BEJOY LAKSHMI COTTON MILLS LTD.

v.

STATE OF WEST BENGAL AND ORS.

January 18, 1967

[K. SUBBA RAO, C.J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI AND C. A. VAIDIALINGAM, JJ.]

Constitution of India, Art. 166(2) *and* (3)—*Authentication according to Rules made by Governor—Whether conclusive of the Governor having acted in accordance with law.*

West Bengal Land Development and Planning Act, 1948—*Notification under s.* 4 *and declaration under s.* 6—*Whether required to be made on Governor's personal satisfaction—Minister making Standing Order under the Rules of Business made by Governor under Art.* 166(3)—*Whether proceeding under the Act covered by the Standing Order—Therefore whether required to be dealt with by Minister.*

The State Government issued a notification in February 1955 under s. 4 of the West Bengal Land Development and Planning Act, 1948, to the effect that certain lands, a major portion of which belonged to the appellant, were likely to be needed for a public purpose. This notification was signed by the Assistant Secretary in the Land and Revenue Department of the State Government. A development scheme was then prepared and after objections to it had been invited and disposed of, the Land Planning Committee which is the prescribed authority under the Act, recommended acceptance of the scheme and the issue of a declaration under s. 6 of the Act. This declaration was issued by the Government in July 1956 and was signed by the Deputy Secretary in the same Department.

The appellant filed a writ petition under Art. 226 of the Constitution praying that the notification under s. 4 and the declaration under s. 6 be quashed. It was contended by him that the entire proceedings were void for the reasons, *inter alia,* (i) that the notification, the declaration, and the sanctioning of the scheme for the notified area were all done by the Assistant or Deputy Secretary and the State Government could not be said to have applied its mind in the proceedings; inasmuch as the executive power of the State is vested in the Governor under Art. 154(1) of the Constitution, it is satisfaction of the Governor that is contemplated under ss. 4 and 6 of the Act; (ii) that under the Rules of Business made by the Governor under Art. 166(3), the Minister-in-charge had issued a Standing Order on November 29, 1959 specifying matters which were required to be referred to him; as the proceedings taken under the Article fell within certain items of that Standing Order, they could only be dealt with by the Minister himself and were in fact not so dealt with.

On the other hand, it was contended on behalf of the State (i) that as the notification and the declaration were authenticated according to the Rules made by the Governor under Art. 166(2) and as they also contained a recital that the Governor was of the opinion the lands were needed for a public purpose, thus showing that the Governor's satisfaction was made out, it was not open to the appellant to go behind and question their validity; and (ii) that the proceedings taken in the case did not fall under any of the items in the Standing Order and did not therefore require to be brought to the notice of the Minister before issue of orders.

A The Single Bench that heard the petition, while rejecting the other contentions of the appellant, held that the proceedings taken under the Act fell within item 18 of the Standing Order which covered all cases proposed to be taken up by the Land Planning Committee and Item 29 relating to cases under the Land Acquisition Act; they should therefore have been referred to the Minister; as this had admittedly not been done, the entire proceedings were illegal and void. However, a Division Bench, B in appeal, took the view that while item 29 of the Standing Order did not apply at all, under item 18 it was only necessary that the proceedings after the issue of the notification under s. 4 should be dealt with by the Minister. It therefore upheld that notification but set aside all the subsequent proceedings.

In appeal before this Court the only question for consideration was whether the notification under s. 4 was validly issued.

C HELD: Dismissing the appeal,

The High Court had rightly upheld the validity of the notification under s. 4 of the Act.

When authentication is in accordance with Art. 166(2) what it makes conclusive is that the order has been made by the Governor. But the D further question as to whether, in making the order, the Governor has acted in accordance with law, remains open for adjudication. [417 B]

R. Chitralekha v. *State of Mysore*, [1964] 6 S.C.R. 268, followed.

The Governor's personal satisfaction was not necessary in the present case as this was not an item of business with respect to which the Governor is, by or under the Constitution, required to act in his discretion. [418 D-E]

E The terms of s. 4 make it clear that it is on the satisfaction of the State Government that any land is needed or is likely to be needed for a public purpose, that a notification is issued. Although in the present case the Land Planning Committee had in fact recommended the acquisition of the land and the issue of a notification under s. 4, there is no provision in the Act or the rules making it obligatory on the part of the State Government to consult the Committee at this stage. Item 18 of the Standing F Order did not therefore apply. Other items in the order were also not applicable and it was not therefore necessary for the proceedings to be referred to the Minister. [420 E; 421 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 216 and 217 of 1964.

