

(1972) 02 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 972 of 1971

Jagannath Talukdar

APPELLANT

Vs

Chandra Kanta Deva Misra and others

RESPONDENT

Date of Decision : 22-02-1972

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 227, 228

Citation : (1972) 02 GAU CK 0003

Hon'ble Judges : R.S. Bindra, J;Baharul Islam, J

Bench : Division Bench

Advocate : J. Das, for the Appellant; G.K. Talukdar, K.N. Choudhuri, for Respondents Nos. 19 and 22, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Bindra, J.—This is an application by Jagannath Talukdar under Articles 226 and 227 of the Constitution of India praying for an appropriate writ against 28 persons cited as respondents respecting an order dated 25-10-1971 passed by the District Judge, Gauhati, in an election dispute between the parties arrayed herein.

2. The facts necessary for our present purpose can be set out in a few words. In a Civil Suit No. 7 of 1912 a Scheme for the management and administration of Barpeta Satra was drawn up by the District Judge, Assam Valley District, in the year 1935. By common agreement, the President of the Managing Committee of the Satra is respondent No. 1 Shri Chandra Kanta Deb Misra. In terms of Para 10 of the Scheme, Members of the Managing Committee of the Satra were elected in May, 1971. Thereafter, a meeting was fixed by the President of the Managing Committee for 26th August, 1971, for election of the Secretary and other office-bearers of the Managing Committee. It is the allegation of the applicant that no notice had been served on him respecting that meeting and that when other members of the Managing Committee assembled for electing the office-bearers on the date mentioned, Shri Nibaran Chandra Das, a member of the newly

elected Managing Committee, proposed adjournment of the meeting on the plea that some members of the Managing Committee had not been served. The President, it is claimed, adjourned the meeting on holding as valid the objection raised. After the meeting had been thus adjourned some members of the Managing Committee expressed resentment against the adjournment ordered by the President and succeeded in prevailing upon him to hold the election on the same date. The President and the rest of the members of the Managing Committee who remained after the meeting had been adjourned reassembled and elected the respondent No. 2 Harendra Nath Das as the Secretary of the Managing Committee. After that election, another meeting of the Managing Committee was fixed for the 12th of September, 1971, for making over charge to the newly elected Secretary.

3. The applicant Jagannath Talukdar having felt aggrieved with the election of the Secretary on 26th August, 1971, and the fixation of the meeting on 2nd of September, 1971, he moved an application in the Court of the District Judge, Gauhati, challenging the validity of that election and simultaneously prayed for stay of the order fixing the meeting for 12th September. The District Judge issued notice of the application to the newly elected members of the Managing Committee and granted ad-interim stay of the order of the President calling the meeting for 12th of September. The President, when notified, approached the District Judge on 6th of September, 1971, with the prayer for suspension of the stay order dated 2nd September, 1971. It was specifically brought to the notice of the District Judge by the President that if the stay order were not kept in abeyance the observance of the Tithi of Madhab Deb on 9th September, 1971, would create baffling problems. The District Judge made an order (reproduced in Annexure "A") on the same day whereby he left the decision as to which Managing Committee, old or the new, should arrange the celebrations of the Tithi, to the Sub-Divisional Officer, Civil Barpeta, depending on whether the new Committee had entered upon office or not. This order was made ex parte and without giving notice to Jagannath Talukdar. On 17th September, 1971, Respondent No. 2 Harendra Nath Das filed objections in the court of the District Judge against the stay order granted by him on 2nd September, 1971, at the instance of Jagannath Talukdar, and prayed for its vacation. On 25th of October, 1971, the District Judge passed the order impugned in the present proceedings. By that order, he vacated the ad-interim stay granted on 2nd September, 1971, and fixed the case for 21-12-71 for determining the question whether Harendra Nath Das had been properly elected as Secretary on 26th August, 1971.

4. The principal charge levelled by Jagannath Talukdar against the election of the respondent No. 2 Harendra Nath Das as Secretary of the Managing Committee on 26th August, 1971, is that the election had been made after the President had once adjourned the meeting fixed for the date. The election of Respondent No. 2, he avers, being illegal the District Judge was not justified in vacating the stay order until the matter of the validity or otherwise of the election of Harendra Nath Das had been finally determined by him.

5. Twenty-four out of the twenty-eight persons cited as respondents denied in their affidavit-in-reply that Jagannath Talukdar, or for that matter any other member of the newly elected Managing Committee, had not been served with a notice in connection with the meeting fixed for 26th August, 1971, or that that meeting had been adjourned by the President at the instance of Shri Nibaran Chandra Das, or that the election of the office-bearers including the Secretary was made after the alleged adjournment. Their version is that all members of the newly elected Managing Committee including the applicant Jagannath Talukdar had been duly served, that the meeting held on 26th August, 1971, was never adjourned, and that Shri Harendra Nath Das was unanimously elected as the new Secretary by those who participated in the meeting. The respondents pleaded further that the District Judge was perfectly justified in passing the order dated 25th of October, 1971, in the context of the facts brought to his notice by Harendra Nath Das, and that no case is made out for this court's interference with the impugned order of the District Judge.

