Ram Kirpal Chhakkar And Anr. vs Union Of India (Uoi), Through The ... on 12 April, 1955

Equivalent citations: AIR1955ALL468

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Bench: Raghubar Dayal

JUDGMENT

M.L. Chaturvedi, J.

1. These four writ petitions do not indicate the provision of law under which they have been made, but the cases have been argued on the assumption that these petitions have been made under Article 226 of the Constitution and they will be dealt with as such.

2. The different petitioners in all these petitions were on the roll of Civilian Staff of the Defence Ministry, Government of India, and were serving under the Central Ordnance Depot., Agra, They were previously discharged from service, but were afterwards either reinstated or re-employed, and in Juno 1953 they were working under the Ordnance Depot. There appears to have been a difference of opinion as regards the status and emoluments of the petitioners between the Ministry of Defence, Government of India, and the Audit Department. Ultimately the Union of India, by their letter dated 26-6-1953, communicated their decision to the effect that some of the personnel would be regarded as "reinstated", some as "re-employed" and certain others were kept under consideration.

The petitioners had been treated as having been re-employed. The petitioners sent representations objecting to their being treated as re-employed personnel, but the representations proved to be of no avail. The present petitions were filed on 2-12-1953 and the main prayers contained in them are that this Court may issue writs or orders quashing the order of the Union of India dated 26-6-1953 in so far as it relates to the petitioners, and for the issue of other writs or directions commanding the Union of India to recall its decision treating the petitioners as 're-employed' persons and to treat them henceforth as 'reinstated' persons. Respondent 1 to the petitions is the Union of India through the Ministry of Defence, Government of India, New Delhi, and respondent 2 is the Commandant, C. O. D., Agra.

3. It is not necessary to mention the facts of the cases in any detail, because the learned Standing Counsel took a preliminary objection to the hearing of these petitions, and, after hearing learned counsel for both the parties at length, we have come to the conclusion that the preliminary objection

has to be given effect to. The preliminary objection is to the effect that the Government of the Union of India is located at Delhi outside the jurisdiction of this Court, and this Court cannot issue any writ or direction to the Government or to the Union of India, as prayed for in these petitions. The order, that is sought to be quashed, purports to have been issued from the Government of India, Ministry of Defence, New Delhi, and is signed by an Assistant Secretary to the Government of India, and the directions prayed for are commands to be issued to the Union of India, besides the prayer to quash the order. It is not the case that the order is void.

4. The learned counsel for the petitioners tried to meet this objection by saying that the Union of India is different from the Government of the Union, and it is located throughout the territory comprised within the Union, that is, the territory composed of the different States that form part of the Union. It is argued that, because of the provisions of Article 300 of the Constitution, the Government of the Union is to be sued in the name of the Union and a writ also, therefore, has to be issued to the Union and not to any member of the Government of the Union. It is said that there are only two criteria for determining the location of an entity like this and they are the extent of its territory and the area over which it functions. In the alternative it is urged that even the Government of the Union is located everywhere in India, and the position here is different from that in America or Australia because, under the Constitutions of those countries, the seat of the Government of the United States of America is in Columbia and that of the Commonwealth of Australia in New Southwales.

The Indian Constitution has not located the seat of the Government at any one place in the territory of India and it must, therefore, be taken that the seat of the Government of the Indian Union is located at every place, which is within the territory comprised in the Indian Union. The learned counsel for the petitioners also referred to a Full Bench decision of this Court in -- 'Maqbuhrnnissa v. Union of India', AIR 1953 All 477 (A). This case will have to be considered in detail hereafter but the decision of the Full Bench in short is to the effect that the Union of India can be said to be within the territorial jurisdiction of the Allahabad High Court, as it has been given authority throughout the length and breadth of the country. If this case could still be said to be good law, we would have been forced to refer the question for decision by a larger Bench, but the question we propose to consider first is whether it has been expressly or impliedly overruled by the subsequent decisions of the Supreme Court.

5. The Full Bench case, mentioned above, arose out of an application filed under Article 226 of the Constitution praying for the issue of a writ in the nature of mandamus directing the Union of India and another to forbear from giving effect to the order asking the petitioners to leave India or from getting that order executed by the subordinate officers. A preliminary objection was raised that this Court had no power or authority to issue a writ or direction to the Union Government as that Government was not situate within the jurisdiction of this Court. The Full Bench overruled the contention on the grounds that the Indian Constitution is of a quasi-federal character, and the Union Legislature has been given powers with regard to subjects enumerated in lists 1 and 3 throughout the territory of India, that the Government of the Union has executive powers co-extensive with that of the Legislature, so both the Legislature of the Union and the Government of the Union function throughout the territory of India, that the jurisdiction of this Court to

intervene under Article 226 does not depend upon where the headquarters or the capital of the Government is situate but upon the fact of the effect of the act dune by the Government and that (in the words of the Full Bench), "obviously, therefore, the reasonable interpretation to place upon Article 226 of the Constitution is to make the test of residence of the applicants and the effect of the order on the applicants the supreme test in deciding whether the Court has or has no jurisdiction in dealing with the writ application".

