(1995) 04 CAL CK 0023

Calcutta High Court

Case No: None

In Re: Bidhan Nagar (Salt Lake) Welfare Association and Others		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: April 24, 1995

Acts Referred:

- Companies Act, 1956 - Section 237(b)
- Constitution of India, 1950 - Article 226, 243P, 243Q

Hon'ble Judges: N.K. Mitra, J

Bench: Single Bench

Advocate: Pradip Ghosh, Arunava Ghosh, Amit Kumar, Pan and Ranajit Talukdar, for the Appellant;Subodh Ukil and Debasis Kargupta for State, for the Respondent

Judgement

N.K. Mitra, J.

This writ application has been moved by the Bidhan Nagar (Salt Lake) Welfare Association, a registered body and also by some other members of the said registered association challenging inter alia, the Government of West Bengal. Department of Municipal Affairs Notification No. 490/C-4/MIM-29/94 and No. 491/C-4/MIM-9/92 both dated 30th September, 1994 and also the government Notification No. 55/ C-4/MIM-9/92 and No. 56/C-4/MIM-29/94 both dated 7th February. 1995 by which, the Governor of West Bengal was pleased to exclude the local areas mentioned therein from the Rajarhat-Gopalpur Municipality in the District of North 24-Parganas and to include the said local areas within the notified area of the Bidhan Nagar Notified Area Authority respectively. The contentions of Mr. Ghosh, learned senior counsel appearing on behalf of the writ petitioners inter alia, are that the said notifications are violative of Sections 3. 9 and 378 of the West Bengal Municipal Act, 1993 as amended by the West Bengal Municipal (Amendment) Act. 1994 since the Governor did not form his opinion in the matter following the statutory norms as laid down in Sections 3. 9 and 378(1) of the said Act. Mr. Ghosh

also contends that formation such opinion is no doubt legislative process, but existing of circumstances suggesting with inference must be made out. In other words, according to Mr. Ghosh, the subjective satisfaction of the Governor in forming such opinion must be based upon certain objective standards, which are totally lacking in the present case. Mr. Ghosh in support of his said contention relies upon the decision of the Supreme Court in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, and also upon a Patna High Court decision in AIR 1969 Pat 88. Mr. Ghosh further contends that as the notifications as contained in Annexures "A" and "B" to the writ application were not published as per the time schedule prescribed under the West Bengal Municipal Act, 1993 depriving thereby the residents of Salt Lake Notified Area, sufficient opportunity to make their representations in the matter.

The said Notifications and also the subsequent gazette notifications being annexures "D" and are also bad in law and since the decision and/or opinion of the members of the Bidhan Nagar Notified Area Authority does not reflect the opinion of the general public in the said notified area, the powers conferred by Sub-Section (4) of Section 378 of the West Bengal Municipal Act. 1993 could not have been invoked by the Governor to include the said local area as contained in the said notification ("E") within the Bidhan Nagar Notified Area.

2. Mr. Ukil. learned Government Pleader appearing on behalf of the respondents has opposed the contention of Mr. Ghosh submitting inter alia, that the mouzas mentioned in the impugned notifications already formed part of Salt Lake Police Station, and in view of Section 379 of the aforesaid Act, Section 3 thereof does not apply to a notified area and he refers to Section 378 and Section 9 and also the definition of ''Municipality'' as contained in Clause (38A) read with clause (35) of Section 2 of the aforesaid act and also Section 5 of the said act and Article 243Q of the Constitution of India. Mr. Ukil also contends that in view of Section 5 read with Section 378(2) of the aforesaid Act the petitioners have no locus standi to move the present writ application and referred to the decisions of the Supreme Court in Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, for the purpose that inclusion or exclusion of any area into or from any notified area or municipality, is only a legislative process, and the question of natural justice or the principle of audi alterem partent does not apply to such process and the statutory provisions of law were followed in the present case regarding publication of the impugned notifications, once such notifications are published after completing the statutory formalities the decisions of the Governor in the matter become final and beyond any judicial review.

3. Lastly, Mr. Ukil, however, submits inter alia, on instruction, that if necessary, the State respondents concerned are ready and willing to hear the objections to be filed by the Salt Lake people, if they so desire and if such objections are filed within the time as may be specified by the court, before taking any final steps in the matter by

the State respondents concerned.

