

(1969) 01 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 1121 of 1966

Shankar Jayaram and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 14-01-1969

Acts Referred:

Constitution of India, 1950 — Article 226

States Reorganisation Act, 1956 — Section 2, 75, 76, 77, 78

Citation : AIR 1970 Bom 117 : (1970) 72 BOMLR 258 : (1971) ILR (Bom) 150

Hon'ble Judges : Vimadalal, J; Padhye, J

Bench : Division Bench

Advocate : C.G. Madkholkar and R.T. Kolhekar, for the Appellant; C.S. Dharmadhikari, Asstt. Government Pleader and W.K. Sheorey, for the Respondent

Judgement

Padhye, J.—Original petitioners in this petition were two (1) Shankar Jayaram Ambedkar in his individual capacity and (2) Nagpur District Pensioners' Association, Nagpur, through its Honorary Secretary Mr. R. N. Gadre. After the petition was admitted the petitioners were required to give the names of the pensioners of the petitioner No. 2 Association who had retired prior to 1-11-1956, but in spite of several opportunities being given, no names were supplied and the orders passed by this Court from time to time were not complied with. We are, therefore, not required to consider in this petition the case of those pensioners said to have been represented by the petitioner No. 2 and the decision of this case will be confined only so far as the petitioner No. 1 Shankar Jayaram Ambedkar is concerned.

2. The petitioner No. 1 in the original petition will hereinafter be described as the petitioner only. The petitioner was employed in the year 1912 as an Overseer in the Agricultural Department as a probationer in the then Central Provinces. He was then transferred as probationer to Hoshangabad and thereafter to Seoni as an Agricultural Assistant and was confirmed as an Agricultural Assistant in the year 1930. The Central Provinces and Berar was thereafter named as Madhya

Pradesh and the petitioner continued in the service of the State of Madhya Pradesh, as it then was as an Agricultural Assistant. He retired on 31-10-1939 while he was serving at Umri in tahsil Bhainsdehi of Betul district in the then State of Madhya Pradesh. At the time of his retirement the last pay drawn by him was Rs. 190 per month and his pension, therefore, came to Rs. 95 per month. Out of his pension, an amount of Rs. 23-75 was commuted on 23rd of December 1942 since when he has been getting Rs. 71.25 P. per month towards his pension. The former State of Madhya Pradesh had granted an increase of Rs. 6 per month to the pensioners prior to 31-10-1956 as a temporary grant which, however, seems to be continued even now. With this increase the petitioner was getting Rs. 77.25 P. per month towards his pension after commutation on 1st of November 1956. As from 1st of November 1956, there was reorganisation of States and some portions of the former Madhya Pradesh were added to the former State of Bombay and the new State of Madhya Pradesh was formed of the remaining districts excluding those which were included in the Bombay State and adding to it the State of Madhya Bharat, Vindhya Pradesh and other portions. There was a second reorganisation in the year 1960 and from 1st of May 1960 the present State of Maharashtra has been constituted.

3. The petitioner has been residing at Nagpur and has been drawing his pension from the Nagpur District Treasury. The case of the pensioners has been under consideration of the State Governments, both Maharashtra and Madhya Pradesh and both the Governments from time to time granted certain increases in the pension of the pensioners on different occasions. So far as the Maharashtra Government is concerned by the Government Resolution No. TIP-1063/ 9611-X, dated 13th April 1964, the pension of the pensioners of two categories was increased. The pensioners whose monthly pension did not exceed Rs. 60 were given an additional temporary increase per month of 10 per cent, or the basic pension and existing temporary increase together; whereas the pensioners whose pension exceeded Rs. 60 but did not exceed Rs. 65.50 were given an increase of Rs. 6 or such increase as will bring the total pension (including present temporary increase) upto Rs. 71.50 P. These orders were made applicable to pensioners drawing pensions granted by the former Madhya Pradesh State which were drawn from treasuries in former Bilingual Bombay State on 1st November 1956 and from treasuries in Maharashtra State on 1st May 1960 and some other categories. However, the pension of the petitioners being more than Rs. 65.50 per month, the petitioner did not get any advantage from this resolution.

