

(1958) 07 BOM CK 0036

In the Bombay High Court

Case No : Miscellaneous Petition No"s. 335 and 406 of 1956

Surjuprasad Dwarkaprasad Gumashta

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-07-1958

Acts Referred:

Constitution of India, 1950 — Article 226
States Reorganisation Act, 1956 — Section 59, 64

Citation : (1959) 1 LLJ 572

Hon'ble Judges : M.C. Chagla, C.J;H.L. Gokhale, J;Badkas, J

Bench : Full Bench

Judgement

Chagla, C.J.—A very interesting question arises with regard to the proper construction of S. 59 of the States Reorganization Act, and the question arises under the following circumstances. A petition was filed by one Surjuprasad Gumashta against the State of Madhya Pradesh alleging that he had been wrongfully dismissed, and this petition was presented before the Nagpur High Court and the petition was admitted by that High Court. Then came the States Reorganization Act and this petition was transferred to the Bombay High Court under Sub-section (2) of S. 59. The petition now comes before the Bombay High Court for final disposal and the question that arises is whether this High Court has jurisdiction to issue a writ against the State of Madhya Pradesh. We are only dealing with this petition to the extent that the complaint made is that the dismissal is by the State of Madhya Pradesh and that the State of Madhya Pradesh is liable to reinstate the petitioner in its service.

2. Now, the scheme of S. 59 is this, that the legislature had to deal with the situation that arose by reason of the fact that the old Nagpur High Court ceased to function, that it became the High Court of the new State of Madhya Pradesh, and part of old Madhya Pradesh integrated into the Bombay State. Therefore, the Bombay High Court had jurisdiction over part of the old Madhya Pradesh. Obviously, arrangements had to be made with regard to the orders made by the Nagpur High Court which ceased to function, and S. 59 deals with various

contingencies which would arise under the new dispensation. Section 59(1) provides :

"Except as hereinafter provided, the High Court at Nagpur shall, as from that day, have no jurisdiction in respect of the territory transferred from the existing State of Madhya Pradesh to the new State of Bombay."

3. And Sub-section (2) provides. - "Such proceedings pending in the High Court at Nagpur or the High Court of Hyderabad immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court for the new State of Bombay shall, as soon as may be after such certification, be transferred to the High Court of Bombay."

4. This was the certificate which was given by the Chief Justice. We are not concerned with Sub-section (3). Sub-section (4) provides :-

"Notwithstanding anything contained in Sub-secs. (1) and (2), but save as hereinafter provided, the High Court of Madhya Pradesh shall have, and the High Court of Bombay shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings, where any such Proceedings seek any relief in respect of any order passed by the High Court at Nagpur before the appointed day."

5. Therefore, with regard to these matters exclusive jurisdiction was conferred upon the Madhya Pradesh High Court. The proviso gives power to the Chief Justice of the High Court to transfer to the High Court of Bombay any of those proceedings. Then comes Sub-section (5) which calls for interpretation at our hands :-

"Any order made before the appointed day by any Court referred to in Sub-section (2) or Sub-section (3) in any proceedings transferred to the High Court of Bombay by virtue of Sub-section (2) or Sub-section (3) shall for all purposes have effect, not only as an order of that Court, but also as an order of the High Court of Bombay; and any order made by the High Court of Madhya Pradesh in any proceedings with respect to which that Court retains jurisdiction by virtue of Sub-section (4) shall for all purposes have effect, not only as an order of that High Court, but also as an order of the High Court of Bombay."

6. Now, the order admitting the petition was passed by the High Court of Nagpur. The petition was transferred to the Bombay High Court by an order of the Chief justice under Sub-section (2) of S. 59, and, therefore, by reason of Sub-section (5) of S. 59, the order admitting the petition made by the High Court of Nagpur became an order made by the High Court of Bombay. Therefore, the legal fiction introduced by this sub-section was, to the extent that we are concerned, that any order passed by the High Court of Nagpur in a proceeding which is