Appeals from the judgment and order dated March 5, 1959 G of the Calcutta High Court in Appeals from Original orders Nos. 397 and 398 of 1958.

Bishan Narain and *B.P. Maheshwari*, for the appellant (in both the appeals).

B. Sen, D. N. Mukherjee and *P. K. Bose*, for the respondents H Nos. 1, 2, and 4 (in both the appeals).

S. K. Roy Choudhury, Rameshwar Nath, Mohinder Narain and *P. L. Vohra*, for respondent No. 3 (in both the appeals).

The Judgment of the Court was delivered by

Vaidialingam, J. These two appeals, on certificate, are directed against the judgment of the Calcutta High Court, in Appeals from Order, Nos. 397 and 398 of 1958, dated March 5, 1959, in so far as the High Court has held that the notification, issued by the State Government, under s. 4 of the West Bengal Land Development and Planning Act, 1948 (W. B. Act XXI of 1948) (hereinafter referred to as the Act), is valid. The appellant and respondents, in both the appeals, are the same and common questions arise for consideration in both.

The Society of Farmers and Rural Industrialists, of which the third respondent is the Secretary, requested the first respondent, the State of West Bengal, to acquire, compulsorily, certain lands for the establishment of an Agricultural Colony for creating better living conditions therein. The first respondent issued a notification, on February 4, 1955, under s. 4 of the Act, stating that an extent of about 28·59 acres of lands, more fully described therein, and situated in the villages of Ghola and Natagarh, is likely to be needed for a public purpose, *viz.*, the establishment of an agricultural colony and the creation of better living conditions. There is no controversy that a major portion of the lands, comprised in this notification, belonged to the appellant-Mills. The said notification was published in the Calcutta Gazette, on February 17, 1955. This notification was signed by the Assistant Secretary, Land and Revenue Department of the Government of West Bengal.

The first respondent then directed the Society to prepare a development scheme and submit the same to the Collector, to enable him to hear objections as per the rules framed under the Act. On or about March 21, 1955, the Society submitted a development scheme and the Collector issued notice, under r. 5 (2) of the West Bengal Land Development and Planning Rules, 1948 (hereinafter referred to as the Rules), inviting objections, within the time specified therein, to the scheme being sanctioned. The objections filed by the appellant Mills, to the sanctioning of the scheme, were overruled by the Collector. On February 10, 1956 the Land Planning Committee, which is the prescribed authority, under the Act, recommended acceptance of the scheme submitted by the Society and for issue of a declaration, by the Government, under s. 6 of the Act. On July 21, 1956, the Government issued the declaration, under s. 6 of the Act, which again, was published in the State Gazette, on August 9, 1956. This declaration was signed by the Deputy Secretary, Land and Revenue Department, Government of West Bengal. On August 28, 1956, notice of the intention to take possession of the lands was issued, under r. 8 of the Rules.

A On September 13, 1956, the appellant-Mills filed, in the Calcutta High Court, a writ petition, Civil Rule No. 2620 of 1956, under Art. 226 of the Constitution, and prayed for a writ, in the nature of *mandamus*, to be issued directing the State Government and its officers, not to give effect or take any steps, on the basis of the notice issued. It also prayed for the issue of a writ, in the B nature of *certiorari*, quashing the notification, under s. 4, and the declaration, under s. 6, issued by the State Government. Though the appellant raised several grounds of attack, as against the proceedings, leading up to the issue of the notice, under r. 8, the main point that appears to have been urged before the learned Single Judge, who heard the writ petition, was that, having due regard C to the scheme of the Act and the materials available, it cannot be said that the Government have sanctioned any scheme, nor can Government be said to have been satisfied, before issuing the declaration under s. 6 of the Act, that the notified lands were needed for a public purpose. In short, the appellant's stand appears to have been that the proceedings have been initiated by the Assistant Secretary of the Department and, orders issued D either by him or by the Deputy Secretary and hence actions taken by them, though in the name of the State Government, are not valid, inasmuch as they are not in conformity with the Act. The State Government, on the other hand, contended that there has been due compliance with the provisions of the statute and the proceedings taken by it are legal and valid, as they have been E dealt with by officers who have been authorised to act in that behalf.

