

(1951) 02 CAL CK 0032
In the Calcutta High Court
Case No : Extraordinary Suit No. 4 of 1951

Kalidas Roy and Others

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 28-02-1951

Acts Referred:

Citation : AIR 1951 Cal 129 : 55 CWN 333

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : A.K. Sen, for the Appellant; B.N. Banerji, I.P. Mukerjee and Amiyanath Bose, for the Respondent

Judgement

Sinha, J.—This is a rule issued by me on the pltfs. in a suit instituted by them & now pending before the fourth Ct. of the Munsiff at Alipore to show cause why the suit should not be removed from that Ct. to the H. C., under the provisions of Clause 13, Letters Patent, & there tried in its extraordinary Original Jurisdiction.

2. The facts of the case are briefly as follows: There is a School in southern Calcutta, known as the Chakrabere H. E. School. It is located, partly in premises No. 23/1 Chakrabere Road & partly in premises No. 93 Bakul Began Road, in Bhawanipore. Several hundred students are on the roll, so that it is an institution of no mean dimensions. To cater for the intellectual needs of so many Juvenile persons of tender years, one would have thought that there existed an atmosphere of calm tranquillity, with the gentle pursuit of knowledge, which is the characteristic of all true seats of learning. But in the case of this most unfortunate Institution this is not to be. The growing lives of these hundreds of future citizens is of no consequence amidst the clash & din of contending factions, to whom the only thing that seems to matter is the solution to the question as to who should run the School. I am overwhelmed to see the public spirit displayed on this burning topic, the amount of energy spent, breath wasted, ink spilled, & feelings embittered, which to say the least, is worthy of a better cause. On this appln I am not called upon to apportion the blame, nor, I

am happy to say, is it necessary to do so. But I make no secret of the fact that I am impelled by a sense of urgency in the matter, & it has an undoubted bearing on the ultimate fate of this appln. I feel that unless something is done quickly & decisively, the question as to who should run the School would indeed become an academical question in more senses than one, there will be no school to run.

3. The Chakrabere H. E. School was founded sometime in the year 1937. It appears that it has a special constitution whereby its managing Committee was chosen by the General Committee of the South Suburban School Calcutta, a well known Institution. This managing Committee, refd. to in the pleadings as the "Old Committee" was managing the School & one Someswar Prasad Mukherjee was the secretary thereof. One Jnanendra Nath Sanyal was for sometime the Head Master. In or about January 1950, the managing Committee ordered his dismissal. The grievance was that he was guilty of maladministration & neglect of duty. It is, however, stated by the contesting resps. that he was in reality, a hard working, conscientious & popular teacher, who unfortunately incurred the displeasure of the secretary, who was the "de-facto" ruler of the School & whose arbitrary actions had brought the Institution to the state of collapse. It is stated that the Guardians of the students had to move in the matter & sometime in January 1950, one Biswanath Bagchi, purporting to act as the representative of the Guardians & students, filed a suit before the fourth Ct. of the Munsif at Alipore being Title No. 143 of 1950, for a declaration that the old Committee was not a legally constituted Committee & for other reliefs. This suit was compromised between the parties on or about 26-7-1950. The suit stood withdrawn, each party bearing his own cost. The Headmaster was to render accounts, & all things done by him in good faith were to be ratified. In or about May 1950, twelve persons formed a Committee & claimed to manage the School. One side alleges that this Committee was "self constituted", & attempted to usurp all powers.

4. The contesting resps. urge that it was "A properly constituted Committee, duly formed. & entitled to manage the affairs of the School". The compromise of the suit No. 143 of 1950, introduced only a brief period of truce. This was eventually folld. by another title suit in the same Ct. instituted by pltfs. 2 herein, together with one Karunamoy Ghosh, against the members of the "Old Committee", & several other persons, being suit No. 705 of 1950, for a declaration that the pltfs. in the said suit were lawfully entitled to manage the School for a declaration that the Old Committee was not entitled to function & for other reliefs. That suit is still pending. To that suit the University of Calcutta, the present appct. before me is not a party.

