
(1956) 07 AP CK 0006

In the Andhra Pradesh High Court

Case No : Division Bench No. 729/B5/2 of 1956

C. Shrikishen

APPELLANT

Vs

State of Hyderabad and Others

RESPONDENT

Date of Decision : 13-07-1956

Acts Referred:

Constitution of India, 1950 — Article 105, 122, 194, 212, 226

Citation : (1956) 07 AP CK 0006

Hon'ble Judges : Jaganmohan Reddy, J;Deshpande, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant;

Judgement

1. The Petitioner a journalist who is also a Barrister and an advocate of this High Court, has presented a petition for declaration and the issue of a writ of prohibition or any other writ or direction to 22 Respondents of whom Respondents 1 and 12 are respectively the State of Hyderabad and Government of India, New Delhi; Respondents 2, 13 and 14 are respectively the Speaker of the Hyderabad Assembly, Speaker of Lok Sabha, Vice-President of Republic of India and Chairman of Rajya Sabha; Respondents 3 to 10 are the Chief Minister and Ministers of the Hyderabad Government; Respondents 11, 21, 23 and 26 are respectively the Presidents of Hyderabad, Andhra, Mysore and Bombay Pradesh Congress Committees; Respondent 18 is the President of the All India Congress; Respondents 15, 16 and 17 are respectively the Prime Minister of India, Education Minister and Home Minister of India; Respondents 19, 22 and 24 are the Chief Ministers of Andhra, Mysore and Bombay, Respondent 20 is the Home Minister of Andhra State while Respondent 25 is the Revenue Minister of Bombay State.

The allegations in the petition are that the Respondent 15 who is the Prime Minister of India is doing everything in his power to influence the Ministers and members of the Hyderabad Assembly to agree to the dismemberment of Hyderabad and the merger of its Maratha, Kannada and Telugu tracts with the

adjoining new State units of Bombay Mysore and Andhra, and that he is trying to force the different Assemblies in Hyderabad, Andhra, Mysore and Bombay to pass resolutions for the disintegration of the Hyderabad State, that the Petitioner has drawn attention (as per annexures to the petition) of Respondents 15, 16 and 18 to the undesirability of proceeding with the implementation of the States Reorganisation Committee, but they are paying no heed and that if they succeed in their mala fide attempt to break up and disintegrate the Hyderabad State.

it would not only injure the people of Hyderabad in general politically, socially and economically but it would affect the Petitioner most adversely and give him a. mental shock to see his land of birth torn asunder by disruptive forces and elements and injure him financially and otherwise.

2. The Petitioner further alleged that neither the Assemblies of Hyderabad, Andhra, Mysore and Bombay nor the Parliament have any jurisdiction or authority to suggest any recommendation regarding disintegration of the State of Hyderabad which according to him.

by all canons of decency, morals, politics and law has got a right to exist and their acts would all be illegal and ultra vires of the Constitution.

After this the Petitioner has set out historical facts leading to the Police Action and the alleged assurances and solemn promises of Sardor Patel and Pandit Jawaharlal Nehru to convene a Constituent Assembly but that Constituent Assembly has not been convened and consequently according to the Petitioner:

it cannot be said legally and constitutionally that Hyderabad State had ceased to have its own independent status and merged or acceded to Indian Union

that even taking the Constitution as basis for guidance Hyderabad State exists as an entity under the Constitution and is continued under the aegis of the Nizam being thereafter styled as Rajpramukh, that this Rajpramukhship has been guaranteed to him both by the Constitution and even by the agreement of Government of India and that the States Reorganisation Commission has no jurisdiction to make any recommendation as regards the discontinuance of the Rajpramukhship, its recommendations having no legal or constitutional value are ultra vires.

3. In the result the Petitioner prayed for the issue of a declaration that the Government of India has no constitutional basis for the introduction of draft Reorganisation Bill in Parliament, and of the proposal for the disintegration of the Hyderabad State, for the issue of a writ of prohibition against Respondent 15 ordering him not to introduce any bill or Act for the disintegration of Hyderabad State, to issue a writ of prohibition or order against Respondents 1 to 11 ordering them not to discuss draft of the Reorganisation Bill as directed by Respondent 15 in the Hyderabad Legislative Assembly, to issue a writ of prohibition against Respondent 2, Speaker of the Assembly ordering him not to allow a discussion on the draft of the Reorganisation Bill, to order Respondents

12 to 18 and also 19 to 26 to keep away from Hyderabad and Respondents 1 to 12 not to influence them by direct or indirect contracts to say or do things for the disintegration of Hyderabad State, to issue a writ of prohibition against Respondents 13 and 14 respectively the Speaker of the Lok Sabha and Chairman of the Rajya Sabha not to allow any Bill to be introduced in the Parliament for the disintegration of Hyderabad State. A stay petition was also presented on the said date, along with an affidavit.

4. This petition first came up before a Bench consisting of one of us and our brother Ansari J., but during the course of arguments to have the petition admitted the Petitioner fainted on 13-4-1956, the last working day before the Summer Vacation and the case had to be adjourned over the Vacation, pending the recovery of the Petitioner who insisted on arguing his own case even though the petition was presented by Mr. Zaidi an Advocate of this Court.

