

(1975) 09 DEL CK 0023

In the Delhi High Court

Case No : Criminal Writ Appeal No. 37 of 1975

Rama Devi

APPELLANT

Vs

K.A. Gafoor and Others

RESPONDENT

Date of Decision : 26-09-1975

Acts Referred:

Citation : (1976) ILR Delhi 72

Hon'ble Judges : S.I. Rangarajan, J; R.N. Aggarwal, J

Bench : Division Bench

Advocate : M.H. Phadke, R.H. Dhebar, B.V. Desai, M.H. Phadke, R.N. Dixit, S.B. Wad, Shyamla Pappu, A.B. Saharia, V.B. Saharya and K.B. Soni, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This Order is made not only in Cr. Writ 37 of 1975 but also in Cr. Writs 40, 45, 46, 50, 51, 52, 57, 58, 60, 61, 64, 65, 66, 70, 71, 72, 77, 79, 85, 86, 90, 91, 92, 96, 100, 101, 106, & 107, all of 1975, where the question of jurisdiction has been argued.

(2) The question of the jurisdiction of the Delhi High Court to entertain petitions under Article 226 of the Constitution for the purpose of issuing a writ of Habeas Corpus or other needed direction in the case of those detenus who are detained in some of the States of India outside the union Territory of Delhi, has arisen for determination in these Writ Petitions.

(3) Without going into the detailed averments made in each of these petitions, in which a question of jurisdiction has been argued, these petitions may be classified into three broad categories :

(1) Where an order of detention u/s 3 has been made and a person is detained outside the union Territory of Delhi coupled with a declaration u/s 9(1), both of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act

(52) of 1974 (COFEPOSA as it is popularly described in a brief manner).

(2) Where the said order of detention has been made and a person is detained outside the Union Territory of Delhi and there has been no such declaration by the Central Government but the validity of the Cofeposa (and the Ordinance (6) of 1975 amending the COFEPOSA), the 38th Constitution Amendment the Presidential Ordinance of December 23, 1974 and the declaration of emergency, have been challenged.

(3) Where the order of detention has been made and a person is detained outside the Union Territory of Delhi and there is no declaration u/s 9(1) of the Cofeposa, but there are averments concerning the State Government having acted on instructions from the Central Government or its concerned officer; it is seen that in such cases the above-said legal provisions have been challenge.

(4) A Division Bench of this Court, consisting of Prakash Nanrain and Ansari, JJ., decided on 30-4-1975 Prem Raj Sahni v. K. B. Srinivasan & Ors (Cr. Writ No. 10 of 1975) (1) (which will hereafter be referred to as the case of Narang, who was the detenu in that case) that the declaration made u/s 9(1) of the Cofeposa at Delhi was itself part of the cause of action; enabling the petitioner to chose the Delhi High Court as the forum for challenging the detention and the declaration; this forum could also be chosen wherever there is a challenge in the petition to the validity of the Central Act and the 38th Constitution Amendment, the Presidential Order dated December 23, 1974 under Article 359 of the Constitution and the continuation of the emergency. It will be best to quote what was stated in Narang concerning this aspect :

"ADMITTEDLY the declaration u/s 9(1) of Act 52 of 1974 was made at New Delhi, But for this declaration it would have been incumbent upon the detaining authority to have submitted the papers regarding the detention of the detenu to an advisory Board as provided by section 8 of Act 52 of 1974. The continued detention of the detenu, Therefore, without submitting the papers regarding the detention to the Advisory Board is by virtue of the said declaration made u/s 9(1). A part of the cause of action to challenge the continued detention of the detenu, Therefore, definitely arises in New Delhi. We were further persuaded to hold that this Court has jurisdiction because of the challenge made in the petition, of the validity of Act 52 of 1974, a Central Act, the Presidential Order under Article 359 of the Constitution made on December 23, 1974, and the continuation of the emergency proclaimed by the President under Article 352 by virtue of Proclamation made in 1971. All the above three being acts of the Central Government or the President or the Central Parliament, a challenge to these can be agitated in the High Court in New Delhi in so far as it affects the liberty of the detenu. Those also constitute part of the cause of action for the challenge to the impugned detention."

