

CASE NO.:
Appeal (civil) 6707 of 1999

PETITIONER:
Tarak Singh & Anr.

RESPONDENT:
Jyoti Basu & Ors.

DATE OF JUDGMENT: 19/11/2004

BENCH:
S.N. VARIAVA & H.K. SEMA

JUDGMENT:
J U D G M E N T

WITH

WRIT PETITION (C) NO. 216 OF 1999

Dipak K. Ghosh

Versus

State of West Bengal & Ors.

SEMA, J.

PREFACE

1. "My son, do not forget my law, but let your heart keep my commands. Let not justice and truth forsake you, bind them around your neck, write them on the tablet of your heart."

2. Writ Petition No. 216/1999 has been filed by a public spirited person in the form of Public Interest Litigation (PIL) inter-alia challenging the allotment of Government land in Salt Lake City, Calcutta from the discretionary quota of the Chief Minister. A writ in the nature of mandamus was specifically prayed for quashing of the allotments of Government Land, stated to be made unconstitutionally, illegally, arbitrarily, whimsically, capriciously with malafide motive and in clandestine manner and/or in colourable and arrogant exercise of power, being violative of Article 14 of the Constitution.

3. In the original petition, the allottees of the land were not arrayed as party respondents. I.A. No. 2 was filed for impleadment of respondent Nos. 8 to 38. However, by our order dated 13.11.2003, we allowed only the impleadment of respondent No. 24 \026 Justice B.P. Banerjee as party respondent. The order reads: "Mr. A.K. Ganguli, learned senior counsel started his arguments at 10.35 A.M. and concluded at 11.15 A.M.

Application to join Justice B.P. Banerjee (retired) as a party respondent to the Writ Petition is allowed. Reply, if any, be filed within six weeks from the date of service. I.A. No. 2 stands disposed of with no further or other order.

The High Court of Calcutta to forward to this Court papers and proceedings in CO No.

7553(W) of 1986 titled Bidhannagar (Salt Lake) Welfare Association and Ors. Vs. State of West Bengal and Others including all order sheets. The High Court to also inform this Court whether CO No. 15381 of 1984 has been disposed of and if not at what stage it is. The Government to produce all relevant files pertaining to the allotment of a plot to Justice B.P. Banerjee (retired) and to state on affidavit whether there is any policy decision regarding allotment of plots to Judges, if so, to produce that policy decision.

List these matters after eight weeks"

4. Pursuant to the aforesaid order, respondent No. 24 filed two counter affidavits \026 first affidavit on 16th January, 2004 and supplementary affidavit on 16th April, 2004, which we shall be dealing with at an appropriate time.

5. The documents produced and the order passed thereunder would clearly establish an unholy nexus between duty and interest.

6. C.O. No. 7553(W) of 1986 titled Bidhannagar (Salt Lake) Welfare Association & Ors. Vs. State of West Bengal and Ors. was listed before Justice B.P. Banerjee on 20.6.1986, when he passed the following order:

"Let the affidavit in opposition be filed within two weeks from date; reply thereto, if any one week thereafter. Let this matter come up for hearing four weeks hence. Until for the orders there will be an order to the extent that if any allotment is made on the basis of the deviation made from the Master Plan the same shall abide by the result of the application."

7. On the same day, i.e. on 20.6.1986, Justice Banerjee made an application before the Chief Minister for allotment of a plot of land in Salt Lake City. It is not clear whether the application was made before he took cognizance of the matter or after. If made before he should have recused himself from the case. If he dealt with the matter first he should not have made the application. But, instead, the learned Judge kept the matter with him, pursued it and passed subsequent orders till the allotment order was made in his favour from the discretionary quota of the Chief Minister and even thereafter.

On 8.6.1987 following order was passed:

"Let the main matters appear in the list as for orders on Thursday next at 3 p.m. In the meantime there will be an interim order as follows:

No further allotment of any land in the Salt Lake City Area will be made without the leave of this Court.

Petitioners are directed to serve a copy of the writ appeal along with the copy of the above application and a plain copy of this order upon the Learned Advocate General forthwith.

