

Calcutta Metropolitan Water and Sanitation Authority Employees Association and Others Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: March 19, 1990

Acts Referred: Calcutta Metropolitan Development Authority Act, 1972 " Section 22B
Calcutta Metropolitan Water and Sanitation Authority Act, 1966 " Section 90A, 90B, 90B(1), 93
Constitution of India, 1950 " Article 226

Citation: (1990) 2 CALLT 378

Hon'ble Judges: Kalyanmoy Ganguli, J

Bench: Single Bench

Advocate: Rabindra Nath Mitra and Indrajit Mondal, for the Appellant; A.P. Sircar, D.P. Mukherjee (II) and Partha Sengupta for Respondent No. 2 and Anil Kumar Mallick and M. Bhattacharjee, for the Respondent

Judgement

Kalyanmoy Ganguli, J.

In this application under Article 226 of the Constitution of India, the petitioners, inter alia, pray for a writ in the

nature of mandamus restraining the respondents from issuing a separate list of holidays for the operational staff of Garden Reach Water Works of

Calcutta Metropolitan and Sanitation Authority for 1989 and/or subsequent years ; a writ in the nature of mandamus to cancel and withdraw and

to forbear from giving effect and/or further effect to the impugned notices of the , Officer-on-Special Duty dated December 22, 1988 to explain

why the said petitioners should not be punished for having absented themselves from duty, specified in the said notice which is Annexure "L" to the

petition and for a writ in the nature of mandamus commanding the respondents to pay overtime (double rate of daily wages) to the petitioners in

addition to tiffin and travelling allowances for working on holidays as per general list of holidays, At the outset it was pointed out to the learned

Advocate appearing for the petitioner that in any single.writ petition, mutually exclusive grievances cannot be agitated and clubbing together of

different causes of action are not permissible in a single petition. Mr. Rabindra Nath Mitra, learned senior advocate appearing for the petitioners

submitted that his clients will not pray for any relief under prayer (B) relating to the show cause notices which is Annexure "L" series as they are

given liberty to agitate the said grievance in a separate writ petition. So far as the prayers (A) and (C) are concerned they are not necessarily

mutually exclusive and as such the petitioners can agitate both the grievances in the same petition.

2. The matter was contested by the different sets of respondents by filing affidavits and making oral arguments.

3. The petitioner No. 1 is the Calcutta Metropolitan Water and Sanitation Authority Employees' Association and the petitioner Nos. 2 to 31 are

members of the said association.

4. The grievance of the petitioners seems to be that the Calcutta Metropolitan Water Sanitation Authority Act, 1966, hereinafter referred to as the

1966 Act, being in force, the petitioners should be governed by the provisions of the said 1966 Act and not by any other provisions of any other

law or by any other order issued by any Officer other than that prescribed in the 1966 Act.

5. Section 18 of the 1966 Act, inter alia, provides that the Board shall appoint for the authority a General Manager who shall have administrative

experience and be preferably an Engineer. The said section further provides that the General Manager shall be the Chief Executive Officer of the

Authority who shall be accountable to the Board for his action.

6. The contention of the petitioners is that the 1966 Act is still in force inspite of incorporation of Sections 90A and 90B by the Calcutta

Metropolitan Development Authority (Amendment) Act of 1974 which empowers the State Government to supersede the Authority under the

1966 Act.

7. By an order of the State Government, the Metropolitan Development Department Order No. 859-T & OP/PWD/A-2-/74 dated February 11,

1974 issued u/s 90A of the 1966 Act, the Calcutta Metropolitan Water and Sanitation Authority was superseded and the period of supersession

has been extended till September 30, 1989. Any extension after the said date is not material for the purpose of the decision of the issues involved

in the present case-

8. It is urged by the petitioners that by the said order of supersession, the powers and duties of the Calcutta Metropolitan Water and Sanitation

Authority, hereinafter referred to as the CMWS Authority, are being exercised and performed by the Calcutta Metropolitan Development

Authority, hereinafter referred to as the CMDA which is constituted by the Calcutta Metropolitan Development Authority Act, 1972 hereinafter

referred to as the 1972 Act.