5. This new committee asked sanction from the University, but so far, the University has not granted it. As far as the University is concerned, it has given its approval to a managing Committee consisting of defts. 2 to 12, & the Headmaster, as the acting Ex-officio member, & it has not approved of any other committee. The institution of title Suit No. 705 of 1950, was folld. by an appln.

for an injunction. The Old Committee retaliated by commencing criminal proceedings & applying for an injunction order u/s 144 Cr. P. C. The interim injunction obtained was later on vacated. In the title suit itself, some sort of an injunction order was passed against the Secretary, against which an appeal is pending, & I am told that the injunction order has been stayed. At this state, however, a matter took a more dramatic turn. On a stated day, the School was surrounded by a motor Patrol Squad of armed Police, complete with lathies, tear Gas & rifles. Thus came to be declared a state of "Total war" between the parties. Commencing with attorney's letter, it has progressively run into title suits, injunctions, criminal actions, mobile squads, tear Gas & rifles. The inevitable result was that the School has to be closed down, although temporarily. I shudder to think what effect all this has had on the impressionable minds of the young students of this unfortunate Institution.

6. On 16-9-1950, the University of Calcutta intimated to Sri Radhika Mohan Sen, a practising Solicitor of this Ct. who has been conducting the correspondence on behalf of the new Committee, that the Old Committee must function until further orders. Thereupon, on or about October 1950, the pltfs. have filed this suit before the Fourth Ct. of the Munsiff at Alipore, being Title Suit No. 841 of 1950. In this suit there are 10 pltfs. & 13 defts, the principal deft. being the University of Calcutta. The plaint contains 30 paras. The prayers in the plaint are similar to the prayers in the other pending suit No. 705 of 1950, with the addition chat a prayer has been added for a declaration that the action of the University was illegal, irregular, inoperative & "ultra vires" & for a mandatory injunction requiring the University to approve the Committee formed by the pltfs.

7. One other fact was brought to my notice during the hearing of this appln. Some students have made an appln. u/s 226 of the Constitution, complaining of the fact that they have been prevented from sitting for their examinations, owing to circumstances arising out of this unfortunate conflict between the two rival committees, & Bose J. has issued a rule.

8. The question for my determination is as to whether upon these facts I should make an order transferring the suit from Alipore to this Ct. Before I proceed to deal with the legal aspect of the matter I will briefly indicate the grounds upon which this appln. has been moved, & the grounds upon which it has been resisted. Mr. Sen, learned counsel appearing for the University, has put forward the following grounds, in support of his appln for transfer: (1) That purposes of justice demands that it should be so transferred. (2) That the balance of convenience is in favour of such transfer inasmuch as: (a) A trial before the Alipore Ct. with the consequential series of appeals, would take so much time that justice will not be done to the parties, & the subject matter of the action might disappear. (b) That the University of Calcutta will have to send some of its principal Officers to look after the trial as also to give evidence. The consequence will be that the University, which is a public Institution will suffer & inconvenience will be caused to the public. (c) That the University will have to send records to

Alipore & cause them to be filed there. This also cannot be done without great public inconvenience, (d) That most of the defts. are practising lawyers of this Ct. & they would find it impossible to abandon their professional work & go on attending at Alipore all throughout the protracted trial. (e) That no real inconvenience will be suffered by the pltfs. since, a solicitor of this Ct. was a pltf. & it was he who was looking after the conduct of the case. (3) That the suit involves difficult points of law, which were better decided in this Ct. (4) That the complaint was vague & wanting in particulars & it would be impossible to proceed to trial upon a vague allegation of "Mala fides" & "Ultra Vires". (5) That the suit had been filed at Alipore not to gain any legitimate advantage but with an ulterior purpose, namely, to harass the University.

