

(1956) 04 CAL CK 0003
In the Calcutta High Court

Hem Chandra Sen Gupta and Others	APPELLANT
Vs	
The Speaker of Legislative Assembly of West Bengal and Others	RESPONDENT

Date of Decision : 17-04-1956

Acts Referred:

Constitution of India, 1950 — Article 1, 194, 208, 212, 226

Citation : AIR 1956 Cal 378 : (1956) 1 CALLT 86 : 60 CWN 555

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : A.K. Hazra, for the Appellant; Adv.-General and G.P. Kar, for B.C. Roy and Speaker, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—There are four petitioners in this application. One of them is a sitting member of the West Bengal Legislative Assembly. The other three describe themselves as "Citizens of West Bengal", by which they undoubtedly mean Citizen of the Indian Union residing in the State of West Bengal. The Union of India and the State of West Bengal have been made party respondents (No. 4 and No. 2). The other respondents are, Dr. Bidhan Chandra Roy, the Chief Minister of West Bengal (No. 3) and the Speaker of the West Bengal Legislative Assembly (No. 1).

The prayers in the petition are all-embracing. They seek for the issue of a medley of high prerogative writs, including the writs of mandamus, certiorari and quowarranto. They seek to restrain the Chief Minister from functioning or drawing his salary, to injunction the Speaker from presiding over the legislature, and generally to paralyse the administration of the State inter alia by stopping recourse to the consolidated fund.

At the hearing, however, the scope of the application has been considerably scaled down. By and large, it may be said that the petitioners would rest content

if the Chief Minister is restrained from pursuing a notice he has caused to be given in the Assembly, of moving a resolution approving of the proposal for the Union of the States of West Bengal and Bihar, and if the Union of India is restrained from bringing or initiating any Bill or Legislation in Parliament for the purposes of uniting the two States. The facts stated in the "petition relevant for the purposes of the reliefs claimed, may be briefly stated as follows:

2. On 22-1-1947, the Indian Constituent Assembly passed a resolution, declaring its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future Government, a Constitution, wherein "the said territories whether with their present boundaries or with such other as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution shall possess and retain the status of autonomous units, and exercise all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherited or implied in the Union or resulting therefrom and wherein all power and authority of the Sovereign Independent-India, its Constituent parts and organs of Government are derived from the people of India...."

In February 1947, the British Government declared its intention of transferring power in British India to Indian hands. In June 1947, a statement was issued by His Majesty's Government on the method of transfer of power in India and inter/ alia of the partition of undivided Bengal. It was , declared that the Provincial Legislative Assembly of Bengal would be asked to meet in two sections and decide whether they would form a separate sovereign State or join any one of the two Dominions of West Bengal or Pakistan or whether there should be a partition of the province.

On 20-6-1947, the members of the Bengal Legislative Assembly met separately and decided upon the partition of Bengal. Thus came into existence the Governor's Province of West Bengal which later on became the State of West Bengal. On 18-7-1947, the British Parliament passed the Indian Independence Act, creating the two independent Dominions of India and Pakistan. This was followed by various orders in Council, particulars whereof are stated in paragraph 9. The Constitution of India was passed on 26-11-1949. The bulk of it came into operation on 26-1-1950, which is described as the "Commencement of the Constitution".

3. According to Article 1 of the Constitution, India, that is Bharat, shall be a Union of States. The States and the territories thereof shall be the States and their territories specified in Parts A, B and C of the First Schedule, annexed to the Constitution. The Provinces of West Bengal and Bihar have become the Part A States of West Bengal and Bihar. Subsequent to the commencement of the Constitution, the Government of India appointed a high-powered commission called the States Reorganisation Commission (S.R.C.) to go into the question of the reorganisation of the boundaries of the different States.

The Commission has given its report and has recommended that the boundaries between the two States of West Bengal and Bihar should be redrawn by incorporating in the State of West Bengal, a small portion of the territories now belonging to Bihar. This has given rise to a great deal of dissatisfaction in both States. People of West Bengal consider the recommendations as falling short of their legitimate demands, whereas the people of Bihar naturally deplore the loss of a part of their territories.

