Ravi Pratab Narain Singh vs The State Of Uttar Pradesh And Anr. on 9 August, 1951

Equivalent citations: AIR1952ALL99, AIR 1952 ALLAHABAD 99

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Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. Shri Lt. Sahabzada Ravi Pratap Narain Singh, Raja of Rudrapur Estate, Rudrapur, District Deoria, has filed this petition, requesting this Court to issue a direction in the nature of a writ ob cerbiorari calling for all the records relating to the issue of a declaration under Section 8(1) (d) (v). U. P. Court of Warda Act, 1912 (Act iv [4] of 1912) for the assumption of superintendence of his estate by the Court of Wards, to quash the declaration and all the proceedings connected therewith and to direct the opposite party, the State of Uttar Pradesh and the Court of Wards, U.P., to hand over the estate of the petitioner to him. This request for issue of a writ of certiorari and other directions was based on two grounds: The first ground was that Section 8(1)(d)(v), U. P. Court of Wards Act, 1912, was ultra vires inasmuch as it constituted an infringement of the fundamental rights of the petitioner guaranteed under Article 19(f) of the Constitution. The second ground was that, in making a declaration under Section 8, U. P, Court of Wards Act, the opposite-party was discharging a quasi-judicial function and, in doing so, it had contravened the fundamental principles of natural justice by not hearing the petitioner and giving him an opportunity to repudiate the charges.

2. The petitioner, in order to establish these grounds, filed a lengthy affidavit with his petition. This was met by a counter affidavit filed on be. half of opposite party No. 2, the Court of Wards and there after a rejoinder-affidavit was filed on behalf of the petitioner. It appears unnecessary to set out in detail all the facts that have been given in these three lengthy affidavits. We need only mention a few salient facts which are necessary for the purpose of deciding the question whether a writ should or should not issue.

3. Admittedly, the petitioner is a proprietor within the meaning of the U. P. Court of Wards Act, owning an estate situated partly in the district of Gorakhpur and partly in the district of Deoria. He had been managing this property for a long time. On 29.6.1949, a notice was served on him by the Collector of Deoria, calling upon him to show cause why he should not be declarad a disqualified

person Under Section (1) (d) (v), U. P. Court of Wards Act, 1912, on grounds of mismanagement. Five grounds of mismanagement were mentioned in the notice as follows:

> 1. That he exacted bigar from his tenants.
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> 2. That he connived at his Ziledar, Shri Jageshwar Lal, extorting one anna per rupee of annual rent as pharkhatawan from each tenant at the time of realization of rent and issue of receipts as a consideration for issuing receipts.
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> 3. That he did not allow remissions in rent sanctioned by Government on account of floods in 1354 Fasli to the extent of Rs. 557-12-5.

(d) That he was addicted to drink and immoral habits to a degree rendering him incapable of managing his estate resulting in wide-spread complaint against the estate and its employees.

6. That he compelled families of Kahars to work for him on a ridiculously low wage of one anna pet day. The notice went on to say that the petitioner was to submit his explanation to the Collector within 15 days of the receipt of the notice. The petitioner asked for extension of time to give his explanation and, within the time finally allowed, he submitted a written explanation to the Collector in which he refuted all the accusations which were made against him in the notice just mentioned. The petitioner denied that he exacted bigar from his tenants. He denied that he connived at his ziledar, Shri Jageshwar Lal, extorting one anna per rupee of annual rent as pharlchatawan from each tenant at the time of realization of rent and issue of receipts as a consideration for issuing receipts and further pleaded that Shri Jageshwar Lal had been transferred in accordance with the directions received from the Sub-divisional Officer and, there, fore, this question became irrelevant. He admitted that he had been unable to allow remissions to the extent of Rs. 557-12-5 in the year 1354 or 1355 Fasli but he added that these remissions had been allowed by him by 24 3-1949, in the year 1356 Fasli which meant that the remissions, in any case, had been allowed before this notice was issued to him. He denied that he was addicted to any drink or immoral habits. He also refuted the allegation that he had compelled families of Kahars to work for him on a ridiculously low wage of one anna per day. After giving these answers to the accusations made against him, he made a request that, after necessary enquiry and after affording him a chance of hearing, the notice under Section 8, Court of Wards Act, might be discharged. Subsequent to this notice, there was no further enquiry and no hearing of the petitioner. On 23-5-1950, the opposite party no. 1, the State of Uttar Pradesh, issued a notification, declaring the petitioner a disqualified proprietor Under Section 8 (1) (d) (v), U. P. Court of Wards Act, 1912, and directed that the declaration was to remain in force for a period of two years from the date of its publication. In pursuance of this declaration, superintendence of the estate of the petitioner was assumed by the Court of Wards and the estate is still under the management of the Court of Wards. He has, therefore, come up to this Court with the prayers mentioned above.

