

(1970) 01 DEL CK 0001
In the Delhi High Court
Case No : C.W. No. 1013 of 1969

Manohar Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-01-1970

Acts Referred:

Citation : AIR 1970 Delhi 178

Hon'ble Judges : H.R. Khanna, C.J; S.I. Rangarajan, J

Bench : Division Bench

Advocate : R.V.S. Mani and A.L. Joshi, for the Appellant; Hardev Singh and D.D. Chowdhry, for the Respondent

Judgement

1. The petitioner, a resident of Bhiwani, Hissar District in the State of Haryana, has sought the following reliefs:

1. That Section 4 and sub-section (b) (ii) of Section 7 and Sections 78, 79 and 80 of the Punjab Reorganization Act 1966 be declared as ultra virus and void.

2. That a suitable writ, order or direction may be issued to implement the Shah Commission Report in toto and that Chandigarh Capital Project as also Lalroo, Darabassi, Pathankot and areas of Gazilka and Malaut be declared as included in the territories of the Haryana State; and

3. That a suitable writ be issued ousting the authority of the Central Government from the control and management of the Bhakra Nangal complex and to vest the same in the State of Haryana in order that people of Haryana may have full share in the water of Satluj, Beas and Ravi rivers.

2. The Union of India and the State of Punjab, but not the State of Haryana, have filed returns contesting this petition.

3. The two questions argued before us relate to (1) the validity of the relevant sections of the Punjab Reorganisation Act and (2) and enforceability by this Court of the Shah Commission Report.

4. So far as the first contention is concerned the validity of the Punjab Reorganisation Act (31 of 1966) was upheld by the Supreme Court in Mangal Singh and Another Vs. Union of India (UOI), . Before the supreme Court the said Act was challenged on the following two grounds, both of which were repelled by the Supreme Court:-

"(1) Constitution of the Legislative Assembly of Haryana by Section 13(1) of the Punjab Reorganisation Act, 1966, violates the mandatory provisions of Article 170(1) of the Constitution; and (2) By enacting that 8 members of the Legislative Council who are residents of the Union Territory of Chandigarh shall continue to sit in the Legislative Council in the new State of Punjab, and by enacting that the members elected to the Legislative Council from the Haryana area shall be unseated, there is denial of equality."

In the result the said Act was held to be intra virus and valid.

5. The petitioner has now sought to assail the validity of the aforesaid sections of the Act on yet another ground, namely, that proviso to Article 3 of the Constitution had not been complied with. Since we are satisfied that there is no merit in this contention ,we propose to discuss this contention at some length to show that it has no force despite the said decision by the Supreme Court regarding the validity of the act being binding on all Courts within the territory of India according to Article 141 of the Constitution.

6. The relevant portions of Article 3 of the Constitution may now be read:-

"3. Parliament may by law -

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the are of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any States;

(e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States the Bill has been referred by the President to the Legislature of the State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired."

7. The argument on behalf of the petitioner based on the above said proviso to Article 3 of the Constitution, is that Act 31 of 1966 could not have been introduced in the Parliament without the President referring to the Legislature of

the concerned State for expressing its views thereon. The answer to this contention by the contesting respondents is based on Article 356 of the Constitution, the relevant portion of which reads as follows:-

"356(1) - If the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) * * * * *

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State."

8. On 5th July, 1966, the President made his Proclamation under Article 356 of the Constitution after expressing satisfaction that the Government of the State of Punjab could not be carried on in accordance with the provisions of the Constitution. He, Therefore, among other things, declared that the powers of the Legislature of the said State shall be exercisable by or under the authority of Parliament. He also suspended the following, among other, provisions of the Constitution, in relation to that State. Among the provisions of the Constitution which were suspended and are relevant for the present purpose were so much of the proviso to Article 3 as relates to the reference by the President to the Legislature of the State and clause (1) and sub-clause (a) of clause (2) of Article 174, Article 174 (1) and (2) (a) read as follows:-

"174. (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time-

(3) prorogue the House or either House."

