

(1969) 04 CAL CK 0016

Calcutta High Court

Case No: Civil Revision No. 502 of 1968

Nitai Pada Roy

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision: April 1, 1969

Acts Referred:

- Constitution of India, 1950 - Article 227
- Essential Commodities Act, 1955 - Section 3, 5
- General Clauses Act, 1897 - Section 24

Hon'ble Judges: R.N. Dutt, J; B. Banerji, J

Bench: Division Bench

Advocate: Nirendra Krishna Mitra, for the Appellant; Surathi Mohan Sanyal, for State, for the Respondent

Judgement

R.N. Dutt, J.

This Rule has been issued under Article 227 of the Constitution against an order made by Shri G.D. Basu, Magistrate, First class, Ranaghat, on May 13, 1968, under para. 6(6), of the West Bengal Foodgrains (Requisitioning) Order, 1967.

2. The facts are as follows:

The Petitioner is a cultivator at Borabpur within Ranaghat Police Station. On February 18, 1968, the requiring authority under the said order served an order on the Petitioner whereby he was directed to sell to the State of West Bengal 16-60 quintals of Aman paddy as part of the produce of his land. The Petitioner filed a dispute under para. 6(1) of the said order. The dispute was heard by Shri G.D. Basu, Magistrate, First class, Ranaghat, who directed the Petitioner to sell 7 quintals 15 kgs. of paddy. The Petitioner has now obtained this Rule against this order of the said Magistrate Shri G.D. Basu.

3. The Rule was issued by a single Judge of this Court and subsequently he sent it to the Division Bench for hearing. When we heard the Rule, we raised a point as to whether Article 227 is attracted or, in other words, whether the Magistrate who decided the dispute can be said to be a Tribunal within the meaning of Article 227 of the Constitution. Paragraph 6(4) of the Requisitioning Order states that the "District Officer" shall, after giving the Applicant an opportunity of being heard and after taking such evidence, as he deems necessary, dispose of the application. Thus the District Officer may take evidence if he thinks necessary and the District Officer must give an opportunity to the Applicant for being heard. It would, therefore, appear that what the District Officer is to do is not to pass an executive order but to hear the parties and determine the dispute judicially or quasi-judicially and in that view of the matter, we think that the District Officer while deciding the dispute under para. 6(6) of the Requisitioning order acts as a Tribunal and so Article 227 of the Constitution is attracted. We are supported, in this view, by the decision of Bijayesh Mukherji, J. in *Gour Hari Mondal v. State of West Bengal* (1966) 71 C.W.N. 107 (118, para. 13(iv)).

4. We now come to the points raised by Mr. Mitra. He first argues that the Requisitioning Order has lost its force with effect from July 24, 1967. He develops his argument like this. u/s 3 of the Essential Commodities Act the Central Government can make orders in respect of certain specified matters. u/s 5 of the Act the Central Government may delegate by a notified order that the powers u/s 3 may be exercised by the State Government. The Central Government by its order No. G.S.R. 906 dated June 9, 1966, authorised the State Government to make orders with regard to foodgrains and on the basis of this order the instant Foodgrains (Requisitioning) Order was made by the State Government. The Central Government on July 24, 1967, made a fresh order or u/s 5 of the Act in supersession of order No. G.S.R. 906 dated June 9, 1966, authorising the State Government to make orders in respect of foodgrains. Mr. Mitra argues that since the previous order, on the basis of which the State Government made the instant Foodgrains (Requisitioning) Order, was superseded on July 24, 1967, the Foodgrains (Requisitioning) Order, 1967, lost its validity and ceased to exist thereafter. There is no substance in this argument. Under the previous order the State Government was given the power to make certain orders u/s 3 of the Act in regard to foodgrains. Under the new order dated July 24, 1967, again the State Government was given the power to make orders u/s 3 of the Act in regard to foodgrains. The instant Foodgrains (Requisitioning) Order, 1967, though made on the authority of the previous order, did not cease to exist but continued in existence and continued to remain valid even after the new order was made on July 24, 1967. This is because of Section 24 of the General Clauses Act. Section 24 is attracted not only to Acts but to orders and notifications under the Acts. Moreover, even apart from the strict terms of Section 24 of the General Clauses Act, the principles involved therein is applicable in the instant case. The language of Section 24 clearly shows that it is intended to apply to all rules,

regulations or orders made under an Act. Because of Section 24 and the authority of the principles underlying Section 24, it is not necessary, to specify in the new Act, Notification or Order that action taken or orders made under the previous Act or Order continues to be valid. We hold, therefore, that the instant requisitioning order continues in valid existence even after July 24, 1967.

5. Mr. Mitra then argues that the instant dispute could not have been heard by the Magistrate Shri G.D. Basu. The explanation to para. 6(6) of the Requisitioning Order as initially made said that the "District Officer" means, in relation to a district, the District Magistrate or the Deputy Commissioner of that district. This was, however, amended by a notification dated September 6, 1967 and the substituted explanation says that the "District Officer" means in relation to a district the District Magistrate or the Deputy Commissioner or an Additional District Magistrate or an Additional Deputy Commissioner of that district and includes such Magistrate of the First class as may be authorised by the District Magistrate or the Deputy Commissioner concerned in this behalf by a notification in the official gazette. It is not disputed that the District Magistrate, Nadia, has by a notification authorised Shri G.D. Basu, Magistrate, First class, to hear such disputes. What Mr. Mitra really argues is that, since the original Requisitioning Order has lost its force, this amendment is ineffective. We have considered that argument and we have found that the original Requisitioning Order continues to be effective even after July 24, 1967 and so, the amendment made in that behalf by the State Government on September 6, 1967, is effective. The matter was referred to Shri G.D. Basu for disposal on September 30, 1967 and on that date the relevant law that was effective was the substituted explanation to para. 6(u) under which the "District Officer" also includes such Magistrate of the First class as has been authorised by the District Magistrate in this behalf by a notification in the official gazette and the present Magistrate Shri G.D. Basu is such a Magistrate. But Mr. Mitra contends that this is double delegation. Really speaking, there is no double delegation here. Under the Essential Commodities Act the Parliament made a law giving powers to the Central Government to delegate its power u/s 3 to the State Government and the State Government under such delegated power made the instant Requisitioning Order. The substituted paragraph is a paragraph of that order and the amendment was made by the State Government in exercise of that delegated power. The State Government has not delegated its powers to make orders to any other officer and so, there is no double delegation. What the State Government has done is that the definition of "District Officer" has been amended so as to include not only District Magistrate but also Magistrate of the First class who may be authorised by the District Magistrate. This is not re-delegation of power to make orders. It merely gives the District Magistrate an authority to name certain officers to hear such disputes. There is thus no double delegation of legislative powers involved in this.

6. We have no materials before us from which it can be said that the instant direction requiring the Petitioner to sell 7 quintals and 15 kgs. of paddy to the State

Government is perverse and so there is no reason to interfere with that order.

7. In the result, the Rule is discharged.

B. Banerji, J.

8. I agree.