4. The present Madhya Pradesh Government also, in its turn, granted relief to the Madhya Pradesh State pensioners who were an receipt of small pensions. By resolution No. 1200-F-1760-IV-R. II (60), dated 17th March 1961, the State of Madhya Pradesh granted a temporary rise in the pension and according to this order pensioners getting pension above Rs. 60 but below Rs. 100 per month would be getting an increase of Rs. 12 per month. This temporary increase took effect from 1st March 1961. This increase was followed by another increase by

Memorandum letter No. 1294-R-1508-IV-R-II, dated 31st May 1965. In addition to the increase already granted in 1961, persons drawing pensions upto Rs. 100 were further granted an ad hoc increase in the pension of Rs. 5 per month. Paragraph 2 of this memorandum states that this increase will apply to all existing pensioners of the State Government and those Government servants who will retire hereafter and will take effect from the 1st of March 1965. Paragraph 4 further states that the pensioners who are already in receipt of or will be eligible for temporary increase in pension in terms of this Department Memorandum No. 1200-IV-R-II, dated 17-3-1961 will receive the benefit mentioned in Paragraph 1 above in addition. Apparently the increases granted by the Madhya Pradesh Government are more beneficial than those granted by the State of Maharashtra and it is because of this that the petitioner claims that he should be given the increase in his pension as per the memoranda issued by the Madhya Pradesh Government on these two occasions.

The petitioner contends that he has retired from the service of the then State of Madhya Pradesh in the year 1939 and the liability to pay the pension is on the State of Madhya Pradesh and whoever may be its successor after the reorganisation of States. According to the petitioner, it is immaterial where he has settled down or resides because under the Pension Rules, he is entitled to draw the pension from any treasury through- out India and the place of drawing the pension will not determine the liability of the Government. It has not been disputed that the petitioner retired in the year 1939 while he was serving at Umri in Tahsil Bhainsdehi, District Betul which was in the State of the then Madhya Pradesh. It is still in the new State of Madhya Pradesh. It has also not been disputed that the petitioner has settled down in Nagpur and was drawing his pension from the Nagpur District Treasury upto 1st of November 1956 and has been drawing the same from the said treasury even now.

5. In the year 1956 the States in India were reorganised and the original State of Madhya Pradesh was split up and the eight districts of the old Madhya Pradesh which are now comprised in what is known as the Vidarbha Region were added to the then State of Bombay which was an existing State. The remaining districts of the existing State of Madhya Pradesh along with other areas, for example, Madhya Bharat, Vindhya Pradesh and other areas, formed a new State going by the name State of Madhya Pradesh. Thus, areas from the existing State of Madhya Pradesh have now gone to two States, namely, the State of Bombay, which from the 1st of May 1960 became the State of Maharashtra and the present State of Madhya Pradesh. In order to bring about this reorganisation, the Central Legislature passed Act No. 37 of 1956, called the States Reorganisation Act, 1956, by which 1st of November 1956 has been named as the appointed day. It will be necessary to deal with some of the provisions of this Act in order to appreciate the controversy raised in the present proceedings. Section 2(g) defines "existing State" to mean a State specified in the First Schedule to the Constitution at the commencement of this Act. It may be stated that in the First Schedule to the Constitution, the State of Bombay and the State of Madhya

Pradesh, with which we are concerned in the present case, were specified and they were thus the "existing States" within the meaning of Section 2(g) of the Act. Section 2(i) defines "new State" to mean a Part A State formed by the provisions of Part II. Then Section 2(k) defines "population ratio" and "population ratio" in relation to the successor States of an existing State, means such ratio as the Central Government may by notified order specify to be the ratio in which the population of that existing State as ascertained at the last census is distributed territorially among the several successor States by virtue of the provisions of Part II. u/s 2(m) "Principal successor State" means (i) in relation to the existing State of Bombay, Madhya Pradesh, Madras or Rajas-than, the State with the same name. Thus, the present State of Madhya Pradesh would be the "principal successor State" of the then existing State of Madhya Pradesh, Section 2(o) then defines the term "successor State" and "successor State" in relation to an existing State means any State to which the whole or any part of the territories of that existing State is transferred by the provisions of Part II.

6. Part II of the Act then gives the territorial changes and formation of new States. Section 8 deals with the formation of a new Bombay State by which certain territories have been excluded from the existing State of Bombay and certain other territories which were not then part of the Bombay State have been added to the existing State of Bombay. One of the territories so added to the existing State of Bombay was the Vidarbha Region comprising of the eight districts in the existing State of Madhya Pradesh. Section 9 deals with the formation of the new State of Madhya Pradesh. By this provision the whole of the existing State of Madhya Pradesh excepting the eight districts of the Vidarbha Region was retained and to it were added certain other territories such as the existing State of Madhya Bharat, some portion of Rajasthan, existing State of Bhopal and the existing State of Vindhya Pradesh and it retained the same old name of Madhya Pradesh. This new Madhya Pradesh is thus the "principal successor State" of the old or the existing State of Madhya Pradesh and under the definition of Section 2(o) the State of Bombay and now the State of Maharashtra would be the "successor State" of the existing State of Madhya Pradesh.

