3) The Advisory Committee referred to in sub-sec. (2) shall be appointed by the State Government by notification in the Official Gazette, and it shall consist of such number of persons not exceeding ten but not less than seven, as the State Government thinks fit.

(4) The members of the Advisory Committee shall be chosen from amongst historians, persons with high cultural background and those who are associated with such bodies as Bangiya Sahitya Parishad, Asiatic Society, Bangiya Sanskrita Parishad and the like.

(5) The State Government shall appoint one of the members of the Advisory Committee as its Chairman who shall preside at its meetings. During the absence of the Chairman at any meeting the members present shall elect one of them to preside at such meeting.

(6) The members of the Advisory Committee shall hold office for such period and on such terms as may be specified in the notification.

(7) If there is a casual vacancy on account of the death, resignation or otherwise of a member, the State Government shall appoint another person as the member in its place, and the member so appointed shall hold office for the remainder of the term of office of the member whose place he fills.

(8) Three members shall constitute the quorum for a meeting.

(9) The Advisory Committee shall examine every proposal for determining the name of any street or square or for changing such name, in such manner as it thinks fit, and shall forward its recommendation to the Corporation. The Corporation may accept the recommendation, but if in any case, the Corporation is unable to accept the same it shall forward the proposal together with the recommendation of the Advisory Committee and its comments thereon to the State Government whose decision thereon shall be final.

5. By a notification No. 2507/C-S/CC/ 3C-4/79 dated 19.8.1964 the State Government appointed the Advisory Committee referred to in sub-section (2) of Section 349 consisting of ten members with high cultural background, some of whom were associated with Bangiya Sahitya Parishad and Asiatic Society of Bengal and among them Sri Narayan Chowdhury was its Chairman. On behalf of the respondent Nos 2 and 3 a xerox copy of the minutes of the proceedings of the 14th meeting of the road renaming Advisory Committee held on the 25th November 1981 in which the recommendation for the impugned renaming of Bosepara Lane was made has been produced. It appears from item No. 14.3 that after several suggestions were made by some members regarding renaming a road in the name of the world famous painter Pablo Picasso the Advisory Committee passed a resolution that the proposal for renaming Hungerford Street as Picasso Bithi be accepted for discussion and the department be requested to observe the necessary formalities meaning thereby issue of a public notice inviting objections. Item No. 14.4 similarly shows that on the proposal of a member to rename Camac Street as Abanindra Nath Sarani a resolution was adopted to accept the said proposal for discussion and request the department to observe the necessary formalities. The minutes of the said meeting also shows that with the permissions of the Chairman the Commissioner placed a file relating to the renaming of a road after Ma Saradamoni. The Commissioner suggested that Bosepara Lane in Ward Nos. 7 and 8 be renamed as Ma Saradamoni Sarani. He also informed the committee that the holy mother lived for sometime at premises No. 16, Bosepara Lane. Thereafter the minutes record as follows :--

He (Commissioner) also urged upon the members of the Advisory Committee to accept the proposal waiving all formalities. The Committee agree.

On the suggestion of the Chairman it was resolved that the proposal be recommended for final approval by the Administrator after waiving all formalities in the matter.

6. It is submitted on behalf of the petitioner that there is nothing to indicate that the Advisory Committee examining the proposal for the impugned renaming of Bosepara Lane as Ma Saradmoni Sarani as required in sub-section (9) of section 349 of the Act. The recorded minutes do not show that the proposal was even discussed by the members of the committee. No reason has been mentioned for waiving the issue of public notice inviting objection although in the same meeting the committee resolved to direct the department to observe the necessary formalities when it accepted for discussion two other proposals for renaming of two public streets. The normal procedure followed by the committee is that at the first stage the proposal is accepted for discussion that direction to department for issue of public notice which is issued by the Corporation of Calcutta and at the second stage after objections, if any, are received from the public the matter is discussed and a decision as to whether the proposal is to be recommended or not is taken. Thereafter the recommendation is forwarded to the Corporation which may accept the recommendation and in case of disagreement it forwards recommendation and its comments thereon to the State Government whose decision is final.

7. In the case of the impugned renaming of Bosepara Lane the normal procedure was not followed, it appears that on the urging or earnest exhortation of the Commissioner the committee agreed to recommend the proposal

8. It has been submitted on behalf of the petitioner that during the period from 9.12.81 to 23.9.83. (21 months) the Corporation of Calcutta issued public notice of proposals to rename public street in twenty cases. The notice called upon "any persons having any objection to the said renaming who state the same in writing to the Assessor, Corporation of Calcutta at 5, S.N. Banerji Road, Calcutta 13 on or before "a date mentioned in the notice. As the contesting respondents have pointed out during the period between January 1979 and January 1982 (36 months) only in four cases recommendations were made without issue of public notice. But minutes of the meetings of the Advisory Committee in connection with those four cases have not been produced to show how the committee examined the proposals as it is mandatory duty of the committee under subsection (9) of Section 349 to examine the proposal before making any recommendation. It is undisputed that in a large majority of cases proposals for renaming of public street/roads were discussed by the Advisory Committee after issue of public notice.