Before we refer to the findings recorded by the High Court, in the writ petition, it is necessary to refer to some of the provisions of the Act and the rules framed thereunder, in order to appreciate the contentions taken by the parties and the opinion F expressed by the High Court. It is also necessary to refer to the Rules of Business, issued by the Governor of West Bengal, under Art. 166(3) of the Constitution and the Standing Orders made by the Minister-in-charge of the Department of Land and Land Revenue.

G Art. 166 of the Constitution is as follows :

"166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed H in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in

question on the ground that it is not an order or instrument made or executed by the Governor. A

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion." B

In exercise of the power conferred by Art. 166(2), the Governor of West Bengal had issued, on August 25, 1951, the following rules :

"(1) All orders or instruments made or executed by or on behalf of the Government of West Bengal shall be expressed to be made or executed by or by order of the Governor of West Bengal. C

(2) Save in cases where an officer has been specially empowered to sign an order or instrument of the Government of West Bengal, every such order or instrument shall be signed by either a Secretary, Joint Secretary, Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of West Bengal and such signature shall be deemed to be the proper authentication of such orders or instruments. D E

. . . . . ."

Under Art. 166(3), the Governor of West Bengal has framed Rules of Business, on August 25, 1951. Rules 4, 5, 19 and 20, which alone are material, are as follows :

"4. The business of the Government shall be transacted in the department specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. F

5. The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more departments to the charge of a Minister; . . . . . G

19. Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the department. Copies of such standing orders shall be sent to the Governor and the Chief Minister. H

A Provided that until such standing orders are made by a Minister, the standing orders which were made under the Rules of Business existing immediately before the commencement of these rules and which were in force in the department in charge of such Minister immediately before such commencement shall so far as may B be, be deemed to be the standing orders for that department made under this rule.

20. Each Minister shall by means of standing orders arrange with the Secretary of the department what matters or classes of matters are to be brought to his personal notice. Copies of such standing orders C shall be sent to the Governor and the Chief Minister."

The Minister-in-charge of the Department of Land and Land Revenue, with which we are concerned, in these proceedings made Standing Orders, under rr. 19 and 20 of the Rules of Business, on November 29, 1951. Standing Order No. 1 is to the D effect that all matters specified therein, are to be brought to the notice of the Minister. Standing Order No. 2 provided that, apart from the matters referred to in Standing Order No. 1, the various items mentioned therein, relating to Land and Land Revenue Department, are to be brought to the notice of the Minister, before the issue of orders. According to the appellant, the proceedings taken by the Government under the Act, are covered E by item 18, or 28 or 29 of Standing Order No. 2. Therefore, those items alone are referred to by us; and they are as follows :

"18. All cases proposed to be taken up by the Land Planning Committee set up under the Land Development and Planning Act. F

28. All schemes relating to acquisition and settlement of waste lands.

29. All cases relating to land acquisition by companies and Industrial concerns or by Government under the Land Acquisition Act before there is notification under Section 4 and agreement under Section 41." G

Standing Order No. 5 provided that the Secretary may permit the Deputy or Assistant Secretaries to dispose of or submit to the Minister for orders such cases or classes of cases as the Secretary may, by general or special order, direct, with the H approval of the Minister-in-charge. By virtue of this Standing Order, No. 5, the Secretary, Land and Land Revenue Department, had issued the following Order :

"Subject to the undermentioned provisos, cases in the different branches of the department shall be disposed of, or when so required by any rule or order shall be submitted to the Minister-in-charge, by or under the orders of the Deputy Secretary or the Assistant Secretary, as the cases may be, who is according to the office organisation for the time being in force in charge of the matters or classes of matters to which the cases respectively appertain.

Provisos

(1) If the officer dealing with the case decides that it is of such importance that it should be submitted to a higher officer in the department, it shall be so submitted.

(2) Cases from all branches involving major questions of principles or policy shall be submitted to the Minister-in-charge through Secretary."