9. Mr. Mukherjee appearing for the contesting resps. puts forward the following reasons for rejecting the appln.: (1) That the pltfs. are "Dominus Litis" & entitled to choose the forum of their action, the cause of action whereof has entirely arisen within the jurisdiction of the Ct. where the suit has been filed. (2) That the litigation in the Alipore Ct. would be less costly & the pltfs. would get the assistance of lawyers free of cost. (3) That the trial in the Alipore Ct. will not be lengthy. (4) That no difficult points of law are involved. (5) That the complaint is not defective & in any event, if particulars are lacking, the defts. might apply before the lower Ct. for compelling particulars. (6) That the balance of convenience so far as the pltfs. are concerned, is to proceed with the suit in the Alipore Ct. & that no real inconvenience is caused to the defts. (7) That the purposes of justice demands that the suit should not be transferred.

10. Before I deal with the points raised, I wish to recapitulate the law governing transfers under Clause 13 of the Letters Patent. A plain reading of the clause shows that the H. C. can transfer any suit pending in any Ct. over which it has power of superintendence to itself "When the H. C. shall think proper to do so either on the agreement of the parties to "that effect or for purposes of justice". The power given is in a wide form & in my opinion, has to be construed as such. Provided that this Ct. thinks that the transfer should be effected for "Purposes of Justice" there are no limitations whatsoever & I do not propose to read any limitation to it unless for some compelling reason. My attention has been drawn to various decided cases. Historically they are interesting & I shall briefly notice them. But each case is an authority for the particular facts arising therein & cannot govern a different set of facts. The only limitation being the existence of "Purposes of Justice", let us see what those words signify. The word "Purposes of Justice" has never been adequately defined. Mukharjee J. in Baburam Agarwalla Vs. Jamunadas Ramji and Co., states as follows:

"That words "Purposes of Justice" Clause 13 of the Letters Patent are advisedly general & wide so as not to fetter the discretion of this Ct. in any way. To attempt to define these words will be to defeat the amplitude of the provision. To conclude from various decisions from time to time the enunciation of different grounds on which transfer can be made under this Cl., & then to say that those

grounds are exhaustive, will be an unnecessary limitation of the scope of this provision. The Letters Patent are to be construed as a statute & if the statute has not chosen to formalise or exhaust the grounds on which suits may be removed from other Cts. to this Ct. it is not for this Ct. to define or delimit such grounds..... Justice like the true diamond has myriad facets & nothing is so misleading as to see one facet for describing its totality."

11. To this enunciation of the law on the subject I respectfully agree. It is a popular misconception that cases can only be transferred from the lower Cts., if certain stated "objective" conditions exist. It is supposed that there must necessarily arise difficult questions of law which as the lower Cts. cannot decide, or some obvious "Mala fides" on the part of the pltf. which would require a superior Ct. to intervene.

12. The true position however is that the existence of difficult questions of Law or "mala fides" are only some of the "objective" tests upon which the Ct. has in the past made orders of transfer. These tests are, however, neither fixed nor immutable, & must of necessity constantly change with the change of times. When English law was first introduced in this Country, the Lower Cts. were thought incompetent to decide any question relating thereto of any complexity. With the passage of time however the basic concepts of these laws, admirable as they are, have firmly woven themselves into the texture of our lives, & the subordinate Judiciary are no longer strangers to such concepts. As conditions stand at present, I should require a legal question to be of very great complexity indeed before I would be prepared to hold that a Judge of the lower Ct. could not deal with it. Had that been the only ground upon which this appln. was based I would not have acceded to it.

13. But while the above observation is true of the personnel of the lower Cts. I cannot say as much for the machinery which they weild. To start at the lowest rung of the Legal ladder & to climb up the multitudinous steps into the ultimate heights is a slow & painful process, in which time has never been of the essence. It is not without reason that litigants pressed for time complain of the Cts. as being "Mistily engaged in one of the ten thousand stages of an endless cause; tripping one another upon slippery precedents; groping knee deep on technicalities, & running their heads against a wall of words." For a concrete proof of this I have only to refer to the order sheet of this very suit. The suit was filed in early October 1950 & the service of the Writ of Summons was completed only in January 1951. If the subsequent stages of this suit are proceeded with at this rate then the suit itself would not be ready for hearing until the end of this year. My attention has been drawn to the fact that a suit somewhat like the present was instituted in the Alipore Ct. with regard to a School called the "Tirthapati Institution". There also it was a fight between two rival committees, & the hearing took 30 days. Mr. Mukherji rightly points out that I have not before me the exact facts of that case. But it is a pointer, & I have no reason to suppose that the issues being similar that this suit would fare any better. Then will begin

