
(1951) 06 CAL CK 0027

In the Calcutta High Court

Case No : Appeal from Original Order No. 138 of 1949

Nani Lal Roy

APPELLANT

Vs

Satyendra Nath Roy

RESPONDENT

Date of Decision : 18-06-1951

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1877 — Section 45

Citation : AIR 1952 Cal 1 : 55 CWN 636

Hon'ble Judges : Harries, C.J.;Das, J

Bench : Division Bench

Advocate : K.K. Bose and K.L. Roy, for the Appellant;Bejon Mitter, for the Respondent

Final Decision : Dismissed

Judgement

Harries, C.J.—This is an appeal from a judgment and order of Banerjee J. dated 3rd March 1949 dismissing an application made u/s 45, Specific Belief Act. The petitioner was one of the sons and heirs of the late Samrangini Roy Chowdhuri, who was one of the recorded joint owners and occupiers of a market which was situate at 180 Kalighat Road, Bhowanipore. This market was supplied with filtered and unfiltered water by the Corporation of Calcutta and the owners were charged for this supply of water as water supplied for domestic purposes.

2. On or about 22nd May 1917 the Corporation informed the owners that it had been resolved that the filtered water supply to markets and bazaars and the unfiltered water supply for cleansing the stalls, drains, streets (paths) of the markets and bazaars should be charged for u/s 230, Calcutta Municipal Act, at the ordinary rates for the supply of water for non-domestic purposes. The quarterly charge for water for non domestic purpos9S wag Rs. 312 and payment was demanded upon that basis. The owners protested and refused to pay for water at the increased rates, The charges for water mounted up and on or about 27th November 1948, the Corporation cut off the water supply of this market.

Demands were made to the Corporation to restore the connection, but the latter refused to do so and this application u/s 45, Specific Belief Act was filed in this Court; on 15th December 1948. A Rule was issued and Banerjee J. made an interim order on the Corporation to restore the connection without prejudice to the rights and contentions of the parties when the matter would come up for hearing.

3. Before Banerjee J., it was contended by the Corporation that the supply of water to markets was supply of water for non-domestic purposes and therefore the increased charges were permissible and as the owners had refused to pay these charges the Corporation were entitled to cut off" the water supply. On behalf of the petitioner, it was contended that the supply of water was clearly for domestic purposes as the water was required by the stall-holders for cooking and for other domestic purposes. After reviewing the authorities Banerjee J. came to the conclusion that the supply of water to this market was a supply for domestic purposes. The respondents were prepared to argue before us that this decision is erroneous, but it is unnecessary to decide the question finally be-cause this case can be disposed of on other grounds.

4. On behalf of the respondents, it was contended that this Court had no jurisdiction to make the order asked for in this ease. The petitioner in his petition prayed for an order directing the Corporation to restore the connection for filtered and unfiltered water at the said market and to recall or cancel demands which had been made at various times for increased charges.

5. The market was situate in Kalighat Road, Bhowanipore and is common ground that those premises are outside the limits of the ordinary original civil jurisdiction of this Court. By the express terms of Section 45, Specific Belief Act, the jurisdiction of this Court is confined to the area within the limits of its ordinary original civil jurisdiction. The contention of the respondents is that as this Court is asked to direct the respondents to do an act outside the limits of its jurisdiction the Court has no jurisdiction whatsoever to make the order prayed for.

6. Section 45, Specific Belief Act, is in these terms:

"Any of the High Courts of judicature at Calcutta, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of judicature."

7. The order which this Court can make is an order requiring a public officer or corporation or inferior Court of judicature to do or forbear to do specific act within the local limits of its ordinary original civil jurisdiction. The Court is asked to call upon the corporation to do a specific act at Kalighat outside the limits of its jurisdiction and therefore it is said that the Court has to power whatsoever to accede to this application.

8. In the case of P.K. Banerjee Vs. L.J. Simonds and Another, a Bench of this Court held that a Court can make an order u/s 45, Specific Relief Act against a person holding a public office irrespective of whether he resides or carries on business within its local jurisdiction provided the act to be done or forbore by him is one which it is incumbent on him in his public character to perform within the Court's territorial limits. Section 45 does not empower, the Court to make an order requiring an act to be done or forbore outside its local jurisdiction even when the person who is required to do or forbear from doing the act is within the jurisdiction. That being so, the Court could not order a person residing within the jurisdiction to deliver certain goods lying at Chittagong outside the jurisdiction.