We shall now refer to some of the material provisions in the Act. Section 2(b) defines 'development scheme' as a scheme for the development of land for any public purpose. Section 2(c) defines 'notified area' as an area declared under sub-s. (1) of s. 4 to be a notified area. Under s. 3, the State Government may appoint, in accordance with the rules, an authority, referred to as the prescribed authority, for carrying out the purposes of the Act. There is no controversy that the Land Planning Committee is the prescribed authority appointed under s. 3 of the Act. Under s. 4, the State Government can, by notification in the Gazette, declare any area specified in the notification to be a notified area 'if it is satisfied that any land in such area is needed or is likely to be needed for any public purpose.....'. Under s. 4A any person interested in any land, within a notified area can file within the time prescribed therein, objections to the acquisition of the land in which he is interested; and the Collector has to give an opportunity to the said objector of being heard; and, after hearing objections and making such further inquiry, the Collector is to submit the case to the State Government along with his report. Under s. 5, the State Government may direct the prescribed authority or authorise any company or local authority to prepare, in accordance with the rules, a development scheme in respect of any notified area. The said section also provides for such schemes being prepared and submitted to the State Government for its sanction. The Government may sanction the scheme either without any modification or subject to such modifications as it considers fit. Under s. 6, when a development scheme is sanctioned, and when the State Government is satisfied

A that any land in the notified area for which such scheme has been sanctioned, is needed for the purpose of executing such scheme, a declaration to the effect that such land is needed for a public purpose shall be made by the State Government. Section 10 provides for the Government directing the prescribed authority to execute any development scheme sanctioned by it or cause it B to be executed in accordance with the rules. Section 14 provides for the Government making rules for carrying out the purposes of the Act and, in particular, in respect of matters mentioned in sub-s. (2).

The State Government have framed rules called the West Bengal Land Development and Planning Rules, 1948, earlier C referred to. Under r. 3(1), the authority for carrying out the purposes of the Act is the Land Planning Committee appointed by the State Government. Rule 5 provides for the prescribed authority to prepare and submit a development scheme when the State Government gives such directions to that authority, and it also deals with the various other matters pertaining to the preparation D and submission of such a scheme.

The appellant's writ petition was heard, in the first instance, by a learned Single Judge of the Calcutta High Court. The appellant raised, broadly, two contentions. The first contention was that the notification, issued under s. 4 as well as the declaration, made under s. 6, of the Act, and the sanctioning of the scheme E for the notified area, were all done by the Assistant Secretary, Land and Revenue Department of the Government of West Bengal and the Government has not, in any manner, applied its mind, in these proceedings, and, therefore, the entire proceedings are void. Under this head, the appellant also pleaded that, inasmuch as the executive power of the State is vested in the Governor, F under Art. 154 (1) of the Constitution, it is the satisfaction of the Governor that is contemplated, under ss. 4 and 6 of the Act. The second contention was that, under the Rules of Business framed by the Governor, under Art. 166(3) of the Constitution, the business pertaining to the Department of Land and Land Revenue, to which these proceedings relate, is to be dealt with personally by the Minister-in-charge; and the proceedings to be taken G under the Act cannot be delegated to the departmental officers, by the concerned Minister. In this particular case, inasmuch as the proceedings have been taken, and orders issued, either by the Assistant Secretary or the Deputy Secretary, of the Department, without reference to the Minister-in-charge, the entire proceedings are illegal and void. Alternatively, it was also urged H that, even if the Minister-in-charge could delegate any of these functions to the subordinate officers, by making appropriate Standing Orders, in this case there has been no such delegation, autho-

rising the Secretary or the Assistant Secretary to deal with such matters. In this connection, the appellant has relied on items 18, 28 and 29, referred to in Standing Order No. 2, issued by the Minister-in-charge, as indicating that those matters have to be dealt with only by the Minister. A