Clauses (35) and (38A) of Section 2 of the West Bengal Municipal Act, 1993 defines the words "municipal area" and "municipality" respectively as follows:- such objections are filed within the time as may be specified by the court before taking any final steps in the matter by the State respondents concerned.

Clauses (35) and (38A) of Section 2 of the West Bengal Municipal Act, 1993 defines the words "municipal area" and "municipality" respectively as follows:

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,

* * * * * * * *

(35) "municipal area" means any place in which this Act, or any part thereof, is in force;

* * * *

(38A) "Municipality" means a Municipal Council for a smaller urban area as defined in article 243Q of the Constitution of India.

According to the above definition of "municipal area" read with Section 379 of the West Bengal Municipal-1 Act, 1993, it is quite clear that Bidhan Nagar Notified Area is a ''municipal area''.

Section 3 of the West Bengal Municipal Act. 1993 relevant portions of which are quoted below, deals with the Governor''s power to declare his intention to constitute a municipal area while Section 9 thereof, which is also quoted below, speaks of the State Government''s power to abolish or alter the limits of a municipal area:

3. Declaration of intention to constitute a municipal area, whenever it appears to the (Governor) that any town, together with, or exclusive of. any railway station, village, land or building in the vicinity of any such town-

(i) contains a population of not less than 20,000 inhabitants.

(ii) has a density of population of not less than seven hundred and fifty inhabitants per square kilometre of area, and

(iii) has an occupational pattern in which more than one-half of the adult population are chiefly engaged in pursuits other than agricu1ture, and if the (Governor) is satisfied that if such town is constituted a municipal area, the municipal income from taxation and other sources is likely to be adequate for the discharge of municipal function under this Act, the (governor) may, by notification, declare (his] intention to constitute such town a municipal area under this Act.

9. Power to abolish or alter the limits of a municipal area. -The State Government may by notification,-

(a) withdraw any municipal area from the operation of this Act; or

(b) exclude from a municipal area any local area comprised therein and defined in the notification; or

(c) include within a municipal area any local area contiguous to the same and defined in the notification; or

(d) divide any municipal area into two or more municipal areas; or

(e) units two or more municipal areas so as to form one municipal area: or

(f) revise the boundary of two or more contiguous municipal area; or

(g) re-define the boundaries or limits of a municipal area; or

(h) [****]:

Provided that the procedure laid down for the constitution of a municipal area under this Act shall be followed mutatis mutandis in each such case:

Provided further that the views of the Municipality affected by any such order shall be taken into consideration before a final declaration is made.

Section 378 of the West Bengal Municipal Act. 1993 which is quoted below, speaks of the constitution of ''notified area'', while Section 379 of the said Act deals with the application of provisions relating to municipality to notified area and the said Section 379 is also quoted below for our conveniences:

378. Constitution of notified area. - (1) Whenever, in the opinion of the (Governor) it is necessary to make provisions for all or any of the purpose of this Act in respect of -

(i) any urbanised area which does not fulfil the conditions for being immediately constituted a municipal area under this Act, or

(ii) any area which is comprised in a newly developing town, or

(iii) any area in which new industries have been or are being established, the [Governor] may, by notification, specify such area and declare [his] intention so to do.

(2) Any inhabitant of the area in respect of which a notification has been published under Sub-section (1) may, if he objects to the making of any provision as aforesaid, submit his objection in writing to the State Government within three months from the date of publication of the notification.

(3) The [Governor] may, after considering the objections, if any received by [him] during the period referred to in Sub-section (2). make an order -

(a) withdrawing the notification under sub-section (1), or

(b) constituting the area specified in the notification or any part thereof as a notified area for the purposes of this Chapter.

(4) The (Governor) may. by order made after declaration by notification of [his] intention so to do followed by the consideration of any objection, thereto received within three months from the date of publication of the notification, add new areas to a notified area constituted under this Section.

* * * *

379. Application of provisions relating to Municipality to notified area. - Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, all the provisions of this Act, except the provisions of Section 3, Section 4, Section 5 and Section 6, which apply to a Municipality, shall also apply to a notified area.

