

(1979) 01 CAL CK 0016

Calcutta High Court

Case No: None

Sureswar Dutta and
Another

APPELLANT

Vs

The State of West
Bengal and Others

RESPONDENT

Date of Decision: Jan. 30, 1979

Acts Referred:

- Bengal Municipal Act, 1932 - Section 56(5), 56A

Hon'ble Judges: Sabyasachi Mukharji, J

Bench: Single Bench

Advocate: A. Roy Mukharjee and J. Ghose, for the Appellant; N.N. Gooptu, Indrajit Sen for Howrah Municipality, Mr. A.P. Chatterjee and Samar Dutta for Respondents Nos. 3 to 32, for the Respondent

Judgement

Mr. Justice Sabyasachi Mukharji

1. In this case the petitioner No. 1 is a resident of Howrah Municipality and is a tax payer of the said Municipality and the petitioner No. 2 is a lawyer paying professional licence fee to the Municipality of Howrah. The petitioners challenge a notification dated the 28th February, 1978. The said notification states, inter-alia, as follows:

Whereas the terms of office of the Commissioners of the Howrah Municipality under sub section (5) of section 56 of the Bengal Municipal Act, 1932 (Ben. Act XIV of 1932), has expired;

And where as the State Government is of opinion that there is no likelihood of a new body of Commissioners being formed within a reasonable time to take over municipal administration;

And whereas the Governor thinks it fit so to do in public interest;

Now, therefore, in exercise of the power conferred by section 56A of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), the Governor is pleased hereby to appoint to Committee consisting of the following members, being persons not subject to any of the disqualifications mentioned in section 22 the said Committee shall for all purpose be deemed to be the Commissioner of the said Howrah Municipality and they shall take charge of the administration of the said Howrah Municipality and act in accordance with the provisions of the said Act and the Rules and the By-laws made thereunder:-

2. Thereafter the notification gives the names of the members of the committee. It is not necessary for me to set out the said names. The said members have been made respondents to this Rule Nisi. It appears that the last general election of the Councilors of the Howrah Municipality was held on the 21st May, 1967 under the provisions of the Howrah Municipality Act, 1965. The petitioner No. 1 claims that he was elected as one of the Councilors of the Municipality. But the said Municipality could not be constituted in view of an interim order passed by this Hon"ble Court in Writ Petition No. CR 548(W)/558(W) of 1967. However, the said Act was ultimately repealed and the election of the Councilors became automatically infructuous. Thereafter, the State Government on the 12th July, 1967 published a notification u/s 67A of the Bengal Municipal Act, 1932 appointing an Executive Officer for running the administration of the Municipality. The said Executive Officer is still continuing. After repeal of the Act of 1965 as mentioned hereinbefore and the disposal of the Writ application, according to the petitioners, the Respondent authorities did not take any steps either for any election or for constitution of the body of the Commissioners as provided under the Act. On the other hand, by notifications from time to time issued the State Government has extended the life of the body of the Commissioners who were elected as early as in 1961 under the previous Act. It is the case of the petitioners that after the change of the government in the State of West Bengal, the left front government in exercise of its powers u/s 56A of the Act by a notification appointed an Advisory Committee consisting of 16 members. The said notification however, was later on withdrawn. In the mean time there was a Writ Petition filed in this Court challenging the said appointment. Thereafter on the 28th February, 1978 the impugned notification was issued by the Secretary to the Government of West Bengal appointing a Committee of the Municipality of Howrah consisting of 30 members in exercise of the powers u/s 56A of the Bengal Municipal Act, 1932. The said appointment was made, according to the notification, in public interest as there was no likelihood of a new body of commissioners being formed within a reasonable time to take over the municipal administration. I have set out the notification before. The petitioners state that all the 16 members of the Advisory Committee who were earlier appointed by the notification dated the 30th August, 1977 which was later on revoked, have been included in the new committee. It is further the allegation of the petitioners that the new committee had been appointed mainly from the members or supporters of the constituents of the ruling left front except one person. The petitioners allege that the said committee consists of 16 members belonging to CPM, 6 from the Forward Block, 4 from the RCPI, 2 from the RSP and one from the Forward Block (Marxist) and one

independent member. The petitioner's allegation is that the said notification has been issued in excess of the powers u/s 56A of the Bengal Municipal Act, 1932 and further, the composition of the said notification indicates that the said notification was a mala fide exercise of powers. In order to appreciate these two contentions it would be relevant to refer to the provisions of section 56A of the Act, which is as follows:-