4. Before going into the constitutional question whether Section 8 (1) (d) (v), U. P. Court of Wards Act, 1912, is ultra vires of the legislature in view of the provisions of Article 19(f) of the Constitution, we have considered the alternative ground that "was put in this petition to the effect that the

declaration was void inasmuch as it was made in contravention of the fundamental principles of natural justice by not hearing the petitioner and giving him an opportunity to repudiate the charges. In this connection, the first point that bad to be considered is whether the Government., in exercising its powers in issuing the notification Under Section 8, was discharging a judicial or a quasi-judicial function or was merely carrying on its administrative duties. On this point, the learned counsel for the petitioner referred us to a decision of a Division Bench of this Court in Avadhesh Pratap Singh v. The U. P. State, civil Misc. case No. 342 of 1950, decided on 20 3 1951. The learned judges dealing with that case have dealt, at great length with the question as to whether the Government exercising its powers to make a declaration under Section 8, U. P. Court of Wards Act is acting in a judicial or quasi-judicial capacity or merely in an executive or administrative capacity. All the case law on this point was fully discussed and it was held that the capacity, in which the Government was acting, was quasi-judicial so that its actions were open to review by this Court by a writ of certiorari. We consider it entirely unnecessary to re-examine all the cases and arguments that have already been dealt with by that Bench as we are in entire agreement with the conclusions arrived at by the learned Judges of that Bench.

5. The next question that came up for discussion was whether, in discharging its quasi-judicial function, the Government had or had not complied with the" requirements of Sub-section (2) of Section 8, U. P. Court of Wards Act, 1912, which lays down;

> "8(2) No declaration under Clause (d) of Sub-section (1) stall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him and has had an opportunity of showing cause why such declaration should not be made."

The learned counsel for the petitioner first argued that the notice served on the petitioner did not contain a detailed statement of the grounds on which it was proposed to disqualify him so that even this requirement of Sub-section (2) of Section 8 had not been complied with. We have already quoted the grounds which were mentioned in the notice served on the petitioner. In our opinion, the notice clearly contains a detailed statement of grounds. It certainly does not contain facts from which these grounds have been inferred but Sub-section (2) of Section 8 does not require that the proprietor should be furnished with all the facts in addition to the statement of the grounds. The grounds furnished to the petitioner were, in no respect, vague. They contained specific allegations and, in our opinion, any further details were not necessary.

6. The second point that was urged by the learned counsel for the petitioner was that the petitioner had not been given an opportunity of showing cause why a declaration should not be made in regard to him. On this point, there has been considerable argument by the learned counsel on both aides. The main contention is centered round the interpretation of the words 'opportunity of showing cause' used in this Sub-section. It has been contended by the learned counsel for the petitioner that the whole conduct of the proceedings which led to the making of the declaration by the Government would show that, at no stage, was the petitioner given a chance to contest the evidence on the basis of which the Government bad come to the view that there had been mismanagement by him, to adduce evidence in refutation of that evidence and to explain his reasons for contending that a

