
(1952) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Application No 13 of 1950

Ahmad-un-Nissa Begum and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 30-06-1952

Acts Referred:

Constitution of India, 1950 — Article 226, 31B

Hyderabad Atiyat Inquiries Act, 1952 — Section 13

Citation : (1952) 06 AP CK 0004

Hon'ble Judges : Mohd. Ahmed Ansari, J;Jaganmohan Reddi, J;A. Sinivasachari, J

Bench : Full Bench

Advocate : Raja Bahadur Bishweshwarnath, for the Appellant; Raja Ram Lyre, General and Shanker Rao Baragaonkar, for the Respondent

Judgement

1. Nawab Kamal Yar Jung Bahadur was one of the foremost noble men of Hyderabad who died on the 23rd Isfandar 1353 F. (26th January 1944) leaving him surviving two full sisters and three others who allege that they were the married wives of the late Nawab. The Nawab did not leave any issue by his wives. He was governed by the "Shia" School of Mohommedan Law. As has been the practice among the noble men of Hyderabad, a number of women were kept in the harem who were called (nick-named) "Khawasees". They were allowed to live along with the legally married wives and more or less treated like the married wives. The Nawab had issues by these "Khawases" and these persons claim that their mothers were the legally wedded wives of the late Nawab and that, therefore, they are the legitimate children. Immediately after the death of the Nawab, H. E. H. the Nizam, by a firman dated 22nd Safar 1363 Hijri, constituted a special Committee to enquire into the matter of the succession to the estate of the late Nawab and to submit through the council its recommendations to him. This Committee consisted of the then Deputy Prime Minister, the then Revenue Member and the then Chief Justice, but the personnel of the committee changed from time to time and finally it consisted of Shri P.

Venkat Ramareddy, the then Deputy Prime Minister, Mr. Amir Ali Khan, a member of the Board of the Revenue and a Judge of the High Court, Shri Shripat Rao. This Committee recommended unanimously that Riasatunnisa Begum who is Respondent No. 15 before us and a married wife of the late Nawab Kamal Yar Jung Bahadur be put in possession of the jagirs held by the late Nawab. Before however this report received the sanction of H. E. H. the Nizam the Police. Action started. After the Police Action, when the Military Governor took over charge, the Nizam, by means of another Firman dated 22nd November 1948, on the advice of the then existing administration, changed the personnel of the Commission and directed the new members of the Commission to take further evidence and submit their report. The new members did not think it necessary to take any further evidence and without taking any further evidence submitted their recommendations finally on 11th November, 1949. Again before the recommendations of the commission reached H. E. H. the Nizam the administration changed, the Military Governor left and Shri M. K. Vellodi was appointed the Chief Minister. After this, the judgment of the commission which was in Urdu was translated into English and when this judgment was being translated into English and it had not been completed, the Constitution of India came into force on 26th January 1950. The position therefore on the 26th January 1950 was that the Commission had sent its recommendations and it did not reach the competent authority for sanction as it was still in the process of being translated.

2. Finally on the 3rd April 1950 M. K. Vellodi, as the Chief Minister of the Hyderabad State, passed an order for implementing the recommendation. The order is as follows:

No. 1024 Dated 3rd April 1950 THE NAZIM ATIYAT, HYDERABAD-DN.

Sir,

Enclosing herewith a copy of the Special Tribunal's decision in the Kamal Yar Jung's succession case along with note of dissent by Mr. Amir Ali Khan. I am directed to inform you that Government have accepted the decision given by the majority members constituting the Special Tribunal according to which the following have been declared the heirs of the late Nawab Kamal Yar Jung Bahadur:

Tahawar Hussain, son -.. 4 As.

Mohd. Hussain Khan, son .. 4 As.

Sadiq Hussain Khan, son .. 4 As.

Khadija Begum, daughter .. 2 As.

Riasat Unnissa Begum, Azizunnissa Begum, Lal Bi, Wives .. 2 As.

Sheerin Bua, Paricherabua as the Mamtuva of the late Nawab have been held entitled to Guzara only. Necessary action may be taken.

Yours faithfully.