56A. Appointment of Committee in case of delay in forming new body of Commissioners by reason of order of Court or for other reason. (1) Where after the expiry of the term of office of the Commissioners of a municipality under sub-section (1) or sub-section (5) of section 56, the State Government is of opinion that by reason of the order of a Court or for any other reason, there is no likelihood of a new body of Commissioners being formed within a reasonable time to take over municipal administration, the State Government may, if it thinks fit so to do in the public interest, by order, appoint a Committee consisting of the same number of members as the Commissioners of the municipality to take charge of the administration of the affairs of the municipality in accordance with the provisions of this Act and the rules and the by-laws made thereunder.

3. On behalf of the petitioners learned Advocate contended that "any other reason" mentioned in the said section must be reasons analogous to or akin to the reason in the nature of the "order of a Court" and there being no such reason, the appointment of the said Advisory Committee was illegal and bad. It is further the case of the petitioners that in view of one of the reasons which authorizes the State Government to appoint an Advisory Committee being the order of a Court, the other reasons must be of the same nature, that is to say, reasons emanating from sources outside the government. The reason why this contention was urged is that in opposition to this Rule Nisi on behalf of the State Government one Sri Pranab Kumar Das Gupta in his affidavit affirmed on the 4th August, 1978, has stated, inter alia, as follows:-

As a matter of policy, the State Government decided to restore the Municipal Commissioners of Howrah along with the Municipal Commissioners of other municipalities which were under supersession or in respect of which an Executive Officer u/s 67A was appointed, to their position. The Chairman of the Howrah Municipality was requested to take over charge of the municipal administration of Howrah, but he did not take over charge from the Executive Officer. The term of office of the Commissioners of the Howrah Municipality expired long ago and there was no likelihood of a new body of Commissioners being formed within a reasonable time because of certain reasons. The State Government have been thinking of lowering the age of voters from 21 to 18 and by recent Ordinance has done it. Secondly, Government has been thinking of extensively amending the B.M. Act, 1932 and an amending Bill is likely to be introduced in the coming session of the Legislature. Thirdly, a proposal has come to Government for constituting a municipal Corporation for Howrah. The Government is actively considering this question. The State Government is also seriously considering making alterations of the area of operation of the municipality due to increase in population in surrounding areas and also due to exclusion of areas within Bally Municipality from the area of operation of Howrah

Municipality.

4. Learned Advocate for the petitioners, however, contended that the reasons given by the State Government were reasons created by the State Government itself and the same could not come within the expression of "any other reason" mentioned in section 56A of the Act. He contended that even in case of a singular factor the rule of ejusdem generis would be applicable and he drew my attention to the observation of Maxwell on the Interpretation of the Statutes, Twelfth Edition, page 229 in aid of the proposition that even though normally unless there was a genus or class or category, there was no room for any application of the ejusdem generis doctrine but even in case of one category the doctrine was not wholly inapplicable if warranted by the purpose and the context of the Act. The principle upon which the rule of ejusdem generis or in other words the rule that when particular words forming part of the same class or same category are followed by a general word then the general word must be construed in the context of the particular words used, must, in my opinion, be applied having regard to the entire purpose of the section and reading the entire section as a whole. It appears to me that in the instant case section 56A enjoins the State Government to act or form its opinion u/s 56A if only there is reason. One of such reason is "order of a court". Normally one indication of one category of reason or class would not be forming part of a class or a genus, but I would not like to express any opinion that in a particular case even one category or one factor may not give an indication of a genus or a class. But the whole purpose of all rules of interpretation is to find out the true intent of the legislature in using the expression or expressions. In this case the quality of the reason has been indicated, that is to say, the reason must have some objective nexus with no likelihood of a new body of Commissioners being formed within a reasonable time to take over municipal administration." So, the reasons must be relevant and have nexus with that object in view. If that is the position, then in my opinion, even if one kind of reason has been indicated, that is to say, the reason of the order of a court, it cannot be said that the expression "any other reason" must be always be reasons external to the government source. Learned Advocate for the petitioners, however, tried to contend that "any other reason" must only be confined to external reasons. That according to him would be a double check on the arbitrary use of the power by the government. According to him the government could not create its own reasons and then purport to exercise power u/s 56A of the Act.