Later from the Osmania Hospital he submitted another petition on 28-4-1956 to have the case heard during the vacation in view of its urgency, but evidently the case could not be posted during the vacation. He again presented another petition on 21-6- 1956 stating that Respondents 15 and 16 had introduced a draft Reorganisation Bill in Parliament in which disintegration and bifurcation of Hyderabad State is proposed and that pending this Bill administrative action is being taken and that we should issue to the Respondents notice to show cause why the application for writ be not admitted and to issue order for recording the evidence of Respondents 1 to 22. As the same bench which heard this petition first could not be constituted due to Ansari J., being on leave, the case has been posted before this Bench and had to be heard afresh.

5. This application in our view suffers from all the infirmities which a petition of this nature could conceivably suffer. We had at the outset indicated to the Petitioner certain difficulties in the way of this petition being admitted and the want of jurisdiction in this High Court to issue the writs and directions prayed for but the Petitioner submitted that before he could satisfy us on these points it would be necessary to give a background and he addressed lengthy arguments more on what he considered to be the merit of the case against bifurcation of Hyderabad State than to satisfy us as to the maintainability of the petition.

Notwithstanding the fact that we impressed on the Petitioner on every occasion that he has to satisfy us, whatever be the merits of the case, as to the jurisdiction of this High Court to issue writs and directions of the nature prayed for by him he tried to trace the history of the various stages of the development of Constitutional reforms in India, the position under the Government of India Act, then under the Government of India Adaptation Laws Order, 1947, the firman of H. E. H. the Nizam of 1949 and the Constitution of India under which Hyderabad continued to be a State.

We have tried to point out more than once to the Petitioner that all this is not relevant for the immediate admission of the petition, but he persisted in lengthy

exhortations which were in the nature of political speeches avowedly designed to obtain publicity through Court proceedings. When we informed the Petitioner firmly that we should be first satisfied with respect to the competence of his petition and that we cannot allow the Courts to be utilised as public platforms for the purposes merely of venting political or social views, he submitted a petition yesterday that he must be allowed to argue in his own way and that he is confronted with an awkward dilemma by our insistence of his first satisfying us on the point of jurisdiction which stands in the way of his writ petition being admitted, that he was unable to understand the peremptory directions and immediate compliance as he had offered to deal with the points raised in the course of his argument as he himself felt that without doing it he cannot expect his writ petition to be granted and that he feels in the circumstances he should not resume his arguments as he would not be in a position to do justice to the cause he has taken up.

6. We do not propose to deal with the various matters mentioned in this petition but we may en passant mention that the Petitioner in Para 11 after stating that Article 3 only contemplates at the most a change of name or boundary for which a special procedure is provided for whereby the President has to ascertain the views of the State or States concerned, makes an unwarranted reference to an alleged agreement with his point of view by one of us.

Apart from the immediate relevance in the matter of admission of the petition on the Petitioner putting forward the view adhered to in his petition, it was pointed out by both of us, that if it is conceded, it will lead to an absurdity because while in the case of a proposal in a Bill affecting the boundary or the name or names of any State or States, the views of the Legislature are to be obtained, while no such views would be necessary with respect to matters enumerated in Clause (a), (b) and (c) of Article 3 and that such an interpretation was not warranted because, the word "unless" in the proviso would show that it may not be necessary to consult the view of Legislature on a Bill affecting boundaries or name or names of State or States but with respect to the other matters the views of Legislatures have to be obtained.

Further we may point out that when during the course of arguments, Judges, in order to elicit the scope of an issue, or limit a proposition or to clarify the meaning or interpretation of any Section or Act or for any other purpose, put questions or assume a position for the purposes of argument, anything said cannot be deemed to be an agreement with the persons making a particular submission so as to be binding. What is binding is what is stated in the order or judgment after due consideration of the arguments and the points involved in the case.

7. Be that as it may, in our view, we have given the Petitioner more than sufficient time to satisfy us if he could as to the maintainability of the petition which he equally recognises to be an impediment to the admission of this petition. We cannot at this juncture permit arguments which are not germane the

point for determination, only to find at the end thereof that the entire matter is circumscribed in a narrow compass relating to the maintainability of the petition.

8. The first defect in this petition is that relief is claimed against Respondents 12 to 26 who are admittedly residing outside the jurisdiction, some of them in New Delhi within the jurisdiction of Punjab High Court, others within the jurisdiction of Andhra High Court and some others within the jurisdiction of Bombay High Court and others within the jurisdiction of Mysore High, Court, at any rate all the several Respondents as aforesaid residing outside the territorial limits of this High Court. This High Court has, therefore, no jurisdiction to issue writs against them.

9. The Supreme Court has made this position quite clear in three cases. In the case of Election Commission, India Vs. Saka Venkata Subba Rao and, , the Respondent who had obtained an order restraining the Election Commission, a statutory authority constituted by the President and having its offices permanently located at New Delhi, from enquiring into the alleged disqualification of the Respondent for membership of the Legislative Assembly. The Election Commission appealed to the Supreme Court where Patanjali Sastri, C.J., observed:

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.