the painful process of appeals from Ct. to Ct. I am informed by Mr. Banerjee appearing on behalf of the defts. 11 to 21 that in this II. C. on its appellate side we are still going on with the hearing of second appeals of 1947. It can therefore be easily imagined as to what length of time it would take before the matter finally terminates. And meanwhile what is to happen to the several hundred boys who are at the threshold of their educational careers? "Purposes of Justice" do not relate exclusively either to the pltf. or the deft, it relates to the whole subject matter of the suit & to all persons affected thereby. The Ct. has to see the entire pattern from a detached height & make up its mind whether it would be for the greatest good of everybody & everything concerned, that it should intervene & take upon itself the burden of trying the suit. "Justice" not only lies in giving every man his due, but also in adjusting human relations. It must be given "Freely without sale fully without any denial & speedily, without delay." It is because of this amplitude in the underlying concept of what constitutes "Justice", that any effort to define it has failed. Banerjee J. has noticed some of the definitions in "Kumar Rupendra Deb Raikut Vs. Ashrumati Debi and Others & Mukharji J. has refd. to others in "Baburam Agarwalla Vs. Jamunadas Ramji and Co., . But both the learned Judges have rightly come to the conclusion that such definitions are not exhaustive. Mukharji J. has pointed out in the case mentioned above that no sooner than a definition is propounded, it is possible at once to point out the inadequacy of it. In my opinion it is best not to attempt a definition at all. Since the administration of justice at a given moment must necessarily depend upon the facts of each case it is best not to involve an empirical formula to govern, all cases at all times. It is sufficient to notice some of the "Objective" & "Subjective" tests which the Cts. have apld. for a determination of the difficult question as to whether a given case comes within the ambit of the clause. In granting an order under this Clause the following "Objective" & Subjective" tests have been apld:

Objective tests:

1. That the case involves difficult points of English Law. (1880) "Doucett v. Wise" (1866) 1 Ind Jur 94.

Payn v. Admitr General of Bengal 5 Cal 766.

2. That the matters in dispute are mainly questions of law which can be tried more conveniently & better, in the H. C. & there was very little evidence to go into.

"Kapilnauth Sahai Deo v. the Government 10 Beng L R 168.

3. That the matter Involves construction of Deeds of Mtge., Assignments & Deeds of further charge, all drawn in the English Form.

Payn v. Admitr Genl of Bengal. (Ibid)

4. Questions of difficulty arose in the suit e. g. whether the bargain was unconscionable or extortionate.

"Harendra Lal v. Sarvamangala Devi" 24 Cal. 183.

5. Where the lower Ct. has dealt with a party with extreme harshness & great want of discretion & has been positively unfair to him showing a state of mind in the Judge which makes it impossible for him to deal with the case impartially & without prejudice. The Ct. is not concerned with the question whether the order was illegal or irregular or whether the Ct. had jurisdiction in making the order.

"Kapilnauth Sahai Deo v. Government" (ibid) Kumar Rupendra Deb Raikut Vs. Ashrumati Debi and Others .

6. That neither the pltf. nor the defts. (one of whom was the Administrator of Bengal) resided at Hoogly where the suit was filed taut all resided at Calcutta, the cause of action arose at Calcutta & all witnesses were at Calcutta.

"Payn v. Admitr. General of Bengal" (ibid).

7. That it would be cheaper to try the suit at Calcutta. "Payn v. Admitr. General of Bengal" (ibid).

8. Defts. witnesses lived in Calcutta. She had not the means to take them to Dinajpore where the suit was filed. Pltf. also resided in Calcutta. All persons who knew of the transaction were residents of Calcutta or its neighbourhood. "Harendra Lal Roy v. Sarvamangala" (ibid)

The expense already incurred by the pltf. was irrelevant since if successful, he will realise the same from the debt. (ibid)

9. That there are prayers for Injunction or Receiver. (ibid)

10. The kernel of the case took place in Calcutta. Attorneys of this Ct. necessary witnesses & would have to advise the parties, & watch the case. Day Books would have to be produced. Records of this Ct. were to be produced. They were better produced here than taken Up-Country. Likelihood of counsel being engaged on both sides as the Estate was a large one.