9. This matter has been finally decided by their Lordships of the Privy Council in the recent case of Sree Meenakshi Mills, Limited v. Provincial Textile Commissioner, Madras, 76 Ind. App. 191, a decision which was given after Binodjee J. had heard this case. Their Lordships held that an application by a company u/s 45, Specific Relief Act, 1877, asking the Court to direct the respondent to desist from seizing yarn supplied to the weavers at or around Madura or Rajapalayam and to restore to the applicant the yarn already seized was incompetent, as the acts with reference to which relief was asked for were to be performed outside the limits of the ordinary original civil jurisdiction of the Madras High Court, though the respondent had his office in Madras within those limits. At p. 200 Sir Madhavan Nair who delivered the judgment of the Board observed;

"The next question relates to the maintainability of the application under the Specific Relief Act. The scope of the provisions of Section 45 restricts the jurisdiction of the High Court of Madras to make an order "requiring any specific act to be done or forbore within the local limits of its ordinary original civil jurisdiction." In the present case the appellant desired the Court to direct the respondent to desist from seizing the yarn supplied or that might be entrusted to the weavers at or around Madura or Rajapalayam and to "restore to the applicant the yarn already seized." Both Madura and Rajapalayam are outside the local limits of the ordinary original civil jurisdiction of the Madras High Court. It is not shown that the yarn seized was brought to Madras. It must be presumed that the yarn still remains in Madura, where it was seized. It is clear that all the reliefs asked for relate to acts done or to be done outside the limits of the ordinary original civil jurisdiction of the High Court It therefore follows that the application u/s 45, Specific Relief Act, is incompetent and should on that ground alone be dismissed."

10. As I have already stated this Court is asked in this application to order the Corporation to perform an act outside its jurisdiction and it appears to me that on the authority of Sree Meenakshi Mills Ltd., (76 Ind. App. 191) this Court has no jurisdiction to make such an order.

11. It was urged on behalf of the appellant that even if this Court could not order the Corporation to restore the connection at Kalighat Market, nevertheless it

could order the Corporation to recall and cancel certain illegal demands. However, the whole purpose of this application is to obtain the restoration of the water supply and merely ordering cancellation of demands will not restore the water. This application must be regarded as an application for an order calling upon the Corporation to restore the water connection and as this Court has no jurisdiction to make such an order the application must fail on this preliminary ground.

12. Banerjee J. dismissed the application on the ground that this Court should not exercise its discretion in favour of the petitioner because the petitioner had another specific and adequate legal remedy.

13. By the terms of Section 45 (d), Specific Relief Act, the Court should only make an order provided the applicant had no other specific and adequate legal remedy. Banerjee J. pointed out that the applicant could have filed a suit in Alipore or in this Court for a mandatory injunction compelling the Corporation to restore the water connection. That such a suit would lie I think is clear from the terms of Section 538, Calcutta Municipal Act, and before us it was not contended that such a suit would not lie. Banerjee J. dealt with this matter in some detail, but as his decision on this point has not been questioned it is unnecessary to deal any further with the matter.

14. As a suit would lie for the precise relief asked for in this application u/s 45, Specific Relief Act, Banerjee J. held that the appellant had another specific and adequate legal remedy and, therefore, an order u/s 45, Specific Relief Act, should not be made.

15. It was contended before us that a remedy by way of a suit cannot be described as a specific legal remedy. A remedy by suit is it is said a general remedy given to all, whereas a specific remedy must be a remedy given in certain cases only and to certain persons. The remedy must be in the nature of a particular remedy as opposed to a general remedy.

16. In the case of Sailendra Nath v. Satyendra Nath 87 Cal. L. J 217, P. B. Mukharji J. took a different view from that taken by Banerjee J. in this case and held that a suit was not a specific legal remedy within the meaning of Section 45 (d), Specific Relief Act. The word "specific" was something opposed to the word "general" and the right of suit was a general remedy and not a specific remedy. The learned Judge further held that the view that a right of Suit was a bar to a mandamus or an order in the nature of mandamus would make Section 45, Specific Relief Act, ineffective and nugatory for all practical purposes.

17. Though it is not strictly necessary to decide this matter I think this Bench should express its opinion because of the conflict of decisions of these two learned Judges.