(5) It is the correctness of this decision which has been challenged before us by the learned counsel appearing for some of the States concerned, some of the

States having been represented by their respective Advocates-General. It was urged that the said decision requires re-consideration and Therefore the question of jurisdiction should be referred to a larger bench. After having heard the arguments not only on behalf of the States concerned but the learned counsel for the petitioners in the above noted petitions, we are inclined respectfully to agree with the said decision by which we also feel bound. We shall presently mention our reasons for saying so.

(6) Article 226 of the Constitution, which did not originally contain (1 A), was amended by the Constitution (Fifteenth Amendment) Act, 1963 (S. 8) by introducing (1A) also. As amended it reads as follow :

(1)Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quowarranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part Iii and for any other purpose.

(1A)The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories".

(7) The difficulty which was experienced prior to the Constitutional amendment would become clear if reference is made to Lt. Col. Khajoor Singh Vs. The Union of India and Another, Stress was laid by B. P. Sinha, C. J., who spoke for the majority, on the language of Article 226(1) which says that the High Court has power to issue writs, directions, orders etc. throughout the territories in relation to which it exercises jurisdiction to a person or authority within those territories. The following conclusion was expressed:

"THEconcept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 220. but the argument of" inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

(8) Suba Rao, J. (as he then was) dissented and referred to the power of the High Court under Article 226 of the Constitution being of the widest amplitude. The Union Government, he said, has no constitutional situs in any particular place: it exercises executive powers in respect of matters to which Parliament had power to make laws throughout India; the Union Government must, therefore, be deemed in law to have "functional existence" throughout India. It was in the light of this difficulty that (1A) was introduced in Article 226 of the Constitution. The preamble to the Constitution (Fifteenth Amendment) Act, 1963 stated as follows :

"(STATEMENT of objects and reasons) Under the existing Art. 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Art. 226 so that when any relief is sought against any Government authority or person, any action taken by the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs."

"THE Joint Committee stated as follows : This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction. The clause has, therefore, been suitably amended."

(9) This was a provision obviously made to enable parties to invoke Article 226 of the Constitution in the respective High Courts themselves where the cause of action, wholly or in part, arises despite the seat of such Government or authority or residence of such person not being within the territories of the respective High Courts. As it often happened to be the case persons from distant parts of India had to come to the High Court of Punjab (which was also then holding its sittings in Delhi till the High Court of Delhi was established in 1966) for the purpose of questioning orders passed by the Central Government which affected those residing outside the Union Territory of Delhi. The above-said Constitution (Fifteenth Amendment) was conceived to remove this difficulty by enabling the power conferred on the High Court under Article 226(1) being also exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. The above said expression, "wholly or in part" has obviously been taken from section 20(c) of the Code of Civil Procedure. Every suit is subject to the limitations imposed by the said Code and shall be instituted only in the Court within whose territorial jurisdiction, among other things, "the cause of action, wholly or in part", arise.

(10) The expression "cause of action" has itself not been defined either in the CPC or in the Constitution; it is only a term of art which has been the subject matter of several decided cases. The Judicial Committee of the Privy Council explained

the meaning of "cause of action" in AIR 1949 78 (Privy Council) approving the definition given by Lord Esber. M. R. who accepted the definition given in Cook v. Gill 1873 L. R. 8 C.p. 107 (4), that it meant "every fact which it would be necessary for the plaintiff to prove. If traversed, in order to support his right to the judgment of the Court. It does not comprise every fact which is necessary to be proved". The Judicial Committee summarised in that case (vide para 61) the principles laid down by the various decisions discussed by it and stated as follow :

"THEcause of action has no relation whatever to the defense that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers.....to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favor".

(11) We are unable to see force in the contention that a more restrictive interpretation of the expression "cause of action" employed in Article 226(1A) should be adopted especially in cases where the liberty of the citizen is involved. It is in this light that the main features of the Cofeposa may be understood.