9. It is the further contention of the petitioners that inspite of the said order of supersession of the CMWS Authority, the 1966 Act and the.

regulation of 1968 made under the provisions of the 1966 Act are in force till today so that the CMDA can exercise the powers under the 19'66

Act and 1968 Regulation for the affairs of the CMWS Authority but the CMDA cannot resort to its power under the 1972 Act and cannot by-

pass the provisions of 1966 Act Which are still in force.

10. It is further contended by the petitioners that the regulation made under the 1966 Act can be issued for the matters mentioned in Section 93 of

the 1966 Act by the CMDA in exercise of the powers of 1966 Act with the previous approval of the State Government but not u/s 22B of the

1972 Act.

11. The petitioners further allege that the CMDA in purported exercise of powers u/s 22B of the 1972 Act made regulations, namely, the Calcutta

Metropolitan Development Authority (Amendment of Calcutta Metropolitan Water and Sanitation Authority) Regulations 1974.

12. Under the said regulations of 1974, the CMDA has created a new post of Officer-on-Special Duty to deal with the affairs of the Calcutta

Metropolitan Water and Sanitation Authority.

13. The petitioners contend that the 1974 Regulations made in exercise of powers u/s 22B of the 1972 Act are patently without jurisdiction and

void because the management of the CMWS Authority cannot be regulated by the 1972 Act as amended and it can only be regulated by the

exercise of the powers under the 1966 Act and accordingly the Officer-on-Special Duty as defined in Regulation 2(1)(d) of the 1974 Regulation

cannot be invested with the powers of the General Manager to be appointed u/s 18 of the 1966 Act and that the said General Manager is to be

preferably an engineer and the present Officer-on-Special Duty is neither a General Manager within the meaning of Section 18 of the 1966 Act nor

is he an engineer and as such the Officer-on-Special Duty is not competent to discharge the functions of the General Manager of CMWS Authority

and cannot deal with the affairs of the CMWS Authority.

14. It is the case of the petitioners that the Officer-on-Special Duty by order No. 1238 dated May 27, 1986 issued an order for departmental

running of Garden Reach Water Works with effect from June 1, 1986 and that paragraph 2 of the said order provides that the total working hours

of each staff will not exceed the limit imposed by Section 51 of the Factories Act, 1948, namely, 48 hours in any week and paragraph 3 of the said

order provides that the total number of holidays in a year barring weekly holidays will not exceed the number allowed in the Water Works of the

Calcutta Municipal Corporation. The exact date may be fixed in consultation with the organisation of the employees but the national holidays must

be included in the list and that the executive engineer concerned will do the needful in that respect. A Copy of the said order dated May 27, 1986

has been annexed to the petition marked with the letter "B".

15. In 1987 the respondents, it is alleged in paragraph 15(a) of the petition, deprived the petitioners of the benefit of general list of holidays for the

operational staff of the Garden Reach Water Works without consulting the association of the petitioners. The copies of the general list of holidays

and the separate list of holidays for 1987 have been annexed to the petition marked with the letters "C and "C1" respectively. It is further alleged

in paragraph 15 (b) that after issuing the separate list of holidays, the respondents imposed duties on the petitioners on holidays including national

holidays like Independence Day, Gandhi Birthday etc. but did not pay overtime as per the Factories Act and Calcutta Municipal Corporation

Rules.

16. Paragraph 15 (c) of the petition states that by an order dated January 30, 1988 the respondents provided that the operational staff of Garden

Reach Water Works would get, for duties on 19 prescribed holidays, conveyance charge of Rs. 2/- and food allowance of Rs. 12/-. A copy of

the said order has also been annexed to the petition marked with the letter "C4".