18. Both the learned Judges have dealt exhaustively with the English authorities on Mandamus on the assumption that section 45 was merely a codification of

English law on the subject, and in the view of Banerjee J. these authorities established that a mandamus should not be granted if the petitioner had another remedy which was equally beneficial, effective and convenient. In short, the view of Banerjee J. was that a specific and adequate legal remedy means a remedy which is equally beneficial effective and convenient.

19. It must be remembered that the words "other specific and adequate legal remedy" appear in Section 45, Specifics Relief Act. The word "specific" appears earlier in the section where it is stated that the Presidency High Courts could make an order requiring any specific act to be done. The word "specific" when used in conjunction with the word "act" must mean some definite or particular act and it appears to me that the word "specific" as used in Section 45 (d) must mean an appropriate and effective remedy which would be as beneficial and convenient as an order u/s 45" of the Act and would result in a specific act being done or forborne.

20. The word "specific" appears in the title of the Act namely, "The Specific Relief Act" and the preamble of that Act is in these terms:

"Whereas it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits."

21. It will be seen, therefore, that the Act deals with relief obtainable in suits and the relief is given generally by way of a suit and what the Act deals with is specific relief generally and that any particular form of relief given by any particular statute and to particular persons.

22. The phrase "specific relief" is defined in Section 5 of the Act. That section is in these terms:

"Specific relief is given"

(a) by taking possession of certain property and delivering it to claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a receiver."

23. In the Act the phrase "specific relief," therefore, is used to cover cases of specific performance or forms of injunctions and declarations,

24. Where a person is entitled to a specific relief, it can I think be rightly said that he has a specific remedy. For example, where a person has a right to a mandatory injunction he can claim specific relief, that is, he can ask for an order calling upon the defendant to do the very act which the latter is under an

obligation to do. He has a right of suit to obtain that relief or remedy and it seems to me that the remedy can properly be described as a specific legal remedy.

25. In my view the phrase "specific legal remedy" in Section 45 (d), Specific Relief Act, means a remedy which would give a person a specific relief. That being so, I think it follows that if a petitioner for an order u/s 45 can obtain the actual relief asked for in the petition by way of suit he has another specific and adequate legal remedy and therefore no order u/s 45 of the Specific Relief Act should be made.

26. The phrase "specific remedy" in Section 45 (d) means a remedy which will give the petitioner, for all practical purposes, what he prays for in the application u/s 45, Specific Relief Act.

27. In the case of *Elliott v. Duchess Mill* (1927) 1 K. B. 182 S L. J. 204 considered the meaning of the word "specific". He observed:

"In my view "specific" means stated with precision as opposed to a mere statement of fact without assigning a precise or determined cause for it. I find that leaving out the medical, pathological, zoological and botanical meanings of "specific" in the Oxford Dictionary and turning to the more ordinary English it is "Precise or exact in respect of fulfilment, conditions, or terms; definite explicit, exactly named or indicated, or capable of being so; precise, particular"."

28. In my view the word "specific" as used in Section 45 (d), Specific Relief Act, means "precise or definite" and if therefore the petitioner has another remedy whereby he can obtain the precise or particular relief asked for in the petition u/s 45, an order under that section should not be made

29. It had always been the view of the Courts in England that a writ of mandamus should not issue if the petitioner had another specific and adequate remedy. This is clearly laid down by Lord Mansfield in the case of *The King v. Bank of England* (1870) 2 Dougl. 524 99 E. R. 334. At page 335 of 99 E R. Lord Mansfield observed :

"When there is no specific remedy, the Court will grant a mandamus that justice may be done. But where (as in this case) an action will lie for complete satisfaction equivalent to a specific relief, and the right of the party supplying is not dear, the Court will not interpose the extraordinary remedy of a mandamus".

30. It is clear from these words that a person can be said to have a specific remedy if by an action he can obtain complete satisfaction, or in other words, specific relief. If he can obtain such satisfaction, particularly when the case is not clear no mandamus should be granted. I may state that the question whether the supply of water to this market was for domestic or non-domestic purposes is by no means clear and the learned Judge dealt with the question in considerable detail. It therefore appears to me that the present case is exactly covered by the observations of Lord Mansfield to which I have made reference.

