
(1990) 04 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : CSA No. 1 1989

State	Vs	APPELLANT
Krishan Lal		RESPONDENT

Date of Decision : 19-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Civil Procedure Code, 1977 — Section 11, 9

Citation : (1990) JKLR 278 : (1991) KashLJ 378 : (1991) SriLJ 66

Hon'ble Judges : R.P.Sethi, J

Bench : Single Bench

Advocate : R.P.Bakshi, A.V.Gupta, Advocates appearing for the Parties

Judgement

1. On proof of the charges of corruption, the services of the plaintiffrespondent were terminated vide Govt. order No. 26GR of 1978 dated 31. 1.

1978. The writ petition No. 413 of 1978 filed by the petitioner is stated to have been disposed of with the observations that the authority

concerned shall make available to the petitioner the copies of the proceedings before he is called upon to show cause against the proposed

punishment. The petitioner filed another writ petition No. 23 of 1972 for quashing the order impugned therein as according to him it was bad in law

in view of the judgement of this Court reported in 1975 JKLR 741; as no copies of the proceedings were allegedly given to the plaintiff enabling

him to represent his case before the defendant. This writ petition was also dismissed by a Single bench and the L. P. A. filed was dismissed by the

Division Bench with the observations that the order of the Court will not prevent the plaintiff respondent from pursuing any other remedy which

may be available to him under law. The respondent thereafter filed a suit for

declaration to the effect that the Govt. Order No. 26GR of 1978

dated 3111978 was illegal with a consequential relief of mandatory injunction directing the appellant State to give all benefits and emoluments to the plaintiff as if he was in service.

2. The suit was resisted on various grounds including the ground that the civil court had no jurisdiction to try the suit. On the pleadings of the parties the following issues were framed by the trial court on 1921981.

1. Whether the plaintiff was serving as, senior assistant in the office of commandant Home Guards and was dismissed from service on a complaint of corruption addressed to the anticorruption organisation on 1431974 against facts and laws? OPP.

2. Whether the f Vigilance Department O & M issued a notice to the plaintiff to show cause as to why the proposed punishment be not imposed on him and he did not receive the copies of the, proceedings of the case and it was mandatory under law? OPP.

3. Did the plaintiff approach the Deputy Secretary O & M for supply of the said copies and in registered envelope received by the then

Commandant Home Guards the letter contained papers regarding Sh. Ghulam Hussain Gujjari (ExDeputy Secretary Legislative Council)? OPP.

4. Whether the said copies were not supplied to the plaintiff under section 7 subclause 5 of the Jammu & Kashmir Govt. Servants Prevention of

Corruption Act. If so what is its effect on the suit? OPP.

5. Whether the court has no jurisdiction to try this suit ? OPP.

6. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPP.

7. Whether the suit has not been properly valued for Court fee? OPD.

8. Whether the Govt. Order No. 26GR of J978 dated 3111978 illegal, if so, how ? OPP.

9. To what relief the plaintiff is entitled to ? OPP. Issues 5 and 6 were treated as preliminary issues and decided in favour of the plaintiff vide trial courts order dated 25th May, 1981.

3. To prove the issues, the plaintiff examined S/Sh. Kesary Singh, Babu Ram, Mobd Jamal, Mohd. Sarwar Khan besides appearing himself in the

witness box. No evidence was led by the defendants. The trial court decreed the

suit as prayed and the appeal filed by the State was dismissed
vide the judgement impugned in this second appeal.

4. I have heard the learned counsel for the parties and perused the record.

5. The objection regarding lack of jurisdiction of the civil court was disposed of by the first appellate court holding that :

The plaintiff before filing the suit had admittedly approached the Hon'ble High Court and the judgement of the Hon'ble Court has given a liberty to

the plaintiff to pursue what ever other remedy may be available to him under law. In my opinion the only remedy, that was left upon to the plaintiff

was by filing the civil suit and the Court has jurisdiction to try the suit under section 9 of the C.P.C. It is still profitable to state here that in

Executive Committee of U.P. State Ware Housing Corporation Limited Versus Cnander Kirn Tiyaagi (AIR 1970 SC 1244) The Executive

Committee of VAISM Degree College Shamli Vs. Lakshmi Narian (AIR 1976 SC 888) and in Mysore State Road Transport Corporation Vs.

