

(1974) 08 CAL CK 0023
In the Calcutta High Court
Case No : Matter No. 533 of 1968

U.P. Electric Supply Co. Ltd. (in Liquidation)	APPELLANT
Vs	
Industrial Tribunal (III)	RESPONDENT

Date of Decision : 28-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 226(1A), 32

Citation : (1975) 1 ILR (Cal) 363

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Salil K. Roy Chowdhury, J

Bench : Division Bench

Advocate : Biswarup Gupta and S.K. Roy Chowdhury, for the Appellant; Somen Bose and Ganendra Narayan Roy, Amicus Curiae, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—This is a reference under chap. V, Rule 3 of the O.S. Rules made by K.L. Roy J. In an application under Article 226 of the Constitution of India the Petitioners are the liquidators of the U.P. Electric Supply Co. Ltd. (in voluntary liquidation) having their office at No. 12 Mission Row, Calcutta. The Respondents are

- (1) The Industrial Tribunal (III), Allahabad.
- (2) The Regional Assistant Labour Commissioner, Allahabad.
- (3) The State of Uttar Pradesh through the Secretary, Labour Department, Lucknow.
- (4) The Collector of Allahabad and 14 erstwhile workers of the company in liquidation who are all residents of Allahabad.

The Petitioners were asking for a Rule requiring the Respondents to show cause why an award made by the Industrial Tribunal aforesaid and a certain certificate issued in consequence thereof should not be quashed.

2. All the Respondents are outside the jurisdiction of this Court. The Petitioners obtained the Rule from this Court on the ground that both the award and the

notice for recovery were served on the Petitioners in Calcutta within the jurisdiction of this Court. The application was filed on the Original Side of this Court. The Rule was issued by the learned Judge exercising writ jurisdiction on the Original Side.

3. Now, Article 226(1) of the Constitution runs thus : 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, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III or/and for any other purpose.

4. The Supreme Court in Election Commission, India Vs. Saka Venkata Subba Rao and, , K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , Lt. Col. Khajoor Singh Vs. The Union of India and Another, and Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd., took the view that it was the location or residence of the Respondent which gave territorial jurisdiction to a High Court under Article 226(1), the situs of the cause of action being immaterial for this purpose. This view of the Supreme Court overruled the view taken by a number of High Courts that situs of the cause of action was an additional factor which gave jurisdiction. As a result of the Supreme Court decisions aforesaid only the High Court of Punjab at that time had jurisdiction to entertain petitions under Article 226 of the Constitution against the Union of India and those other bodies which were located in Delhi.

5. That is why by the Constitution (Fifteenth Amendment) Act, 1963, which came into effect on October 6, 1963, Clause (1A) of Article 226 of the Constitution was introduced. Clause (1A) is as follows:

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;

6. The object of Clause (1A), therefore, is to restore the view taken by different High Courts and to provide that the High Court within which the cause of action arises, wholly or in part, would also have jurisdiction to entertain a petition under Article 226 against the Union of India or other bodies which are located in Delhi. The Fifteenth Amendment, therefore, superseded the Supreme Court's decisions to the contrary. Before the Fifteenth Amendment came into force this Court had framed certain Rules relating to applications under Article 226 of the Constitution. These Rules were published in the Calcutta Gazette on November 10, 1960, being Notification No. 758G, dated November 1, 1960. The Rules

relevant for our purpose in this reference are Rules 1, 4, 5, 6 and 12 respectively. These Rules are as follows:

1. Except as otherwise provided,- all applications made under Article 226(1) of the Constitution shall be governed by these Rules.

4. All applications for writs in the nature of mandamus, prohibition and quo warranto, in which all the Respondents reside or carry on business or have their offices situate within the ordinary original civil jurisdiction of this High Court, whether they relate to a person, or Court, or authority, whether exercising civil, criminal or administrative jurisdiction, shall be dealt with by the Original Side and shall be marked as "Original Side" applications.

5. All applications for writ in the nature of certiorari, wherein the records are located or are available within the ordinary original civil jurisdiction of this High Court, whether they relate to an authority or Court exercising civil or criminal or other jurisdiction shall be dealt with by the Original Side and shall likewise be marked as "Original Side" applications, where such authority or Court and any other person, having custody of the records, have their offices situated within the aforesaid ordinary original civil jurisdiction of this High Court.

6. All other applications, whether they relate to a person or authority or Court exercising civil or criminal or other jurisdiction, shall be dealt with by the Appellate Side of the High Court and marked as "Appellate Side" applications.

12. In an application for a writ in the nature of certiorari, there should be a statement as to the location of the records of the proceedings impugned.

7. From the Rules quoted above we draw the following conclusions:

(1) These are Rules framed specifically under Article 226(1) of the Constitution.

(2) For writs in the nature of mandamus, prohibition and quo warranto an application may be made on the Original Side of this Court where the Respondents reside or carry on business or have their offices within the jurisdiction of the Original Side.

(3) For writs in the nature of certiorari an application may be made on the Original Side of this Court if the records are located or are available within the jurisdiction of the Original Side.

(4) All other applications for writs are to be made in the Appellate Side of this Court.

(5) In an application for a writ in the nature of certiorari a statement has to be made as to the location of the records of the proceedings impugned.