On behalf of the State it was urged that, as the notification issued under s. 4 and the declaration made under s. 6. have been authenticated in the manner, specified by the Rules made by the Governor under Art. 166(2) of the Constitution, it was not open to the appellant to go behind and question the validity of either the notification or the declaration, which contained a recital that the Governor was of the opinion that the lands were needed for a public purpose. According to the State, this recital shows that the Governor's satisfaction is clearly made out. The respondents also pointed out that the Governor had issued the Rules of Business, under Art. 166(3) of the Constitution; and, under rr. 19 and 20, therefore, the Minister-in-charge, of the particular department, has been clothed with authority, by means of Standing Orders, to give such directions, as he thinks fit, for the disposal of the case in his department. By virtue of such authority, conferred on the Minister-in-charge of the Department of Land and Land Revenue, in this case, the Minister has made Standing Orders, on November 29, 1951. The respondents further urged that the proceedings taken in this case, by the State Government, under the Act, do not come under any of the items referred to in Standing Order No. 2, which deals with matters which are to be brought to the notice of the Minister, before issue of orders. These matters could be validly dealt with, by the Assistant Secretary of the said Department. B C D E

The learned Single Judge, after a consideration of the Rules of Business, issued by the Governor, as well as the Standing Orders, made by the Minister-in-charge and the relevant provisions of the Constitution, has held that the contention of the appellant, that it is the Governor who has to be satisfied in such matters, cannot be accepted. On the other hand, the learned Judge has held that, in respect of the matters in question, the relevant business of the Government of the State has been allocated, by the Governor, to the Minister concerned, by issuing Rules of Business. The learned Judge has also held that, under the Rules of Business, the Minister-in-charge has got authority to delegate any particular functions, to be disposed of by his subordinates. But, after a consideration of the Standing Orders, made in this case, by the Minister-in-charge, the learned Judge is of the view that the various proceedings, taken by the Government under the Act, will come under item 18 or 29 of Standing Order No. 2 and, as such, these proceedings should have been referred to the Minister-in-charge, F G H

A before the issue of orders. It was admitted, by the Advocate-General, before the learned Judge, that none of the proceedings, which are under challenge, either in the matter of sanction or satisfaction, received the attention of the Minister, but was dealt with, either by the Assistant Secretary, or the Deputy Secretary So the entire proceedings, beginning from the issue of the noti-
B fication, under s. 4, dated February 4, 1955, and ending with the issue of the notice, dated August 28, 1956, under r. 8 of the Rules, were held to be illegal and void. In consequence, the learned Judge granted the prayers, asked for by the appellant, in his writ petition.

C This order of the learned Judge was challenged, in two appeals, before a Division Bench of the Calcutta High Court, *viz.*, Appeals from Orders Nos. 397 and 398 of 1958. One appeal was filed by the State, along with respondents 2 and 4, and the other, by the Farmers Society, the 3rd respondent herein. In both the appeals there was a common attack against the order of the learned Single Judge setting aside the entire proceedings taken
D by the Government, under the Act. The Division Bench has also held that Art. 166(2) is only to the effect that, when authentication is made in the manner mentioned therein, what is made conclusive is that the order has been made by the Governor; but, whether, in making the order, the Governor has acted in accordance with the law, still remains open to adjudication. The learned
E Judges have also held that, by virtue of the power conferred under the Rules of Business issued by the Governor it is open to a Minister, by making proper Standing Orders, to delegate his functions and authorise disposal of such functions to his subordinates. The learned Judges then considered the question as to whether there has been such a delegation in the Standing Orders made on November 29, 1951, regarding the Land Revenue Department. They
F are not prepared to accept the contention of the appellant that item No. 29, of Standing Order No. 2, applies to these proceedings, necessitating their being dealt with by the Minister himself. The view of the learned Judges is that the said item will relate only to land acquisition, made under the Land Acquisition Act; and, the present proceedings being under the Act, that provi-
G sion will not apply. The learned Judges are also of the view that the proceedings connected with the issue of a notification under s. 4 of the Act, do not come under item No. 18 of Standing Order No. 2, made by the Minister. But they are of the view that the said item will apply to all proceedings taken by the Government under the Act, after the issue of the notification under s. 4, and,
H therefore, the Minister-in-charge should have dealt with the matters connected with the sanctioning of the scheme, under s. 5, and the issue of the declaration, under s. 6, But, inasmuch as the Minister has, admittedly, not dealt with those proceedings,

at that subsequent stage, the learned Judges held that all orders passed, and notifications issued, subsequent to the stage of the issue of the notification, under s. 4, will have to be set aside as void. In view of the fact that the learned Judges held that the issue of a notification, under s. 4, is not a matter which has to be dealt with by the Minister and, as the exercise of the functions in that regard have been delegated under the Standing Order, that notification was allowed to stand. In consequence, the learned Judges modified the order of the learned Single Judge, to the extent indicated above.