17. The petitioners state that in 1988 the respondents deprived the petitioners of the benefit of general list of holidays and the Superintending

Engineer (FAWS) of the COMWS Authority issued a separate list of holidays applicable to the operation and maintenance personnel of the

Garden Reach Water Works and that the said list of holidays was issued without consultation with the association of the petitioners and excluded

Durga Puja Saptami (17-10-88), Guru Nanak Birthday (23-11-88), Christmas Holiday (25-12-88) and included Surendra Nath Banerjee

Birthday (10-11-88) and Chhat Puja (15-11-88). Copies of the general and separate list of holidays have been annexed to the petition marked

with the letters "D" and "D1" respectively.

18. The petitioners state that the 1966 Act and 1968 Regulations do not provide for any separate list of holidays for the operational staff of the

Garden Reach Workshop and that the Factories Act, 1948 is "not" applicable to the Garden Reach Workshop and no factory licence has been

taken by the respondents. ½

19. The main contention of the petitioners seems to be that a separate list of holidays is absurd and unreasonable as also illegal and without

jurisdiction. The respondents in that respect contend that this argument is not available to the petitioners in view of the fact that after having

obtained the benefit of all such holidays, the petitioners are praying for extra holidays and as such the prayer should not be granted.

20. The respondents' contention seems to be, on facts, that the petitioners having obtained the benefit of the holidays cannot ask for extra holidays

in the year in question but the matter is one of principle to guide the parties in future. So the question to be decided is whether the respondents

have any power to act in the manner as stated in the petition on the basis that the power of the General Manager and the Board cannot be taken

over by the Officer-on-Special Duty and the CMDA in view of the fact that the 1966 Act is still in force and it is only that the Authority has been

superseded by the Act has not been repealed and further that the rules and regulations are to be framed under the provisions of Section 93 of the

1966 Act and 1978 Regulation and not under the provisions of Section 22B of the 1972 Act read with the schedule thereof and the Regulations of

1974.

21. This necessitates an examination of the various provisions of the Acts. Sections 90A and 90B of the 1966 Act was inserted not by amending

the 1966 Act at all but were inserted into the body of the 1966 Act by the amending Act namely, West Bengal Act 21 of 1974 introducing into the

1972 Act, by introduction of Section 22B of the 1972 Act. Section 22B of the 1972 Act as amended provides, inter alia, that the 1966 Act,

amongst certain other Acts, shall stand amended to the extent and in the manner specified in the schedule. Part C of the schedule of the 1972 Act,

referred to in Section 22B of the Act, provides that after Section 90 of the 1966 Act, the Sections 90A and 90B of the 1966 Act shall be inserted.

22. Section 90A of the 1966 Act, inter alia, provides as under :-

(1) If in the opinion of the State Government it is necessary so to do with a view to better co-ordination and speedier execution of development

works and maintenance thereof the State Government may, by an order published in the official Gazette and mentioning therein the reason for the

order supersede the Authority for such period as may be specified in the order.

(2) For the removal of doubts it is hereby declared that no notice whatsoever is required to be given to the Authority for submission of any

representation before making any such order or supersession under sub-section (1).

(3) The State Government may, if it considers necessary so to do by order, extend or modify from time to time the period of supersession.

23. Section 90B speaks about the consequences of such supersession and reads as follows :-

(1) When an order of supersession has been made u/s 90A then, with effect from the date of the order---

(a) all directors and members of the Authority shall vacate their offices ;

(b) all properties, funds and dues which are vested in or realisable by the authority shall vest in and be realisable by the Calcutta Metropolitan

Development Authority constituted u/s 3 of the Calcutta Metropolitan Development Authority Act, 1972 (hereinafter referred to as the

Metropolitan Authority) ;

(c) all contracts and liabilities which are enforceable by or against the Board shall be enforceable by or against the Metropolitan Authority ;

(d) all the powers and duties which may, under the provisions of the or any other Act or any rule, regulation, by-law, order or notification made

thereunder be exercised or performed by the authority shall be exercised or performed by the Metropolitan Authority;

(e);

(f) all officers and other employees of the Authority continuing in office immediately before the date of the order shall be deemed to be employed

by the Metropolitan Authority on such terms and conditions not being less advantageous than what they were entitled to immediately before the

said date.