5. Learned Advocate for the petitioners submitted that the reasons indicated in the affidavit on behalf of the Government were all reasons which were created by the Govt. Such reasons, according to learned Advocate for the petitioners, could not come within the purview of the expression "any other reason" u/s 65A, as aforesaid. I am, however, unable to accept this contention. As I have mentioned before that the principle that where a particular expression is followed by a general expression, the general expression should be construed as covering only cases which are analogous or akin to that particular reason must always be applied with caution and having regard to the purpose of the Act and the language used in the relevant section. This is more so when the particular

expression is only an expression of a single category or a single class. In my opinion, u/s 56A, for the Government to act there must be the reason. That is the first condition. The reasons may be either the order of the Court or "any other reason" which make it unlikely for new body of Commissioners to be formed within a reasonable time. If there are objective factors which make the holding of the election unlikely within a reasonable time, in my opinion, that would come within the purview of Section 56A of the Act. See in this connection the discussions in Maxwell on Interpretation of Statute. 12th Edition, page 299 onwards also Craie on Statute Law, 6th Edition page 76 onwards. In this case I have set out the reasons indicated by the Government I cannot say that the said reasons were extraneous to the purpose of this Act or do not have any rational nexus to the question whether there was likelihood of a new body of Commissioner being formed within a reasonable time. If that is the position, then, in my opinion, the challenge to the impugned notification on this ground that the Respondent Government exceeded its jurisdiction in exercise of its power for the reasons indicated u/s 56A of the Act cannot be accepted.

6. It was, further, contended that the new body which has been formed consisted mainly of the members or supporters of the ruling left front Government which now controls the West Bengal Government. It was, therefore, urged that the exercise of the power, even if there was power was mala fide. Whether the municipal affairs or local village self-government affairs should be conducted in non-partisan spirit or on the basis of party less democracy or not is another question. But the reality of the situation today in India is that these bodies and these affairs are, in fact, conducted on party lines. It is also a fact that the left front Government which was returned to power had enjoyed, during the last general election, the confidence of the majority of the electorate as evidenced by the result of the election. In our country, there is no system of proportional representation. Therefore the majority election result must be accepted as reflecting the majority opinion. Even on behalf of the petitioners it is not disputed that in the Howrah Municipal area the left front parties obtained nearly about 45 per cent support. According to the respondents, however, they obtained higher percentage of votes. Be that as it may, it appears that the Respondent nos. 3, 4, 6, 7, 8, 14, 19, 24, 25 & 31 had been elected in the last 1967 election. The Respondent No. 9 is himself a member of the present West Bengal Legislative Assembly from Howrah. It is stated that others are prominent social workers of the locality. There is, however, no material before me to dispute or seriously doubt that it is not so. In that view of the matter, it cannot in my opinion, be said that in nominating the Respondent nos.3 to 32 the State Government had acted mala fide or in an arbitrary manner.

7. On behalf of the Respondent nos. 3 to 32 a plea was taken that the petition was not verified by both the petitioners. If I was in favour of the contentions urged in support of this application on behalf of the petitioners I would not have rejected the petition on this ground but would have given the petitioners leave to re-verify the petition by both of them. But in the view I have taken, I am unable to accept the contentions urged on behalf of the petitioners but even then, in my opinion, it would not be appropriate to permit the

Respondent Government to set up an Advisory Committee for an indefinite period. The reasons that the Respondent Government has indicated, suggest that certain measures are contemplated to be taken soon. Therefore, I direct that the new Committee should function upto 30th September, 1979. With these observations, the Rule Nisi is discharged. Interim order, if any, is vacated. There will, however, be no order as to costs.