In these appeals, by certificate, the only question that arises for consideration is regarding the correctness of the views expressed by the learned Judges of the Division Bench of the Calcutta High Court, upholding the validity of the notification, dated February 4, 1955, issued under s. 4 of the Act.

On behalf of the appellant, Mr. Bishan Narain, learned counsel, raised substantially the same contentions that were taken in the writ petition before the High Court. According to learned counsel, the reasons given by the Division Bench, for setting aside the notifications and orders issued under ss. 5 and 6 of the Act, as well as the other subsequent proceedings, apply with equal force to the notification issued under s. 4. The learned counsel also urged that, inasmuch as the executive power of the State is vested, under Art. 154, in the Governor, the satisfaction, contemplated before issue of the notification under s. 4 of the Act, should have been arrived at by the Governor himself. Counsel also urged that, even if, under the Rules of Business, issued under Art. 166(3) of the Constitution, by the Governor, a Minister-in-charge can delegate his functions, by making suitable Standing Orders in that regard, in this case, the Standing Orders made by the Minister-in-charge, will clearly show that all the matters connected with the proceedings to be taken under the Act, have been reserved to be dealt with by the Minister himself. Therefore, according to counsel, inasmuch as, admittedly, the Minister has not dealt with any of these proceedings, even the issue of a notification under s. 4 is illegal and void. In this connection, learned counsel referred us to items 18, 28 and 29, of Standing Order No. 2, made by the Minister-in-charge, in this case. We may, at this stage, indicate that no contention was taken before us that even if authorised by the Rules of Business, a Minister-in-charge cannot legally delegate any such matters to be dealt with by his subordinates, by making appropriate Standing Orders.

The same contentions taken in the High Court, on behalf of the State, have been advanced before us, by Mr. B. Sen, learned counsel.

A We have already referred to the Rules of Business and Standing Orders. We are in entire agreement with the views expressed by both the learned Single Judge as well as the Division Bench of the Calcutta High Court regarding the scope of Art. 166(2) of the Constitution. The learned Judges are perfectly correct in their view that what the authentication makes conclusive, under B Art. 166(2), is that the order has been made by the Governor. But the further question as to whether, in making the order, the Governor has acted in accordance with law, remains open for adjudication. In this connection, we may refer to the decision of this Court in *R. Chitralekha v. State of Mysore*[1]. Subba Rao, J., (as he then was), explains the scope of Art. 166, at p. 376, C thus :

> "Under Art. 166 of the Constitution all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and that orders made in the name of the Governor shall be authenticated in such manner as may be specified in rules D to be made by the Governor and the validity of an order which is so authenticated shall not be called in question on the ground that it is not an order made by the Governor.
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> If the conditions laid down in this Article are complied with, the order cannot be called in question on E the ground that it is not an order made by the Govenor. It is contended that as the order in question was not issued in the name of the Governor the order was void and no interviews could be held pursuant to that order. The law on the subject is well-settled. In *Dattatreya Moreshwar Pangarkar* v. *The State of Bombay* (1952 F S.C.R. 612, 625) Das J., as he then was, observed :
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> 'Strict compliance with the requirements of article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of G that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself.....Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the H procedure established by law requires is that the appropriate Government must take a decision as to whether

[1] (1964) 6 S.C.R. 368.

the detention order should be confirmed or not under section 11(1).'

The same view was reiterated by this Court in *The State of Bombay* v. *Purshottam Jog Naik* (1952 S.C.R. 674), where it was pointed out that though the order in question then was defective in form it was open to the State Government to prove by other means that such an order had been validly made. This view has been reaffirmed by this Court in subsequent decisions : see *Ghaio Mall and Sons* v. *The State of Delhi* (1959 S.C.R. 1424), and it is, therefore, settled law that provisions of Art. 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor."

