K. S. Rashid and Son and Others

Vs

The Income-Tax Investigation Commission and Others

Civil Appeal Nos. 118 to 121 of 1952

(M.C. Mahajan, B.K. Mukherjea, S.R. Dass, Vivian Bose, Ghulam Hasan JJ)

22.01.1954

JUDGMENT

MUKHERJEA, J. -

These four consolidated appeals, which have come before us, on a certificate granted by the High Court of Punjab under Article 133(1)(c) of the Constitution, are directed against one common judgment of a Division Bench of that Court dated the August 10, 1950, by which the learned Judges dismissed four analogous petitions, presented on behalf of the different appellants, claiming reliefs under Articles 226 and 227 of the Constitution, in respect of certain income-tax investigation proceedings commenced against them under Act XXX of 1947. It appears that a partnership firm carrying on business under the name and style of K. S. Rashid & Son was started on the of May 5, 1934, the partners being three in number to wit K. S. Rashid Ahmed, Saeed Ahmed, his son, and Mrs. Zafar Muhammed, his mother. Mrs. Zafar Muhammed died on the of January 7, 1946, and as a result of her death the partnership stood dissolved. Immediately on the day following, that is to say on the of January 8, 1946, a new firm was started bearing the same name, with the two surviving partners of the original firm and one Saeeda Begum, a daughter of K. S. Rashid, as the third partner. On the of December 31, 1947, the Central Government referred the cases of this firm, as well as of the individuals constituting it, to the Income-tax Investigation Commission for enquiry and report under Section 5 of Act XXX of 1947, presumably on the ground that there had been substantial evasion of payment of income-tax in these cases. The authorised official appointed under Section 6(3) of the Act, who figures as respondent No. 2 in all these appeals, in due course started investigation in these cases and the appellants' complaint is, that contrary to the provisions of the Act, he extended his investigations to a period subsequent to the March 31, 1943, up to which date the income-tax assessment in all these cases was completed. A petition embodying this complaint was made to the authorised official on the of Apri l8, 1949, but no order was passed on the petition, as the Commission was expecting an early change of law in this respect. The law was amended by an Ordinance dated the of July 5, 1949, but the appellants still contended that the amendment was neither retrospective in its operation, nor did it enable the authorised official to carry on his investigation beyond the March 31, 1943. The account books, however, were shown to the official under protest. On the September 17, 1949, three applications were filed before the Commission, one with regard to the affairs of Mrs. Zafar Muhammed stating that no investigation could take place in regard to her as she was already dead; the second with regard to the affairs of Saeeda Begum on the ground that she being a new partner and not having been assessed before, was not subject to the jurisdiction of the Commission; while the third application was to the effect that the new firm, which came into existence on the of January 8, 1946, could not have its affairs enquired into at all under the provisions of the Act. After that, in June, 1950, four miscellaneous petitions were filed, (being C.M. Cases Nos. 259 to 262 of 1950) on behalf of the appellants, before the High Court of

Punjab, and the prayers made therein were of a three-fold character. It was prayed in the first place that a writ of prohibition might be issued to the Commission and the authorised official directing them not to proceed with the investigation of cases referred to the Commission under Section 5 of Act XXX of 1947. The second prayer was for a writ in the nature of certiorari for quashing the proceedings already commenced. The third and the alternative claim was that the proceedings before the Commission might be revised under Article 227 of the Constitution and suitable orders passed as the justice of the case would require. Upon these petitions, rules were issued on the of July 25, 1950, after a report from the Investigation Commission had been called for. On behalf of the respondents, who resisted these petitions, certain preliminary points were raised in bar of the petitioner's claim. It was contended in the first place that the petitioners being assessees belonging to U.P., their assessments were to be made by the Income-tax Commissioner of that State and the mere fact that the location of the Investigation Commission was in Delhi would not confer jurisdiction upon the Punjab High Court to issue writs under Article 226 of the Constitution. The second objection was that the Act itself being of a special nature which created new rights and liabilities, the remedies provided for in the Act itself for any breach or violation thereof were the only remedies which could be pursued by the aggrieved parties and Article 226 or 227 of the Constitution would not be available to the petitioners. The third ground taken was that the Court could not give relief to the petitioners because of Sections 5(3) and 9 of Act XXX of 1947. These contentions found favour with the learned Judges who heard the petitions, and although they did not express any final opinion on the third point raised, they dismissed the applications of the petitioners on the first two grounds mentioned above. It is against these orders of dismissal that the present appeals have been taken to this Court and Dr. Tek Chand, who appeared on behalf of the appellants, has assailed the propriety of the decision of the High Court on both the points.