Let a plain copy of this order, duly counter signed by an Officer of this Court be given to the Learned Advocate for the parties."

On 11.6.1987 following order was passed:

"Let the main writ application come up for hearing on June 17, 1987 at 2 p.m. In the

meantime the interim order passed on June 8, 1987 is varied to the extent that the said order will not prevent the Chief Minister to make allotment of plot in Salt Lake City Area from its own Quota according to his own discretion.

Let the plain copy of this order duly countersigned by an Officer of this Court be given to the Learned Advocates for the parties appearing."

On 17.6. 1987 following order was passed.
"Let the application for taking additional ground and acceptance of additional evidence filed in Court today be kept in record. Let the affidavit in opposition, if any, to the said application affirmed by Sudhir Chandra De on June 16, 1987, if any, be filed within three weeks from date, reply if any, one week thereafter and let the application come up for hearing on July 16, 1987 at 2 p.m."
(emphasis supplied)

8. No hearing had taken place on 16.7.1987 as ordered. No order was also passed in the order sheet, on the other hand Justice B.P. Banerjee again wrote a letter to the Chief Minister. The letter dated 16th July, 1987 is reproduced in extenso:-

"Hon'ble Mr. Justice
Bhagabati Prasad Banerjee

Dated the 16th July, 1987

To
Shri Jyoti Basu
Hon'ble Chief Minister
Of the State of West Bengal
Writers' Building,
Calcutta

Dear Sir,

This is to inform you that I have no landed property in the State of West Bengal or elsewhere and I am in dirth of accommodation. I have not applied for allotment of any land as yet. I shall be happy if you kindly allot me a suitable plot of land measuring about 4 to 5 cottahs in Salt Lake City from the reserved quota under your disposal.

Thanking you,

Yours faithfully,
Sd/-

Bhagabati Prasad Mukherjee

C.C.
Mr. Naranaryan Gupta
Bar-at-Law
Advocate General
State of West Bengal"

9. It will be noticed that the deponent has not referred to his application dated 16th July, 1987 addressed to the Chief Minister in

his first counter affidavit. He has sought to explain this in his supplementary affidavit that his omission to mention about his application of 16.7.86 (it is dated 16.7.87) in his earlier affidavits is bonafide as he did not have a copy of the application in his file. Such a defence from a person, no other than the Judge of the High Court, is unacceptable. Learned Judge would remember the petition filed by him on 20.6.86 but not 16th July, 1987. Be that as it may, the letter dated 16th July, 1987, which is available on record sent by the Government in file No. SL(AL)/SP-1049/87, is admitted. This letter has great significance. It was followed by an order of allotment passed by the Chief Minister on 24.7.1987, in favour of Justice B.P. Banerjee.

10. Pursuant to our order dated 13.11.2003 and subsequent orders, the High Court has furnished the necessary informations, including the Cause Lists pertaining to CO No. 7553(W) of 1986. It is revealed from the Cause Lists and the record, submitted by the High Court, that the case was listed before Justice B.P. Banerjee after 16.7.1987 on 20.7.1987, 22.7.1987, 23.7.1987, 24.7.1987, 27.7.1987, 28.7.1987, 29.7.1987, 30.7.1987, 11.8.1987, 21.8.1987, 24.8.1987, 25.8.1987, 26.8.1987 and 27.8.1987. The High Court further clarified that on all these dates the matter was listed before Court No. 9, which was presided over by Justice B.P. Banerjee and it was kept as part-heard. The High Court record also disclosed that the matter was kept part-heard throughout till the Judge retired in 1998.

11. Curiously enough, on 24.7.1987, the Chief Minister passed an order allotting a plot of land in favour of Justice B.P. Banerjee from his discretionary quota in Salt Lake City, in which the name of Justice Banerjee appeared at Sl. No. 1, and on the same day also the matter was listed before Justice Banerjee. Formal allotment of plot of land bearing No. FD-429 measuring 4 Cottahs in Salt Lake City, Calcutta was made on 16.10.1987 and till his retirement in 1998, the matter was kept by Justice B.P. Banerjee.