The learned Judges also mentioned that the use of the words 'any Government' in Article 226 of the Constitution, indicated that more than one Government could function within the same territory, and also that the other interpretation would mean that all writ petitions, seeking orders to be issued to the Government of India, would have to be filed only in one High Court, namely, the High Court of East Punjab.

6. We now proceed to consider what view the Supreme Court has taken with respect to the above grounds, which are the basis of the decision of the Full Bench of this Court. In the case of --'Election Commission India v. Saka Venkata Rao', AIR 1933 SC 210 (B), the relevant facts are that the respondent Saka Venkata Rao was declared elected to the Madras Legislative Assembly and he took his seat as a member of the Assembly on 27-6-1952. Before the elections were held, Venkata Rao had applied to the Election Commission for exemption from the disqualification that attached to him by virtue of the provisions of Section 7(b), Representation of the People Act, 1951. The Commissioner rejected his application for exemption and communicated their order to the respondent by means of a letter dated 13-5-1952, but it was not received by him. A communication to the same effect was also sent to the Speaker of the Assembly and he on 3-7-1952 read out this communication, The Speaker then referred the question to the Governor of Madras, who forwarded the case to the Election Commission for its opinion.

Venkata Rao challenged the competency of the reference, and the Chief Election Commissioner went down to Madras and heard Venkata Rao's counsel and the Advocate-General of Madras on 21-8-1952. On the same date the respondent filed an application in the High Court of Madras under Article 226 of the Constitution with a prayer that a writ of mandamus or prohibition be issued directing the Election Commission to forbear from proceeding with the reference made by the Governor of Madras. On receipt of the rule nisi the Commission objected to the jurisdiction of the Court to issue the writs prayed for. The Madras High Court overruled the preliminary objection and issued a writ prohibiting the Commission from proceeding with the enquiry in regard to the question referred to it by the Governor. An appeal against this order was filed before the Supreme Court by the Election Commission and their Lordships bad to consider whether the High Court at Madras had any jurisdiction to issue a writ to the Election Commission. In the course of their judgment they laid down, "But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. In the first place, the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond' the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be 'within those territories', which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories....."

> "These writs were thus specifically directed to the persons or authorities against whom redress was sought and were made returnable in the Court issuing them and, in case of disobedience, were enforceable by attachment for contempt. These characteristics of the special form of remedy rendered it necessary for its' effective use that the persons or authorities to whom the Court was asked to issue these writs should be within the limits of its territorial jurisdiction. We are unable to agree with the learned Judge below that if a Tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within those territorial limits so as to affect the rights of parties therein, such Tribunal or authority must be regarded as 'functioning' within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226."

The last sentence clearly overrules the main argument of the Full Bench. The argument of the learned counsel for Venkata Rao, that the question referred for decision to the Election Tribunal related to Venkata Rao's right to sit and vote in the Legislative Assembly at Madras, and the parties to the dispute also resided in the State of Madras, was overruled on the ground that the cause of actionl which attracted jurisdiction in suits was based on statutory enactment and could not apply to writs issuable under Article 226 which made no reference to any cause of action, or where it arose but insisted on the presence of person or authority within the territory. The other argument that it could not have been contemplated that an inhabitant of the State of Madras, feeling aggrieved by a threatened interference with the exercise of his rights in that State by an authority located in Delhi, should seek his remedy under Article 226 in the Punjab High Court, was overruled on the ground that an argument of inconvenience like this could not override the language of the Article, which was reasonably plain and it was idle to speculate as to what was or was not contemplated. In the end their Lordships allowed the appeal and dismissed the petition filed under Article 226 of the Constitution.

7. A resume of the grounds on which the above decision was based would go to show that all the arguments on which the Full Bench decision of this Court was based wore repelled by the Supreme Court, excepting perhaps the small point about the use of the words 'any Government' in Article 226. It is possible to contemplate more than one Government being located within the jurisdiction of the same High Court, and as far as the Punjab High Court is concerned, it is obvious that the Governments of the State of Punjab and of the Union of India are both located within jurisdiction of that Court. The expression obviously could not mean "every Government" in India. Full Bench did not attach much importance to the use of those words, and the argument based on their use cannot have any effect in view of the decision of the Supreme Court.