Mirza Khaisam (AIR 1970 SC 747) it was held by their Lordships that declaration to enforce a contract of personal service can be granted in the

following three cases :

i. The appropriate case of public servant who have been dismissed from service in contravention of Article 311;

ii. Dismissed worker under Industrial and Labour law; and

iii. When a statutory body has acted in breach of a mandatory obligation imposed by statute.

The preliminary objection thus raised about incompetence of the civil court and its lack of jurisdiction has thus no merit and is over ruled".

5. It was further held that the plea of estoppel raised by the appellant as also the bar of resjudicata were not applicable in the case. The learned

District Judge held that such argument was based upon total ignorance of law and facts of the case.

6. Section 9 of the C.P.C. provides that the civil Courts shall have the jurisdiction to try all suits of a civil nature except suits of which the

cognizance is either expressly or impliedly barred. The exclusion of jurisdiction of civil courts must be explicitly expressed or clearly implied.

Jurisdiction means the legal authority to administer justice according to the procedure prescribed and subject to the limitations imposed by law

upon the judicial authority. In a case where the right claimed in the suit is admittedly of a civil nature and the aggrieved person approaches the High

Court in writ jurisdiction which is decided on merits, it has to be seen whether thereafter the civil court has got the jurisdiction to grant the relief not.

In the instant case the plaintiff/respondent filed writ petition No. 413 of 1978 against the order of his dismissal on the ground that he was not

supplied with the copies of proceedings of enquiry held by the Anticorruption Organisation despite his request, which according to him was

obligatory upon the authority under the mandatory provisions of Sec. 17 (5) of the prevention of corruption Act under which the enquiry was held.

The writ petition was disposed of with the observation that the authority concerned shall make available the copies of the proceedings to the

petitioner before he is called upon to show cause against the proposed punishment vide order passed by the Division Bench dated 15/3/1978. The

order of termination of the petitioner was challenged mainly on the grounds of noncompliance of the provisions of Sec. 17 (5) of the prevention of

Corruption (Commission) Act. It was prayed :

Preliminary notice annexure "A" to the petition may kindly be quashed by issuance of a writ of Certiorary or in the alternative any order passed or

proposed to be passed by the respondents be quashed or in the alternative the respondents be directed to discharge their duties and obligations by

complying with the provisions of Section 17 (5) of the Prevention of Corruption (Commission) Act by providing the copies of the proceedings as

contemplated by the said Section to the petitioner to afford him a reasonable opportunity to give an effective reply or any other writ, order, or

direction, which the Hon'ble court may deem fit in the fact and circumstances of the case may kindly be issued against the respondents.

7. After the relief was granted the petitioner instead of approaching the concerned authorities appears to have perused writ petition No. 23 of

1978 on the same grounds. Hon'ble Justice I.K. Kotwal in his judgement dated : 16/1/1979 noted : the allegation of the petitioner;

The challenge is based upon the solitary ground that the order is violative of Sec. 17 (5) of the J&K Government Servants Prevention of

Corruption (Commission) Act, 1962 in as much as no copy of the proceedings which took place before the AntiCorruption Commission was

supplied to him before passing the impugned order; all other grounds taken in the writ petition were not pressed during arguments"".

The writ petition was disposed of holding :

This syndrome of errors, omissions and oddities cannot be explained on any hypothesis other than the one, that there is something fishy in the

petitioner's version What I am, therefore, called upon to decide is a very complicated question of fact. I am afraid I cannot do it"".

8. The letters Patent Appeal No. 43 of 1979 filed against the judgement of Hon'ble Justice I K. Kotwal was dismissed by this court on 15.4.1980.

It was however observed that the order of the Division Bench will not prevent the appellant from perusing whatever other remedy may be available

to him under law. The present suit was thereafter filed in the court below. It appears from the orders passed in writ petition No. 413 of 1978, 23

of 1978 and LPA No. 43 of 1979 that the contention of the petitioner regarding violation of the provisions of Section 17 (5) of the prevention of

Corruption (Commission) Act was not accepted and found to be ""fishy"". In the suit also the challenge was thrown to the ""order of termination of

his services mainly on the ground of the violation of the provisions of Sec. 17 (5) of the prevention of Corruption (Commission) Act, 1962 which

was made the subject of issue No. 4.

