
(2016) 03 AHC CK 0030
In the Allahabad High Court
Case No : Misc. Bench No. 4736 of 2016

Asok Pande (In Person)

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Citation : (2016) 2 AllWC 1872 : (2016) 116 ALR 83 : (2016) 34 LCD 606

Hon'ble Judges : Amreshwar Pratap Sahi;Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Asok Pande (in person), Advocate, for the Appellant; A.S.G, U.N. Misra, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. This petition has been presented as a Public Interest Litigation by a member of the legal profession who is a practicing Advocate of this Court for an extraordinary direction under the extraordinary jurisdiction of Article 226 of the Constitution of India through a writ of Mandamus to the respondents-Union of India and the Allahabad High Court, not to hold the forthcoming sesquicentennial celebrations, primarily on the ground that the calculation of 150 years is founded on an erroneous assumption and even otherwise, it amounts to celebrating the subservient legacy of the British Rule.

2. The second relief prayed for is that the Government of India should be directed to change the years of passing of different laws legislated by the British Parliament keeping in view their adaptation under the Indian Constitution in the post-independent era.

3. The submissions raised bring within its fold the historical evolution of the High Court of Judicature at Allahabad and its present status under the Constitution. This aspect has to be understood in the light of Article 372 of the Constitution of India with reference to the jurisdiction of High Courts under Article 225 of the Constitution of India.

4. At the very outset, we may observe that the arguments raised have a sentimental overtone and at the same time, the arguments on the legal plane are of transient importance apart from the controversy actually raised. In our opinion, logic, reason and rationality should not become a casualty when sentiments run high while interpreting law, yet the Courts have an obligation to decide issues raised before it. This obligation, however, has to be discharged for the purpose of protection of the Rule of Law and certain rights and obligations that emerge under the constitutional scheme.

5. Sri Ashok Pande contends that the High Court of Judicature at Allahabad was established under a Charter of the British Sovereign during the reign of Queen Victoria and therefore, its establishment in 1866 was not on account of the freewill of the people of India. The purpose of such establishment was to serve British Foreign Rule and therefore, such purpose cannot be celebrated as an anniversary of such an achievement. He has passionately argued that the establishment of the High Court through the Charter of the Sovereign was an outcome of the Indian High Courts Act, 1861 which was an act of British Parliament and not through any Indian representation. Thus, in sum and substance, he urges that there is neither any legal nor moral or constitutional or historical basis to celebrate the occasion by Indians of an establishment that was a creation of the Britishers. Such creation, according to him even if required to be celebrated, would be either after Independence or after the advent of the Constitution, when India was declared a Republic on 26th of January, 1950. The occasion therefore to celebrate 150 years is based on an incorrect perception as such the same should be forestalled.

6. Responding to the said submissions of the petitioner, learned counsel for the Union of India Sri Lalit Mohan Joshi has very aptly reproduced the extract of the welcome address delivered by Hon"ble Mr. Justice Nasiruallah Beg, the then Chief Justice of the Allahabad High Court on 25th November, 1966 in the presence of the then President of India Dr. Radha Krishnan on the occasion of the centenary celebrations of the High Court, and has urged that the said speech is a complete answer to the storm raised by Sri Pande. He therefore contends that the petition deserves a decent departure by consigning it to records.

7. Sri Upendra Nath Misra, learned counsel for the High Court has very lucidly traced the constitutional provisions and the statutory enactments beginning from the Indian High Courts Act, 1861 onwards to urge that the continuity of the institution, even though established during British Rule, was acknowledged as a part of the continuing judicial system of our country and therefore, its celebration of its 150 years of establishment is not to glorify the British Rule but to rejoice a democratic system of dispensation of justice underlined with judicial values that has survived for long. He therefore contends that the issues raised on none of the planes as argued by Sri Pande do survive the scrutiny of any law or any legal principle or any moral principle or for that matter, any rationale principle that would justify the filing of such a petition.

8. Having considered the submissions raised, the question of establishment of the High Court is a historical fact. However, the exercise of its powers, authority and jurisdiction has seen transition during the British Rule and to a vast extent after independence under the Constitution. It is no doubt true that what has been adopted under the Constitution is defined under Article 372 of the Constitution of India but at the same time, it will be appropriate to remember the first line and the entire Preamble which clearly states that "WE, THE PEOPLE OF INDIA, HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION." The argument of Sri Pande therefore on the legal plane that the celebrations are for glorifying an institution established by British Laws has no legs to stand as our Constitution has adopted the existence of such High Courts that were created prior to Independence, and it is the people of India who have acknowledged such adoption. To say that the people of India had not voted or their representatives had not passed any enactment which was made law by the British Parliament is a fallacious argument and stands negated by virtue of what has been indicated above.

9. The Constitution under Article 214 acknowledges the system of High Courts and its establishment for each province. The Constitution envisages a separate High Court for every province and if there is no such High Court, then it has to be established subject to Article 231 and further subject to the powers of the Parliament to make a law to extend the jurisdiction of a High Court to a Union Territory. Thus, when the Constitution came into force the scheme of the State Judiciary contained a provision for High Court for each State.