6. The first question that falls for decision in the case is whether the special jurisdiction of the High Court under Article 226 can be invoked against a private person. Shri Das, representing the applicant Jagannath Talukdar, was unable to satisfy this court that the remedy adopted by his client for the relief claimed is available to him against the respondents who are all private persons. The High Court, we believe, cannot grant relief against private persons who have no statutory or legal existence in exercise of its writ jurisdiction. If contrary view canvassed in this Court on behalf of Jagannath were to prevail it would completely supplant the legal machinery elaborately devised by the Government for administration of justice. If any and every dispute between two private persons can be taken to the High Court under Article 226, the entire structure of judicial hierarchy except the coping at the apex, viz., High Court, would become otiose. To bring out the naivety implicit in the stand taken by Shri Das, an illustration may be given. If B owes money to A on the basis of a promissory note, A may well move the High Court under Article 226 for a Writ of mandamus directing B to make the payment to him instead of filing the usual suit for its recovery. Will the High Court oblige A? Certainly not, for such a jurisdiction has not been given to it. The Supreme Court discussed at some length in *Election Commission, India Vs. Saka Venkata Subba Rao and, ,* the origin and development of the power to issue prerogative writs as a special remedy in England. Such power formed no part of the original or the appellate Jurisdiction of the Court of the King's Bench. These writs had their origin in the exercise of the King's prerogative power of superintendence over the due observance of the law by his officials and tribunals, and were issued by the Court of King's Bench habeas corpus, that the King may know whether his subjects were lawfully imprisoned or not; certiorari, that he may know whether any proceedings commenced against them are conformable to the law; mandamus, to ensure that his officials did such acts as they were bound to do under the law; and prohibition, to oblige the inferior tribunals in his realm to function within the

limits of their respective jurisdiction. These writs, Supreme Court pointed out, were specifically directed to the persons or authorities against whom redress was sought and were made returnable in the court issuing them and, in case of disobedience, were enforceable by attachment for contempt.

7. For sometime after the Constitution came into force there was belief in certain quarters that the expressions "to any person" and "for any other purpose" used in Article 226 may have enlarged the scope of writ jurisdiction in India as compared to what obtains in England. However, such belief was soon dispelled by the decision in the case of *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. H.M. Jagtiani*, wherein it was held that the powers given to a High Court under Article 226 are to be exercised in accordance with the principles which governed the high prerogative writs prior to the Constitution, and that the power of the High Court to issue a writ under Article 226 to "any person" can only mean the power to issue such a writ to any person to whom according to the well established principles, a writ lay. The High Court observed further that the words "and for any other purpose" used in Article 228 must mean for any other purpose for which any of the writs mentioned would, according to the well established principles, issue. The Supreme Court held in the case of *P.D. Shamdasani Vs. Central Bank of India Ltd.*, that "The language and structure of Art. 19 and its setting in part III of the Constitution clearly show that the article was intended to protect those freedoms against State action other than in the legitimate exercise of its power to regulate private rights in the public interest", and that "violation of rights of property by individuals is not within the purview of the article". At page 60 of the report the Supreme Court posed the question while examining the implications of Art. 21 of the Constitution, could it be suggested that that article was intended to afford protection to life and personal liberty against violation by private individuals? and the reply given was in the negative.

8. In face of the view expressed by Supreme Court in *P.D. Shamdasani Vs. Central Bank of India Ltd.*, and Calcutta High Court's decision in *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. H.M. Jagtiani*, we have no hesitation in holding that the remedy sought by Jagannath Talukdar against the respondents, who are all private persons, is altogether misconceived and so the present writ application must fail for reason of that basic legal and constitutional flaw.

9. Another principle governing the writ jurisdiction of the High Court is that the jurisdiction is supervisory in nature and not appellate or revisional. The Supreme Court observed in the case of *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, that resort to the High Court's jurisdiction under Art. 226 is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily High Court will not entertain a petition for a writ under Art. 226, the Supreme Court added, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. The matter was clinched by the Supreme Court when it stated further that the High Court does not act as a court of appeal

against the decision of a court or tribunal to correct errors of fact, and does not by assuming jurisdiction under Art. 228 trench upon an alternative remedy provided by statute for obtaining relief. The Supreme Court concluded with the observation that where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art. 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up. In the case of *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , the Supreme Court declared

However extensive the Jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

It was further stated that

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, excess has resulted in manifest injustice.

