

(1977) 03 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 11821 of 1975

Chandra Kanta Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-03-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 228A(3)

Citation : AIR 1977 All 270 : (1977) AWC 170

Hon'ble Judges : Yashoda Nandan, J; Satish Chandra, J; S.B. Malik, J; R.M. Sahai, J; K.N. Singh, J

Bench : Full Bench

Advocate : Gyan Chandra Dwivedi, for the Appellant;

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—On February 7, 1977, a Division Bench of this Court passed the following order:

"By this writ petition under Article 226 of the Constitution, the petitioners seek to challenge the validity of the U. P. Ordinance No. 14 of 1976, which has since been replaced by an Act, on the ground that it contravenes Article 29 and other provisions of the Constitution.

Art. 228A(3) of the Constitution provides that the minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law has to be five. Even if we are not inclined to accept the argument of the petitioners, it will not be possible for us to reject the writ petition, as it would amount to determination or a question on constitutional validity of the Ordinance. The object of placing a writ petition for admission obviously cannot be to compel the Division Bench to admit the writ petition whether it agrees with the arguments advanced by the petitioner or not. In the circumstances, in cases where the constitutional validity of some State law is being questioned, it will serve no useful purpose to list that petition before

Division Bench. Accordingly we direct that the papers of this writ petition be placed before the Hon'ble the Chief Justice for making the appropriate orders."

2. The Hon'ble the Chief Justice directed that the petition be listed before this Bench. When the hearing began, we felt that even though a petition under Article 226 of the Constitution may raise question as to the constitutional validity of any State law, it may not be necessary for it to be heard by a Bench of five Judges for its admission. Learned counsel for the petitioner conceded that though this aspect was implicit in the reference but since such a question was not expressly referred, he may be granted time to study and make considered submissions. We accordingly adjourned the hearing.

3. Article 228A as added to the Constitution by the Constitution (Forty Second Amendment) Act, 1976 reads:

"Special provisions as to disposal of questions relating to constitutional validity of State laws-- (1) No High Court shall have jurisdiction to declare any Central law to be constitutionally invalid.

(2) Subject to the provisions of Art 131A, the High Court may determine all questions relating to the constitutional validity of any State law.

(3) The minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law shall be five:

Provided that where the High Court consists of less than five Judges, 111 the Judges of the High Court may sit and determine such question.

(4) A State Law shall not be declared to be constitutionally invalid by the High Court unless-

(a) Where the High Court consists of five Judges or more, not less than two-thirds of the Judges sitting for the purposes of determining the validity of such law, hold it to be constitution any invalid; and

(b) Where the High Court consists of less than five Judges, all the Judges" of the High Court sitting for the purpose hold it to be constitutionally invalid.

(5) The provisions of this article shall have effect notwithstanding anything contained in this Part.

Explanation.-- In computing the number of Judges of a High Court for the purposes of this article, a Judge who is disqualified by reason of personal or pecuniary bias shall be excluded."

4. The scheme of this Article is that the High Court has been debarred from declaring any Central law to be constitutionally invalid. In the next place, a High Court can declare a State law to be constitutionally invalid if two-thirds of the Judges sitting for the purpose of determining the validity of such law hold it to be constitutionally invalid. To this end, at least five Judges must sit and hear the case. If a High. Court consists of less than five Judges all the Judges have to sit

and hold that the law is constitutionally invalid.

5. Learned counsel for the petitioner urged that by Clause (3) at least five Judges have to sit for determining the question as to the constitutional validity of the State law. The word "determining" meant settling or resolving the question. According to learned counsel a Bench of less than five Judges cannot, at the admission stage, dismiss the writ petition involving a constitutional question because by dismissal, the question as to the constitutional validity of any State law, is determined, though against the petitioner. While conceding that a Bench of less than five Judges may after hearing it admit a writ petition, but they cannot validly dismiss it.

6. The word "determination" has been defined under Shorter Oxford English Dictionary, page 493, as a bringing or coming to an end, judicial or authoritative decision or settlement, the resolving of a question the action of decisively ascertaining the position, the mental action of coming to a decision. The word "determine", has been defined to mean to put an end to, to settle or decide, to come to a judicial decision, to lay down decisively or authoritatively, to ascertain definitely, to, resolve a question. In Webster's Third New International Dictionary, page 616, the word "determine" has been defined to mean to fix conclusively or authoritatively to settle a question or controversy to settle or decide by choice of alternatives or possibilities. In *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhand and Others*, , it was held that the expression "determination" in the context in which it occurs in Article 136 signifies an effective expression of opinion which ends a controversy or a dispute. In *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, , it was held that the word "determine" has a much wider scope than the word "consider". The word "consider" merely connotes that there must be active application of the mind by an authority after considering the entire circumstances of the case. In some decision, the word determine, has been held to mean to come to an end. (See *Sital Sukhram Vs. Central Government Industrial Tribunal Cum Labour Court, Jabalpur and Others*, and *Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum*,

7. In *Rama Shankar Vs. Mst. Hubraji and Others*, , a Division Bench held that the word "determination" connotes the idea of final determination and not a mere opinion or finding, In *B. P. Refinery (Kent) Ltd. v. Kent River Board* (1956) 2 All 834, it was held that the word "determination" connotes the idea of ascertaining precisely.