A person or an authority against which a writ is sought to be directed must therefore be within the territories as a condition of the High Court being empowered to issue such a writ. In that case the High Court of Madras was held not to have jurisdiction to issue a writ against Election Commission which has its permanent office located at Delhi.

This decision in "Saka Venkata Rao's case (A)", was followed in the case of - K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , which is a reverse case, namely, where the Punjab High Court had considered the objection urged on behalf of the Respondent to the fact that the Petitioners being Assessees belonging to Uttar Pradesh, their assessments were to be made by the Income Tax Commissioner of that State and the mere fact that the location of the Investigation Commission was in Delhi would not confer jurisdiction upon the Punjab High Court to issue any writ under Article 226 of the Constitution.

In other words, the ratio of the Punjab High Court's decision was that even though the person or authority to whom the High Court is empowered to issue writs is within the territories, yet if the subject-matter is outside the jurisdiction

the High Court cannot issue a writ. On appeal to the Supreme Court their Lordships distinguishing the case of - AIR 1943 164 (Privy Council) and following "Saka Venkata Rao's case(A)", held that the Punjab High Court had jurisdiction to issue a writ to the Investigation Commission in spite of the fact that the Assesseees were in the State of Uttar Pradesh and the original assessments were made by the Income Tax Authorities of that State itself.

10. In a latest case of - A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, , it was contended successfully that the High Court had jurisdiction to issue a Writ to any person within its territories though acting as an agent if he is guilty of doing an act which is not authorised by law or is violating fundamental rights of the citizens.

11. These decisions of the Supreme Court clearly leave no doubt as to the limits of the jurisdiction of a High Court to issue writs to persons or authorities residing outside its territorial jurisdiction. We asked the Petitioner whether he would like to amend his petition but he refused to do so. On this ground itself the petition is liable to be dismissed.

12. There is yet another ground upon which the petition becomes untenable, viz., the want of jurisdiction in the High Court to issue any writs against a Legislature or Parliament or the Speaker or any officer of these Assemblies. It is an elementary proposition of Constitutional law that both Parliament and a State Legislature are sovereign within the limits assigned to them by the Constitution. Clauses (3) of Articles 105 and 194 determine the privileges and powers and immunities of Parliament and Legislatures of States to be those defined by it under any law and until so defined shall be those of the Parliament of the United Kingdom.

Similarly Articles 122 and 212 expressly prohibit the jurisdiction of the Courts in respect of the exercise of powers vested in any officer or member of a Parliament or an officer or member of a Legislature in whom powers are vested under the Constitution for regulating procedure or conduct of business or for maintaining order in the respective assemblies.

A Speaker of a Parliament or Legislature or the Chairman of the Rajya Sabha are officers within the meaning of this Article. Ministers of the Government whether of the Centre or of States are also members respectively of the Parliament or Legislature; as such the Courts cannot interfere with them in the part they play in the proceedings or business of the Assemblies nor can they interfere with their privileges, as the rights of any of them to introduce any Bill in their respective assemblies are rights and privileges of those members whether as members or as Ministers. There is an inherent right in the Legislatures to conduct their affairs without any interference from any outside body.

13. That apart neither a Writ of Prohibition nor a Writ of Certiorari nor a Writ of Mandamus will lie to restrain these bodies from enacting any legislation even if it is ultra vires these powers. If authority is necessary we may refer to the well

known case of - King v. Legislative Committee of Church Assembly, Ex-parte Haynes Smith 1928 1 KB 411(E). In this case an application made to restrain by prohibition together with Certiorari the National Assembly of the Church of England from proceeding with the prayer book measure, was unsuccessful on the simple ground that neither the Committee was empowered to act nor had it in fact attempted to act judicially in matters which could be considered to affect the interest of the community.

What was not permissible for the Courts to do in the case of the Church Assembly in its legislative capacity in regard to a measure which it was enacting cannot be permissible in the case of a Legislature or Parliament. The Writ of Prohibition and Certiorari by their very nature do not lie, nor a Writ of Mandamus which as observed by Lord Goddard in - Rex v. Dunchee 1950 2 All ER 741 at 743(F), "is neither a Writ of course nor a Writ of right, but that it will be granted if the duty is in the nature of a public duty and specially, affects the rights of an individual, provided there is no more appropriate remedy."

It is clear therefore that the Courts can have no jurisdiction to issue any of these Writs to the Legislatures; in other words until a bill becomes law, the Legislative power not being complete the Courts cannot reach them.

As we have already observed during the course of the arguments addressed by the Petitioner that neither a Court nor a Judge has a general or roving .superintendence over an undefined field, nor is it their function to declare void or directly annul a law immediately it is promulgated unless its interpretative function is sought by any person or party who challenges that law as having infringed his rights on the ground of its being ultra vires of the powers of the legislative body.

14. A perusal of the prayers would show that the Petitioner is asking us to do what we are not empowered or competent to do. In this view of the matter the petition is rejected, as being not maintainable and incompetent.