8. There is no doubt whatsoever that these Rules have nothing to do with the situs of cause of action. They were framed before Article 226(1A) came into the Statute Book. In this reference, the Petitioner contended before K.L. Roy J. that the Original Side of this Court had jurisdiction to entertain the application as the

situs of part of the cause of action was within jurisdiction. The Respondents' contention was that since the Respondents were all outside the jurisdiction the application should have been made on the Appellate Side of this Court in terms of Rule 6 quoted above. These rival contentions of the parties have been referred to the Division Bench by K.L. Roy J. under chap. V, Rule 3 of O.S. Rules. This Rule lays down:

Where it shall appear to any Judge at any stage of a suit, application or other matter, that it involves a substantial question of law as to the interpretation of the Government of India Act, 1935, or any order in Council made thereunder, or the Constitution of India, or any order made thereunder, he shall report to that effect to the Chief Justice, who shall constitute a Bench of two or more Judges to hear the question of law arising in the suit, application or other matter and remit the matter with their opinion to the Judge who made the report.

9. Before us the Respondents were not represented at all. We requested Mr. Somen Bose and Mr. Ganendra Narayan Roy to appear as amicus curia to assist us in coming to our conclusion in this reference. We are grateful to both of them for the valued help and assistance that they have given to us.

10. Mr. Bose has submitted that this reference is incompetent because it does not involve any substantial question of law as to the interpretation of the Constitution of India. The point that was debated before K.L. Roy J. was one relating to the applicability of Rules framed by this Court for applications under Article 226 of the Constitution. This point does not touch upon the interpretation of the Constitution at all.

11. We are unable to accept this contention of Mr. Bose. It seems to us that the reference does involve a substantial question of law as to the interpretation of the Constitution and that question is whether Article 226(1A) of the Constitution is to be construed in the context of or with reference to the Rules framed by this Court in 1960 before Article 226(1A) was enacted. We are of opinion that the reference is competent under chap. V, Rule 3 of O.S. Rules.

12. Mr. Bose's second contention is that if the Rules referred to above can be made applicable to Article 226(1A) also, the Court should try to do so and should hold that the application should have been made on the Appellate Side of the Court under Rule 6, inasmuch as all the Respondents were outside the jurisdiction of the Original Side.

13. It seems to us that this second contention of Mr. Bose cannot also be upheld. Historically it is abundantly clear that when this Court framed the Rules it was concerned only with the location or residence of the Respondents or the location of records to give territorial jurisdiction to the High Court. For the purposes of convenience of business as has been pointed out in the unreported Division Bench judgment in Appeal No. 258 of 1973, Messrs Arthur Butler and Co. (Muzaffarpur) Ltd. and Anr. v. Union of India and Ors. Unreported, the Rules were framed to provide which application should be made on the Original Side

and which on the Appellate Side. The judgment was delivered by B.C. Mitra J. sitting with Janah J. on September 20, 1973. B.C. Mitra J. observed:

This Court in entertaining the writ petitions and dealing with the same derives its jurisdiction not from the Rules framed by this Court, but from Article 226 of the Constitution. It is the Constitution which has conferred upon this Court the jurisdiction to entertain and deal with the writ petition and the Rules set out above have been framed only for convenience of business.

In that case, excepting the Respondent No. 5 all other Respondents had their offices outside the original jurisdiction. The Respondent No. 5 was a party of no consequence. The Rule was issued by Ghose J. exercising writ jurisdiction on the Original Side. It was argued that at the time when the Rule nisi was issued, Ghose J. had no jurisdiction to entertain the application. The writ petition ought not to have been marked as an "Original Side" matter but should have been marked as an "Appellate Side" matter and should have been moved before one of the learned Judges who had jurisdiction to deal with the writ petitions on the Appellate Side. The application, it was urged further, was moved on the Original Side in contravention of the Rules set out above.

14. Dealing with these points B. C. Mitra J. has said:

...The learned Judge who issued the Rule nisi was at the relevant time one of the Judges of this Court who had the jurisdiction to deal with the writ petitions in the Original Side. Even assuming that the writ petition ought to have been marked as an Appellate Side matter and ought to have been moved before one of the learned Judges of this Court taking the writ petitions in the Appellate Side, the marking of the writ petition and the issue of Rule nisi by Ghose J. is in our view a mere irregularity which does not affect the jurisdiction of this Court to issue a Rule nisi in a petition under Article 226 of the Constitution. It can by no means be said that the Rule nisi issued by this Court is a nullity and is altogether void merely because the petition was entertained by Ghose J. who was dealing with the writ petitions of the Original Side of this Court at that point of time.... Lastly, it is to be noticed that the Rules framed by this Court do not in any way curtail the jurisdiction of a learned Judge who is dealing with the writ petitions in the Original Side from entertaining an application which though marked as "Original Side" ought to have been marked as "Appellate Side". In our view, this contention of counsel for the Respondents cannot be accepted.

15. The case before the Division Bench presided over by B.C. Mitra J. was one under Article 226(1) of the Constitution. The case before us is one under Article 226(1A). We have already said that the Rules that were framed by this Court were Rules under Article 226(1) and not under Article 226(1A). In fact, uptill now no Rules under Article 226(1A) have been framed by this Court at all. In the absence of any such Rules in a case in which the cause of action, either wholly or in part, arises within the territorial jurisdiction of the High Court at Calcutta, a writ petition may be filed either in the Original Side or in the Appellate Side

according to the choice and convenience of the Petitioner.

16. The question referred to us is whether an application under Article 226 of the Constitution can be maintained on the Original Side of this Court where all the persons and authorities against whom the Rule is asked for are outside the jurisdiction of this High Court, but where part of the cause of action is alleged to have arisen within the original jurisdiction of this Court. Our answer to this question is in the affirmative.

17. We now remit the matter with our opinion aforesaid to the appropriate Court for disposal according to law. Costs costs in, the Rule.

Salil K. Roy Chowdhury J.

18. I agree.