4. In or about 23-1-1956, the Chief Ministers of West Bengal and Bihar made a joint declaration from New Delhi, now known as the "Roy Sinha declaration", proposing a merger of the two States of West Bengal and Bihar. The proposal, however, was not referred to by the Governor of West Bengal, in his address to the legislature on the opening of the last Budget session.

5. On 24-2-1956, the Legislative Assembly of the State of Bihar passed a resolution supporting the merger of the two States. This resolution is stated to have been forwarded to the Union Government.

6. On 14-2-1956, the Secretary to the West Bengal Legislative Assembly issued a circular as follows:

Circular No. 12(241) K.A. dated Calcutta, the 14th February, 1956 to all members of the West Bengal Legislative Assembly. Dear Sir/Madam,

I beg to inform you that the Hon^{ble} Dr. Bidhan Chandra Roy, Chief Minister has given notice that he would move the following resolution during the current session of the West Bengal Legislative Assembly--

Resolution.

"This Assembly approves the proposal for the Union of the States of West Bengal and Bihar."

Yours truly, (Sd.) A.R. Mukerjee Secretary to the West Bengal Legislative Assembly.

7. A member of the Assembly, Dr. Banerjee brought an amendment resolution which

"Regretted that there was no mention of any effective measure to be taken by Government to reorganise the boundaries of the State on the basis of language and contiguity and to counter the move to amalgamate West Bengal with Bihar."

This resolution, or the "amendment resolution" as it has been called, was moved in the house even before the main resolution, and was lost. It is stated that this was claimed to be sufficient to declare the main resolution of Dr. Roy to have been carried a claim which was negated by the Speaker of the House, the respondent No. 1.

8. This application was moved before me on the 10th April last, for a rule to be issued upon the respondents to show cause why the reliefs in-dated above,

should not be granted. As I considered the matter to be of great public importance, I desired that notice should be given to the Solicitors for the Union of India and the State of West Bengal, which was done. I have now had the advantage of hearing learned counsel for the respondents as well as of the petitioner.

9. I have heard learned counsel for the petitioners at length, but I regret to say that much of his argument was quite besides the point. He started by expressing his strong condemnation of the conduct of the Chief Minister, who, according to learned counsel, had broken his solemn oath of office to uphold the rights of the people of the State and to bear allegiance to the Constitution. He characterised the proposed resolution as political extinction and the mover thereof as being guilty of an attempt at racial suicide.

10. These are high-sounding words, but are obviously more suited to a political platform than a Court of Law. The Court has no politics. It only protects and administers the law. It takes no part in political controversies, however vital or pressing they may be. Political extinction or racial suicide, if they are offences at all, are offences yet unknown to our law, and the writs of this Court do not reach there.

I therefore requested learned counsel to restrict himself severely to questions of law and confine himself to remedies which are within the powers of this Court to grant. The approach of Mr. Hazra to the entire question was primarily a historical one. He argued that the Province of Bengal was at one time put to a hard election. But to its credit, it elected to remain within the Indian Dominion even though in an extremely truncated form.

It is argued that full sovereignty lay in the province and in its successor, the State of West Bengal. When this sovereign autonomous State joined the federation known as the Indian Union, it was upon the implied condition that its continued existence should be guaranteed. In other words, the identity of part "A" States, which voluntarily joined the Union when it came into being, is sacrosanct and can never be destroyed.

From this, Mr. Hazra went on to argue that Article 3 of the Constitution must be interpreted in this historical back ground, and it logically followed that parliament had been granted power only to consolidate or sub-divide part "B" or part "C" States, but never part "A" States, which must continue for ever as autonomous sovereign States in their pristine form. I regret to say that the whole argument is based upon a misconception of the law.

Originally, India had a unitary Constitution, under which the Provincial Governments had no independent existence except perhaps as agent of the Central Government. Under the Government of India Act, 1935, a federal system was established. But although the part relating to Provincial autonomy was given effect to, the Federation never came into existence. The Provinces therefore never became Sovereign States and in reality had no voice in the formation of

the Union under the Constitution.