If this is the extent and nature of the right vesting in the High Court under Art. 226, then the present application must be held to be entirely misconceived. Firstly, it was not denied by Shri Das that the order made by the District Judge on 25-10-71 is open to challenge by appeal in High Court in exercise of its ordinary civil jurisdiction, and, secondly, because it was not contended that the District Judge lacked jurisdiction to pass the impugned order. Nor was it urged that the District Judge had violated the principles of natural justice in connection therewith.

10. The fact that Jagannath Talukdar did not implead the District Judge as a party to the writ application is clearly indicative of his intention that he has come to this court under Art.228 for reversal of an order made by the District Judge between two private parties. Is it possible for this court to issue a writ to the respondents of the nature sought without making District Judge a party? In our opinion the reply must be an emphatic no, for, apart from other vices such a writ would be riddled with, it would not be binding on the District Judge and so it would be completely ineffective. In the case of *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, , the Supreme Court held that if a necessary party to a writ application is not impleaded then the application shall not be considered as legally constituted and will fail on that ground alone. In para 12 of the report the Supreme Court observed that "in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also

parties in whose favour the said order is issued are necessary parties". In support of that conclusion the Supreme Court cited with approval an extract from a Bench decision of the Bombay High Court in Ahmedalli Abdulhusein Kaka and Another Vs. M.D. Lalkaka and Others, . That extract runs as follows:--

I think we should lay down the rule of practice, that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances title Tribunal would not be a necessary party when the petitioner wants the order of the Tribunal to be quashed or to be called in question. It is equally clear that all parties affected by that order should always be necessary parties to the petition.

That the present application is not validly constituted because the District judge has not been impleaded as a party, therefore, admits of no doubt or dispute.

11. To sum up the conclusions reached above are that (1) no application for writ can lie against a private person respecting a private dispute involving no state action; (2) the High Court exercises supervisory power, and not appellate or revisional, while sitting in writ jurisdiction; and (3) the tribunal whose order is sought to be challenged is a necessary party and unless it is impleaded the writ application will not be considered as validly constituted. All these legal flaws are manifest respecting the application filed by Jagannath Talukdar.

12. Before concluding we may say a few words on the merits of the prayer made by Jagannath Talukdar. In the application made to the District Judge on 2-9-1971, he had challenged the election of the Secretary without assailing the validity of the election of the members of the Managing Committee in the meeting held in May, 1971. Another relief sought by Jagannath was that the order of the President of the Satra calling a meeting on 12th September, 1971, for taking over charge by the new Secretary be stayed. The learned District Judge granted ad-interim stay on 2-9-71 of the meeting fixed for 12th September. However, after the President of the Satra moved an application on 6th of September, 1971, and the respondent No. 2 Harendra Nath Das approached the Court with another application on 17th of September, 1971, both assailing the correctness of the allegations set out in Jagannath's application dated 2-9-1971, the District Judge proceeded with the matter quite warily, and we think not without justification, for the challenge by Jagannath Talukdar to the validity of the elections held on 26th August, 1971, was vigorously controverted by the respondents nos. 1 and 2. Faced with such a situation, the District Judge had to take a decision, one way or the other, solely on the basis of allegations made by the parties and completely unaided by evidence which alone was likely to make him wise about the true state of affairs. Having taken a decision in favour of the respondents we cannot accept the contention, advanced on behalf of Jagannath Talukdar, that the District Judge had gone wrong in the exercise of his jurisdiction or had committed any irregularity or illegality. He had perfect jurisdiction to decide the matter in the way that appealed to his judicial

conscience on the basis of the available date. The writ jurisdiction, we may emphasise, is purely discretionary and the High Court can legitimately decline to interfere if it is satisfied that there has been no failure of justice. In other words, no party is entitled to claim an order either under Article 226 or 227 as a matter of course and that an order under either of the two articles can be made only to advance the interests of justice. The remedy provided by Article 226 being discretionary the High Court must in exercise of its discretion impose on itself a wise self-restraint so as to avoid any undue interference in the general administration of the country. We are satisfied that in the instant case there is no occasion for this court to interfere with the order made by the District Judge.

13. In fairness to Shri Das it must be mentioned that towards the close of his arguments he invited this Court to interfere under Article 227 if it was not legally possible to do so under Article 226. The High Court can interfere under Article 227 in exercise of its power of superintendence over the Sub-ordinate Courts if it is proved that there has been erroneous assumption, or excess of jurisdiction, or refusal to exercise jurisdiction, or violation of the principles of natural justice, or arbitrary or capricious exercise of authority, or error of law apparent on the face of the record. The case in hand does not fall, we are convinced, under either of those headings.

14. No other point was pressed in support of the writ application.

15. In the result, the application fails and is dismissed with costs. Advocates fee Rs. 50/-

Baharul Islam, J.

16. I agree.

Application dismissed.