declaration in regard to him should not be issued. The facts given in the affidavits filed by the parties show that certain enquiries were held by the Naib-Tahsildar, the Sub-Divisional Officer and the Collector into the charges made against the petitioner prior to the issue of the notice, dated 29 6 1949. It also appears that the petitioner was aware of those enquiries and that possibly, at some stages in the enquiries, he had himself taken an active part. After issue of the notice, in which the statement of grounds for declaring the petitioner a disqualified proprietor was furnished to him, no enquiry at all was held and no opportunity at all was given to the petitioner to adduce any evidence. The contention on behalf of the petitioner is that the mere opportunity to submit a written explanation did not amount to an opportunity of showing cause which should have been given to him under Sub-section (2) of Section 8 of the Act. On behalf of the Court of Wards and the State of Uttar Pradesh, it was contended that it was sufficient compliance with the provisions of this Sub-section to give an opportunity to the petitioner to submit his explanation as there is nothing at all in this Sub-section, requiring the Government to afford an opportunity to the petitioner to adduce evidence in his favour or to contest the evidence offered against him. On this point also, the view of the Division Bench of this Court in Avadhesh Pratap Singh v. The U. P. State, referred to above, was entirely in favour of the petitioner. It was held in that case that, though the Government did indeed furnish a detailed statement of the grounds, they did not give the applicant of that case an adequate opportunity of 'showing cause why such a declaration should not be made'. Where an opportunity is required to be given of showing cause, the opportunity must be adequate. In that case, it was found that all that the Government had done was to ask for a mere representation from the applicant within a certain time and it was held that enabling a mere representation to be made is not the same thing as giving an opportunity of showing cause. The expression 'showing cause' was considered to connote an opportunity of leading evidence in support of one's allegations and in controverting such allegations as are made against one. With due respect, we may at once say that we entirely agree with this interpretation of the words 'opportunity of showing cause' used in Sub-section (2) of Section 8 of the U. P. Court of Wards Act, 1912. It is obvious that it cannot be said that an opportunity of showing cause was granted when the petitioner was only called upon to submit a written explanation, was not clearly told what the entire evidence available against him was and was not afforded any opportunity to adduce evidence to controvert the charges by adducing his own evidence. It was contended by the learned counsel for the opposite-parties that the petitioner no-

where asked for an opportunity to produce evidence or to examine the evidence available against him and consequently it was sufficient compliance if the Government gave him an opportunity to Submit a written explanation. Firstly, we are of the view that Sub-section (2) of Section 8 of the Act enjoins a duty on the Government itself to ensure that the opportunity of showing cause is adequate and, therefore, the Government must, on its own initiative, adopt such a procedure that ah opportunity does become available to the person, against whom a declaration is said to be made, to adduce evidence. Secondly, we are of the view that, in this case, the petitioner did actually ask for an opportunity which was denied to him. We have had occasion to mention that, at the end of his written explanation, the petitioner had made a prayer that an enquiry might be held and he might be afforded a chance of hearing. In our opinion, the request for an enquiry coupled with the request for a chance of hearing clearly indicates that the petitioner wanted that he should have an opportunity to scrutinise and cross-examine the evidence available against him, to adduce his own evidence and

to explain his case. In the present case, therefore, though there was a clear demand by the petitioner under which he should have been given an opportunity to adduce evidence, it was entirely ignored by the State. Consequently, it is not possible at all to hold that there has been compliance with this provision of law, requiring the State to afford an opportunity to the petitioner to show cause. The learned counsel for the opposite parties referred us to two cases of Board of Education v. Rice, (1911) A. C. 179 and Local Government Board v. Arlidge, (1915) A. C. 120, for the purpose of interpretation of the words 'opportunity of showing cause'. We have, however, found that these cases are of no assistance to us in this respect. In both those cases, the bodies whose action came up for question in the Courts were required to take some action which was considered to be a quasi-judicial action and no procedure to take that action was prescribed. It was held that, in those circum-stances, it was not compulsory for those bodies to examine witnesses and follow the procedure of a regular judicial trial. The statutes under which those bodies were acting did not contain any provision at all, requiring them to afford an opportunity of showing cause to the parties against whom action was contemplated and consequently, in our opinion the views expressed therein can be of no assistance at all in interpreting the present statute where such words have been specifically used by the legislature. It was for this reason that no question arose in those cases of interpreting the words 'opportunity of showing cause'. The only case which appears to us to be of some assistance is that of High Commissioner for India v. I.M. Lall, A. I. R. (35) 1948 P. C. 121. That was a case of a member of the Indian Civil Service, Shri I. M. Lall, who had been dismissed from service after an enquiry bad been held under Rule 65 of the Civil Service (Classification and Control) Rules. During that enquiry, the grounds, on which it was proposed to take action, were reduced to the form of definite charges which were communicated to Shri Lall and he was asked to show cause why he should not be dismissed. Thereafter, evidence was recorded and. on the finding that there were grounds for dismissing him, an order of dismissal was passed. It was contended by Shri I. M. Lall that the procedure adopted in dismissing him did not comply with the provisions of Sub-section (3) of Section 240 of the Government of India Act, 1935, which required that no member of a Civil Service could be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Their Lordships of the Privy Council, in deciding the case, held that the opportunity, which had been given to Shri I. M. Lall during the proceedings under Rule 55 just mentioned, was not a sufficient compliance with the provisions of Sub-section (3) of Section 240 of the Government of India Act, 1935, under which it was necessary to give such an opportunity after the punishment of dismissal had been tentatively decided upon on the completion of the enquiry. Their Lordships of the Privy Council said:

> "In the opinion of their Lordships, no action is proposed within the meaning of the Sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow in provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical."

They went on to hold that it was on that stage being reached that the statute gave the civil servant an opportunity for which provision was made by Sub-section (3) of Section 240. On this ground the order of dismissal of Shri I. M. Lall was set aside. When setting aside that order of dismissal, their Lordships incidentally considered the scope of the opportunity of showing cause to be given to Shri I. M. Lall under the provisions of Sub-section (3) of Section 240 of the Government of India Act,

1935, and they expressed their opinion by saying that they saw no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant had been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry. It was contended by the learned counsel for the opposite parties that these remarks of their Lordships indicated that it was permissible not to give an opportunity be a civil servant to adduce evidence when he was called upon to show cause against the action proposed to be taken under Sub-section (8) of Section 240 and, on this analogy, it must be held that under Sub-section (2) of Section 8, U. P. Court of Wards Act, 1912, also it was not essential that the Government of Uttar Pradesh should have afforded an opportunity to the petitioner to adduce evidence. We have not found it possible to accept this contention because, in our opinion, it cannot be held that their Lordships ever meant to say that, at the subsequent stage when a civil servant was called upon to show cause under Sub-section (3) of Section 240, Government of India Act, 1935; he need not be given any opportunity at all to give evidence. All that their Lordships said was that it would not be reasonable that the civil servant should ask for a repetition of the enquiry that had already been made under Rule 55 if that enquiry had been duly carried out. This remark does not exclude the right of a civil servant to give any evidence which he may not have been appropriately required to give at the stage of the earlier enquiry under Rule 55. In fact, the remark that it would not be reasonable that a civil servant should ask for a repetition of the enquiry held under Rule 55 would appear to contain an implication that if there had not been an earlier enquiry duly carried out, it would have been held that the civil servant had a right at this sub. sequent stage to adduce evidence when showing cause why the proposed action should not be taken against him. The views of their Lordships of the Privy Council in that case, therefore, only go to confirm our view that even in the present case, an opportunity should have been given to the petitioner to put forward all necessary materials when he was served with the detailed statement of grounds for making a declaration against him. It must be held that the failure to afford such an opportunity was a clear failure to comply with the requirements of Sub-section (a) of Section 8, U. P. Court of Wards Act, 1912.

7. It has been contended by the learned counsel for the opposite parties that this failure to comply with the requirements of Sub-section (2) of Section 8 of the Act may be an irregularity or an impropriety but that it cannot be said that, on account of this failure, the State of Uttar Pradesh had, in any way, exceeded its jurisdiction. This argument has also not appealed to us. Sub-section (2) of Section 8 empowers the State to make a declaration subject to two conditions. One is that a detailed statement of grounds on which it is proposed to disqualify a proprietor should be furnished to him and the second is that he should be afforded an opportunity of showing cause why such a declaration should not be made. If either of these essential preliminary conditions is not satisfied the law does not recognise the existence of any power in the State to make such a declaration. This clearly means that until these conditions have been satisfied there is no jurisdiction in the State to make a declaration. Learned counsel referred us to the case of The King v. Woodhouse, (1906) 2 K. B. 501) which was followed in the case of Globe Theaters Ltd. v. Chief Judge of Small Cause Court, A. I. R. (34) 1947 Bom. 108 for the purpose of finding out what are questions of jurisdiction and what are questions which would be merely questions of fact and law without being questions of jurisdiction. In our opinion, these cases do not, in any way, go against the view which we have taken.