Thus, even though the Province of West Bengal voluntarily joined the dominion of India, it never became a Sovereign State. But the most important thing to notice is that the Union of India under the Constitution is not based on agreement among the component States. Thus, the Constitution of India can only be said to have been framed by the people of India for the people of India as a whole and in whom the real sovereignty rests. The Constitution is a creation of the people of India and not the States, the States themselves being created by the people of India. The Constitution is federal in form but it is not a federation based -upon agreement of the component States.

Unlike the American Constitution, the component States are not, and never have been, independent units. There is no such thing as a citizen of West Bengal, although the petitioners describe themselves as such. The Constitution recognises only one form of citizenship for the whole country and there cannot be a double citizenship, namely, a citizenship of the Union and a citizenship of the State.

It is interesting in this connection to observe the difference between the objectives resolution passed by Constituent Assembly on 22-1-1947, and the draft Constitution published in 1948 upon which is based the Constitution which was finally passed. According to the objectives Resolution, the component units were to retain the status of autonomous units together with residuary powers.

But under the draft Constitution the residuary powers resided in the Union. The original idea of autonomy in the States was substituted by that of a strong centre. Even historically speaking, the Constitution was not the result of an agreement between several sovereign States. In fact, it was drawn up by a few eminent men, who drew their inspiration from the Government of India Act, 1935, the Constitution of the United States, the Constitution of Australia, the Constitution of Ireland, and the Constitution of Canada.

One must, however, clearly bear in mind the distinction between calling a component State, an autonomous sovereign State, and the question of the nature of its powers within the sphere allotted to it by the Constitution. The Constitution has allotted certain powers exclusively to the local legislature. Within its own allotted sphere, and subject to the Constitution, the State Legislature is supreme and has sovereign powers, since sovereignty means nothing more than an absence of outside interference. But this is because the Constitution itself grants such a right.

There is no question of any extraneous causes or overriding implications. There is however no question of the component States being mere administrative units, acting as agents of the Central Government, as during the British regime. Our Constitution combines the features of the federation as well as of a unitary system. In times of emergency, the federal Government can even be made into a unitary one. But all this flows from the Constitution itself. It is not possible to

look beyond it and import extraneous factors to control or guide its implementation.

11. Let us now investigate the history of Article 3 of the Constitution. Section 290, Government of India Act, 1935, ran as follows:

"290(11 subject to the provisions of this Section, His Majesty may by order in Council--

- (a) create a new province;
- (b) increase the area of any province;
- (c) diminish the area of any province;
- (d) alter the boundaries of any province.

Provided that, before the draft of any such order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any province which will be affected by the Order, both with respect to the proposal to make the order and with respect to the provisions to be inserted therein."

After the Independence Act of 1947, and under the Section as adapted by the India Provisional Constitution Order 1947, the above power was vested in the Governor-General, and now under the Constitution it is vested in Parliament.

12. Article 4, Section 3(1) of the American Constitution lays down:

"But no new State shall be formed or erected within the jurisdiction of any other State; nor any " State be formed by the junction of two or more States, or part of States, without the consent of the Legislatures of the States concerned as well as the Congress."

13. Section 123-4 of the Australian Constitution states as follows:

"The parliament of the Commonwealth may with the consent of the Parliament of a State and the approval of the majority of the electors of the State voting upon the question, increase, diminish or otherwise alter the limits of the State, upon such, terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

A new State may be formed by separation of territory from a State but only with the consent of the Parliament thereof, and a new State may be formed by the Union of two or more States or part of States, but only with the consent of the Parliaments of the States affected".

It will thus be seen that the provisions in Article 3 of the Constitution, confer

wider powers upon Parliament than either under the American or the Australian Constitution. In the latter, the consent of the Component States or a majority of its electors must be obtained. Thus there must be either consent or a referendum. In India it is sufficient if the view of the State is ascertained.