"Brojogopal Nath v. Lakshimoni Dassi" 54 Cal 607.

That the sheriff's Officer was a necessary witness & records of this Ct. will be required as evidence.

" Baburam Agarwalla Vs. Jamunadas Ramji and Co., .

11. If the parties were diligent, the delay in the hearing would be considerably minimised.

"Brojogopal Nath v. Lakshimoni (ibid).

12. That the trial in the lower Ct. would be unsatisfactory.

"Raja Ojooderam v. Sm Nobinmoni Dassi" (1886) 1 Ind. Jur 396.

13. The balance of convenience in bringing a suit, trying a suit in this Ct. & the

lower Ct. is one of the matters to be considered.

"Brojogopal Nath v. Lakshimoni Dassi", (ibid).

Expenses & inconvenience by themselves are not enough unless they result in injustice.

"In re Norton's Settlement"; "Norton v. Norton (1908) 1 Ch 471 at p. 479.

14. In order to justify a transfer it is as a rule necessary that something more should exist than a mere balance of convenience. The Ct. must be satisfied that the expenses or the difficulties in the trial in the mofussil Ct. would be great that injustice would be done.

Bhudeb Chandra Chakravarty and Another Vs. Kumar Brojendra Krishna Mitra Bahadur and Others .

15. Taking all facts into consideration, the Ct. must come to the conclusion that the pltf. in commencing an action in a particular Ct. has done so on account of any legitimate advantage which a trial in that Ct. would give him, but for purposes entirely foreign for that legitimate purpose. In such a case if the Ct. not only has jurisdiction to transfer but it is the duty to transfer. "Sudhirendra Nath v. Arunendra Nath", (ibid) "In re. Norton's Settlement"; "Norton v. Norton" (ibid). Subjective tests:

1. Where the litigant feels that regard being had to the feeling in the district against him, he was not likely to have a fair trial.

"Mohur Singh v. Ghureeba 15 W. R. 8.

2. If the Ct. on a consideration of all the facts of the case comes to the conclusion that the appct. feels that he is not likely to have a fair (SIC)al in the Ct. from which he seeks to transfer it. In coming to a conclusion on this point, the question for consideration is what is the effect likely to be produced in the mind of the party & not in the mind of the Judge. It necessarily depends on the individual concerned, his temperament, & feeling, his interest & circumstances.

"Rupendra Deb v. Asrumati", (ibid).

3. Where the deft. is afraid of personal violence. "Baburam v. Jamunadas", (ibid)

4. The temperament & feeling of an individual cannot be a ground of transfer. There must be public sentiment in the locality against the appct. & the feeling must be produced by such fear. The Ct. must apprehend that such sentiment might engulf the trying Ct. and pervert witnesses. A mere subjective test is not enough. The objective test must exist.

"Baburam v. Jamunadas", (ibid)

14. A perusal of the authorities will show that it is not possible to lay down any formula which will apply to all cases. The facts in each case must continue to

vary & new objective tests must be added to the list. It is also a debatable point whether it is necessary to apply both the objective & the subjective test before the appln. can be granted. Mukherji J. has held in "Baburam v. Jamunadas", (ibid) that a mere subjective test is not enough but the objective conditions must also exist. He points out that the feeling of an individual is not relevant when such feeling is not justified on one of the well recognised grounds. I do not think that it can ever be doubted. This Ct. will see that Justice is done but it will not pamper litigants or treat them like temperamental "Prima Donnas"