3. It is this order of the Chief Minister sanctioning the recommendations of the Commission that is sought to be challenged in these proceedings. The main grounds on which this order is being challenged are: (a) that under the Atiyat Law that was extant at the time when the succession opened, the right to sanction succession to a jagir with an income of over Rs. 25,000/- vested with the Nizam as the Sovereign and that he exercised this power by virtue of his prerogative and as such any recommendation by a Commission regarding the succession to the Jagir should be sanctioned by the Nizam and this recommendation not having received the sanction of the Nizam as required by law was ultra vires the powers of the Chief Minister; (b) alternatively if it be held that the power exercised by the Nizam was not by virtue of any prerogative right or that if any prerogative right existed it was taken away by the coming into force of the Constitution of India inasmuch as there was no authority left-behind to exercise that sovereign power which used to be exercised by the Nizam during the preconstitution days, this sanction by the Chief Minister would have no force, as it is only after the requisite sanction as required by law is given that the recommendation could have any force. These in the main were the contentions of the Petitioners.

4. It has to be observed that the properties left by the late Nawab are jagir lands and all matters relating to jagirs in the Hyderabad State were governed by a Special Law known as Atiyat Law or the law relating to land grants. Under the Atiyat Law whenever a jagirdar dies his successors had to appear before the Special Court viz., the Atiyat Court, which would enquire into the question of the succession to the estate of the jagirdar and submit its recommendations to H. E. H. the Nizam and H. E. H. the Nizam was the final authority to sanction or not to sanction the succession in favour of any particular individual. The procedure with regard to these matters has been embodied in Regulation No. 34 of 1331 F. and Regulation No. 10 of 1338 F. which have the force of law. In this particular case the Nizam chose to constitute a Special Commission instead of directing the case to be enquired into by the ordinary Atiyat Court. This was in consonance with the practice in vogue in the Hyderabad State in regard to succession relating to high noble men styled as "Umrai Uzzam.?"

5. The power of the Nizam to constitute Special Tribunals to enquire into the succession to the estate of jagirs of high noble men has been well recognised and there is no doubt about it. Once the right of the Nizam to constitute the Special Tribunals is recognised then the question that arises for consideration is as to whether the body so constituted would be regarded as a judicial body whose orders are subject to the Certiorari Jurisdiction of the High Court.

6. There can be no doubt that the Commission that was constituted was a judicial body because it had the necessary ingredients which go to make it a judicial body. It was a body of persons having legal authority to determine questions affecting the rights of subjects within the meaning of the dictum of

Lord Atkinson Frome United Breweries Co. Ltd. v. Bath Justices (1926) AC 586. Further this Commission had also been enjoined to act judicially according to well established procedure; therefore according to the definition given by the Supreme Court in the well known case of the Province of Bombay Vs. Kusaldas S. Advani and Others, it was a judicial body and its decisions, judicial decisions. The tests laid down by Scot L. J. in Cooper v. Wilson 1937 -2KB 309 are also satisfied in this case. The point that arises for consideration is that although this is a judicial body exercising judicial functions its decisions are not final but are only in the nature of recommendations subject to the confirmation of the H. E. H. Nizam. The question arises as to whether it ceases to be a judicial body or whether its decisions could not be regarded as judicial decisions simply because they became enforceable only after the sanction of the Nizam was accorded. So far as this point is concerned it is settled law that because a proceeding is subject to the confirmation and approval of another authority the proceeding does not cease to be a judicial proceeding. Mahajan J. observed as follows in the case of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi,

The fact that the Government has to make a declaration alter the final decision of the Tribunal is not in any way inconsistent with the view that the tribunal acts judicially.

Likewise the decisions of military tribunals which are subject to the confirmation of either the Commander-in-Chief or other Military Authorities do not cease to be judgment, of a quasi-judicial body. Therefore, it comes to this that the proceeding should be regarded as a judicial proceeding where the parties have had an opportunity to put forward their cases and after the parties have been heard the authorities looked into the matter with a judicial approach. If it is a judicial proceeding then it is certainly subject to the controlling authority of the High Court by means of a writ of Certiorari. Therefore, the Commission constituted by the Nizam to enquire into the succession to the estate of the late Kamal Yar Jung Bahadur is a judicial body and its proceedings are judicial proceedings.