transferred to the High Court of Bombay should be deemed to be an order passed by the High Court of Bombay. Relying on this provision what has been argued - and very strenuously argued - by Mr. Bobde is that the result of this legal fiction in the case before us is that this Court has jurisdiction to issue a writ against the State of Madhya Pradesh. The submission seems to be startling because apart from the provisions of the States Reorganization Act, the position under the Constitution is perfectly clear. Under Art. 226 the jurisdiction of this Court to issue writs are confined to issuing writs on those persons and authorities which are within the territorial jurisdiction of this Court. It is not suggested, and it cannot be suggested, that under Art. 226 this Court has any jurisdiction to issue a writ against the State of Madhya Pradesh. But what is argued is that when the petition was filed, the Nagpur High Court had jurisdiction to issue a writ against the Madhya Pradesh Government as it then was. The Court having accepted the petition and having issued a notice, the jurisdiction which the Nagpur High Court initially had against the State of Madhya Pradesh continued by reason of the legal fiction introduced by S. 59(5), and the principle that is availed of is that if a party is within jurisdiction at the inception of a proceeding he cannot take away the jurisdiction of the Court by withdrawing himself from the jurisdiction and the Court will pass an order notwithstanding the fact that he is no longer within jurisdiction at the time when the order was passed.

7. Now, that principle is perfectly sound and Mr. Bobde has relied in support of that proposition of *Michigan Trust Company v. Ferry* (1913) 228 U.S. 346 : 57 Law ed. 867 and *Carrick v. Hancock* (1895) 12 T.L.R. 59. But, in our opinion, that principle cannot apply to the provisions of Sub-section (5) of S. 59. Section 59(5) introduces a very limited and a very qualified fiction and it would be wrong to extend that fiction and give it a wider scope than it is entitled to. The limited fiction is to treat the orders passed by the Nagpur High Court before reorganization in matters which are transferred to the High Court of Bombay as the orders of the High Court of Bombay. It is very pertinent to note that no legal fiction is introduced with regard to any subsequent order that the High Court of Bombay may pass. Sitting here today we must accept the order passed by the Nagpur High Court as our order. That order was to admit this petition. That order is binding on us. We must accept that order; we must respect that order. But S. 59(5) does not introduce any legal fiction with regard to the order that we might pass today, and the whole argument of Mr. Bobde is that we must extend that fiction and we must assume that today the State of Madhya Pradesh is within our jurisdiction and we can issue an effective writ against that State. Although the petition might have been admitted by the Nagpur High Court, the petition and the objection to the petition, is being heard today and it is today that we have to be satisfied that the Court can issue an effective writ against the State of Madhya Pradesh ordering it to reinstate the petitioner in its service.

8. Mr. Abhyankar has frankly conceded that unless we are prepared to hold that S. 59(5) is an extension of the jurisdiction of the High Court under Art. 230

before the seventh amendment, he cannot succeed in the contention put forward both by him and by Mr. Bobde. Turning to that article before its amendment, it gave parliament the power by law to extend the jurisdiction of a High Court to any State specified in the first schedule other than the State in which the High Court had its principal seat, and it is not disputed that at the date when the States Reorganization Act was passed, parliament had the power to extend the jurisdiction of the Bombay High Court, and what is urged by Mr. Abhyankar is that in effect by S. 59(5) parliament has extended the jurisdiction of the High Court so as to permit the High Court to issue writs under Art. 226 to authorities and to persons not situated within its territorial jurisdiction. In our opinion, the contention is entirely untenable. As the Advocate-General of Madhya Pradesh has rightly pointed out, Art. 230 deals with the territorial extension of the jurisdiction of the High Court. What it contemplates is that parliament may by law confer upon the High Court of Bombay, for instance, territorial jurisdiction wider than the territorial jurisdiction of the State. But surely that is not what S. 59(5) does, even assuming we were to accept the contention of Mr. Bobde and Mr. Abhyankar. At the highest, what S. 59(5) does is that it extends the jurisdiction of the Bombay High Court to a particular authority which is not within its jurisdiction. In other words, according to Mr. Abhyankar, parliament purporting to act under Art. 230 of the constitution conferred upon the High Court a jurisdiction which it did not possess, viz., to issue writs against the State of Madhya Pradesh which is not within its territorial Jurisdiction. Now, that is something which parliament certainly cannot do under Art. 230. It cannot confer on the High Court an extended jurisdiction with regard to a person or an authority or with regard to a class of persons or authority. The only power that can be exercised under Art. 230, as just pointed out, is to extend the territorial jurisdiction of the High Court. Further Art. 230 postulates a law with a certain element of permanence and continuity. There is neither an element of permanence nor an element of continuity in S. 59(5). It is intended for a particular emergency, it is intended for a few exceptional cases, and in our opinion it is not possible to accept the contention that parliament was exercising its very special power under Art. 230 to extend the jurisdiction of the High Court to deal with cases which might arise on the reorganization of the States. Reliance has also been placed by Mr. Bobde on a decision of the Rajasthan High Court which, according to him, considerably supports his contention. That is the decision in *Jaswantsingh Vs. Assistant Judge, Mahsana and Others*, . That was rather a curious case where a matter was transferred under a corresponding section of the States Reorganization Act, S. 64, by the Chief Justice of Bombay to the Rajasthan Court. This dealt with a territory which originally formed part of the State of Bombay and then became part of the new State of Rajasthan. An order was made by the Assistant Judge of Mehsana who was a judicial officer in Bombay, holding that an appeal against a decision with regard to the Payment of Wages Act was not competent. The learned Chief Justice Wanchoo and Mr. Justice Modi heard a petition filed before them for a writ of certiorari, to quash the order of the Assistant Judge, Mehsana, and what was urged before those learned