4. Mr. Ukil relying strongly upon the above provision of Section 379 contends that in view of the total restrictions imposed by Section 379 regarding the applicability of Sections 3. 4. 5 and 6 of the West Bengal Municipal Act, 1993 to a Notified Area, the Governor, while excluding from a municipal area any local area and including any local area within a Notification area does not require to follow the conditions specified in Section 3, at all.

5. The said contention of Mr. Ukil, However, appears to be fallacious in view of his own submission that Bidhan Nagar Notified Area comes within the purview of Article 243Q of the Constitution of India and is a Municipality, which submission appears to me as correct, inasmuch as, upon a close look into the relevant provisions of Article 243Q of the Constitution of India, read with Clause (e) of Article 243P thereof, which are quoted below, one can safely come to the conclusion, that though Bidhan Nagar Area has been declared as a notified area by the State Government, in fact it is a municipality within the meaning of Articles 243P and 243Q of the Constitution of India, and since such notified area is a municipality, the restrictions imposed by Section 379 of the West Bengal Municipal Act, 1993 regarding application of certain Sections of the said Act, specially Section 3 thereof, in case of a notified area, do not apply to the Bidhan Nagar Notified Area at all.

[Emphasis added]

243P. In this Part, unless the context otherwise requires,-

* * * *

(e) "Municipality" means an institution of self-government constituted under article 243Q;

* * * *

243Q. (1) There shall be constituted in every State,-

(a) A Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area in accordance

with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit specify by public notification" for the purposes of this Part.

6. From the above wordings of Sub-section (1) of Section 378 it would be thus clear that only in respect of the areas mentioned therein, the Governor may, by notification, make provisions for all or any purpose of the Act, specifying such area, and declare his intention to do so while from the provisions of Section may, by order made after declaration by notification his intention so to do and after considering the objection if there by any add new areas to a notified area. Making a close scrutiny of the above provisions of Section 378 it would be thus abundantly clear that the governor may by order add only such new area as mentioned in Section 378(1). Since, the notification mentioned in Section 378(4). Means only a notification issued u/s 378(1) and no other notification.

7. Now it is to be seen whether the Governor after being satisfied about the areas to be included in the Bidhan Nagar Notified Area had issued the impugned notification (Annexure ''A''). Nowhere it appears from the said notification that the Governor had formed any opinion of his own for including the area mentioned in the said notification after considering himself the conditions and/or factors mentioned in Section 378(1). Which are in my opinion, pre-conditions and/or conditions precedent for forming his opinion to issue such notification. In other words, the subjective satisfaction of the Governor in the matter was not derived from any of the objective standards as specified in Section 378(1), inasmuch as. The decisions arrived at by the Bidhan Nagar Notified Authority in its meetings as mentioned in the impugned Notification (Annexure "A"), cannot be called by any stretch of imagination the objective standard relying on which the subjective satisfaction of the Governor can be arrived at.

8. Similar is the case with the impugned Notification (Annexure "D"). Section 3 of the West Bengal Municipal Act. 1993 lays down certain pre-conditions to be followed by the Governor before expressing any intention to declare an area to be a municipality. In otherwords, the subjective satisfaction of the Governor in the matter must be based on the objective standards as specified in Section 3 and only after being satisfied about such objective standards, which are also in my opinion conditions procedent, the Governor may issue a Notification u/s 4 of the West Bengal Municipal Act, 1993 and not otherwise. In otherwords, the Governor cannot take any other circumstances into consideration for forming his subjective satisfaction to declare his intention in the matter, except the pre-conditions as specified in Section 3 of the Act.

9. Moreover, in excluding from any municipal area any local area comprised therein, and/or including within any municipal area any local area contiguous to the same as per the provisions of Section 9 of the Act as quoted above, the provisions of Section 3 thereof are to be followed mutatis mutandis in each such case, as has been clearly provided in the first proviso to the said Section 9 that is, the pre-conditions as mentioned in Section 3 above, has to be followed first in the matter, before issuing any such notification as referred consideration of all such pre-conditions as mentioned in the above Sections 3, 9 and 378(1) of the Act, by the Governor before issuing the impugned Notifications (Annexures "A" and "B"). however, appears to be totally lacking in the present case, and as I have already- observed hereinbefore, that the restrictions imposed by Section 379 of the West Bengal Municipal Act, 1993 do not apply to the Bidhan Nagar Notified Area for the reasons as stated above, the provisions of Sections 3, 4, 5, and 6 of the Act cannot be bye-passed by the Governor in any way for issuing the said notifications (Annexures "A" and "B").