9. In the aforesaid background it has been submitted on behalf of the petitioner that the Advisory Committee did not comply with sub-section (9) of section 349 of the

Act as it did not examine the proposal after obtaining materials through issue of public notice inviting objections or even otherwise and it made the [commendation at the behest of the Commissioner. It is urged that the Corporation of Calcutta by acting on such recommendation made without following fair procedure of issuing public notice has denied the petitioner the equality before the law or the equal protection of the law which is a fundamental right of the petitioner and has thus violated Article 14 of the Constitution. In this connection reliance has been placed on the observations of the Supreme Court in [Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another](#), that the implication of Article 14 is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination. Reference has also been made to [Budhan Choudhry and Others Vs. The State of Bihar](#), in which the Supreme Court held that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The aforesaid cases related to discriminatory procedural provisions in statutes made by legislature. In the instant case the controversy is over discriminatory procedure of a statutory body in giving effect to sub section (9) of Section 349 of the Act by not directing issue of public notice contrary to the normal procedure followed by the Advisory Committee in similar cases and the acceptance by the local authority of the recommendation of the Advisory Committee tainted with such discrimination. It is submitted that the Advisory Committee was required to act judicially and reference has been made to Sri Bhagwan vs. Ram Chand 1965 S.C. 1767 in which it has been held that an obligation to act judicially may in some cases be inferred by the scheme of the statute and its relevant provisions. Regarding locus standi of the petitioner reliance has been placed on the decision in Fertilizer Corporation Kamagar Union vs. Union of India AIR 1981 S.C. 344 and the Bench decision of this Court in Kedar Nath vs. State of West Bengal 1982 (2)-CHN 273.

10. It has been submitted on behalf of the contesting respondents that the petitioner has no locus standi to maintain the writ petition for Mandamus as he has no legal right to the continuance of a name of a public street or to the enforcement of a public duty, if any, of the Advisory Committee or the Corporation of Calcutta to issue public notice and consider objections to the proposed, renaming thereof. In support of this contention reliance has been placed on the case of Calcutta Gas Company vs. State of West Bengal AIR 1962 S.C. 1047 and the case of [Mani Subrat Jain and Others Vs. State of Haryana and Others](#), in which it has been held Mandamus can be asked for only for a judicially enforceable right as a legally protected right by one suffering a legal grievance. A person can be said to be aggrieved only when he is denied a legal right by some one who has a legal duty to do something or abstained from doing something. It has been argued that the present case is not a public interest litigation and in this connection reference has been made to the observations of the learned Judge Bhagwati J. in [S.P. Gupta Vs. President of India and Others](#), that when a legal wrong or legal injury is caused to a

person or to a determinate class of persons and such person or class is by reason of poverty, helplessness or disability unable to approach the court for relief any member of the public can maintain an application for an appropriate direction ordered or writ in the High Court under Article 226 and in case of breach of any fundamental right in the Supreme Court under Article 32 (vide paragraph 17). It is submitted that similar view has been taken in the [People's Union for Democratic Rights and Others Vs. Union of India \(UOI\) and Others](#), . It is also contended on behalf of the contesting respondents that the legislature has not made any express provision for issue of public notice in section 349 of the Act although it has provided for issue of public notice expressly to the owners where building line or street alignment of any public street is proposed to be prescribed under Article 356 of the Act It is next submitted that the requirement to observe the rules of natural justice is not to be implied in sub-section (9) of Section 349 of the Act which gives unfettered discretion to the Advisory Committee to examine the proposal "in such manner as it thinks fit" before making the recommendation. It is argued that as the petitioner has not suffered any legal injury or civil consequence by the impugned administrative action, the question of observance of the rules of natural justice does not arise. Reference has been made to the observation of the learned Judge Bhagwati J. in Maneka Gandhi's case Ayr: 1578 S.C. 597 (para 59 at page 627) in which after referring two several earlier decisions of the Supreme Court His Lordship observed that the net effect of this and other decisions was that the duty to act judicially need not be superseded but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the persons affected and where it is found to exist, the rules of natural justice could be attracted. It is also pointed out that it has been held in [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), that civil consequences cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence. The contention is that in the instant case it cannot be said that the petitioner has suffered any civil consequence. It is also submitted that where power is conferred on a high authority there will be presumption against abuse of power. In this connection reference has been made to 8. [S.S. Moghe and Others Vs. Union of India \(UOI\) and Others](#), and J.N.U. vs. Narwal, AIR 1980 S.C. 1666.