7. If the proceedings of the Commission are regarded judicial proceedings and its orders judicial orders then in order to invoke our jurisdiction under Article 226 of the Constitution, unless the Petitioners before us show that there has been a usurpation of jurisdiction or that there has been an excess of jurisdiction on the part of this Commission, no rule for a writ of Certiorari would be issued. Excess of or want of jurisdiction would arise where the commission had no authority to entertain an enquiry. The issue of a writ as it generally understood is not to reopen or vacate the judgment of an inferior tribunal as is done in the case of an appeal. The exercise of the writ is regulated & limited by fixed principles. The High Court would merely determine the validity or invalidity of the record of such inferior tribunal and confirm or reverse in whole or in part accordingly.

8. In as much as the point that arose in this case came up for the first time and in view of the fact that the coming into force of the Constitution made a change in

the status and powers of the Nizam, the Full Bench which initially heard the case referred the following questions to a Fuller Bench of five Judges:

1. Is the Order of the Government dated 3rd April 1950 an administrative order or a quasi-judicial order and has this Court jurisdiction to quash it?
2. H. E. H. the Nizam still retained the prerogative right to sanction recommendations submitted to him by commissions constituted by him to enquire into cases of succession relating to Jagirs?
3. If the right does not survive has the Executive of the Hyderabad State power to confirm such successions for the purposes of granting commutations to the persons entitled? And if so what form should the order take?

The Full Bench has on the 10th April, 1952, answered the above questions as follows: With regard to the first and second questions, it was unanimously held that the order of the Chief Minister dated 3-4-1950 is a quasi-judicial order (See AIR 1952 Hyd. 163 F. B.)

and the High Court has jurisdiction to issue an appropriate writ pertaining thereto and that H. E. H. the Nizam has no prerogative after the enforcement of the Indian Constitution on 26th January, 1950 and that even before its enforcement his prerogative right, if any, had lapsed after the Jagir Abolition Regulation. With respect to the third question the majority of the Full Bench (Siadat Ali J. dissenting) held that the executive of the Hyderabad State has power to confer succession for the purposes of granting commutations to the persons entitled.

9. It would be desirable to advert to the changes that the State underwent in so far as this administration was concerned after the Police Action. Soon after the Police Action, H. E. H. the Nizam issued a Firman whereby he made it known that all the administrative powers that were vested in him were exercisable by the Military Governor, (Vide Firman dated 20th September, 1948). Later on 5th February, 1949 the private domain or the estate of the ruler known as the "Sarfakas" were merged in the Diwani. This was done by Regulation No. 41 of 1358 F. & later on by another Regulation No, 69 of 1358 F. By the Hyderabad (Abolition of Jagirs) Regulation all jagir tenures were incorporated and merged with, the State lands. This Regulation came into force on 15th August, 1949. According to this Regulation no person could after the commencement of this Regulation be appointed or recognised as a Jagirdar whether in succession or otherwise. It was also provided in the Regulation that by a date to be notified the administration of the Jagirs was to be transferred to the Government and the jagirdars were called upon to make over the management of the jagirs to the Jagir Administrator. A most important provision in the aforesaid Regulation is that while this Regulation purported to abolish all jagirs and to pay commutation to the existing jagirdars a provision was made in the Regulation that all proceedings relating to the jagir which were pending at the commencement of the Regulation before an Atiyat Court or before a Commission or any other authority be

completed in accordance with the existing law as if the Regulation had not been enacted (Vide proviso to Section 21 of the Regulation). This implied that all pending proceedings would be governed by the law that was extant prior to the coming into force of this Regulation. It was argued by the learned Advocate for the Petitioners that the existing law was that a Commission enquired into the succession and made its recommendation on which the Nizam sanctioned the recommendation and made an order for the grant of jagir in favour of a particular individual by virtue of his prerogative right as Sovereign.

