
(1952) 04 CAL CK 0006
In the Calcutta High Court
Case No : Civil Rule No. 2500 of 1951

Naresh Chandra Sanyal

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-04-1952

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1952 Cal 757 : 56 CWN 539

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Santosh Kumar Basu and Barindra Kumar Ghosh, for the Appellant; Bhabesh Narain Bose and S.K. Guha for Opposite Parties (Nos. 2 to 4), for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for an appropriate "Writ for quashing of certain orders passed by the Authorities of the Assam Railway against the petitioner reducing the petitioner from the rank of a Station Master to a Signaller.

2. The petitioner was posted as Station Master at Dinhata which was in the State of Cooch-Bihar prior to 1-1-1950 when Cooch-Bihar was absorbed into the State of West Bengal. In January 1949 while the petitioner was posted at Dinhata Station he was charged with offences of serious misconduct involving the offence of forgery. On 14-2-1949 the petitioner sent a reply to the charge sheet. On 18-3-1949 the petitioner was summoned to the office of the Deputy Chief Transportation Superintendent who held a departmental enquiry into the conduct of the petitioner. It is alleged in the petition that in holding this departmental enquiry, all the statutory rules relating to such enquiry were not observed. Particulars of such irregularities have been set out in the petition. By an order dated 19-8-1949 which was communicated to the petitioner on 1-9-1949, the Deputy Chief Transportation Superintendent, Assam Railway, who has his office at Pandu in Assam, passed an order at that place reverting permanently the

petitioner to the post of Signaller. The petitioner on 20-10-1949 preferred an appeal to the respondent 2, who is the Chief Administrative officer of the Assam Railway, and it appears that on 1-12-1950 the following order was passed by the Chief Administrative officer at Pandu after consideration of the petitioner's appeal:

"I have carefully gone through the above appeal and do not see any reason to alter the decision conveyed by the Deputy C. T. S. under his letter No. 649-E-58 (d) dated 19-8-1949."

The petitioner has challenged these two orders as illegal on the ground that the statutory rules governing the conduct of the departmental enquiry have not been complied with in this case.

3. On behalf of the respondents Mr. Bhabesh Narain Bose has raised certain preliminary objections to the maintainability of this application and has also questioned the jurisdiction of this Court under Article 226 to entertain the present application. It is submitted by Mr. Bose that both the order of reduction and the appellate order were passed at Pandu outside the territorial jurisdiction of this Court and the officers against whom the Writs are sought, have also their offices at Pandu and are residents of Pandu which is outside the jurisdiction of this Court. Therefore this Court cannot in the exercise of its powers under Article 226 interfere with these orders at all. Article 226 provides that the High Court has power and jurisdiction to issue Writs and Directions only throughout the territories over which it exercises jurisdiction and under this Article it can issue Writs only to person, Authority or Government within those territories over which the High Court ordinarily exercises jurisdiction. In other words the High Court at Calcutta cannot issue any Writ to an authority or person in Behar in respect of any order passed or action taken in Behar. Therefore it appears to me that this High Court has no power to issue Writs quashing the orders which were made outside the territorial jurisdiction of this Court against persons whose obedience cannot be enforced by this Court in case they do not condescend to comply with the directions issued by this Court. If a person wants to get any redress against persons or authorities outside the jurisdiction of this Court, in other words, outside the State of West Bengal in respect of actions taken or orders passed outside the said jurisdiction, such person must approach the proper forum, which can grant relief in respect of these matters. In the case of *Lloyds Bank Ltd. v. Lloyds Bank Staff Association*, Harries C. J., and Banerjee J. made the following observation:

"it was faintly suggested at the outset that a Mandamus could issue against the Government of India which is a respondent in this matter restraining that Government from giving effect to the award. Article 226 of the Constitution expressly allows Writs in the nature of prerogative Writs to issue against Government which is a departure from English practice, That Government must however be located in the territory over which the Court exercises jurisdiction and in my view the Government of India cannot be said to be located in the

State of West Bengal and therefore Writs under Article 226 cannot issue against it at the instance of this Court."

4. In an Original side Matter No. 1 of 1952, *S. Das Gupta v. S.C. Satyawadi*, I have held that the orders passed by the Central Board of Revenue at New Delhi could not be interfered with in exercise of the powers conferred upon this Court under Article 226 of the Constitution.