9. On reading Article 3 and Article 174(1) of the Constitution along with the above proclamation of the President it is seen that the President had suspended the power of the governor to summon the House or each House of the Legislature of the State, which by itself prevented the State Legislature from meeting, and also suspended the State Legislature from meeting, and also suspended so much of proviso to Article 3 of the Constitution relating to the reference by the President to the Legislature of the State. It will thus be seen that the power to summon the Legislature, of the Governor having been suspended no occasion could thereafter arise, during the period when such

suspension was in operation, for the Legislature to meet for the purpose of expressing its views on the Bill to be introduced in Parliament affecting the area, boundaries or name of the concerned State. This would be the direct result of the suspension of the power of the governor to summon the Legislature of the State, even without suspension of so much of proviso to Article 3 relating to the reference by the President to the Legislature of the State. However, in order to make the matter clearer, the operation of so much of the proviso to Article 3 had also been suspended by the President. In view of the clear power conferred by Art. 356(1) (a) & (b) to declare that the powers of the Legislature of the State shall be exercisable by or under the authority of the Parliament, it enacted Act 31 of 1966 by which all the powers of the Legislature of the concerned State (State of Punjab) to make laws were conferred on the President. We can find no warrant for the contention of the petitioner that what was transferred by means of Article 356(1)(b) of the Constitution was only the legislative power of the State Legislature but not the power to meet and express its views as contemplated by the proviso to Article 3 of the Constitution. According to the petitioner Article 356(1)(c) only enabled the President to make such "incidental and consequential" provisions as appeared to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of the Constitution to any body or authority in the State but not to make provisions which were not both "incidental or consequential". This argument of the petitioner would appear to have no validity for two reasons; Firstly, the expression "incidental and consequential" may be read as "incidental or consequential" to suit the context; that this is a permissible mode of construction, if the context so requires it is well settled. It will be sufficient to refer on this question, to the following observations of the Supreme Court in *Ishwar Singh Bindra and Others Vs. State of U.P.*, :

"Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b) (i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn., it is stated at page 135 that "and" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Similarly in Maxwell on Interpretation of Statutes, 11th Ed., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunction "or" and "and" one for the other."

10. It can hardly be denied that the dispensing with the need to consult the views of the concerned State Legislature was itself a direct consequence of the Legislature being unable to meet for any purpose whatever during the period

when the Governor's power to summon the Legislature was itself suspended. The petitioner does not advance his case in any manner, Therefore, by laying stress on the expression "incidental" alone in Article 356(1)(c). Secondly, the petitioner cannot seek to derive any assistance from the English decisions which he quoted in order to show what he contended was the restricted meaning given to the said expression. The decision of the House of Lords in *Amalgamated Society of Rly. Servants v. Osborne*, 1910 Ac 87 was concerned with a situation where a registered trade union was limited by its memorandum of association from levying contributions from its members for the purpose of securing parliamentary representation. This levy was sought to be justified as a power "incidental" to the purposes of the trade unions.

11. The second case relied upon on behalf of the petitioner for this purpose was *Attorney General v. Mersey Rly. Co.*, 1907 Ac 415 where the question was whether a railway company without express power to run omnibuses could do so. The argument that the running of omnibuses was incidental to the railway enterprise was repelled.

12. The third case relied upon, in this connection, was *Attorney-General v. Crayford Urban District Council*, (1961) 3 All Er 1002. That again was a case concerned with the limit of powers of local authorities as statutory bodies. The following meaning which Lord Macnaghten, in 1910 Ac 87, had attributed to the expression "incidental" was followed by Pennycuik, J., "what might be derived by reasonable implication from the language of the Act", but not equivalent to "in connection with". The former was said to be a narrower meaning than the latter. It seems to us that the petitioner can derive no assistance whatever from any of the said rulings because even adopting the narrower meaning of "incidental" given by Lord Macnaghten the Proclamation of the President in this case seems to fall well within the scope of Article 356(1)(c) of the Constitution; as pointed out earlier the expression "incidental" being used "disconjunctively" with the expression "consequential" would altogether militate against the contention of the petitioner. The ground of invalidity urged by the petitioner, so far as the above sections of Act 31 of 1966 are concerned, Therefore, fails.