(2)

(3) The State Government may make such incidental or consequential orders as may appear to be necessary for giving effect to the order made

under sub-section (1) or sub-section (3) of Section 90A or under sub-section (2) of this section.

24. From the above provisions it appears that the contention of the petitioners that the Officer-on-Special Duty has no manner of authority to issue

the impugned orders, is not tenable as the provisions of the 1966 Act stands amended to the extent as enjoined u/s 22B of the 1972 Act

(introduced by the West Bengal Act 21 of 1974) introducing Sections 90A and 90B in the 1966 Act. Clause (d) of sub-section (1) of Section

90B of the 1966 Act, inter alia, provides that all the powers and duties which may, under the provisions of this (1966 Act) or any other Act or any

Rules, Regulations, By-laws, Order or notification made thereunder be exercised or performed by the authority shall be exercised or performed by

the Metropolitan Development Authority.

25. The above amendment gives ample authority to the CMDA to frame regulations in the 1966 Act regardless of the provisions made in Section

93 of the 1966 Act.

26. So the principal contention of the petitioners fails. So far as the question of consultation with the employees in the matter finalising the list of

holidays is concerned the respondents State that the employees, through their union were consulted after the publication of a provisional list but no

consensus was reached and as such the list of holidays had to be prepared by the CMDA on its own. It may be remembered in this connection

that "consultation" does not necessarily mean "concurrence".

27. It may further to mention" here that neither the vires of West Bengal Act 21 of 1974 introducing Section 22B in the 1972 Act inserting thereby

Sections 90A and 90B into the 1966 Act, nor the vires of Sections 90A and 90B of the 1966 Act themselves have been challenged in the writ

petition and as such this court is not even called upon to decide the vires of the said amendments and they are to be taken as good law.

28. But so far as the order of the Officer-on-Special Duty being No. 1238 dated May 27, 1986 being Annexure "B" to the petition, is concerned,

it should not be lost sight of that the said order states inter alia, that in preparing the separate list of holidays, national holidays ""must"" be included in

the list but it is alleged in the petition that national holidays like 15th August, 2nd October, Guru Nanak Birthday and Christmas etc. have not been

declared as holidays in the separate list of holidays whereas Chhat Puja has been declared as a holiday. There is no effective reply by the

respondent on this aspect of the matter and the respondents are directed to prepare their separate list of holidays strictly in conformity with the said

order dated May 27, 1986, specially paragraph 3 thereof, so far as the national holidays are concerned. Although it had been contended by the

respondents that it does not lie in the mouth of the petitioners to claim any extra holidays for the year in question as the petitioners have already

enjoyed the 19 holidays including Chhat Puja, themselves, it is necessary for future when the separate list of holidays would be prepared for the

ensuing years.

29. Regarding the justification of the separate list of holidays it has been stated by the respondents and justifiably so that the employees concerned

have to cater to the needs of about 10 lakhs of people regarding the supply of water and the number of holidays to be enjoyed by such employees

has necessarily to be restricted in the larger interest of the community in general So far as the contention regarding the payment of overtime at

double the rate of wages is concerned, it has been specifically stated at page 33 of the petition in category B, that for extra hours of duty on

working days extra remuneration is to be paid as per Factories Act and for duties on the 19 prescribed holidays conveyance charge of Rs. 2/- and

food allowance of Rs. 12/- only for full time deployment on such holidays are to be paid provided the incumbent concerned does not dray any

other extra concession namely the overtime allowance under the Factories Act or the compensatory casual leave for performing the duties for the

same period. From this it appears that it is an option given to an employee to claim either this conveyance allowance of Rs. 2/- and food allowance

of Rs. 12/- "or" to claim benefits of overtime allowance or the compensatory casual leave as stated above subject to the provisions of the

Factories Act. In my opinion the terms are not onerous at all as the employee can choose either of the benefits but not both by seeking the best of

both the world.

30. For reasons stated above this application fails and is rejected subject to the observation made hereinbefore regarding the national holidays.

There will however, be no order as to costs.