9. While dealing with the situation where resort is had to the filing of the suit after decision of the case in a writ jurisdiction, this court in C. O. S.

No. 76 of 1988 titled Satish Chander Vs. State of J&K & Ors : vide order dated 27.12.1989, held :

It has been argued on behalf of the learned counsel for defendant No. 3 that the present suit seeking annulment of the judgement of this court

passed in writ petition is not maintainable and liable to be dismissed The learned counsel for the plaintiffs on the other hand has relied upon the AIR

1965 Supreme Court page 1153 and AIR 1968 SC 1370 to urge that the decision in an earlier petition on merits operates as a bar to subsequent

suits provided the suit is between the same parties with respect to the same matter and as in the present case, the plaintiffs were not parties, to the

earlier proceedings, the present suit was maintainable. Section 9 of the CPC provides that civil courts have jurisdiction to try all the suits of a civil

nature except the suits on which their cognizance is either expressly or impliedly

barred. In this explanation attacked to the section, it is provided that a suit in which the right to property or to an office is contested is a suit or civil nature, notwithstanding the fact that such right may depend entirely on the decision of a question as to religious rights or ceremonies. There is, therefore, no dispute that the present suit is a suit of civil nature in which the right to property is contested. There is also no specific bar either in the civil Procedure code or any other enactments for the civil court to entertain such a suit particularly where the parties filing the same were not parties to the earlier legislation either directly or indirectly, or where the decree is alleged to have been obtained after playing fraud with the court. Mr. Bhagotra has, however, argued that the civil court would not be justified to adjudicate upon the judgement of this court passed in exercise of its writ jurisdiction under article 226 of the constitution of India or supervisory jurisdiction under Article 227 of the Constitution, It is submitted that the Jurisdiction of the civil court to determine the legality of an order passed by the constitutional court may impliedly be held barred. I agree with the submissions of the learned counsel for the defendant No. 3 and hold that the civil court has no jurisdiction to decide the legality or validity of the order passed by a constitutional court in exercise of the powers conferred under article 226 of the constitution or its supervisory powers under Article 227 of the constitution and no suit with respect to it can be filed, entertained or adjudicated upon by a civil court".

10. In this case also the plaintiff respondent impliedly sought the quashing of the judgements of this court passed in writ petition No. 23, and 413 of 1978 and LPA No. 43 of 1979. The civil court, therefore, had no jurisdiction to entertain the suit and adjudicate upon the disputes raised by the respondent which were covered by the judgement of the High Court. Both the courts below therefore, committed a mistake of law in entertaining, trying and decreeing the suit filed by the plaintiff respondent

11. Otherwise also the plea raised by the plaintiff respondent was barred under the general principles of resjudicata which are based upon the principles of justice, equity and good conscience. The general principles of resjudicata though not strictly according to section 11 of the CPC yet have been called held to be applicable in the writ proceedings by the Supreme Court in AIR 1962 SC 1563.

12. Section 20 of the Prevention of Corruption (Commission) Act, 1962 also provides that nothing done or purporting to have been done under the Act shall be called in question in any court. The order of termination of the petitioner/plaintiff's service was passed under the said Act which was sought to be declared null and void not effecting his rights by means of the suit filed by him. The exclusion of the jurisdiction of the civil Courts was, therefore, explicit barring the jurisdiction of the civil court to entertain the suit under section 9 of the CPC. Both the courts below have completely ignored the provisions of Sec. 20. of the Prevention of Corruption (Commission) Act.

13. On the basis of what has been held herein above, it is clear that the civil court had no jurisdiction to entertain, try or decree the suit filed by the plaintiff/respondent. The judgement and decrees passed by the courts below are, therefore, without jurisdiction which are accordingly set aside and the suit of the plaintiff/respondent dismissed but under the circumstances without any order as to costs.