(12) The Act itself, as its preamble indicates, has been placed on the statute-book "for the purpose of conservation and augmentation of foreign exchange and prevention of smuggling activities and matters connected therewith". This would inevitably involve a kind of nationwide effort and a kind of gearing the machinery of the State and Central Governments to meet with the threat to the nation's economy caused by such smuggling activities. In the matter of making an order u/s 9(1) one of the considerations specified is the satisfaction of the officer making the declaration that the person concerned was smuggling or was likely to smuggle goods into, out of or through any area highly vulnerable to smuggling etc.; it would be clear from the Explanation thereto that the guarding of the coast-line of India effectively is necessary to achieve this result. In the very nature of things some kind of concerted action would be necessary. Hence section 3 enables the Central Government or State Government, or any officer of the Central Government not below the rank of Joint Secretary of that Government specially empowered by that Government or any officer of the State Government not below the rank of Secretary of that Government, specially so empowered, to act under the Act. Where any such order is made by the State Government or its officials the same has, u/s 3(2), to be forwarded within ten days to the Central Government along with a report. A person so detained is also liable to be removed from one place of detention to another place whether within the same State or another State by order of the appropriate Government, with the consent of the Government of the receiving State. Section 11 enables the Central Government to revoke any order passed by the State Government in addition to an order of detention passed by itself. By Ordinance 6 of 1975 amending the Cofeposa, section 12-A was introduced which contains special provisions for dealing with the emergency; when such an order is made, the detaining authority should be satisfied that such a course is necessary for effectively dealing with the emergency; then it may make a declaration to that

effect and communicate a copy of the declaration to the person concerned, which declaration has to be reviewed by the appropriate Government within fifteen days from the date of the order. It is, however, needless to notice these provisions at any further length because the orders of detention in these cases were made before Ordinance 6 of 1975 was passed and came into effect. The point to note is that the provisions enabling the concerned Central Government official not only to detain any person in any State (section 3) but also to revoke any order detaining a person not by itself but by the State Government (section 11) are intended to achieve a nation-wide approach to this problem. There may also be executive or administrative instructions issued to achieve uniformity of operation by taking concerted action to the extent necessary", but such instructions even when issued will not have statutory force; every detaining authority in the Centre or State must be satisfied that a case for detaining any person exists; to this fact, however, we will revert later.

(13) There can be and is really no dispute about the fact that the High Court within whose territorial jurisdiction the order of detention is made and/or the person is detained will have jurisdiction. It was one time feebly contended by Shri Harjinder Singh, who appeared for the detenus in some of these petitions that once an order of declaration u/s 9(1) is made the order of detention itself will merge in the said order of declaration and that the High Court within, whose territorial jurisdiction the said order of detention was made initially and the person was being detained would no longer have Jurisdiction to entertain a petition under Article 226. But it did not take long for him to realise the difficulties (one of them being that considerations for making the two orders are separate) in the way of such a contention being accepted; he, Therefore, abandoned the said argument.

(14) It was pointed out for the detenus that the Fifteenth Constitution Amendment was a liberalising provision enabling the aggrieved person to file a petition under Article 226 even in a State High Court where a part of the cause of action arose. It could not take away the jurisdiction in the High Court which already existed in a State High Court within whose territorial jurisdiction a person was actually detained and the detention order was also made; in like manner, it could not take away the jurisdiction which already vested in the Punjab High Court whose jurisdiction could be invoked under Article 226 of the Constitution by a person who chose to file it in Delhi because an order, as in this case, of declaration was made or Where the concerned law, the validity of which was questioned, was enacted at Delhi.

(15) The contention for the States, on the other hand, is that the order of declaration u/s 9 or the passing of the laws by the Central Legislature could not be said to be a part of the cause of action of a petitioner who is detained by a State within its own territorial jurisdiction by reason of an order of detention having been passed at that place; in any case, it was contended, even if this Court has jurisdiction, the Court should exercise its discretion not to entertain

such petitions here since it might lead to the evil of what is graphically described as "forum-shopping".