15. I however think that Banerji J. was right when he pointed out in "Rupendra Deb v. Asrumati", (ibid) that the Subjective test depended on the temperament & feeling of the litigant. Supposing there existed a feeling of hostility against a person in a particular district. He might be a brave man, able to treat such feelings with contempt, or else he might be an extremely nervous person, unable to overcome it even in small doses. What would be the ethical standard applied? In the former case, it would be officious to transfer the suit, but in the latter case it would be a denial of justice to compel him to face the trial. The "Subjective" test however does not arise in every case. In this particular case before me, the feeling of any individual is not one of the matters that I have to take into account. I propose to decide the case on the balance of convenience alone, but of different kind to that dealt with by the decided cases. In my opinion, where questions of sufficient public importance are involved, especially if they relate to the affairs of a public Institution in which a great many persons are interested, the purposes of Justice demand that the questions should be decided swiftly & decisively. One way of doing so would be to make available to litigants who pray for it, the machinery of this Ct. which is so constituted as to ensure a speedy trial, & to minimise the number of appeals.

16. The fact that two rival Committees are fighting each other does not by itself make it a matter of public importance. What makes it a matter of public importance is that as a result thereof a large body of students find themselves in an unfortunate predicament & cannot carry on their studies. Any delay in deciding the matter will not only prejudice the interests of a large number of innocent persons but will result in the destruction of the subject matter of the litigation. If the disputes between the parties are not forthwith resolved I cannot imagine Guardians continuing to send their wards to this School, where flying armoured squads are a familiar sight, & an essential prerequisite to sitting at an examination is to make an appln. to the H. C. under the Constitution for vindication of the fundamental rights. My attention has been drawn to the fact that the mere existence of a balance of convenience is not enough to justify a transfer but it must further be shown that the plaintiffs in instituting their suit at Alipore did not do it for gaining a legitimate advantage but a purpose entirely foreign to it. With great respect, I am unable to subscribe to this view. In my opinion a mere balance of convenience may be sufficient, if it is of such a nature that the Ct. is satisfied that purposes of Justice demand such transfer. The case of "In re Norton's Settlement; "Norton v. Norton" (ibid) was for stay on the

ground that it was vexatious & an abuse of the processes of the Ct. In such a case the test is certainly much stricter, & mere balance of convenience is not enough. But in the appln. under Clause 13, the H. C. is merely transferring a suit from a Ct. under its Superintendence to try it under its own extraordinary original jurisdiction. To say that it can do so only when a stated combination of circumstances exist, would be to severely limit that power when the statute itself is advisedly worded in the widest possible terms.

17. On the facts stated before me I am by no means satisfied that the plfts. filed the suit at Alipore with any ulterior motive. I am not also impressed by the complaint that particulars have not been given in the plaint. That is a matter for which there are adequate provisions in the Code. But I do hold that it would cause great public inconvenience if the University has to keep engaged some of its principal Officers to look after a protracted trial in the, lower Cts. & to file its records a long time before trial, such as is customary in the lower Cts. I further do not accept the argument that litigation in this Ct. will be more expensive. That plea has been negatived by Arueer Ali J. in "Harendra v. Sarvamangala" (ibid) and by Bannerjee J. in "Sudhirendra v. Arunendra" (ibid) and "Rupendra Deb Raikut v. Asrumati" (ibid). In my opinion, litigation whether in these Cts. or in other Cts. is just as expensive as the litigant chooses to make it. The argument that a large number of defts. would find it difficult to attend the trial in the lower Cts. because they are practising advocates of this Ct. is a matter to be taken into consideration. I would not however have given it much weight had I not been convinced that a well known solicitor of this Ct. is actually in charge of the conduct of this suit. That was clear to me even at the hearing of this appln. Upon a consideration of all these matters I am of the opinion that the case should be transferred to this Ct. & there tried in its extraordinary Original Jurisdiction. As I wish the suit to be speedily tried I shall give directions for expedition. Written Statement within a fortnight from date, but if the defts. are advised to ask for particulars then they are at liberty to ask for an extension. Discovery will be within a fortnight after the filing of the respective written statements. Inspection forthwith thereafter, & the suit to come in my peremptory list as a specially fixed suit, for hearing on 18-5-1951. Registrar will request the learned Munsiff 4th Ct. Alipore to transfer the records of the case to this Ct. as expeditiously as possible. Registrar to act on Counsels endorsement. Costs in the cause.