We are also in agreement with the views expressed by the High Court that the Governor's personal satisfaction was not necessary in this case as this is not an item of business with respect to which, the Governor is, by or under the Constitution, required to act in his discretion. Although the executive Government of a State is vested in the Governor, actually it is carried on by Ministers; and, in this particular case, under rr. 4 and 5 of the Rules of Business, referred to above, the business of Government is to be transacted in the various departments specified in the First Schedule thereof. Item 5 therein is the Department of Land and Land Revenue, and the Governor has allotted the business of that Department to a Minister. We are further in agreement with the views of the High Court that the said Minister-in-charge, has got power to make Standing Orders regarding the disposal of cases, in his Department, under the Rules of Business issued by the Governor, on August 25, 1951, under Art. 166(3) of the Constitution. In this case, there is no controversy that the Minister-in-charge, of the Department of Land and Land Revenue, has made Standing Orders on November 29, 1951, by virtue of powers given to him under rr. 19 and 20 of the Rules of Business.

According to the appellant, the entire proceedings connected with the acquisition under the Act, in this case, will come under either item 18, 28 or 29 of Standing Order No. 2 and, in consequence, they require to be dealt with by the Minister before orders are issued. Inasmuch as the validity of the notification, under s. 4, issued under the Act, alone arises for consideration, in these

A appeals, the only question is as to whether it was necessary for that matter also to be placed before the Minister-in-charge, either under item 18, 28 or 29 of Standing Order No. 2. Those items have been referred to, by us, in the earlier part of this judgment.

B We have no hesitation in rejecting the contention of the appellant that item 29 will take in proceedings connected with the issue of the notification, under s. 4. As pointed out by the learned Judges of the Division Bench of the Calcutta High Court, that item relates only to acquisition, under the Land Acquisition Act; and, inasmuch as the issue of the notification, under s. 4, in this case, is under the Act, that is not covered by the said C item. So, item 29 does not apply. Learned counsel then urged that this must be considered to be a scheme relating to acquisition and settlement of waste lands, in which case, item No. 28 will stand attracted. So far as this is concerned, the learned Single Judge, who dealt with the writ petition, has negatived the contention of the appellant. The learned Judge has found, as a fact, D that there is no evidence to show that the lands, which are the subject of the issue of notification, under s. 4, are waste lands; and, therefore, he has held that it cannot be said that the notification relates to acquisition of waste lands. The learned Judge has also stated that, even the appellant, in his writ petition, has not alleged that the land, or any part of it, is waste. In this view, the learned Judge has held that, on the evidence, it is not E possible to hold that the acquisition relates to waste lands. No doubt, the Division Bench has not expressed any opinion on this aspect, but, as the records now stand, we have to accept the findings recorded by the learned Single Judge, in which case, it follows, that the appellant cannot rely upon item No. 28, either.

F This leaves us with the question as to whether the issue of a notification under s. 4 of the Act is a matter covered by item No. 18 of Standing Order No. 2, issued by the Minister. If it is a matter covered by the said item, there can be no controversy that, before the issue of the notification under s. 4, the matter should have been dealt with by the Minister-in-charge. In this case, G as we have already pointed out, the Minister-in-charge has not dealt with those proceedings; and it is admitted that the Assistant Secretary of the Land and Land Revenue Department of the Government of West Bengal, who issued the notification, under s. 4, alone dealt with the matter. The learned Single Judge has, no doubt, accepted the contention of the appellant that item No. 18 of Standing Order No. 2 applies, to all proceed- H ings taken under the Act, including the issue of a notification, under s. 4. On the other hand, the learned Judges of the Division Bench have taken a contrary view, on this

aspect. Having due regard to the Act and the Rules, and the matter dealt with by item No. 18, we are in agreement with the views expressed by the learned Judges of the Division Bench that item No. 18, of Standing Order No. 2, does not apply to proceedings connected with the issue of a notification, under s. 4, of the Act. A

We have gone through the entire provisions of the Act, as well as the Rules framed thereunder; and, so far as we can see, the Land Planning Committee, which is the prescribed authority, under s. 3 of the Act, comes into the picture only when the State Government takes action, under s. 5, regarding the preparation of a development scheme, and at subsequent stages. The Land Planning Committee, set up under the Act, does not come into the picture, at the stage when the Government issues a notificaton, under s. 4 of the Act. In this connection, it is necessary to note that the expression 'notified area', under s. 2(c) of the Act, means an area declared, under sub-s. (1) of s. 4, to be a notified area. The State Government is given power, under s. 4, by issue of a notification in the Gazette, to declare any area, specified in the notification, to be a notified area, if it is satisfied that any land, in such area, is needed or is likely to be needed, for any public purpose. There is no provision, either under the Act or the rules framed thereunder, making it obligatory on the part of the State Government, to consult the Land Planning Committee at this stage. Nor are we able to find any provision, in the Act or the Rules, which gives a right to the Land Planning Committee to be consulted, or to propose any case, before a notification is issued by the Government, under s. 4 of the Act. There is no duty imposed, or function assigned, to the Land Planning Committee, either under the Act or the Rules, to participate at this stage. B C D E F