(16) Before we deal with these contentions the question No. 3 which is only of subsidiary importance may be disposed of. With reference to the contention that directions, if any, given by the Centre to the States, assuming any such direction was given, would be part of the cause of action enabling the detainee to choose Delhi as the venue, it has to be borne in mind that the order of detention can be made either by the Central Government or the State Government; but when the State Government makes such an order it would be acting under a specific statutory power conferred on the State Government itself by reason of section 3. It is for this reason, among others, that the State High Court has jurisdiction. Directions, if any, issued by the officials of the Central Government would only have the effect of showing, if at all, that there was non-application of mind by the concerned detaining authority of the State Government; this may furnish, if this is so, in some cases at least a ground for vitiating the order of detention; but such directions would not by themselves have any bearing on the question of jurisdiction unless those are directions which the statute (COFEPOSA) empowered the Central Government or any official of the Central Government to issue and such direction would, Therefore, be binding on the State Government. In this light the reliance by Shri Madan Bhatia, learned counsel for the petitioner in one of the Cr. Writs, on *Shriram Jhunjhunwala Vs. The State of Bombay and Others*, would be really of no assistance. That was a case under the Mineral Concession Rules, 1949 where the orders of the Union Government alone are final and the State Government only carries out the orders of the Union Government. It was not, Therefore, open to a person affected by any order passed under the said to file a petition under Article 226 of the Constitution in the High Court of the concerned State. This is obviously so by reason of the statutory position, namely, that any direction of the Centre was binding on the State; more directions, other than statutory, issued by the Central Government would not be binding on the State Government.

(17) In the present case no petitioner can, Therefore, rely upon the so-called instructions issued by the Central Government as part of the cause of action; he could only rely upon them as probably showing non-application of mind by the concerned detaining authority of the State. Such a contention would have a bearing on the merits, but not on the question of jurisdiction. This aspect does not have to be pursued further in any of these Cr. Writs since, on examination of the averments in the petitions, it is seen that wherever such directions by the Central Government have been alleged the validity of the Cofeposa, 38th Amendment etc. have also been challenged. The question of such directions, Therefore would not have to be discussed independently on the question of jurisdiction in the present context.

(18) Shri Govind Swaminathan, Advocate General of Tamil Nadu, mainly stressed the fact that the object of the Constitution (Fifteenth) Amendment was not in

consonance with the present effort. He put it broadly on the ground that it was to enable parties to invoke Article 226 in their respective States, provided even a part of the cause of action arose there, without being obliged to come to Delhi and that what was happening now was the reverse of it, namely, a kind of "forum shopping" by those who still chose Delhi as the Venue. But it seems on close examination, that this result of allowing "forum shopping" cannot be avoided if on the language employed by Article 226, as amended, this Court has jurisdiction.

(19) Shri M. H. Phadke, who argued the case with considerable vehemence on behalf of the State of Maharashtra, contended that an order of declaration would only enable a State Government to detain a person but did not by itself compel or command the State Government to detain that person. He urged that despite the issue of such a declaration a State Government could release that detenu at any time, even earlier, by revoking the order of detention. The consequence of an order made u/s 3(1) is that the State Government could detain a person until a maximum of one year from the date of detention, if the Advisory Board also concurred in it, whereas if a declaration is made u/s 9(1) the maximum period could be two years from the date of detention. This is what has been provided by section 10 of the Act which also contains a proviso that nothing herein shall affect the power of the appropriate Government in either case to revoke or modify an order of detention at any earlier point of time. It is no doubt true that section 11 of the Act enables the Central Government to revoke an order passed even by a State Government; the Central Government itself, as already noticed, can straightaway pass an order of detention with reference to any person, wherever he may be. While these are possible Shri Phadke urges that the mere fact of a declaration u/s 9(1) of the Cofeposa by the Central Government would not compel a State Government to detain a person longer than one year (the maximum period, if there is no such declaration) because the power of the State Government to release him earlier was not taken away. From this feature, he sought to contend further that the declaration u/s 9(1) could have no conceivable relationship to the cause of action in favor of a detenu; hence a person detained by the appropriate State authority could not choose the Delhi High Court as the venue for a petition under Article 226 merely because of the declaration u/s 9(1), which was admittedly made in many cases by the duly empowered official of the Central Government. As already indicated there is no force in this contention.

(20) Dr. V. A. Seiyad Muhamad, on behalf of the State of Kerala, who followed Shri Phadke, referred to the declaration u/s 9(1), having no impact on the detenu in terms of "cause of action"; he urged that it would be purely contingent upon the detenu being detained for more than one year, which may or may not happen and which it would not be possible to predicate at this stage. He also urged that the concerned detenus who are challenging the concerned declaration as one only seeking to get rid of something "negative" which could not by itself be any "cause of action". In reality Dr. Muhamad is only stating in a different form what Shri Phadke has said, the substance of both the contentions appears to be the same, namely, that by virtue of the declaration no State Government is

commanded to detain the detenu for such time as they may wish.