12. The facts, as recited aforesaid, speak for themselves. The facts speak volumes that the learned Judge has misused his judicial function as liveries to obtain personal interest is clearly discernable.

13. We will now proceed to deal with the counter filed by respondent no. 24 \026 Justice Banerjee. As already noticed, respondent no. 24 filed two counter affidavits \026 first affidavit on 16th January, 2004 and supplementary affidavit on 16th April, 2004. The defence of respondent No. 24 is detailed in paragraph 9 of the counter affidavit filed on 16.1.2004. To appreciate the controversy in proper perspective, paragraph 9 of the counter affidavit is quoted in extenso:

"It is submitted that there was no nexus between the orders dated 8.6.87 and 11.6.87 and the allotment made in favour of this deponent on 14.10.87. It was merely an accident or a mere coincidence that the allotment was made by the Government after the order dated 11.6.1987. This deponent had been making his representations much earlier, one year earlier to the Central Government through the Ministry of Law requested the Chief Minister to take necessary steps to solve the residential problem of this deponent. This deponent was not aware that my allotment of plot was made first after the order dated 11.6.87 and as alleged by the applicant. It is reported that a large number of allotments were made at about the same time. There had been allotments of hundreds of plots under the discretionary quota for special allotment of plot both prior to 11.6.87 and subsequent thereto. However, for the reasons best known to the petitioner, the Writ petitioner

has challenged only the allotments made after 11.6.87 leaving aside hundreds of allotments made under the same quota and in the same fashion prior to 11.6.87. The State Government had already given out that Judges of the High Court were recognized class of persons who were allotted plots of the Salt Lake involving the discretionary quota from 1981. This deponent accepted the allotment as other High Court and Supreme Court Judges had already been allotted plots on similar reasons all of them had applied for and accepted allotments of plots in their favour. All the Judges have constructed their houses like this deponent and are living there."

14. The fallacy of the defence is that there was no nexus between the order dated 8.6.1987, 11.6.1987 and the allotment made in favour of respondent No. 24 on 14.10.1987 (actually it is 16.10.1987). It can never be and could not be termed as coincidence. The matter was pending before the learned Judge upto 27.7.1987, as disclosed from the Cause Lists sent by the High Court. As noticed above, he has not mentioned his letter dated 16.7.1987, addressed to the Chief Minister. The Chief Minister passed an order on 24.7.1987 allotting a plot in favour of Justice B.P. Banerjee, on which date also the matter was pending before him. He has not explained this. The matter was listed before him on 16.7.1987 but no order was passed on this date, instead he had written a letter to the Chief Minister for allotment of plot of land and the order was passed by the Chief Minister in his favour on 24.7.1987. Therefore, by no stretch of imagination it can be termed as coincidence. There is undoubtedly an unholy nexus in between the passing of the judicial order and granting order of allotment.

15. In the supplementary affidavit filed on 16.4.2004, respondent No. 24 has stated that writ petition being CO No. 7553(W) of 1986 was never kept by him as part-heard. Paragraphs 9.1 and 9.2 of the counter affidavit are reproduced:

"9.1 The deponent never kept the Writ Petition being C.O. No. 7553(W) of 1986 as part heard, so that the matter could not be taken up by any other Court. The Ld. Single Judge in the case of Tarak Singh V/s. Jyoti Basu has erroneously recorded the submission of the counsel for Mr. Tarak Singh, that the deponent had kept the matter part heard. The said submission is contrary to the facts as also the records of the case.

