

(2014) 04 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : WPPIL No. 9 OF 2014

Balraj Bakshi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2014) 2 JKJ 388

Hon'ble Judges : M.M. Kumar, C.J;Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : S.S. Lehar, Sr. Advocate and Mr. Aditya Sharma, Advocate for the Appellant

Final Decision : Dismissed

Judgement

M.M. Kumar, C. J.

1. The instant petition purported to be filed in public interest seeks jurisdiction of this Court to issue directions to Union of India, Ministry of Water

Resources and Irrigation-respondent No. 1 to compensate the people of Jammu and Kashmir on account of loss caused to them on account of

executing Indus Water Treaty. A further prayer for issuance of direction to the State of Jammu and Kashmir has also been made to take up the

matter with State of Punjab-respondent No. 3 with respect to Ravi water as per Water Sharing Agreement of 1995 and 1979 entered between

the State of Jammu & Kashmir-respondent NO. 2 and State of Punjab-respondent No. 3. It has also been 2 prayed that directions be issued to

Union of India and the State of Jammu and Kashmir to take steps for forcing the State of Punjab to build up the barrage at Shahpur Kandi in

Gurdaspur (Punjab) as per the Water Sharing Agreement of 1955 and 1979 and

enforce the provisions of treaty entered between the State of

Jammu & Kashmir-respondent No. 2 and State of Punjab-respondent No. 3 by taking appropriate steps for getting 1150 cusec of water from

Ravi river. A further direction has also been sought to the State of Jammu & Kashmir to provide drinking water to the people free of cost and also

to create alternative resources of water in the kandi belt.

2. The petitioner has disclosed his antecedents by asserting that he is a well known Urdu writer and has been given some project by the Ministry of

Art & Culture. He claimed to be producer of tele-films. In para 2 of it is asserted that people of Jammu & Kashmir are aggrieved of the Indus

Water Treaty and the petition has been filed to advance the cause of people of Jammu & Kashmir State and he has no personal interest.

3. It is appropriate to mention that Indus Water Treaty, 1960 was entered between Government of India and that of Pakistan to attain complete

and satisfactory utilization of the waters of the Indus system of rivers and the same is in force. A reference has been made in para 6 of the petition

about some agreement 3 between the Government of India and Pakistan where Government of Pakistan agreed to deposit with Reserve Bank of

India some ad hoc amount to be paid to Eastern Punjab as cost of the water supplied by the Eastern Punjab to the West Punjab. The aforesaid

Inter Dominion Agreement on the canal waters dispute was signed at New Delhi on 04.05.1948. Thereafter Indus Water Treaty, 1960 was

entered into between Government of India and Pakistan and in para 7 it is alleged that as a result of the Treaty India had to pay 63 million pounds

to Pakistan as compensation for irrigation projects. An effort has been made to highlight various features of the Treaty and certain obligations

undertaken between the two Governments. However, we are avoiding to give detailed sketch of various features of the Treaty as in the ultimate

analysis we find the same to be irrelevant.

4. We asked Mr. S.S. Lehar, learned counsel for the petitioner to enlighten us with regard to existence of any law as to whether any individual

could feel aggrieved by such a Treaty particularly when it has been in force for the last over 54 years. We also asked learned senior counsel that

how can directions be issued to the State of Jammu and Kashmir to raise dispute with the State of Punjab-respondent No. 3 in the face of original

jurisdiction of Hon'ble Supreme Court under Article 131 of the 4 Constitution to entertain such disputes. All that is submitted by Mr. Lehar is that

the people of the State of Jammu and Kashmir have lost huge water and they paid huge price for the drinking water and the obligations under

various treaties have not been fulfilled.

5. Having heard learned senior counsel at a considerable length and perusing the paper book, we are left with the impression that by instant petition

a luxurious litigation is sought to be initiated for some extraneous considerations. The petitioner claims to be a Urdu Scholar and is hardly well

versed with the developments in the form of various treaties and agreements between Government of India and Pakistan as well as between the

State of Jammu & Kashmir and the state of Punjab. The petitioner has made some casual averments in respect of all these treaties and agreements.

There is nothing on record to show that he has undertaken any empirical research to reach the conclusion that the people of Jammu & Kashmir

have suffered damages on account of one treaty or the other. We have our doubts about the authenticity of the cause projected by the petitioner

styling the same as public interest litigation and there appear to be some oblique motive.

6. In any case on legal issues, the petitioner cannot maintain this petition. A casual look at the prayer made by the petitioner 5 reveals that he has

sought directions to the State of Jammu & Kashmir to raise dispute with the State of Punjab. For inter-State dispute Article 131 of the Constitution

vests exclusive jurisdiction with Hon'ble the Supreme Court of India. It would be apposite to read Article 131 of the Constitution, which is set out

below for ready reference:-

131. Original jurisdiction of the Supreme Court. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any

other court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a

legal right depends:

[Provided that the said jurisdiction shall not extent to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar

instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such

commencement, or which provides that the said jurisdiction shall not extent to such a dispute.]

7. A perusal of the aforesaid provision would show that Hon'ble Supreme Court enjoys the original jurisdiction to the exclusion of any other Court

in respect of dispute between Government of India and one or more States or Government of India or any State or States on one side and one or

more States on the other or between two or more States. Therefore, once the area of jurisdiction is covered by Article 131, the petition raising the

bogies of public interest cannot agitate these 6 issues before a Writ Court under Article 226 of the Constitution particularly when we have our

doubts about the authenticity and the actual intention of the petitioner, whose antecedents do not reveal any relationship between him and the cause

raised by him. We have not been able to persuade ourselves to entertain this petition for the reason that Indus Water Treaty, 1960 is in operation

for the last over 54 years. A treaty like Indus Water Treaty was entered between two sovereign countries with the object of attaining complete and

satisfactory utilization of waters of the Indus system of rivers. It is in force for the last 54 years. We must lean towards the presumption that it is for

optimum utilization of water for the benefits of the population of both countries. How it could cause loss to the citizen is beyond our

comprehension. Such a question in any case would be beyond the pole of jurisdiction of this Court. Moreover there is no basis for us to accept

such a conclusion. We fail to understand how this realization has dawn on the petitioner that he alone could think of such a loss after a period of 53

years. We are further of the view that the dispute between the State of Jammu and Kashmir and State of Punjab has to be resolved by invoking the

original jurisdiction under Article 131 of the Constitution by either of the State. There is, thus, no room for us to entertain the instant petition.

8. As a sequel to the above discussion, this petition fails and the same is dismissed with costs of Rs. 10,000/- (ten thousand). Costs to be

deposited with the Legal Service Committee of the High Court.