

(1994) 01 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34534 of 1994

Yogesh Kumar Misra

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 356
Evidence Act, 1872 — Section 78, 81

Citation : (1994) 01 AHC CK 0080

Hon'ble Judges : U.P.Singh, J and T.P.Garg, J

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution of India has been moved by Sri Yogesh Kumar Misra, an advocate of this Court. He has appeared in person and argued this petition. The relief's sought for are:

(a) that a direction be issued to the Chief Minister of Uttar Pradesh not to take any administrative decision which is contrary to the provisions of the Constitution:

(b) that a direction be issued to the Prime Minister of India not to compel the peoples" representatives of this State to deviate from carrying their duties:

(c) that a direction be issued to Sri N. D. Tiwari, the President, U. P. C. C. (I) that he should carry his duties, and functions as public representative:

(d) that the DirectorGeneral of Police of the State be directed to issue directions to the effect that the Police Administration of the State should keep itself away from the administrative policy of the State so as to maintain confidence of the people in the Police administration:

(e) that any other suitable direction be issued in respect of the constitutional rights of the citizens; and

(f) a direction be issued to the Union of India to dismiss the Government of Uttar Pradesh.

2. The petitioner alleged that petition is not politically motivated and has not been filed being inspired by any political party. It has been filed on behalf the people. The averments in the petition are that the Governor of the State of Uttar Pradesh has sent a report to the President and the Prime Minister of India pointing out the failure of the Government and that the President has expressed his anxiety over such failure, but even then, the President has not dissolved the Government. It was contended that having received such information sent by the Governor as the State, the President and/of the Prime Minister has option under Article 356 of the Constitution but to dissolve the Government.

3. Various instances showing the constitutional failure of the Government are presented in paragraphs 3 to 12, such as lowering down the education standard by withdrawing the Copying Ordinance; attack on the members of the legislative parties inter to in the House release of unsocial elements from Jail; and setting free some undesirable elements in the Police with a view to ensure victory of the party; selection of a particular community in the recruitment of State Police and P. A. C. with an object that the present Government may be helped in the matter of election; attack by unsocial elements in the High Court campus in collusion with police on 13th September, 1994; fatal attack and lathi charge on teachers and students of Agra Medical College causing injuries to students and teachers including female teachers; persuading the students to withdraw their movement so as to drop the proceedings against them, suppressing the movement of Uttarakhand resorting to firing at various places resulting in death and serious injuries to the people; delivering inflammatory speeches in the garb of reservation causing possibility of class arm struggle between two groups; providing reservation in technical and medical field; exhorting the party men to initiate violent struggle against the newspapers who are publishing unconstitutional Act of the Government; and discriminatory attitude against the upper caste.

4. On these facts as enumerated above, Mr. Misra relied on the cuttings of the press reports contained in Annexures 1 & 2 reported by daily newspaper "Dainik Jagran" and contended that the Governor of the State of Uttar Pradesh had sent written information to the Prims Minister and the President of India suggesting dissolution of the State Government but even then no action has been taken in dissolving the Government.

5. As against all these, the learned AdvocateGeneral appearing on behalf of the respondents 3 to 5 contended that this petition is misconceived and be dismissed since this court cannot rely upon the reports in the press and the petitioner has not placed any evidence on the record for this court to proceed to issue any direction in respect of the reliefs claimed by him. It was further contended by the learned AdvocateGeneral that the statements in paragraphs 2 to 14 are stated to be true to the information of the petitioner. These paragraphs are supposed to contain the materials for the proper exercise of the jurisdiction of this court and since there is no primary evidence before this court, will not exercise its

jurisdiction on hearsay secondary evidence based on the press reports. In other words, there is complete lack of materials for exercise of jurisdiction of this court to issue any such directions in respect of any one of the reliefs claimed by the petitioner. We are in agreement with the contentions raised by the learned Advocate General. The Hon'ble Supreme Court in the case of *Bharat Singh v. State of Haryana*, AIR 1988 SC2181, pointed out the distinction between a pleading under the Code of Civil Procedure and a writ petition or a counteraffidavit and pointed out that while in a pleading i. e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counteraffidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. It was held that when a point, which is ostensibly a point of law, is required to be substantiated by fact, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counteraffidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counteraffidavit as the case may be, the court will not entertain the petition.

6. Again in the case of *Laxmi Rai Shetty v. State of Tamil Nadu*, (1988) 3 SCC 319, the Supreme Court categorically held that a statement of fact contained in a newspaper is merely hearsay and therefore, inadmissible in evidence in absence of maker of the statement appearing in court and deposing to have perceived the fact reported. In the said case the Supreme Court refused to take judicial notice of the fact stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence at under. It further held that the report in a newspaper is only hearsay evidence and a newspaper is not one of the documents referred to in Section 78 (2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proof of facts reported therein.

7. Here, in the present case, the facts alleged in the petition are not supported by any evidence except the newspaper reports and, therefore, the point that has been raised before us by the petitioner is not entertainable. On this hearsay secondary evidence, we are not in a position to conclude that the President and the Prime Minister of India had the report before them submitted by the Governor of the State of Uttar Pradesh. We cannot conclude to say that under Article 356 of the Constitution of India the President had received a report from the Governor of the State of Uttar Pradesh on which he may be satisfied to issue the proclamation in case of failure of constitutional machinery in the State.

8. In this view we do not find any merit in this petition and it is accordingly dismissed.