5. Mr. Santosh Kumar Basu on behalf of the petitioner drew my attention to the case of *Ryots of Garabandho v. Zamindar of Parlakimedi*, 70 Ind. App. 129 (P. C.), and to the case of *P.K. Banerjee Vs. L.J. Simonds and Another*, . It may be pointed out that the facts of these cases are distinguishable and a good deal of the force of the observations made by the Judicial Committee in *Parlahimedi's* case and by *Gentle J.*, in *Simond's* case has been taken away after the coming into force of the Constitution of India. Under the Constitution the High Court's power to issue writs is confined to the territories within the State of West Bengal. In *Simond's* case, the act in respect of which relief was sought u/s 45, Specific Belief Act was to take place if at all outside the original jurisdiction of this Court and so *Gentle J.*, held that this Court had no jurisdiction. In the *Parlakimedi's* case, the Judicial Committee while considering the question about the extent of power of the High Court in its Original jurisdiction to issue prerogative writs held that location of the office of the Authority whose order or action was impugned could not give jurisdiction to the High Court to issue Writs of Certiorari in respect of an order which was to take effect outside the original jurisdiction of the High Court.

6. Mr. Bhabesh Narain Bose further submitted that the orders which are challenged in this application would take effect at Dinhata or at Gitaldah both of which stations were in Cooch-Behar before the State of Cooch-Behar became merged in the State of West Bengal on 1-1-1950. Mr. Bose referred to States Merger (West Bengal) 1949 Order which was published by the notification dated 31-12-1949.

It is, therefore, clear that the order of reduction also took effect at a place which was outside the State of West Bengal at the time when the order of reduction was passed i.e. on 19-8-1949, before the Constitution came into force. Mr. Bose has also pointed out that the order of reduction dated 19-8-1949 being passed before the Constitution came into force this Court cannot in the exercise of its jurisdiction under Article 226 of the Constitution interfere with this order inasmuch-as the Constitution has no retrospective operation. Mr. Bose has placed reliance in *Keshavan Madhava Menon Vs. The State of Bombay*, and in *Janardan Beddy v. State of Hyderabad*, 1951 S. C. at p. 377 (C.W.N.).

7. Mr. Santosh Kumar Basu on the other hand has pointed out that the order of the appellate authority was passed on 1-12-1950 and as the petitioner also challenges that order and asks for relief in respect of that appellate order which was passed after the Constitution, this application is maintainable at least so far

as the relief with regard to the appellate order is concerned. It may be pointed out, however, that the petitioner cannot get complete relief by merely getting rid of the appellate order. He has also to get rid of the original order of reduction which was passed on 19-8-1949. Unless it can be shown that the order of 19-8-1949 was an ultra vires order, this Court will not have any jurisdiction to interfere with that order. But as the question whether this order is an ultra vires order or not has not been gone into in this case inasmuch as the merits were not enquired into in course of the hearing, I do not propose to express any opinion with regard to this point.

8. It has also been submitted by Mr. B.N. Bose that the petitioner had an alternative remedy by way of a suit and, therefore, this Court should not in the exercise of its discretion under Article 226 grant any relief to the petitioner in this application. It has been held by Das J., in *D. Parraju v. General Manager, B. N. Rly.* 56 Cal. W. N. 264, that where extended questions of facts have to be gone into in disposing of an application under Article 226, the petitioner should be relegated to a suit and the Court should not exercise its powers under Article 226 in such a case. Mr. S. K. Basu appearing for the petitioner, however, points out that the real question is whether the principles of natural justice have been observed in this case and further whether the statutory rules have been complied with Or not.

It may be pointed out however, that with regard to these matters, namely to what extent the rules of natural justice or the statutory rules have been violated there are facts in dispute in this case. It is not a case where the facts are admitted and the only question to be decided is a question of law. One of the submissions of Mr. Santosh Kumar Basu is that the orders were passed mala fide. This is a question which can be more conveniently disposed of in a suit than in an application under Article 226 of the Constitution. It appears to me that the preliminary objections must be given effect to and this petition, therefore, fails.

9. This Rule is accordingly "discharged but I make no order as to costs.