7. We are not concerned in this petition with the subsequent parts of the Act excepting Part VII which deals with apportionment of assets and liabilities of certain Part A and Part B States. Both Bombay and Madhya Pradesh States were Part A States. Section 75 of the Act makes the remaining provisions of this Part applicable in relation to the apportionment of the assets and liabilities immediately before the appointed day of every Part A or Part B State the whole or any part of whose territories is transferred to another State. Section 76 deals with the division of land and goods. Section 77 deals with the division of the treasury and bank balances. Section 78 deals with arrears of taxes. Section 79 with the right to recover loans and advances, Section 80 with credits in certain funds, Section 81 with assets and liabilities of State undertakings and Section 82 with the public debts. From these various provisions, it will be apparent that the

assets of the existing State of Madhya Pradesh as on 1st November 1956 were divided between the successor Bombay State and the principal successor State of Madhya Pradesh and the lands and goods, treasury and bank balances and other assets which remained in the eight districts of Vidarbha which were transferred to the State of Bombay were transferred to the State of Bombay and the other property of similar nature which was in the districts which formed part of the new State of Madhya Pradesh were given to the new State of Madhya Pradesh.

8. Similarly, Sections 83 and 84 are with regard to liabilities of the successor States with regard to the liabilities of the existing State. Section 85 deals with the liability of the existing State in respect of the provident fund account of a Government servant. Section 86 which deals with pensions reads-thus :

"The liability of the existing States in respect of pensions shall pass, to, or be apportioned between the successor States in accordance with the provisions contained in the Fifth Schedule."

From the reading of the various sections of Part VII, it is clear that; the liability in respect of the pensions u/s 86 of the Act as on the appointed day, namely, 1st November 1956, either passes to a successor State if there is only one, successor State, or is to be apportioned between successor States, if there are more than one successor States, in accordance with the provisions contained in the Fifth Schedule. According to the definitions which we have referred to already, the State of Bombay after 1st November 1956 would be the successor State to the existing State of Madhya Pradesh on the definition of "successor State" given in-Section 2(O), because it is the State of Bombay to which part of the territories of the-existing State of Madhya Pradesh has been transferred by the provisions of Part II. So-far as the new State of Madhya Pradesh is concerned, it was not an existing State. The existing State was the old Madhya Pradesh State, as it stood before 1st November 1956 and the new State of Madhya Pradesh cannot squarely fall within the definition of "successor State" as given in Section 2(O) of the Act. The new Madhya Pradesh State, however, can be the "principal successor State" within the meaning of Section 2(m)(i) of the Act as the name of the new State is the same as the existing State of Madhya Pradesh.

9. The question whether in relation to the existing State of Madhya Pradesh, both the State of Bombay and the new State of Madhya Pradesh are successor States or not, has not been pointedly considered in any reported decisions, but some reference is to be found in W.W. Joshi and Others Vs. State of Bombay and Others, , where. the State of Bombay as well as the new State of Madhya Pradesh have been taken to be the successor States of the former State of Madhya Pradesh and out of the two successor States the State of Madhya Pradesh is the principal successor State of the former State of Madhya Pradesh. Similar "observations are-to be found in a Full Bench decision of this Court in State v. Sarjooprasad Gumasta,. First Appeal No. 101 of 1959, decided on 14th June 1966 (Bom) (FB), and in the Division Bench decision thereafter in the same

case decided on 6th of March 1967 (Bom). Nothing, however turns in the present case on the question whether both the Bombay State or the new Madhya Pradesh State are the successor. States of the former State of Madhya Pradesh or only the State of Bombay, and now the State of Maharashtra, is the successor State and the State of Madhya Pradesh is the principal successor State.

10. As said earlier the scheme of Part VII of the States Reorganisation Act shows that the assets as on 1-11-1956 were to be divided between the two new States which are successors of the old State of Madhya Pradesh on the principles laid down in the several provisions of Part VII of the Act. Similarly, the successor States were to be fastened with the liabilities of the existing State of Madhya Pradesh as on 1st of November 1956 and the liability with respect to pensions u/s 86 was the liability which was on the existing State on 1st of November 1956. It appears that just as in the case of other assets, namely, the treasury, cash balances, public debts and such other matters, the said property was to remain where it was, namely, that these cash balances etc., were not to be disturbed, but were to "go to the State to which those districts have been attached, similarly, with respect to pensions, it appears that those pensioners who used to draw pensions from the treasuries of the eight districts of Vidarbha which were transferred to the State of Bombay were a liability on the new State of Bombay and those pensioners who used to draw their pensions on 1-11-1956 from the then districts which now formed part of the new Madhya Pradesh State were to be a liability of the new State of Madhya Pradesh or the principal successor State. In order to make an equitable division, an apportionment had to be made between the two States and that was to be done by the Central Government and on such apportionment being made if it was found that one State paid more to the pensioners in its area than what was due under the apportionment, then the other State was to reimburse the former State to that extent and vice versa. This is worked out by means of the Fifth Schedule to the Act, Paragraph 1 of the Fifth Schedule provides that subject to the adjustments mentioned in paragraph 3, the successor State or each of the successor States shall, in respect of pensions granted before the appointed day by an existing State, pay the pensions drawn in its treasuries. Paragraph 1, therefore, has clearly reference to a liability of the new State in respect of pensions as it existed immediately before the appointed day and it were to continue to pay the pensions to those pensioners who were being paid from the treasuries immediately before the appointed day. Paragraph 2 has no application to the present case as it applies to officers or employees who retired or proceeded on leave preparatory to retirement before the appointed day, but whose claims for pensions are outstanding immediately before that day. In paragraph 3, a method is given as to how the liability is to be apportioned between the successor States. We reproduce Para. 3 below :

