
(2014) 02 MAD CK 0102
In the Madras High Court
Case No : W.P. No. Sr. No. 19723 of 2014

P.R. Krishnan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Constitution of India, 1950 — Article 1, 226, 3, 368, 4(2)

Citation : (2014) 2 LW 577

Hon'ble Judges : Satish K. Agnihotri, Acting C.J.;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

K. Agnihotri, Actg. C.J. and K. Ravichandran, J.—The writ petition filed by the writ petitioner is posted before us, even before numbering the same, to decide its maintainability before this Court. The petitioner as a Party in person sought to file the above writ petition before this Court with the reliefs as stated hereunder:

For the reasons stated in the accompanying affidavit it is most humbly prayed that this Hon"ble Court may be pleased to;

Declare that on a proper interpretation of Article 3, read with Articles 1, 4(2) and 368 of the Constitution;

Parliament does not have power either under Article 3 or any other proviso of the Constitution to divide a state except by an appropriate amendment of the Constitution and with the unanimous consent of the people of the affected state or states, and subject to Article 1;

B) Parliament does not have power to destroy a state even by an amendment as it will violate federalism a basic feature of the Constitution and thereby destroy India, as enshrined under Article 1 of the Constitution;

C) All the constitutional functions specified in Article 3 may be performed by Parliament only by following the amendment process articulated in Article 368, and subject to Article 1;

D) The law laid down by the Supreme Court in Babulal Parathe, which has been followed by Raja Rampal, Pradeep Chaudhary and Mullaiperiyar are no longer good law;

E) The President's power under Article 3 is a power coupled with duty, which the President has to discharge independently and on his own and that in the independent discharge of this duty he is not bound by any aid or advice by his Council of Ministers;

F) The deeming provision in Article 4(2) which states that an amendment of the Constitution made order under Article 3 shall be deemed as not an amendment has to be ignored and read down and consequently,

G) In the matter of bifurcation of the State of Andhra Pradesh, the President and the council of Ministers have not acted in accordance with relevant provisions of the Constitution.

2. The Registry of this Court returned the papers to the petitioner by raising a doubt with regard to its maintainability under Article 226 of the Constitution of India before this Court. The petitioner represented the paper by stating that he is residing in Tamil Nadu and therefore, this Court has got jurisdiction under Article 226 of the Constitution of India to entertain the writ petition and still if the Registry has doubt, the writ petition may be posted for maintainability. Accordingly, the matter is listed before us.

3. We have heard the petitioner as party in person, a Senior Advocate of this Court and perused the relief sought for in this writ petition.

4. The petitioner contends that the Parliament has no power under Article 3 of the Constitution of India to divide the State of Andhra Pradesh. He further contended that the petitioner has got the privilege to ask for the prayer in the writ petition and therefore, this Court can entertain the same and issue notice to the respondents.

5. We have given our careful consideration to the submissions made by the petitioner.

6. We are unable to appreciate his contentions. On going through the averments made in the affidavit filed in support of the writ petition as well as the prayer sought for therein, we are of the firm view that this writ petition is not maintainable before this Court. The grievance of the writ petitioner is against the division of State of Andhra Pradesh by the Central Government. He has impleaded the Union of India as the first respondent and all other States in this country as Respondents 2 to 29. We wonder as to how he is justified in maintaining this writ petition before this Court. The petitioner himself admitted in his affidavit that number of Public Interest Litigations related to this issue are reported to have been filed before the Hon"ble Supreme Court and Andhra Pradesh High Court and those writ petitions have been dismissed as premature. But however, he wants to maintain this writ petition before this High Court.

7. The petitioner is admittedly the resident of Tamilnadu and is said to have aggrieved against the division of Andhra Pradesh State. To challenge such division, the petitioner has chosen this court to file the writ petition with the relief as extracted above. Needless to say that it is purely an internal issue or affair of that particular State against which no action can be initiated before any other High Court of other States, even under the guise of a Public Interest Litigation. We do not think that a P.I.L. has got no boundaries or barricades. The attempt of the petitioner, who is a resident of Tamil Nadu in questioning the act of Parliament in dividing the State of Andhra Pradesh, that too by filing a writ petition before this Court, is neither maintainable nor entertainable.

8. The jurisdiction of a High Court to issue directions, orders or writs to any Government, authority or person is dealt with under Clause (2) of Article 226 of the Constitution of India. The residence of a petitioner is not important, but it is the cause of action which has arisen either wholly or in part for exercise of such power, irrespective of the fact whether the seat of such Government or authority or the residence of such person is within the territorial jurisdiction or not. In the case on hand, no cause of action has arisen wholly or in part within the territorial jurisdiction of this Court. Thus, this petition is not maintainable. Moreover, the jurisdiction under Article 226 of the Constitution of India is undoubtedly a discretionary jurisdiction. Hence, the petitioner cannot compel this Court to number the writ petition and entertain the same. Accordingly, we hold that this writ petition cannot be entertained by this Court and consequently, the same is dismissed as not maintainable even at the threshold. Thus, the W.P. Sr. No. 19723 of 2014 is dismissed. No costs.