(21) Shri P. K, Chatterjee, who argued on behalf of the State of West Bengal, urged that the order of detention was the crux of the matter and that the writ habeas corpus is purely procedural and the object was only to secure the release of the person detained by seeking that his body should be produced ; there is no question of any body's right having to be gone into in these circumstances. As he explained that the relief is tied to body and hence must be brought at the place where the body was and nowhere else. A little further thought on this contention might reveal the danger in its being accepted. After a petition under Article 226 in filed at the place where the body is, an effort can be made to deprive that court of jurisdiction by removing him to another jurisdiction, as it is possible, to deprive that court of jurisdiction. He also relied in this connection upon certain observations of P.N. Bhagwati, J. in *Kanu Sanyal v. District Magistrate* 1973 SCC 674 (6). But this would not be to understand these observations either totally or correctly. The entire observations in paragraph 4 (pp 680-81) show that we originally conceived was an action to get the body of the person wrongfully detained; "that was the primary purpose of the action, its substance and end". In course of time, however, the production of the body of the person alleged to be wrongfully detained came to be regarded as ancillary to the main purpose of the petition; it was merely a means for achieving the end which was to secure the liberty of the person illegally detained. It was no longer necessary to have the body of the person. Bhagwati, J. pointed out: "There is no reason in principle why "that which was merely a step in the procedure for determining the legality of detention and securing the release of a subject unlawfully restrained should be elevated to the status of a basic or essential feature of the writ. That step was essential to the accomplishment of the purpose of the writ at one time, but it is no longer necessary. The inquiry into the legality of the detention can be made and the person illegally detained can be effectively set free without requiring him to be produced before the Court". We have only to recall what was summed up by the Judicial Committee of the Privy Council in *Mohd Khalil Khan* (3) : the cause of action does not "depend upon the character of the relief prayed"; ""it refers. . .to the media upon which the plaintiff ask for a conclusion in his favor". This contention of Shri Chatterjee has also no force.

(22) By reason of the Constitution (Fifteenth) Amendment the writ issued by a High Court under Article 226 now runs throughout the land and is not merely confined to its territorial jurisdiction of any High Court. Obedience to any such order passed by any High Court can be enforced throughout the land by punishing a person violating any such order (or direction) for contempt even though he is not within the territorial jurisdiction of that High Court. Section 11 of the Contempt of Courts Act, 1971 puts this matter beyond doubt:

"11.Power of High Court to try offences committed or offenders found outside jurisdiction.-A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to

have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits".

(23) The rival contentions may be rendered easier to resolve in the light of a hypothetical instance which v/e put to the counsel appearing for the various States. The illustration is as follows :

"LET us suppose a person who is detained does not meet with any success before the Advisory Board (as it was the case, prior to the Ordinance 6 of 1975) he could be detained for a period of one year by the State. Let us further suppose that the detenu waits for a whole year in the hope he would be released thereafter but on the expiry of one year from the date of order of detention he is not released. He then invokes the jurisdiction of the Delhi High Court under Article 226 to set aside the detention made by the Central Government official u/s 9(1) of the Act questioning the legality of the said order. 9(1) of the Act questioning the legality of the said order. even in such a case ?"

(24) None of "the learned counsel for the States was able to say anything significantly to persuade us that even in such a case the Delhi High Court would not have jurisdiction to quash the order of declaration u/s 9(1). if it is one which requires to be quashed. To us it seems obvious that in such a case the detenu could invoke the jurisdiction of the Delhi High Court for the purpose of challenging the order u/s 9(1). The further question, namely, that when he could choose the venue of the Delhi High Court at this stage, after the expiry of one year, whether he could not also seek to do so at an earlier stage, does not even have to be considered with any seriousness, in our illustration the jurisdiction of the Delhi High Court is so plain, jurisdiction "vests only because of the order of declaration giving the detenu a cause of action; the cause of action that thus accrues to him cannot cease to be available merely because he takes this kind of proceeding in the Delhi High Court before the end of that period of one year or at the expiry of three months period (if the case had not been put up before the Advisory Board) with a request to this Court to quash the order made u/s 9(1) as being invalid."