In all these cases, it was held that if some proceedings have been made essential preliminaries to an enquiry, the failure to carry oat those proceedings would result in taking away the jurisdiction to pass an order on the enquiry. It is only questions which are decided in the order passed after the enquiry that must be deemed to be questions of fact of law and not questions of jurisdiction. Learned counsel particularly relied on the words 'extrinsic to the adjudication impeached' which were used by their Lordships of the Privy Council in Colonial Bank of Australasia, and John Turner v. Robert Willian, (1874) 5 P. o. 417 at p. 442) when holding that objections founded on the personal incompetency of the Judge, or on the nature of the subject-matter of the enquiry, or on the absence of essential preliminaries will be deemed to be questions affecting jurisdiction. It was held that it is such matters 'extrinsic to the adjudication impeached' which raise questions of jurisdiction. Learned counsel argued that, in the present case, the opportunity to show cause was not a matter extrinsic to the declaration which is in question but was intrinsic to it and consequently it cannot be held to raise a question of jurisdiction. In our opinion, this argument is not tenable because the provision for giving an opportunity to show cause has to be observed prior for the making of the declaration and is a matter extrinsic to the actual adjudication which consists of making the declaration and consequently the views expressed rather go to show that, in the present case, a question of jurisdiction of the State to make a declaration does arise than that no such question arises. We are, therefore of the view that, in this case, the declaration was made by the State Government without jurisdiction inasmuch as the State did not give an opportunity to the petitioner to show cause which was a condition precedent to the exercise of the power of making the declaration by the State.

8. Learned counsel for the opposite parties further put forward a contention that no writ of certiorari could be issued by this Court in view of the provisions of Section 11, "U. P. Court of Wards Act, 1912, which lays down:

> "11. No declaration made. by the Provincial Government Under Section 8 or by the Court of Wards Under Section 10 shall be questioned in any civil Court."
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> We are of the opinion that there is no force at all in this argument because the High Court, exercising its powers of issuing a writ under Article 226 of the Constitution, cannot be said to be a civil Court.
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> The civil and criminal jurisdiction of the High Court is exercised by virtue of Article 225 of the Constitution. Article 226 gives an additional power which is exercised by virtue of this provision of the Constitution and not by virtue of the High Court being either a criminal or a civil Court. There is also the second reason that even if the High Court could be deemed to be a civil Court, Section 11, U. P. Court of Wards Act, 1912, could not take away the power of the High Court to issue a writ under Article 286 of the Constitution because no law made by a State Legislature can, in any way, curtail the powers granted to the High Court by the Constitution. For this latter proposition, we may refer to the case of Abdul Majid Haji Mahomed v. P.R. Nayak, 53 Bom. L.R. 621.

9. One more argument that was advanced by the learned counsel for the opposite parties was that Section 13, U. P. Court of Wards Act, 1912, had made provision for an alternative remedy to the petitioner by way of a reference to the State Government and, therefore, this Court should not issue a writ of certiorari. We have not been convined that Section 13, U. P. Court of Wards Act, permits a proprietor to challenge the right of Superintendence of the person or property on the ground that the declaration Under Section 8 of the Act was not valid as that this section of the U. P. Court of Wards Act would not provide any remedy at all in the case which is before us. Further, we are unable to hold that, where the High Court comes to the view that jurisdiction not vested in a judicial or quasi-judicial tribunal has been exercised and a writ of certiorari should issue, such a writ cannot be issued in case there is an alternative remedy. A Full Bench of this Court in Asiatic Engineering Co. Ltd. v. Achhru Earn, Misc. Writ. Appln. No. 287 of 1950 has held that the question of existence of a specific and adequate alternative remedy is material only when the question of issue of a writ of mandamus is under consideration and not in the case of a writ in the nature of certiorari or a prohibition. This argument also, therefore, has no force.

10. In view of the fact that we have come to the decision that the declaration must be set aside on the ground of want of jurisdiction due to non-compliance with the provisions of Sub-section (2) of Section 8, U. P. Court of Wards Act, 1912, we have considered it unnecessary to examine the alternative ground taken by the petitioner that the provisions of Section 8 (1) (d) (v), U. P. Court of Wards Act are ultra vires in view of Article 19(f) of the Constitution.

11. As a result, we allow this petition, quash the declaration made by the Government Under Section 8, U. P. Court of Wards Act in respect of the petitioner and direct that he be restored to pos-session of his property taken over in pursuance of that declaration. The petitioner will be entitled to his costs from the opposite parties which we fix at Rs. 300.