31. Reliance was placed by the appellant upon another decision of Lord Mansfield in *Rex v. Barker* (1762) 97 E. R. 823. Lord Mansfield observed :

"A mandamus is a prerogative writ; to the aid of which the subject is entitled, upon a proper case previously shown to the satisfaction of the Court. The original nature of the writ, and the end for which it was framed, direct upon what occasions it should be used. It was introduced to prevent disorder from a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one.

Within the last century, it has been liberally interposed for the benefit of the subject and advancement of justice.

The value of the matter, or the degree of its importance to the public police, is not scrupulously weighed. If there be a right, and no other specific remedy, this should not be denied"

32. In this observation it will be seen that Lord Mansfield was of opinion that a writ of mandamus should only be issued where there was no specific remedy. It was contended that Lord Mansfield must have meant by these words that a writ of mandamus should issue unless the law gave some particular remedy as opposed to a general remedy to meet the facts of the case. However it appears to me that Lord Mansfield in this observation gave the word "specific" the same meaning as he gave to it in the case of *The King v. Bank of England* (1870 2 Dougl 524), that is, that a man has a specific remedy if an action would lie for complete satisfaction equivalent to a specific relief. I do not think it can be said that the observation of Lord Mansfield in the case of *Rex v. Barker* (1762 97 E R. 823) can assist the appellant in any way.

33. In the case of *In re Barlow* (1861) 30 L. J. Q. B. 271 Hill J., dealt with the question when a mandamus should be granted. In that case it was argued that the petitioner for a mandamus had other alternative reliefs. Dealing with the argument Hill J. at p. 271 observed :

"It is well settled that where there is a remedy equally convenient, beneficial and effectual, a mandamus will not be granted. This is not a rule of law, but a rule regulating the discretion of the Court in granting writs of mandamus; and unless the Court can see clearly, that there is another remedy equally convenient, beneficial and effectual, the writ of mandamus will be granted, provided the circumstances are such in other respects as to warrant the granting of the writ,"

34. In the case of *In re, Nathan* (1884) 12 Q. B. D. 461 the Court of appeal had to consider when a mandamus should be issued. At p. 478 Bowen L. J. observed:

"What is the origin of the right that any man has to ask the Court for a writ of mandamus? A writ of mandamus, as everybody knows, is a high prerogative writ, invented for the purpose of supplying defects of justice, By Magna Carta the Crown is bound neither to deny justice to anybody, nor to delay anybody in

obtaining justice. If, therefore, there is no other means of obtaining Justice, the writ of mandamus is granted to enable justice to be done. The proceeding, however, by mandamus, is most cumbrous and most expensive; and from time immemorial accordingly the Courts have never granted a writ of mandamus when there was another more convenient, or feasible remedy within the reach of the subject."

35. It will be seen that according to Bowen L. J., if there was another convenient or feasible remedy the Court should not issue a mandamus because of the cumbrous and expensive nature of the proceedings to obtain a mandamus.

36. In *Beg v. Leicester Guardians* (1899) 2 Q. B. 632 Darling J. took the same view and in particular, adopted the words of Bowen L. J. in *In re, Nathan* (1884-12 q.b.d. 461) and the words of Hill J. in *In re Barlow* (1861 30 L. J. Q. B. 271) to which I have already made reference.

37. In *Rex v. Dymock* (1915) 1 K. B. 147 Darling J. was of opinion that as a mandamus was not the only remedy and that a person claiming a right to the office of sexton as a free-hold for life could bring an action for fees no mandamus should issue.

38. In the case of *Rex v. Poplar Borough Council*, (1922) 1 K. B. 72 the Court of Appeal again considered when a writ of mandamus should issue. At p 84 Bankes L J. observed :

"That prima facie mandamus is the appropriate remedy where there is a clear breach of duty by a public body, the performance of which would be to the benefit of the person or body complaining, is clear. In cases where the statute creating the duty has prescribed a form of remedy for a breach of that duty other than mandamus, then as a general rule the Court will not allow any other remedy to be pursued. There may also be cases where the party complaining may have some alternative remedy as convenient, beneficial and effectual as mandamus, and if so in its discretion the Court will not grant a writ of mandamus."