8. For the reasons given above, we have come to the conclusion that the Full Bench case of the Allahabad High Court, mentioned above, has been impliedly overruled by the later Supreme Court decision.

9. To the same effect is another decision of the Supreme Court reported in -- 'K. S. Rashid & Son v. Income-tax Investigation Commission', AIR 1954 SC 207 (C). In this case it was held that the Punjab High Court had jurisdiction to issue a writ to the Income-tax Investigation Commission in Delhi,

though the assessees were residents of U. P. and the original assessments against them were made by the Income-tax Authorities in this State.

10. We respectfully agree with the Division Bench decision of this Court in the case of -- 'Kesar Sugar Works Ltd., v. Union of India', AIR 1954 All 726 (D), where it was held that this Court had no jurisdiction to quash an order issued by the Ministry of Food of the Union Government. To the same effect is the decision of a single Judge in -- 'Tej. Bhan Madan v. Government of India', AIR 1954 All 522 '(E), where the learned Judge held that the High Court of Allahabad had no jurisdiction to entertain a petition praying for the issue of a writ of mandamus where the order challenged was an order passed at New Delhi by the Deputy Secretary to Government of India.

11. A similar point came up for consideration before a learned single Judge of the High Court at Bombay in -- 'P. N. Films Ltd. v. Union of India', Misc. No. 170 of 1954, D/- 6-9-1954 (Bom) (F). The learned Judge took a view similar to the One that this Court took after the decision of the Supreme Court in the case of the Election Commission mentioned above. But in the course of the judgment the learned Judge referred to the Full Bench decision of this Court in the case of Maqbulunnissa (A), and then considered it to be a matter of some comment that in a subsequent Division Bench case of this Court, a contrary view was taken to that taken by the Full Bench without referring to the Full Bench case. The Division Bench case referred to is the case of -- 'Hafiz Mohammad Yusuf v. Custodian General Evacuee Properties, New Delhi, AIR 1954 All 433 (G).

In this case the petitioner had prayed for the issue of a writ of certiorari to quash certain orders passed by the Assistant Custodian, the Additional Custodian and the Custodian General and, on a preliminary objection being raised to the maintainability o the petition, it was held by this Court that the orders of the Assistant Custodian and the Additional Custodian merged in that of the Custodian General, and as the office of the Custodian General was located outside the State of U. P., this Court could not issue any writ to the Custodian General. No relief in that case was sought against the Union of India or against the Government of the Union of India. A relief was sought against an order passed by the Custodian General whose office, like that of the Election Commission, was located in Delhi.

The case, therefore, could not be distinguished from the Supreme Court case of the Election Commission, mentioned above. The decision of the Full Bench was on a very different question, that is, whether the Union Government is subject to jurisdiction of this Court or not. The clear distinction, mentioned above, was perhaps not brought to the notice of the learned Judge, otherwise he might not have considered it necessary to comment upon the omission to mention the Full Bench case in the subsequent Division Bench case.

12. After the two decisions of the Supreme Court, the learned counsel for the petitioners dropped the line of argument on which the Full Bench of this Court had based its decision and his main contention was, as mentioned above, that the Union of India and the Government of the Union of India must be taken to be located everywhere in the territory of India. In the Full Bench case of Maqbulunnissa (A)', the learned Judges have mentioned at more than one place that the mere fact that the Government of the Union of India is situate in Delhi and that the capital of India is at Delhi

does not mean that the Government of the Union is not subject to the jurisdiction of this Court. At one place they say, "We do not think that it can be said that the Union Government functions only in Delhi merely because its capital is situate at Delhi."

At another place, "To hold that the jurisdiction of this Court does not extend to the Union Government as it has its capital at Delhi and must be deemed to have its domicile at Delhi would be to place the Union Government not only with respect to the rights conceded in Part III but for any other purpose, also, beyond the jurisdiction of all State High Courts except the Punjab High Court."

And at a third place, "In our opinion, the jurisdiction of this Court to intervene under Article 226 depends not upon where the Headquarters or the capital of the Government is situate but upon the fact of the effect of the act done by Government."

The above quotations would show that the Full Bench case does not, in any way, help the petitioners in their contention that the Government of the Union is actually located at any place other than Delhi. On the contrary, it would appear that in the opinion of the Full Bench the Government of the Union was located at the capital at Delhi.