"In any case where there are two or more successor States, there shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March 1957, and in respect of each subsequent financial year, the total payments made in all the successor. States in respect of the pensions

referred to in paragraphs 1 and 2. The total representing the liability of the existing State in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or States paying less."

This will show that the payments made in the successor States have relation to the pensions referred to in paragraph 1 which would mean the pension payable in that successor State as on 1-11-1956 and it is on that basis that the apportionment has to be made in the population ratio and the consequent reimbursement by one successor State to the other. The other paragraphs of the Schedule have no reference to the present case.

11. It thus appears from the scheme of the States Reorganisation Act, including the Fifth Schedule, that for the purpose of transferring the liability of the existing States to the successor States, the material point of time that has to be taken into consideration is the appointed day, namely, 1st of November 1956, on which the liability existed. There is no provision with respect to the future liabilities of the State. It will thus appear that with respect to those pensioners who have retired prior to 1-11-1956 the liability of the successor State would be on the basis of the liability existing on 1-11-1956 with respect to such pensioners and it seems to us that subsequent to 1-11-1956, by any unilateral act of one of the successor States the other successor State cannot be bound. Section 86 of the Act deals with the liability of the existing State and any liability which is incurred after 1-11-1956 by a successor State could not be said to be a liability of the existing State and as such, one successor State will not be bound by the liability which has been created by another successor State. This, however, proceeds on the footing that there are two successor States to the existing State. In this view therefore, the State of Bombay which is the successor State to the existing State of Madhya Pradesh would not be liable to give the increase in the pension which has been granted by the present State of Madhya Pradesh to its pensioners and the petitioner cannot lay a claim for such increase in the pension as has been made by the present State of Madhya Pradesh. The petitioner's claim against the State of Maharashtra for the increase in pension which has been granted by the State of Madhya Pradesh must, therefore, be rejected. It is stated by the learned Assistant Government Pleader that some of the pensioners who have settled down in the Vidarbha Region have accepted the increase in the pension which has been granted by the State of Maharashtra. The petitioner, however, has not accepted the said increase given by the State of Maharashtra because of the dispute which he has raised.

12. As regards the State of Madhya Pradesh, the learned counsel for the State Mr. W. K. Sheorey urges that the State of Madhya Pradesh is not liable for the claim of this present petitioner. We are not deciding in this case whether the State of Madhya Pradesh is liable to give the amount to the petitioner by which the pension has been increased by that Government from time to time, The Full

Bench of this Court in Surjuprasad Gumasta and Another Vs. State of Madhya Pradesh and Others, , Dr. Sarjuprasad Gumasta v. State of Madhya Pradesh, has held that this Court would have no jurisdiction to issue a writ against the State of Madhya Pradesh as the jurisdiction of this Court extends only to the territorial limits of the State of "Bombay and now the Maharashtra State. It is true that Article 226 of the Constitution has subsequently been amended and given jurisdiction to the High Court to issue a writ to any Government Authority or person even though the seat of the Government or authority or the residence of such person is not within those territories, provided however that the cause of action wholly or in part arises for the exercise of such power within the territorial jurisdiction of the High Court. Such is not the case here. It cannot be said that any part of the cause of action to claim the increase given by the Madhya Pradesh State, as in existence to-day, arises in any part of the State of Maharashtra. We are, therefore, not in a position to grant any relief to the petitioner so far as the Madhya Pradesh Government is concerned. The petitioner, therefore, is not entitled to any relief claimed by him, either against the State of Maharashtra or against the State of Madhya Pradesh, in the present petition.

13. The petition, therefore, fails and is accordingly dismissed, but in the circumstances, we make no order as to costs.

Vimadalal, J.

14. I have heard the judgment of the Court just delivered by my brother Padhye. I would like to add that, as a matter of plain language as well as, as a matter of legislative intendment, the words "the liability of the existing States" in Section 38 of the States Reorganisation Act, 1956, must be read as, "the existing liability of the existing States". If an existing State chooses to create a higher or an additional liability in future, the provisions of Section 86 of the said Act would not be attracted, and there is no other statutory provision which would pass on such higher or additional liability, or even an apportioned part of it, to the successor State.

15. Petition dismissed.