39. It was urged before us that an alternative specific remedy must be confined to remedy specially given by statutes creating rights. Bankes L. J. in the observation quoted above makes it clear that where a statute creating a right also gives a remedy, normally the Court will not give the person granted that right any other remedy and, therefore, a writ of mandamus should not issue. Bankes L. J., however deals with another class of cases, that is, where the party complaining may have some alternative remedy, and if that alternative remedy is as convenient, beneficial and effectual as a mandamus the Court will not grant a mandamus. The alternative remedy may be any alternative remedy provided it is as convenient, beneficial and effectual, and it seems to me quite clear that Bankes L. J. was not excluding a remedy by way of a suit. At p. 90 Warrington L. J. observed :

"The issue of the writ (that is mandamus) is no discretionary, and it has been laid down that where there is a remedy equally convenient, beneficial, and effectual a mandamus will not be granted."

40. In the case of *The Queen v. Charity Commissioners for England and Wales* (1897) 1 Q. B 407, Wright J. stated the rule as to the discretion of a Court to issue a mandamus rather more broadly, At p 413 he observed :

"On the second ground, also, it seems to me that the rule (for a mandamus) ought to be discharged, There is no doubt that in applications for a mandamus this Court has a discretion, except in cases where the refusal of the application would deprive a party of his legal rights without any other remedy existing whatever,"

41. From a consideration of these authorities I think it is clear that the Courts in England would not grant a mandamus if the petitioner had an alternative remedy which was equally effectual, beneficial and convenient. That is the meaning which the Courts in England have given to the phrase "another specific and adequate legal remedy."

42. It was contended that this rule of the Courts in England only applied if the alternative remedy was a remedy at common law and it did not apply if the alternative remedy was an equitable one. Writs of mandamus were sought for in the common law Courts and previous to the Judicature Acts the common law Courts only granted common law remedies. After the Judicature Acts however all remedies could be granted by the common law Courts and it is to be observed that in the cases which I have cited which were decided after the Judicature Acts no distinction is drawn between an alternative remedy at common law and in equity. What is stated is that if a petitioner for a mandamus has an alternative remedy equally beneficial, effective and convenient, whether such remedy be at law or in equity no mandamus should issue.

43. Whether a remedy by way of a suit could be regarded as a specific legal remedy within Section 45 (d), Specific Relief Act, was considered by a Bench of the Bombay High Court in the case of *Lady Dinbai Petit Vs. M.S. Noronha*, . 407. Dealing with this question Kania A. C. J. at p. 417 observed:

"I only observe that for the argument of the appellants that the specific remedy mentioned in the fourth proviso means a special remedy separately provided by an Act of the Legislature, there appears no justification. It is true that the alternative remedy must be equally adequate and efficacious. But there is no reason why on that ground the remedy provided by an ordinary suit should be considered excluded,"

44. A contrary view was taken by Greaves J. in *Manick Chand Mahata v. Corporation of Calcutta* 48 Cal. 916. the learned Judge observed:

"I think "specific and adequate remedy" in Sub-section (d) of 8. 45, Specific Relief Act, refers not to a general right of suit which must, unless expressly

barred, always exist, but to some specific remedy expressly given by a particular Act."

45. That, as I have already observed, was also the view of P. B. Mukharji J. in the very recent case *Sailendra Nath v. Satyendra Nath* 87 Cal. L. J 217 to which I have made reference.

46. It appears to me that if the English authorities have to determine the matter, the view of the English Courts was and is that a mandamus should not issue if the petitioner has, either by way of suit or otherwise, a remedy equally effective, beneficial and convenient. That, as I have stated, is also the view of the Bombay High Courts and that is, with very great respect the right view. Further as the phrase "specific legal remedy" appears in an Indian Act it must be construed in the light of the provisions of that Act and it appears to me that when that is done "a specific legal remedy" means a remedy which will give the person complaining the specific relief or the precise or particular relief which he will obtain in a mandamus or in an application u/s 45, Specific Relief Act.

47. That being so the view of Banerjee, J., that the Court should not, on the facts of this case issue an order u/s 45, Specific Relief Act was right and must be maintained. A suit filed either at Ali-pore or on the Original Side of this Court would have obtained for the appellant the precise relief which he sought for, namely, a restoration of the water connection. A mandatory injunction could have been granted and such would have been in every respect as convenient, effective and beneficial as an order under Section 45, Specific Relief Act.

48. For these reasons the application was rightly dismissed by Banerjee, J., and accordingly the appeal fails and is dismissed with costs.

Das, J.

49. I agree.