11. After considering the submissions made on behalf of the parties and the facts and circumstances of the case I find that in the instant case the relevant minutes of the meeting of the Advisory Committee held on 25.11.81 shows that the committee acted under exhortation or a part of dictation of the Commissioner representing the Corporation of Calcutta without deliberating for examination of the proposal in question in its historical and cultural aspects as required u/s 349(9) of the Act and thus failed to exercise its discretion properly. The scheme of the Act has shown that the qualifications of persons prescribed in sub-section (2) of Section 349 to become

members of the Advisory Committee spells out that the proposal for naming of a public street or changing its name as historical and cultural implications are to be considered by eminent historians and men of high culture associated with august literary and cultural Bodies of Calcutta. The Advisory Committee would abdicate its function if it acts merely on the suggestion or exhortation of a high official of the Corporation of Calcutta without deliberating on a proposal and examining all its aspects from the cultural and historical stand points. The normal mode of exercise of the discretionary power conferred on the Advisory Committee after issue of public notice creates a reasonable or legitimate expectation in the minds of public spirited citizens like the petitioner that it would be consistently followed in every case of renaming a public street road and that is a limitation on the ostensibly unfettered discretion in the Advisory Committee and is consisting with a presumption in favour of a implied duty of the "committee to observe the said procedure barring exceptional circumstances which would be recorded in the minutes of the meeting. The expression "in such manner as it thinks fit" in Section 349 (9) properly construed means in such fair manner as it thinks fit. It does not and cannot exclude the element of fairness or fair play in action by giving opportunity to the public to make written representation or by recording unusual and exceptional circumstances for not adopting the normal procedure. Moreover the minimum standard of fairness demands that materials for and against the proposal for renaming a public street should be obtained from the public for proper examination of the proposal and this is facilitated by the issue of public notice. That is why in most cases the Advisory Committee initially accepts a proposal for discussion and directs issue of public notice and at a later stage deliberates on it taking into consideration the written objection, if any, received from the public. In the present case there is nothing to show what exceptional circumstances weighed with the Advisory Committee to dispense with the normal procedure. The petitioner has denied in his affidavit that Ma Saradmoni lived for sometime at Bosepara Lane, that is to say, the fact stated by the Commissioner before the Advisory Committee. If the petitioner got opportunity to make written representation the relevant materials would have been placed before the Advisory Committee.

12. In my opinion, the Advisory Committee has failed to exercise its discretion and thereby failed to perform the public duty of examining the proposal in question as contemplated by the scheme of the provisions of Section 349 of the Act.

13. I also find that in the instant case the petitioner has been deprived of his right to be heard in the matter of the proposed renaming of Bosepara Lane through written representation of by the Advisory Committee which did not follow the normal procedure of issuing public notice or record sufficient reasons for dispensing with the same. Although the Advisory Committee is not a state or public authority within the meaning of Article 12 of the Constitution the Corporation of Calcutta is state as a local authority. The respondent No. 2 Corporation of Calcutta by accepting the recommendation of the Advisory Committee arrived at without exercise of its

discretion properly and without following fair procedure, has acted unreasonably and arbitrarily in violation of Article 14 of the Constitution.

14. The law relating to the standing to apply for judicial review has evolved and become more and more liberal since the time of the decisions of 1962 or 1977 cited on behalf of the respondents. In England it has been held by Lord Diplock in *R vs. Inland Revenue Commissioners exp. National Federation of Self Employed and small Businesses Limited* (1982) A.C. 617 638B that standing is a matter of practice in the exercise of court's discretion. In that case the test formulated by the House of Lords, (at the stage of final hearing) is in essence a test of the merits of the complaint (see H.W.R. Wade Administrative Law 5th Edn. 982 589). The Supreme Court has come close to this view in the Judges case [S.P. Gupta Vs. President of India and Others](#), in which lawyers were permitted to maintain writ petitions raising issues effecting judiciary and it was held by all the learned Judges except Venkataramiah J. that lawyers had interest and locus standi to file the petitions. Bhagwati, J. delivering the judgment held (in paragraph 22 at page 194). We would therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision". In the present case the petitioner who has been deprived of the opportunity of being heard through written representation and whose legitimate expectation of getting such hearing has been thus frustrated has sufficient interest to maintain the writ petition. Short of a legal right he has deeper concern than that of a mere busy body and he has not come for personal gain or private profit or political motive or other oblique consideration. The petitioner seeks to place before the Advisory Committee the antiquities and cultural heritage of the area bearing the name of Bosepara Lane from ancient times which are said to be inseparable associated with that name. The spectre of floodgate of litigation being opened by liberalisation of standing has been laid to rest by the observations of the Supreme Court in Judges' case in which the learned Judge Bhagwati, J. quoted from Professor K.E. Scott's book "Standing in the Supreme Court : A functional Analysis who argued that parties will not litigate at considerable personal cost unless they have a real interest in the matter and how rarely one can discern the flood that the dissenters feared (see paragraph 22 at page 194). In view of the foregoing discussion I hold that the petitioner is entitled to the Mandamus. The respondents Nos. 2 and 3 are directed by a writ of Mandamus not to give further effect to the decision to rename Bosepara Lane in ward Nos. 7 and 8 of the Corporation of Calcutta as Ma Saradmoni Sarani. The Rule is made absolute to this extent without any order for costs. Let an appropriate writ be issued accordingly. The respondents will however, be at liberty to alter the name of the public street in accordance with law. No opinion has been expressed in this judgment on the merits of the proposal for a change in the name of Bosepara Lane.