

# CALCUTTA HIGH COURT

Nando Lal Ganguli

Vs

Khetra Mohan Ghose

(Chitty and Smither, JJ.)

28.01.1918

## JUDGMENT

### **Chitty, J.**

1. An application was made to the President of the Tribunal constituted under the Calcutta Improvement Act, 1911, for sanction to prosecute one Khetra Mohan Ghose for giving false evidence before the President of the Tribunal in two apportionment cases. The President held that he had no jurisdiction to entertain the application, on the ground that the Tribunal was not a Court within the meaning of Section 195, Criminal Procedure Code. Against that decision the applicant obtained this Rule, and Khetra Mohan Bose has appeared by Pleader and shown cause against it. The opinion of the President appears to be based upon the decision in Hari v. Secretary of State 27 B. 424 : 5 Bom. L.R. 431 where it was held that the Bombay Tribunal was not a Court but merely a body of arbitrators not subject to the supervision of the High Court. It was no doubt on account of this decision that Act XIV of 1904 was passed by the Imperial Legislative Council. In the case of Calcutta the Tribunal is constituted by the Calcutta Improvement Act of 1911, but the finality of its decisions is regulated by that Act as modified by the Calcutta Improvement (Appeals) Act, 1911, passed by the Imperial Legislative Council. It is unnecessary for us to discuss the question whether in view of the subsequent legislation the Bombay decision is still good law, as we have no doubt whatever that the Calcutta Tribunal is a Court within the meaning of Section 195 of the Criminal Procedure Code. By Section 70 of the Calcutta Improvement Act, the Tribunal is constituted for the purpose of performing the functions of a Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894. By Section 71(a) the Tribunal shall (except as to appeal which are specially provided for) be deemed to be the Court and the President the Judge under the said Act. Section 71 (c) gives the President the powers of a Civil Court with regard to the summoning and attendance of witnesses and production of documents. By Section 77 (6) apportionment cases may be tried by the President sitting alone and his decision is then to be deemed to be the decision of the Tribunal.

2. It has been held by the Court that the word "Court" in Section 195 has a wider meaning than a Court of Justice as defined in the Indian Penal Code. It may include a Tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination. See *Raghoobuns Sahoy v. Kokil Singh*<sup>1</sup> where the question arose whether a Collector acting under Sections 69 and 70 of the Bengal Tenancy Act was a

Court. That case was followed in *Chandi Charan Giri v. Gadadhar Proadhan*<sup>2</sup> where the question was to what Court the Collector was subordinate. We may also refer to the definition of "Court" in Section 3 of the Evidence Act. It includes all Judges and Magistrates and all persons except arbitrators legally authorized to take evidence.

3. We do not think that the Tribunal as "the Court" under the Land Acquisition Act, 1894, for the purposes of the Improvement Trust can be regarded simply a body of arbitrators. It is the Court under that Act, and the President is the Judge. It follows that it must also be regarded as a Court for the purposes of Section 195 of the Criminal Procedure Code. We may point out that if the contrary view were to prevail, the deplorable result would follow that any private person who alleged that false evidence had been given before the Tribunal might institute a prosecution without any control on his action by the Tribunal before whom the evidence was given.

4. The Rule is accordingly made absolute, the order of the President is set aside and the application remanded to him for adjudication upon the merits.

Cases Referred.

117 C. 872 : 8 Ind. Dec. (N.S.) 1126

244 Ind. Cas. 177 : 19 Cr. L.J. 273 : 22 C.W.N. 165