Judges was that a writ could not be issued against the Assistant Judge of Mehsana because Mehsana was not within Rajasthan. Now, the question with regard to payment of wages arose in territories which now form part of Rajasthan, and the grievance was of people who were now residents in Rajasthan, that their appeals had not been heard, and obviously something had to be done to remedy that state of affairs, and therefore what the learned Judges did was that they said they would assume that the Assistant Judge of Mehsana is now the District Judge of Pali, the corresponding judicial officer in Rajasthan to the Assistant Judge of Mehsana, and making that assumption they would quash the order and direct the District Judge of Pali to hear the appeal on merits. As the Advocate-General of Madhya Pradesh has pointed out, it was really not necessary for these learned Judges to have - we might say so with respect - indulged in this rather farfetched legal fiction. It would have been sufficient if they had said that as this was a petition to quash a judicial order, once the record was brought before them they would have jurisdiction to quash it and direct the proper authority to hear the appeal, and inasmuch as the proper authority was situated within Rajasthan, a perfectly valid order could have been made directing the District Judge of Pali to hear the appeal. Therefore, this decision does not help the contention of Mr. Bobde or Mr. Abhyankar that when a matter comes before the Bombay High Court and because the Bombay High Court is asked to assume that an earlier order made by the Nagpur High Court is an order made by the Bombay High Court, therefore the jurisdiction of the Bombay High Court becomes extended and extended to this extent that it can actually issue a writ calling upon the State of Madhya Pradesh to reinstate a servant who was dismissed. Another important aspect of the matter should not be overlooked. In the Rajasthan case the learned Judges were compelled to resort to the legal fiction because they realized that grave injustice would be done to persons who had become residents of Rajasthan. They had no other remedy open to them. That is not the case here. If the complaint of the petitioner is that he has been dismissed by the State of Madhya Pradesh and that the State of Madhya Pradesh should reinstate him, nothing is easier than for him to file a petition in the High Court of Madhya Pradesh and to get a writ from that High Court. If, on the other hand, the relief he seeks is that the Bombay Government should reinstate him, the Bombay Government being the successor of the Madhya Pradesh Government, then the petition is well founded and could be maintained in this Court and this Court can give him relief if he is entitled to that relief. Therefore, looking at it from either point of view, whether he seeks relief against the Madhya Pradesh State or against the Bombay State, he is not without a remedy and therefore we are not compelled to resort to any extreme legal fiction which the Rajasthan High Court was compelled to resort to.

9. The effect of this judgment is that the State of Madhya Pradesh and the Accountant-General of Madhya Pradesh will be struck off the record. The petition against the State of Bombay will remain and it will be disposed of according to law by the Division Bench. No order as to costs. Order accordingly.