No doubt, Mr. Bishan Narain, in this connection, referred us to the proceedings, dated January 21, 1955, of the 270th Meeting of the Land Planning Committee, as supporting his contention that it is the Land Planning Committee that has proposed the acquisition of the lands in question, under the Act, and therefore, the matter comes under item 18 of Standing Order No. 2. In the proceedings, referred to by learned counsel, it is stated that the Land Planning Committee considered a proposal submitted by the third respondent herein, for acquisition and development of 28·59 acres of land, in the villages of Ghola and Natagarh. There is also a recommendation, by the Land Planning Committee, that the land, referred to by the third respondent, is needed for a public purpose and, therefore, it recommended that a notification, under s. 4 of the Act, be issued. No G H

A doubt, it is seen that the Land Planning Committee has taken some interest in this matter and supported the proposal of the third respondent regarding the acquisition. But, the question is as to whether it is one of the duties or functions of the Land Planning Committee, which it is bound to discharge, either under the Act or the Rules. The answer, in our view, must be in the negative. A reference to the Act and the Rules would show that there is no such right given to the Land Planning Committee. It may be that that Committee advises the Government on particular matters or makes suggestions to the Government. The Government may also consult that body and act on its advice or suggestions. But, before item No. 18 of Standing Order No. 2, can be made applicable, it must be established that there is a duty or an obligation, on the Government, to issue a notification under s. 4 of the Act, only in consultation with the Land Planning Committee, in which case, it may be stated, that the Committee is discharging a duty under the Act. We do not find any such provision making it obligatory, on the part of the Government, to consult the Land Planning Committee, at that stage. The terms of s. 4 also makes it clear that it is really on the satisfaction of the Government, that any land is needed or is likely to be needed for a public purpose, that a notification is issued, declaring that area to be a notified area.

The Act and the Rules clearly show that from the stage of s. 5, when the prescribed authority, *viz.*, the Land Planning Committee, is directed to prepare a development scheme by the State Government, the said Committee is discharging its statutory functions, under the Act.

To sum up, we are not inclined, to accept the contentions of the appellant, that the issue of a notification, under s. 4 of the Act, is a matter which should have been dealt with by the Minister-in-charge himself, on the basis that it is covered by item 18 of Standing Order No. 2. That item does not, as pointed out above, apply. If that is so, it is clear that the issue of a notification, under s. 4 of the Act, and the satisfaction to be arrived at, that the land, in the area in question, is required or is likely to be required for a public purpose, are matters which do not require to be dealt with by the Minister nimself. Under Standing Order No. 5, the Minister-in-charge has authorised the Secretary to permit a Deputy or an Assistant Secretary of the Department, to dispose of certain types of cases and the Secretary has also issued an order, which has been referred to earlier, in conformity with standing order No. 5; and it is by virtue of this provision that the notification, under s. 4, was issued by the Assistant Secretary, Land and Revenue Department

Government of West Bengal. We are in entire agreement with the reasons given by the Division Bench of the Calcutta High Court for upholding the validity of the notification, dated February 4, 1955, issued under s. 4 of the Act. A

Before we conclude, we should also make it clear that in this case, no contention was advanced that matters connected with the issue of a notification, under s. 4 of the Act cannot be delegated by the Minister-in-charge and that they have to be dealt with by the Minister himself. We had, therefore, no occasion to consider this aspect of the matter. As pointed out above, the entire arguments have proceeded on the basis that there has been no such delegation, by the Minister, under the Standing Orders made by him. B C

The result is, that the appeals fail and are dismissed with costs of the respondents, one set in Civil Appeal No. 216 of 1964.

R.K.P.S. *Appeals dismissed*