9.2 It is submitted that when C.O. No. 7553(W) of 1986 came up for hearing on 17.6.1987, the matter was adjourned since Misc. Applications were moved for taking additional Grounds and additional evidences. The deponent issued directions for filing affidavits as usual and listed the said applications for hearing on 16.7.1987. However, the said matter did not come up for hearing on the same date or thereafter." (Emphasis supplied)

16. Undoubtedly, the averments in the aforesaid two paragraphs are contrary to the Report sent by the High Court, as referred above. The deponent admitted that the matter was listed for hearing on 16.7.1987. His averments, that the matter did not come up for

hearing on the same date or thereafter, are false to the knowledge of the deponent. Learned counsel for the petitioner, therefore, urged that the false affidavit, filed by respondent No. 24, clearly amounts to criminal contempt. We may not pursue this contention of the learned counsel for the petitioner further, in view of the order that we propose to pass. We, however, agree with the learned counsel for the petitioner that the averments made in paragraphs 9.1 and 9.2 are contrary to the record produced by the High Court.

17. In the aforesaid circumstances, Mr. A.K. Ganguli, learned Senior counsel appearing for respondent No. 24, submitted that CO No. 7553(W) of 1986 which was listed for hearing before respondent No. 24 on 20.6.1986 was not concerned with the allotment of land under the discretionary quota of the Govt./ Chief Minister. It was in regard to violation of the Master Plan and therefore, there was no nexus between the order passed by the learned Judge and the allotment made in his favour.

18. We are unable to countenance with the submission of Mr. Ganguli. In the first place, the application for injunction arising out of CO No. 7553(W) of 1986 was in respect of illegal, clandestine purported allotment of plots in Salt Lake. All the more reasons, the conduct of the learned Judge becomes more murkier when on the same date he applied for a plot of land in the Salt Lake City and injuncted further allotment of any land in the Salt Lake City by an order dated 8.6.1987 but by subsequent order dated 11.6.1987 allowed the Chief Minister to make allotment of plot in Salt Lake City Area from its own Quota according to his own discretion.

19. Mr. Ganguli further argued that no order/ proceeding, sent by the High Court, would indicate that the matter was taken up for hearing on 17.6.1987 and the order sheet dated 17.6.1987 does not show any direction to keep the matter as part-heard. This submission is also contrary to the records, namely, the Cause Lists sent by the High Court. The matter was ordered to be listed for hearing on 16.7.1987 was admitted by him. However, no order was passed on that day for the reasons best known to the learned Judge. The Cause Lists, submitted by the High Court, would show that from 20.7.1987 till 27.8.1987, it was kept part-heard and the file of the case was kept with respondent No. 24, till he retired in 1998.

20. It is also contended by Mr. Ganguli that a large number of Judges of High Court and Supreme Court have also been allotted plots in Salt Lake City under the discretionary quota of the Chief Minister and it will be unfair to single out respondent No. 24 for meting out a different treatment. At the time of hearing of this writ petition, we requested the learned Senior counsel to inform us whether any other Judge or Judges obtained the allotment order from the discretionary quota of the Chief Minister by compromising his judicial duties, we would also proceed against such allottee. He, however, was unable to receive any instructions in this behalf. It is trite, unequals cannot be treated equally.

21. It must be grasped that judicial discipline \026 is self discipline. The responsibility is self responsibility. Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that we occupied and the enormous power we wield, no other authority can impose a discipline on us. All the more reasons Judges exercise self discipline of high standards. The character of a Judge is being tested by the power he wields. Abraham Lincoln once said, "Nearly all men can stand adversity, but if you want to test a man's character give him power". Justice delivery system like any other system in every walk of life will fail and crumble down, in the absence of integrity.

22. Again, like any other organ of the State, judiciary is also manned by human beings \026 but the function of judiciary is distinctly different from other organs of the State \026 in the sense its function is divine. Today, judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors failed people approach the judiciary as the last

resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a Judge is being judged with more stricter than others. Integrity is the hall-mark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that temple of justice do not crack from inside, which will lead to catastrophe in the justice delivery system resulting in the failure of Public Confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside.