8. In *Annapu Rammanna v. Ponduri Sreeramulu* AIR 1958 AP 768, it was held that a summary dismissal " of an appeal is also determination so as to bring out merger of lower court's decree in that of the appellate court.

9. It is evident that the word "determine", has several meanings, some giving the word the widest amplitude while others a restricted ambit.

10. The principles of interpretation of provisions in a constitution are well

known. In *Union of India v. Harbhajan Singh Dhillon* AIR 1972 SC 1051, it was held that the only safe guide for the interpretation of an article or articles of an organic instrument like our Constitution is the language employed interpreted not narrowly but fairly in the light of the broad and high purposes of the Constitution, but without doing violence to the language.

11. In *Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh*, , it was laid down that if two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange inconsistent results, or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of statute.

12. In *Kanwar Singh Vs. Delhi Administration*, , the Supreme Court held that if giving a literal meaning to a word used in statute would defeat the object of the legislature which is to suppress a mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.

13. During the last 25 years, the High Court speaking through a single Judge or a Division Bench, as the case may be, used to and could declare a law constitutionally invalid. The obvious object of Article 228A is to avoid this. It has specifically provided that two-thirds of at least five Judges or if there are less than five, all of them must hold the law, to be constitutionally invalid then alone the High Court could declare it so. The object was that a declaration of constitutional invalidity could be done after: determining the constitutional question by a Bench of five Judges.

14. It is an established practice that High Courts take up a petition under Article 226 for admission or preliminary "hearing, to decide whether a notice or rule nisi be or be not issued to the respondents. In *Himansu Kumar Bose*, the Hon^{ble} the Chief Justice of the High Court at Himansu Kumar Bose Vs. Jyoti Prokash Mitter, the Supreme Court held that in writ petitions filed in High Courts under Article 226 rule nisi is usually issued where arguable issues are raised. At another place it observed that if triable issues are raised by a petition, it would be inappropriate to dismiss the petition in limine. The purpose of an admission hearing is to screen cases in order to see whether triable or arguable points arise. If such a question arises the petition is admitted. Dismissal means lack of such an issue in the opinion of the Bench. Then at the final hearing all interested parties are heard on the raised questions with a view to decide or determine them. This is the stage when alone a State law can possibly be declared constitutionally invalid. At the admission stage, even if the Judges hearing the petition are of opinion that the law is constitutionally invalid, they cannot either hold it or declare it to be so. They can only admit the writ petition to a regular or final hearing.

15. The aim and object of Article 228A was to make sure that a State law is not declared constitutionally invalid except by the stated majority of at least five Judges. This safeguard to the validity of a law would be fully achieved if the provisions of Clauses (3) and (4) of Article 228A are held applicable to the final hearing of a writ petition and not to the admission stage. If we read the entire article as disclosing an integrated scheme, the word, determining occurring in Clause (3) would take its colour from the context. In other words, if we read Clauses (3) and (4) together as cognate parts of a single scheme, there is no difficulty in holding that the determining required by Clause (3) is the decision reached after hearing both the parties and not merely the opinion formed at the admission hearing.

16. Article 226 as substituted by the Constitution (Forty-second Amendment) Act, 1976 by Clause (3) provides that no petition shall be entertained if.... The word "entertained" has been explained by the Supreme Court:--

"We are of opinion that the word "entertain" means the first occasion on which the Court takes up the matter at the admission stage or if by the rules the appeals are automatically admitted, it will be the time of hearing of the appeal."

If Parliament intended that at least five Judges should sit to hear a writ petition raising a constitutional question even at the admission stage, it may as well have couched Clause (3) of Article 228A by suitably using the word "entertained".

17. Of course, the Parliament well knew the established practice that writ petitions are at first heard for admission. In Section 58 (2) of the Constitution (Forty-second Amendment) Act it has provided that every pending petition before a High Court which would not have been, admitted by the High Court under the provisions of Article 226 as substituted by Section 38 if such petition had been made! after the appointed day shall abate.

18. If the submission of the learned counsel for the applicant is accepted, it will mean that every writ petition in which a question as to the constitutional validity of a State law has been raised must be heard by at least five Judges sitting together, no matter how frivolous the question may be and no matter whether the question has already been settled. This procedure would cause immense inconvenience to the disposal of the work in this Court. Looking to the number of writ petitions that are instituted every day a Bench of five Judges would be required virtually every day to hear one or more of such petitions at the admission stage. It will seriously hamper the ultimate disposal by the Court. On the practical plane the inconvenience will be substantial. This is another reason why of the two available connotations the Court should adopt one which would not only advance the remedy but also obviate practical difficulties and inconvenience.

19. In our opinion, a Division Bench can reject a writ petition if it is of opinion that the question as to the constitutional validity of a State law has no prima facie substance. We, therefore, return the reference with this opinion to the

Division Bench for hearing the writ petition for admission.