So far as this question as to whether the Nizam was according sanction by virtue of his prerogative right is concerned the Full Bench by a majority gave the opinion that the Nizam did not exercise this right by virtue of his prerogative. And even otherwise the question seems to be of no great importance after the advent of the Hyderabad (Abolition of Jagirs) Regulation because after this Regulation the question of determining as to whom a jagir should be granted ceased to have any importance, as Section 4 clearly states that after the commencement of the Regulation no person would be appointed or be recognised as a Jagirdar whether in succession to a deceased jagirdar or otherwise. Therefore the only act that had to be done was to sanction the payment of compensation to the person who had. been declared to be entitled to succeed to the deceased jagirdar and this act is done by the head of the State not by virtue of any prerogative right. If it is conceded that the sanction of the payment of, compensation to the heirs of a deceased jagirdar is accorded by the head of State then the Rajpramukh in whom is vested the executive power could accord sanction. So far as this sanction is concerned it was argued that even if it be regarded that the sanction of the Rajpramukh was enough to give effect to the recommendations of the Commission still this being an executive act of the Government, under the provisions of Article 166 of the Constitution the order ought to be expressed to be taken in the name of the Rajpramukh and inasmuch as the order sought to be impugned now does not appear to have been expressly taken in the name of the Rajpramukh the order cannot have any force. So far as this question viz., the provision in Article 166 of the Constitution pertaining to the manner in which an order of the executive had to be made js concerned the Pull Bench has held by a majority that that provision is only directory and not mandatory. The Bench relied upon the Federal Court judgment reported in ? J. K. Gas Plant Manufacturing Co. (Rampur) Ltd. v. Emperor AIR 1947 F.C. 33 wherein their Lordships, while discussing a similar provision in the Government of India "Act, held that the provision was only directory and, it is now well settled that it is only directory by reason of the judgment of the Supreme Court in the case of Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, . So that argument can have no force.

10. The delay in the hearing of the case has worked to the disadvantage of the Petitioners because on the 8th March 1952 an Act called the Hyderabad Atiyat Enquiries Act (Act X of 1952) received the assent of the Rajpramukh. By virtue of Section 13 of the aforesaid Act finality was given to the decisions of the Atiyat

Court and Other decisions by the Military Governor, the Chief Minister or the Chief Civil Administrator of Hyderabad or the Revenue Minister (by virtue Of the powers given to him by the Chief Minister). As such all those orders that were passed in cases relating to Atiyat grants including jagirs on or after 18th September, 1943 up to the date of the coming into force of the Act in question were validated and held to be orders passed by a competent authority under the law in force. This is a curative and validating legislation. The effect of this legislation is that even if under an enactment that was extant, the sanction of the Nizam was necessary and such sanction was not obtained and sanction was accorded by some other individual this Act purported to validate orders. Therefore by force of this legislation all the orders passed subsequent to 10th September 1948 right upto the coming into force of the Act would be declared proper and held to be valid. The orders that is now impugned is an order which comes within the period mentioned in Section 13 of the aforesaid Act. Therefore even if there is any flaw with regard to the competence of the sanctioning authority it has now been cured and validate by this enactment and therefore no question of the order being incompetent or being bad for want of authority can arise.

11. It was argued at the bar that the provision in the Hyderabad (Abolition of Jagir) Regulation that all pending proceedings relating to Atiyat or crown grants should be completed according to the existing law was bad for the reason that according to the existing law, that is, the law in force before the Hyderabad (Abolition of Jagir)" Regulation came into force, sanction had to be given to the recommendation of the Atiyat Court by the Nizam himself and that the Nizam as such exercising his powers as the Sovereign of the State had ceased to exist and he was only the head of the Executive. It was urged that it is. not this authority who is called Rajpramukh who could give the sanction. This argument also can have no force for two reasons: (a) that it is no longer open, to any person to question the validity of any provision of the Hyderabad (Abolition of Jagir) Regulation of 1358 F, and the Hyderabad Jagir (Commutation) Regulation 1359 F. after they have been incorporated in the 9th Schedule of the Constitution by the insertion of Article 31B in the Constitution by the Constitution First Amendment Act of 1951. No objection, on the ground of its being void or its being inconsistent with the rights conferred by the Constitution could be raised. It may incidentally be stated here that the Constitution First Amendment Act itself, was questioned as being invalid and this dispute has been set at rest by the judgment of the Supreme Court in the case of Shankeri Prashad v. Union of India AIR 1951 SC 458. (b) As has been observed by us already it would be regarded as proceedings having been completed under the existing law because if it be said that the sanction of the Nizam was required no objection on the ground of want of his sanction could now arise because of his having validated the sanction given by a person to whom he had delegated his powers.

12. For all these reasons, we hold that the Petitioners have not made out a case for the issue of a Writ of Certiorari. We, therefore, dismiss the application with

costs of the contesting Respondents. Advocate's fee in each case Rs. 500.