10. The view of the municipality affected by any such order passed by the State government u/s 9. no doubt, shall have to be taken into consideration before a final declaration is made, but in the present case, the Governor solely relied upon the view of the Bidhan Nagar Notified Area Authority in issuing the impugned Notifications (Annexures "A") itself, which, however, in my view is not permissible in law, inasmuch as. nothing appears from the said Notification (Annexure ""A") that prior to taking into consideration the view of the Bidhan Nagar Notified Area Authority the Governor after being satisfied himself about the existence of the preconditions as laid down in Section 3 and Section 378(1) of the West Bengal Municipal Act, 1993 had issued the said notification (Annexure "A").

11. Let us now discuss the decisions cited at the Bar. So Ear as the decision of the Supreme Court in the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, and the decision of the Patna High Court in the case of Siya Sharan Sinha and Others v. State of Bihar and Others in AIR 1969 Pat 88 as cited by Mr. Ghosh, learned senior counsel appearing on behalf of the writ petitioners are concerned. Hidayatullah, J. whose view was one of the majority view

of the court in the case of Barium Chemicals Ltd. (supra) held, dealing with a provision of the a similar nature, paragraph 27 of the said decision inter alia as follows :

(27).....No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as of the kind contemplated by the Section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly :

It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist.

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist an dgive no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness.

12. In the said decision, Shelat, J. whose view also formed part of the majority view of the court, observed inter alia, referring to the words "reason to believe" or "in the opinion of" as are used in Section 237(b) the Companies Act, 1956, relying upon two English decisions in the cases of Nakkuda Ali v. Jayaratna 1951 Ac, 66 and Ridge v. Baldwin. 1964 AC. 40, held inter alia, as follows, in paragraph 63 of the said decision of the Supreme court:

(63).....the words, "reason to believe" or "in the opinion or do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the Court that such "a reason to believe or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative.

13. His Lordship also deciding the scope and limits of interference by a court of law in respect of an order passed by the authority concerned in exercise of the power conferred under a statute, held inter alia, as follows in paragraph 60 of the said decision :

(60).....Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quahsed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on ground extraneous to the legislation or if there are no grounds at all

for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it. It did not apply its mind to the relevant facts.

14. In my view, the words "whenever it appears to" as used in Sections 3 and 378(1) of the West Bengal Municipal Act, 1993 are also to be tested on the touch stone of the said principle of law as enunciated by the Supreme Court is paragraph 63 at page 324 of its decision in the case of Barium Chemicals Ltd. (supra). The said decision of the Supreme Court was followed by a Division Bench of the Patna High Court in the case of Siya Sharam Sinha & Ors. (supra), wherein the Division Bench inter alia, held in a matter identical to the present case in paragraph 14 and 15 thereof as follows :

14. Coming to the second point urged on behalf of the petitioners, it is to be noted first that there are three requirements in respect of which the State Government is to be satisfied before declaring its intention to constitute a town or an area a Municipality and they are the following :

(i) That three fourth of the adult male population of the town or the area are engaged in pursuits other than agricultural :

(ii) That such town or area contains not less than five thousand inhabitants : and-

(iii) That the density of the population of an average number of not less than one thousand inhabitants to the square mile of the area of the town is there.

14. It is not doubt true that the State Government namely, the governor, has to be satisfied as to the existence of the three conditions aforesaid before a declaration of intention is made u/s 4 of the Act. The satisfaction is of the Governor and not of the Court. But when undisputed materials have been placed before the court, as have been done in this case, which necessarily lead to the conclusion that any or more of the conditions has or have not been satisfied, then the Court has got to hold that the satisfaction of the State Government or the Governor was based on no material. In that view of the matter also, the notification has got to be declared invalid."