10. The State of U.P. already had a High Court as well as other provinces throughout the country. In this State, the Constitution of the High Court has a peculiar history as the Chief Court of Oudh at Lucknow came to be amalgamated with the Allahabad High Court in 1948. It is not necessary to delve into the history of such amalgamation as it has been dealt with in several decisions of this Court and the Apex Court. But at the same time, it is necessary to mention that the same High court continued to exist at the time of the advent of the Constitution and is still a living structure with the exception of the carving out of the jurisdiction of that area which now falls within the State of Uttaranchal (now Uttarakhand) with a separate High Court of the State of Uttarakhand at Nainital. Thus, historically and genetically, the physical existence of the High Court together with its customs, traditions and contribution to the development of law has been continued since long and has very aptly expressed by the then Chief Justice Nasirullah Beg in 1966.

11. Thus, the mathematical calculation and the argument of an erroneous assumption on that count loses its significance.

12. On the issue of celebration, we find from records that in 1966, the High Court celebrated its centenary and in 1991, celebrated the 125th year of its establishment. Fortunately, to the best of records available, no writ petition appears to have been filed for forestalling those celebrations, but it appears that

some voice had been raised in this regard in 1966 and for that reason, a response came from the then Chief Justice of this Court in his welcome address that has been aptly placed before us by the learned counsel for the Union of India Sri Lalit Mohan Joshi. We have verified the said contents of the speech of Chief Justice Nasirullah Beg from the compilation of the commemorative volume of the centenary celebrations in 1966 and we are extracting that portion of the speech which rightly answers the sentiment that has upsurged in the mind of the petitioner. The same is extracted hereunder:-

"Although we are, at this time, celebrating the completion of 100 years" existence of this Court, which was established much after the advent of the British in India, the roots of our judicial traditions go back into antiquity to a period long before the British appeared on the scene. We cannot, therefore, forget, on this occasion, the fact that this event is only a milestone in the judicial annals of our civilisation.

As my learned brother, Mr. Justice Dhavan, has shown in his erudite article on the "Indian Judicial System", published in the Centenary Commemoration Volume I, India has the oldest judiciary in the world, and no other judicial system has a more ancient or exalted pedigree. He has demonstrated that ancient India had the highest standard in antiquity as regards the ability, learning, integrity, impartiality, and independence of the judiciary, and these standards have not been surpassed till today, that (in the words of one of the great jurists of ancient India, Katyayana) "the Judges were independent and subject only to law", that the fundamental duty of the Court was to do justice without fear or favour, and that the Indian judiciary consisted of a hierarchy of Judges with the Court of the Chief Justice (Praad-Vivaaka) at the top. In the words of an Englishman, Dr. Spellman, "in some respects the judicial system of ancient India was theoretically in advance of the English system of today". Therefore, it would be wrong to think that we are merely celebrating the Centenary of a Court established by the British Government in India. This is really an occasion to remember and ponder over our own judicial traditions, which are much older than those of the British or any other judicial system in existence today."

13. To celebrate is to perform publicly with solemnity. It is a ceremonious honour to commemorate an achievement in civilization, particularly an event that marks the beginning of an era. It is a ceremony of keeping in remembrance and in this case, what has been achieved in the field of law and dispensation of justice in the past 150 years.

14. Long cherished fundamental principles of law and customs for effective dispensation of justice that have been evolved with passage of time and have received acceptance in modern times is a testimony to the principle, "Time consecrates and what is dray with age becomes religion". The passage of 150 years is being celebrated for such achievements and not to remember alien rule. It is not the antiquity of British Sovereignty or suzerainty over natives that calls for rejoicing but the growth of social development and wider human approach

through an effective Judicial System that deserves celebration.

15. This is not an astrological festival but it celebrates the true essentials of a judicial journey and progress in law. It is a steady gain and not a painful loss. Harsh and brutal systems generally give way to gentle ones.

16. Let us add that we are celebrating time refinement and exposition of law, better than those of our erstwhile rulers. We should not turn our celebrations to recall the unimportant part of history that dismays us.

17. Having said so, we would like to emphasise and advice the petitioner that it is true that the right to reason and think is a natural right and a person has a right to think freely and express himself which also includes a right to dissent or have an opposite opinion which may be different and diverse. But at the same time, we would like to mention, what a contemporary religious Philosopher Wayne W. Dyer has said --

"if you change the way you look at things The things you look at, change"

18. We, as Judges, when we judge others, we do not define them but we define ourselves and the laws that we administer.

19. Having given a thoughtful consideration to the issue raised, we have been unable to find any reasonable or rationale ground to entertain this Public Interest Litigation on the issue of celebrations. The prayer made has therefore to be declined.

20. The second relief claimed by the petitioner is for a direction to the Government of India to change the year of passing of different laws legislated by the British Parliament after the advent of the Constitution. This entirely falls within the realm of legislative function, as laws made by the Parliament and State Legislatures, even if require the change of the year, would require a legislative process to be undergone. We cannot issue any such direction to the Government and it is open to the petitioner to approach the Members of Parliament and State Legislatures, if he so desires for any such amendment, which cannot be directed by us to be performed by the Parliament or a State Legislature.

21. The petition having failed to stand the scrutiny of law in the extraordinary jurisdiction of Article 226 of the Constitution of India, is hereby rejected with an earnest request to all members of the legal fraternity, particularly those who have nurtured the High Court with their toil and blood including the petitioner, to make the forthcoming events of celebrations a memorable success notwithstanding their diverse opinions.