In other words, the powers under Article 3 may be enforced upon an unwilling component State. It, therefore, approximates more to the Government of India Act, 1935 than its foreign counterparts. Under Article 3, Parliament may by law form a new State by uniting two or more States. For this purpose, a Bill must be introduced in Parliament.

But before the introduction of such a Bill, the recommendation of the President must be obtained. In the case of a Part A or Part B State, if the boundaries or names are affected, the President must obtain the views of the legislature of each of the States concerned.

14. There is no warrant for Mr. Hazra's argument that Article 3 of the Constitution does not apply to Part "A" States. Articles 1 and 3 read together, makes it abundantly clear that for the purposes of Article 3, no distinction is made between Part A, Part B or Part C States. In fact, the proviso in Article 3 makes it clear that the article is dealing also with Part A States, since special safeguards have been provided for in such a case.

15. Mr. Hazra then points out that the resolution proposed by Dr. Boy does not comply with the provisions of Article 3, which pre-supposes the existence of a Bill which it is intended to move in Parliament. Such a Bill would have to be lodged with the President for his recommendation and the President would have to ask the State legislature for its views, because the bill would necessarily affect the boundaries and names of two part "A" States.

16. If the impugned resolution was meant to be an approval within the meaning of Article 3, this would be a point of substance. The learned Advocate General appearing for the State of West Bengal and its Chief Minister upon instructions says that it is not, and cannot be an approval under Article 3. He admits that the views of the local legislature under Article 3 cannot be given before the President asks for it..

At the present moment there is no bill before Parliament seeking the Union of the States of West Bengal and Bihar; not even a bill intended or proposed to be moved, whereon the recommendation of the President has been sought for. The resolution has been sought to be moved to convey to the centre that an Union of States if proposed is likely to be approved by the respective legislatures. This is intended to be an inducement for the members of Parliament and/or the Government of India to moot such a Bill.

If such a Bill is mooted and lodged with the President for his recommendation, it will have to be sent down again to both the State legislatures for expressing their respective views- It is true "that the word "Proposal" has been used in the

impugned resolution, but it is not the "proposal" as contemplated in Article 3, because such a proposal must be contained in a Bill intended to be introduced in Parliament:, and at the moment there is no such Bill in existence.

The learned Advocate General characterised the proposed resolution as merely "Gas and Vapour. He has also pointed out that the proposed resolution is even more vaporous than is commonly thought.. Under Rule 92, West Bengal Assembly Procedure Rules, a member who wishes to move a resolution shall give 21 days" notice of his intention to do so. Under Rule 95, any member may move a resolution relating to a matter of general public interest, under Rule 94, every resolution shall be in the form of a declaration of opinion by the assembly. But the important rule is Rule 20(1) which states that

"on the termination of a session all pending notices shall lapse, and fresh notice must be given for the next session except in the case of a question which has not been answered or Bills which for want of time could not be introduced".

The learned Advocate General says that the last session has come to an end because the Legislative Assembly has been prorogued. Mr. Hazra is not prepared to accept this, but seeing that the Speaker of the house is represented before me and supports this statement, I have no doubt whatever about the authenticity and correctness thereof. It follows that the impugned notice itself has spent its force. At a future session of the Legislative Assembly fresh notice will have to be given of any resolution of a like nature that may be brought before it.

17. Next, Mr. Hazra argues that not only is the proposed resolution, violative of the procedure laid down in Article 3, but it also introduces the concept of a partial union which has no existence in the eye of law. He argues that under Article 3, you can unite two states into, one, but once you have done so, the new state is a distinct entity. There is no provision by which, two States can unite for some purposes and remain separate for other purposes. For instance he says that there cannot be two High Courts in such a consolidated state, and yet that is the actual proposal.

18. This is certainly a very difficult question. Prima facie, his main proposition seems to be sound, namely that under Article 3, there can be a complete union of two States but there cannot be a half-way house. In other words, in the Constitution as it stands at present, there does not appear to be any provision for two States to unite in some matters and not unite in respect of other matters

So far as two High Courts are concerned, the learned Advocate General has drawn my attention to Article 4 of the Constitution which enables Parliament to provide for "supplemental, incidental and consequential provisions" to any law referred to in Article 2 or Article 3.