13. The learned counsel for the petitioners drew our attention to a passage at p. 48 of Cooley on Constitutional law, Edn. 4, Chap. IV, Para. 1, where the learned author said that the natural classification of governmental powers was divided into legislative, executive and judicial; and also to a passage at p. 1616, Article 1058, Vol. III, of Willoughby on the Constitution of the United States, Edn. 2, where the legislative, executive and judicial departments are all spoken of as departments of the Government. He also referred to Article 1 of the Constitution wherein it is laid down that India shall be a Union of States and the territory of India shall comprise the territories of the States and those specified in Part D of Schedule 1, and such other territories as may be acquired.

The argument is that as the Union comprises, the Slates, therefore, it is located in all those States, and as under Article 300 of the Constitution the Government of the Union is to be sued in the name of the Union, the respondent is the Union and not the Government. In the alternative it is urged that if the real party is the Government of the Union, the Government also is situated throughout the territory of the Union. It is true that under Article 300 of the Constitution the Government of India may be sued in the name of the Union of India, but Article 226, which is the specific Article dealing with the matter, says, in so many words, that writs, directions or orders may be issued, to any person or authority, including in appropriate cases any Government.....,"

> The writs, therefore, can be issued to the Government, and, even supposing that the respondent described in the petition has been rightly described as the Union of India, the real party is the Government of the Union to whom the writ is to be issued. The name may be of the Union, but the party, for all practical purposes, is the Government and we think that there, cannot be much doubt that the Government of the Union is located at the capital of the Union at New Delhi. The order dated 26-6-1953, sought to be quashed, is signed by an Assistant Secretary to the Government of India in the Ministry of Defence, New Delhi, and the commands

> sought to be issued can only be effective if they are served on the appropriate officer of the Government of the Union.
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> In form, the command may be issued to the Union, but, in substance, it has to be issued to the Government or to an Officer of the Government. The important question, therefore, is to see where the Government of the Union is located. The name "Union of India' has been applied to a combination of the territories which together comprise the Union, and the Union of India, as such, cannot be said to be located at any place: other than where its Government is located for the purposes of issuing or serving upon it any writ to be issued under Article 226.

14. The learned counsel further contended that no writ can be issued to the President, though all executive action has to be taken in the name of the President, and from this he inferred that the writ cannot be issued to any Minister of the Government or to any of his Secretaries, but it can only be issued to the Union. We are not inclined to hold that no writ can be issued to the Ministers or the Secretaries of the Government. But supposing that the writ should be in the name of the Union under Article 226 of the Constitution, it has to be taken to be in substance a writ against the Government or a member of the Government. The distinction between the State and the Government has been brought out clearly by W. F. Willoughby in the introduction to his book 'The Government of Modern States' at p. 5, and the learned author says:

> "Of these distinctions, much the most important is that between the State and Government. The State, to use the term employed in political science, is the body politic. The Government is merely the aggregate of the instrumentalities I employed by such body in performing its functions."

15. For reasons peculiar to the United States of America and the Commonwealth of Australia, those States have their specified seats of Government at Columbia and New South Wales respectively, and the mere fact that the Constitution of India does not itself lay down where the seat of the Government of the Union of India will be does not mean that the Government of India has a seat through-out the territory of India and not at any particular place. The capital of India was shifted to Delhi in 1911 and after India was declared to be a Republic in 1950, Delhi has continued to be the seat of the Government of India, and it is common knowledge that the Government of the Union is located at Delhi.

The word 'Government' has a wider connotation as well of including all the departments by which a country is governed, namely, the executive, the legislative and judicial. But as far as Article 226 is concerned, we have no doubt that the Government there refers not to the legislative or judicial departments but merely to the executive department. Under Article 77(3), the President has been authorised to make Rules for the more convenient transaction of the business of the Government of India and for the allocation among the Ministers of the said business. The Government in this sub-article obviously means the executive and in the book styled "General Rules and Orders under the Constitution", which has been published by the Manager of Publication at Delhi, a mention is made of the different Ministries of the Central Government, from pp. 113 to 145 and at certain other

places as well. These Ministries are located at Delhi and the Government of the Union of India must also be held to be located there.

16. One important circumstance is that the Courts do not issue writs and injunctions which they have no power to enforce. If a writ or injunction is disobeyed, the only way to enforce it is to take proceedings against the guilty party for disobedience of the order. If that party is outside the jurisdiction of the Court, then the Court has no power to enforce obedience of the injunction or writ issued by the Court, and Courts, therefore, do not issue writs where they have no power to enforce their obedience. If a writ is issued to some officer at New Delhi and he ignores it, this Court cannot proceed in contempt against such officer, as he is outside the jurisdiction of the Court. This also points to the conclusion that this Court should not issue any writ or direction to the officer or the Authority whose offence is located at Delhi.

17. For the reasons given above, we think that the preliminary objection raised in these petitions has to be given effect to with the result that these petitions should fail. They are accordingly dismiss ed with costs.