23. Since the issue involved in the present controversy will have far reaching impact on the quality of judiciary, we are tempted to put it on record which we thought it to be a good guidance to achieve the purity of Administration of Justice. Every human being has his own ambition in life. To have an ambition is virtue. Generally speaking, it is a cherished desire to achieve something in life. There is nothing wrong in a Judge to have ambition to achieve something, but if the ambition to achieve is likely to cause compromise with his divine judicial duty, better not to pursue it. Because if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be tendency to compromise between his divine duty and his personal interest. There will be conflict in between interest and duty. This is what exactly has happened in this case. With due respect to the learned Judge, Justice B.P. Banerjee, he has mis-used his divine judicial duty as liveries to accomplish his personal ends. He has betrayed the trust reposed in him by the people. To say the least, this is bad. The matter could have been different if the learned Judge got allotment from the Chief Minister's quota simpliciter like any other citizen.

24. In the back-drop of the facts and circumstances, as recited above, we are of the view that the conduct of the learned Judge is beyond condonable limits. We are aware that the order, we propose to pass, no doubt is painful, but we have to perform a painful duty to instill public confidence in the Judiciary. It is a case where a private interest is pitted against a public interest. It is now well-settled principle of law that in such cases the latter must prevail over the former. Consequently, the order dated 24.7.1987 passed by the Chief Minister and the formal allotment order dated 16.10.1987 allotting plot No. FD 429 measuring 4 Cottahs in Salt Lake City in favour of respondent No. 24 \026 Justice B.P. Banerjee are hereby quashed and cancelled. The plot shall stand vested with the Government.

25. In the course of hearing of this petition we had requested the learned Senior counsel, appearing for respondent No. 24, to let us know the expenditure incurred by respondent No. 24 in constructing the house over the said plot of land. Mr. Ganguli has filed the expenditure statement. The details of the expenditure submitted are as follows:

"Cost of the land paid on 16.11.1987	Rs.	41,006.10
Cost of Construction upto 1994	Rs.	7,65,228.61
Total	Rs.	8,06,234.71
Annual value of the Building Qtr.3/92	Rs.	8,097.00
Onwards (determined by Bidhannagar Municipality formerly Bidhannagar Notified Area Authority)		
Municipal Tax (quarterly)	Rs.	432.00"

26. The question now to be considered is with regard to the price of the house on the plot of land. We give the following directions:

(i.) The Government may appoint a Govt. Valuer and after assessing the cost of construction, at the prevailing rate at the time of construction, (cost of land will not be included), offer the said price to respondent No. 24 and the Govt. may take over the building. In this event the Government should give to respondent No. 24 one year's time to vacate, provided respondent No. 24 and

all family members and persons residing in the bungalow file an undertaking in this Court within 8 weeks from today, that they will hand over to the Government vacant and peaceful possession at the end of one year.

(ii.) Alternatively, if respondent No. 24 feels that he should receive the prevalent market value for the bungalow, he may so intimate the Government. The Government may then put the house along with the land for public auction by advertising the same in two national dailies and one local daily, if any, widely circulated in the area and offer to sell the house to the highest bidder.

(iii.) In the case, as in clause (ii.), there would be two separate bids \026 one for the house and the other for the land. In respect of the house the reserve price should be fixed which shall not be less than the market value of a bungalow of this type at present rates. Such valuation to be fixed by the Government Valuer. The value to be based on vacant possession being delivered to the purchaser.

(iv.) The price of the house fetched in the auction sale be paid to Justice B.P. Banerjee and he must within a week of receipt of the price hand over vacant and peaceful possession to the purchaser. If not delivered, the Government to ensure eviction and delivery of possession to the purchaser.

(v.) The process of the aforesaid directions shall be completed within six months from the date of receipt of this order.

(vi.) The Chief Secretary of the Government of West Bengal shall send the compliance report within the period stipulated.

(vii.) We clarify that respondent No. 24 or his relations shall not be allowed to bid in the auction sale.

27. The net result is that the Writ Petition No. 216/1999 against respondent No. 24 is allowed and is dismissed qua other respondents. C.A. No. 6707/1999 is dismissed. Rule is discharged.

28. We clarify that dismissal of the Writ Petition against other respondents should not be misunderstood as approval of the policy decision of the Government with regard to the allotment of land by the Chief Minister from his discretionary quota.

Parties are asked to bear their own costs.