19. Unless, however, we know the precise nature of the law which is proposed to be enacted, it is idle to consider whether it is in reality a union not contemplated by law, or whether a particular provision in it can legitimately be described as

"supplemental, incidental and consequential". To such a union of States, the provisions of the Constitution must be strictly applied and the scope therefore cannot be conveniently enlarged.

The Constitution can how-ever be amended by following the procedure laid down for the amendment of the Constitution. Such considerations are however entirely premature at the present moment. The vaporous resolution, such as it is does, not indicate the nature of the" proposal for uniting the two States. The conditions of unity are not stated, I am informed that in fact no such conditions have been as yet determined or agreed.

20. Lastly, the learned Advocate General has argued that this Court has in any event no jurisdiction to interfere at this stage.

21. Under Article 194, subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the legislature, there shall be freedom of speech in the Legislature of every State. Under Article 208, a house of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. Article 212 of the Constitution runs as follows:

"212 (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. (2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers".

22. It is argued that under rules of procedure-framed by the Assembly under Article 208 a member is at liberty to bring forward any resolution, provided the rules are observed. It is for the Speaker of the House to allow or disallow such a resolution to be raised or discussed in the house. The Courts cannot at this stage seek to regulate the procedure of the house and arrogate to itself the powers of the Speaker.

If however ?a law is passed or a resolution adopted or a motion carried, which is not in accordance with the Constitution, such a law, resolution, or motion can be declared invalid by the Court. I think this is a correct delineation of the law. In "The Queen v. Lords Commissioners of the Treasury" (1872) 7 QB 387 (396) (A), Blackburn.J. said as follows:

"I must observe in saying this that there is not the slightest intention on my part to question the exclusive prerogative of the House of Commons in voting the money. As long as the thing remains "in fieri" a resolution in the House it could not, I believe, be brought properly before this Court. But when the money has been voted, and the money has been granted, and an Appropriation Act has been passed, then it has become an Act of the Legislature, and we must construe it when it comes before us as we should do any other Act".

"What are the safeguards" says Dicey in his law of the Constitution (9th Edn. p. 131) "which under a rigid Constitution can be taken against unconstitutional legislation"? He answers the questions as follows:

"Two methods may be, and have been, adopted by the makers of Constitutions, with a view to rendering unconstitutional legislation, either impossible or operative. Reliance may be placed upon the force of public opinion and upon the ingenious balancing of political powers for restraining the legislature from passing unconstitutional enactments. This system opposes unconstitutional legislation by means of moral sanctions, which resolve themselves into the influence of public sentiment.

Authority again may be given to some person or body of persons, and preferably to the Courts, to adjudicate upon the constitutionality of legislative acts and treat them as void if they are inconsistent with the letter or the spirit of the Constitution. This system attempts not so much to prevent unconstitutional legislation as to render it harmless through the intervention of the tribunals and rests at bottom, on the authority of the judges".

23. The Constitution lays down the respective jurisdictions of the legislatures and the Courts. It is the business of the Legislature to make laws . and of the Courts to administer them. The powers, ; Privileges and Immunities of the State Legislatures and their members have been laid down in, the Constitution. Within the legislature, members have absolute freedom of speech and discussion (Article 194). Subject to the provisions of the Constitution, they can regulate their own procedure (Arts. 208, 212).

In such matters and within their allotted spheres, they are supreme and cannot be called into account by the Courts of the land. The Courts are therefore not interested in the formative stages of any law. Even where a law has been promulgated, it is not the duty of the Courts to act in a supervisory character and rectify the defects "suo motu".

The position has been correctly enumerated in " Chotey Lal Vs. The State of Uttar Pradesh and Others, . There, while the Zamindari Abolition and Land Reforms Bill was pending before the Uttar Pradesh Legislature, the petitioner, a zamindar, applied for the issue of a Writ of Mandamus and a writ of prohibition against the State of Uttar Pradesh prohibiting them that "they shall not make the law in the name of Zamindari Abolition and Land Reforms Bill". Sankar Saran J. stated as follows:

"It is necessary to understand exactly how and in what circumstances Courts declare laws invalid or unconstitutional. Until a Bill has become law, the legislative process not being complete, Courts do not come into the picture at all. It is not the function of any Court or a judge to declare void or directly annul a law the moment it has been promulgated.