13. There is still less merit in the contention of the petitioner that he is entitled to have the Shah Commission Report enforced through Court. It was stated in the counter affidavit filed by Miss Shyama Bahl, Deputy Secretary to Government Punjab, Reorganization Department, on behalf of the State of Punjab (vide paragraph 8) that the Shah Commission was set up under the Commissions of Inquiry Act (LX of 1952). This fact has not been controverted by the filing of a rejoinder. Section 3 of the Commissions of Inquiry Act provides that the appropriate Government may, if it is of opinion that it is necessary so to do and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazettee, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and

within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly. It is seen from the Shah Commission (called Punjab Boundary Commission) Report, which has been made Annexure "A" to the petition, that the government of India resolved to reorganise the then State of Punjab on a linguistic basis so as to constitute from its territories two States, namely, Punjab and Haryana. The Resolution has been printed as Appendix Iv (pages 60-61) of the said Report. In Chapter 1 of the said Report (page 2) it has been stated that on April 23, 1966, the Government of India Published a Resolution appointing the said Commission. It is clear, Therefore, on the material placed before us that the said Commission was appointed under the Commissions of Inquiry Act, 1952 even though the Resolution of the Government of India dated 23rd April, 1966, Appendix Iv, at pages 60-61 of the Report, does not expressly set this out.

14. The Supreme Court had, on two occasions, pointed out that a Commission of Inquiry appointed under the Commissions of Inquiry Act was for fact finding purposes and that the report of the Commission had no force *proprio vigore*; vide *State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad*, and *P.V. Jagannath Rao and Others Vs. State of Orissa and Others*, .

15. It is seen even from the above said Resolution of the Government of India dated 23rd April, 1966, (vide paragraph 2) that the Commission was to examine the existing boundary of the Hindi and Punjabi Regions of the then State of Punjab and to recommend what adjustments, if any, are necessary in that boundary to secure the linguistic homogeneity in the proposed Punjab and Haryana States. In Paragraph 4 of the Resolution, the Commission was asked to make its recommendations to the Government of India not later than 31st May, 1966. It is further seen from Chapter II, Paragraph 26, page 9 of the said Report that the Commission was asked to recommend;-

(i) adjustments of the existing boundary of the Hindi and Punjabi regions of the present State to secure linguistic homogeneity;

(ii) to indicate boundaries of the hill areas of the present State which are contiguous to Himachal Pradesh and have cultural and linguistic affinities."

16. It is thus clear that the Commission was only asked to make the recommendations, which were made by that Commission. The Commission's Report, Therefore, could have no force *proprio vigore*, to use the expression adopted by the Supreme Court in both the above said decisions.

17. In this context the learned counsel for the petitioner very feebly relied upon the *King v. Christ's Hospital Governors*, (Ex Parte DUNN) reported in (1917) 1 Kb 19, where under a scheme, made under the Endowed Schools Act, for the management of Christ's Hospital a certain number of Council of Almoners were to be appointed by the Governors "on the recommendations" of the Lord Mayor and Aldermen of the city of London, among other bodies. When such recommendations were made a contention was raised that the recommendations

should not be construed as a nomination upon which the governors were bound to act, Darling J., observed as follows:-

"The word "recommendation" is not there used in its ordinary sense as when one says "I recommend you to do so and so", or as when a doctor says to his patient "I recommend you to take a change of air". Although put in the form of a recommendation, the clause really empowers those bodies to say "we nominate such and such a person and you must appoint him an almoner; we cannot put him there ourselves; you are the governors of the institution and you have the means of including him in the list". I think that what was in the mind of those who framed the scheme was something equivalent to a *conge d'elire* which, though in words a permission or invitation to elect, is really a command to do it. So here a nomination is called a "recommendation". The most definite language has not been used, but, as I have said, I think the word "recommendation" is used not in the mild sense, but as really meaning a nomination".

18. The said decision has obviously no application to the present case.

19. It is hardly necessary for us to add that the further relief sought by the petitioner, asking for a direction to oust the Central Government from the control and management of the Bhakra Nangal complex and vesting it in the State of Haryana is not one which is within the province of this Court to grant.

20. Since we find that the writ petition has no merits the same is dismissed, but without costs.

21. Civil Misc. No. 1 of 1970, which has been filed to add the States of Rajasthan and Himachal Pradesh as respondents (in view of the dismissal of the main petition) is consequently dismissed.

22. Petition dismissed.