(25) This appears to us to be crucial in favor of the maintainability of the petition under Article 226 challenging the declaration made u/s 9(1) in this High Court even in cases where the order of detention had been made and the person was detained within the territorial limits of a State outside the Union Territory of Delhi."

(26) From the declaration u/s 9(1) to the challenge concerning the validity of the laws under which a person is detained seems but another step; we encounter no difficulty whatever in taking this step. A challenge to the law will be as much a part of the cause of action as challenge to a declaration made under that law." We are inclined to the view that the cause of action used in the Constitution (Fifteenth) Amendment is of the widest amplitude. The surprise expressed by

some of the counsel, particularly Shri Govinda Swaminadhan. who appeared for the State of Tamil Nadu, that the same is being supposedly used, for a purpose even contrary to its original intendment. does not appear justified. On the other hand, as indicated already, what appears to be true is, that "the contention of the States even docs violence to the amendment by seeking to take away a jurisdiction already conferred on and vesting in the Punjab High Court initially and later the Delhi High Court concerning such cases. The amendment was only a liberalising provision: it surely did not take away jurisdiction which was already there; it was only a case of conferring additional jurisdiction i.e. to those States, which did not have jurisdiction previously, provided a part of the cause of action at least arose in the concerned States. In this sense it would not even be accurate to any that the amendment is invoked for the purpose of investing any fresh jurisdiction in this Court: what has been got rid off by the amendment is the disability in the matter of issuing writs, directions etc. outside the territorial limits of the concerned High Court. As it has been worked this amendment only makes it even clearer than before that this High Court could issue a writ or other direction under Article 226 of the Constitution to run outside the territorial limits of the Union Territory of Delhi. Viewed in its proper perspective the objection as to jurisdiction seems entirely misconceived."

(27) It is no doubt true that if there is no territorial jurisdiction for the Delhi High Court to entertain such petitions even consent cannot confer jurisdiction. In other words, if on the question of jurisdiction the previous decision of the Division Bench of this Court happened to be (with respect) wrong or if even appeared to be of doubtful validity then it may have had to be reconsidered. It was pointed out in *Governors of the Cambell College Belfast v. Commissioner of Valuation for Northern Ireland* (1964 (2) All E.R. 705(7) that even a long lapse of time should not deter a cort from having to reconsider prior decision, if it turns out to be wrong on a question of jurisdiction, on the principle of stare decisis alone. In that case the effect of long-continued practice and decisions of the courts interpreting the Valuation (Ireland) Amendment Act, 1854 . and the Poor Relief (Ireland) Act, 1838 was discussed; the courts below had been pressed by this consideration but the House of Lords allowed the appeal on what was considered to be the proper construction of the said provisions despite the long continued practice and decisions (vide the observations of Lord Reid on page 710 and that of Lord Upjohn on pages 720-721). It is in this view that we have endeavored to hear so many counsel appearing for the concerned States and the concerned petitioners in order to make sure whether the question of absence of jurisdiction raised by the States concerned has any merit.

(28) The contention that even if we have jurisdiction we should decline to entertain the petitions by exercising our discretion against the petitioners has nothing to commend it. In the first place, a Division Bench of this Court has chosen to entertain such applications and that decision has not been shown to require reconsideration. More writ petitions have been filed here on the faith of the said decision. We are unable to find anything specially in the conduct of any

of these petitioners which may persuade to exercise our discretion against them by declining to entertain the petitions though we have the necessary jurisdiction, granting that these petitions may be more conveniently disposed of by the concerned States, as it has been urged before us, seems to be no ground in our view for not entertaining these petitions we fear that it may in that event amount to declining to exercise jurisdiction vested in this Court. This Court might dismiss a similar petition, by refusing to invoke Article 226 of the Constitution altogether in a proper case, but this is not because this Court has no territorial jurisdiction (the petitioner is dominus litus): the liberty of the citizen is involved. In these circumstances we see little force in the submission that we should decline to exercise jurisdiction by ordering them to go back to the State High Courts.

(29) We accordingly held that we have jurisdiction to entertain these petitions and direct that they will be listed for hearing on the merits according to the direction already given by us in other writ petitions (following the order in Cr. Writ 23 of 1975) that these petitions will be listed for hearing (as soon as ready, if any of them is not immediately ready for hearing) according to the date on which each of them was filed.