Courts are not a supervisory body over the Legislature. Their approval or

disapproval is not needed for an Act passed by the legislature to have the force of law. Their function is interpretative. In other words, upon any particular case coming before them in which the right of any party is involved they decide whether the Act or any part of it is to be disregarded on the ground of its incompatibility with the Constitution".

Judging by these tests, the Court cannot at this stage be called upon to interfere. No law has been passed and not even a Bill has been initiated. A member of the legislature wants the legislature to pass a resolution. There is no knowing whether the resolution will be passed at all and even if it is passed, the union is not at once effected. In fact nothing happens, except that it may act as an incentive to Parliament to take a certain action which will have to be done in accordance with law.

24. Mr. Hazra has relied on the case of "Attorney General for New South Wales v. Trethowan" 1932 AC 526 (C). The Constitution Act 1902 enacted by the legislature of New South Wales was amended in 1929 by adding Section 7A which provided that no Bill for abolishing the Legislative Council or repealing that section shall be passed until it had been approved by a majority of the electors voting upon a submission made to them in accordance with the section.

In 1930 both houses of the legislature passed two Bills, one to repeal Section 7A and the other to abolish the Legislative Council, without recourse to the electors. It was held that this was invalid, I do not think that this case at all assists the petitioners. There was no question of interference before the Bills were passed. So far as the legislatures were concerned, they had purported to do their part and had passed the Bills and yet they had ignored the law in "manner and form". It was therefore ripe for interference by the Court.

Equally we must not confuse a case such as this with cases like "Rex v. Electricity Commissioners" (1924) 1 KB 171 (204) (D) or "Rex v. Minister of Health", ex parte Davis (1929) 1 KB 619 (E). These are cases where the person or body concerned had duty to act judicially. It was held "that in such a case, where want of jurisdiction was patent the Court need not wait for the penultimate injury to be perpetrated. Here we have no question of any body acting judicially, either in form or substance.

25. Lastly Mr. Kar has taken the point that I have no jurisdiction over the Union of India. He has cited the cases of " Election Commission, India Vs. Saka Venkata Subba Rao and, ; " Jagan Nath Vs. Jaswant Singh and Others, .

26. On the facts of this case, the point is well founded. A Bill is being introduced in Parliament to give effect to the recommendations of the States Reorganisation Commission, with suitable modifications. In this Bill, there is no mention of the adjustment of territories between West Bengal and Bihar. This, the petitioners urged, is destructive of their fundamental rights and pray that the Bill should be stopped. But what fundamental right?

It is the petitioners' own case that the boundaries of Part A States such as they exist now, are immutable, and any variation thereof, an invasion of the territorial sovereignty of the component state. And yet, when a Bill is introduced without disturbing such boundaries, then it is bad because some land belonging to a neighbouring part "A" State is not made over to West Bengal. The inconsistency in the argument is amazing. Then again, the person who will initiate the Bill, the body which will consider it, all are outside the jurisdiction of this Court. It is but manifest that I have no jurisdiction to interfere in such a case.

27. Before I conclude I must deal with a point made by Mr. Hazra. He said that respondent 2 was illegally spending amounts out of the consolidated fund for purposes of meetings etc. to ensure that his resolution is passed in the legislature. This he says is unauthorised expenditure.

First of all there is practically no evidence before me that he is doing anything of the kind. But even if it were so, that is not within the scope of an "application under Article 226. The centre is astute enough to look after its own financial interests and unauthorised expenditures will undoubtedly be disallowed in audit. The interference of this Court is not called for.

28. The petitioners appear to have gained much of their object, since the position with regard to the impugned resolution has now been clarified. But the application as a whole must be dismissed. There will be no order as to costs.