15. In the present case, except the copies of the minutes of the meetings held by the Bidhan Nagar Notified Area Authority on August 30. 1994 and September 6, 1994 no other material has been produced before me from which it can be held that prior ? to the issuance of the impugned Notifications, the Governor had satisfied himself about the existence of the pre-conditions as stated in Sections 3 and 378(1) of the West Bengal Municipal Act, 1993.

16. All the judgments cited by Mr. Ukil. learned Government Pleader appearing on behalf of the State respondents, in Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, Bhaskar Textile Mills Ltd. Vs. Jharsuguda Municipality and Others, and Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane,

Maharashtra and others, deal with the scope and ambit of an order made by the State Government or the Governor under a statute which is a legislative process, vis-a-vis the applicability of the rule of natural justice. Undoubtedly, all the aforesaid decisions equivocally have held that the rule of natural justice does not apply to the actions of the Government or the Governor under a statute specially in establishing a municipality or extending its limits, which is neither executive nor administrative. It is a legislative process indeed, and as such, no judicial duty is cast upon the Government or the Governor in charge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. The Court cannot sit in judgment over such decision, of the Government or the Governor. It cannot lay down the norms for the exercise of that power. It cannot substitute even "its juster will for theirs".

17. No doubt all the above decisions cited by Mr. Ukil are authorities for the legal principle of law as laid down in the said decisions, that in case of legislative process, the principle of natural justice does not apply, but at the same time it has also been observed therein, that when such legislative process is conditional, the Court has the power to see whether before taking such legislative process, the statutory provisions of law have been complied with. In other words, if certain conditions are laid down in the statute itself to be followed before taking a decision by the Government or the Governor, the Court has power to see whether such conditions have been fulfilled before taking such decision by the Government or the Governor.

18. According to me, if such conditions include the principle of audi alterem partem, the Court certainly has the power to see whether such principle was applied before the action was taken and since the since the said principle of audi alterem partem is a part of natural justice, it cannot be ruled out altogether, that the rule of natural justice does not apply at all to the legislative process. Therefore, even if the power given under a statute to do anything is legislative in nature, but if the legislation is a conditional legislation i.e. that the State or the Governor shall act as per the provisions of the statute, certainly exercise of such power is justiciable in Court on the ground of non-compliance of the statutory pre-conditions.

19. From the above discussions it is thus quite clear that the impugned notifications being Annexures "A" and "B" are not valid or legal since it is quite clear that the Governor had issued the same without first considering the pre-conditions attached to his power to issue such notifications under the statute specially, the pre-conditions as laid down is Sections 3. 9 and 37B(1) of the West Bengal Municipal Act. 1993.

20. Regarding the other contention of Mr Ukil that the writ petitioner have no locus standi to move the present writ application, I am. however, of the view that all persons and authorities who are affected by the impugned notifications, have the right to challenge the validity of the same under Article 226 of the Constitution of

India on the ground of noncompliance of the statutory provisions of law by the Governor before issuing the impugned Notifications, and the facts and circumstances of the present case would amply show that the writ petitioners are definitely affected by the impugned notifications, inasmuch as the Governor without being satisfied first about the existence of the pre-conditions as stated in Section 3 and 378(1) of the aforesaid Act had issued the impugned Notifications and as such, they have the locus standi to move the present writ application. The said contention of Mr. Ukil, therefore, fails

21. Accordingly. I hold relying upon the decisions cited by Mr. Ghosh learned senior counsel for the writ petitioners, and also considering provisions of the West Bengal Municipal Act. 1993 that all the impugned Notifications being Annexure "A", "B", "D" and "E", the last two being gazette Notifications issued subsequent to the earlier notifications being Annexures "A" and "B", are illegal and bad in law being violative of Sections 3, 9 and 378(1) of the West Bengal Municipal Act. 1993 for the reasons as stated above and as such the same are quashed. So far as the decisions cited by Mr. Ukil, learned Government Pleader, appearing on behalf of the State Respondents, as discussed above are concerned, in my view those also do not run totally counter to the principle of law as enunciated by the decisions cited by Mr Ghosh as referred to and discussed above. The writ application is thus allowed without, however, any order as to costs.

The prayer for stay of operation of this order as made on behalf of the State respondents, however, is refused.