So far as the first point is concerned, which relates to the question of jurisdiction of the Punjab High Court to issue writs of certiorari or prohibition in these cases, the learned Judges based their decision entirely upon the pronouncement of the Judicial Committee in the well known case of Ryots of Garabandho v. Zemindar of Parlakimedi The question for consideration in that case was, whether the High Court of Madras had jurisdiction to issue a writ of certiorari in respect of an order passed by the Collective Board of Revenue, as an appellate authority, in certain proceedings for settlement of rent between the Zemindar of Parlakimedi and the Ryots of certain villages within his estate situated in the district of Ganjam which was wholly outside the limits of the Presidency town of Madras. The question was answered in the negative. The Judicial Committee laid down that the three Chartered High Courts of Calcutta, Madras and Bombay had powers to issue, what were known as the high prerogative writs, as successors to the Supreme Courts which previously exercised jurisdiction over these Presidency towns; but the exercise of the powers under the Charter was limited to persons within the ordinary original civil jurisdiction of the three High Courts, and outside that jurisdiction it extended only to "British subjects" as defined in the Charter itself. It was held that the Supreme Court of Madras had no jurisdiction under the Charter which created it to correct or control a country court of the East India Company deciding a dispute between Indian inhabitants of the Ganjam district about the rent payable for land in that district; and no such power was given by any subsequent legislation to its successor, the High Court. A contention seems to have been raised on behalf of the appellants that the jurisdiction to issue writs could be founded on the fact that the office of the Board of Revenue, which was the appellate authority in the matter of settlement of rents, was located within the town of Madras and the order complained of was made in that town and reliance was placed in this connection upon the case of Nundo Lal Bose v. The Calcutta Corporation, where a certiorari was issued by the Calcutta High Court to quash an assessment made by the Commissioners of the town of Calcutta on a certain dwelling house. This

contention was repelled by the Judicial Committee with the following observations :-

> "The question is whether the principle of that case can be applied in the present case to the settlement of rent for land in Ganjam, merely on the basis of the location of the Board of Revenue, as a body which is ordinarily resident or located within the town of Madras, or on the basis that the order complained of was made within the town. If so, it would seem to follow that the jurisdiction of the High Court would be avoided by the removal of the Board of Revenue beyond the outskirts of the town, and that it would never attach but for the circumstance that an appeal is brought to, or proceedings in revision taken by, the Board of Revenue. Their Lordships think that the question of jurisdiction must be regarded as one of substance. And that it would not have been within the competence of the Supreme Court to claim jurisdiction over such a matter as the present by issuing certiorari to the Board of Revenue on the strength of its location in town. Such a view would give jurisdiction to the Supreme Court, in the matter of the settlement of rents for ryoti holdings in Ganjam between parties not otherwise subject to its jurisdiction, which it would not have had over the Revenue Officer who dealt with the matter at first instance."

It is on the basis of these observations of the Judicial Committee that the learned Judges have held that the mere location of the Investigation Commission in Delhi is not sufficient to confer jurisdiction upon the Punjab High Court to issue a writ in the present case. It is said that the petitioners are assessees within the U.P. State and their original assessments were made by the Income-tax Officers of that State. The subsequent proceedings, which had to be taken in pursuance of the report of the Investigation Commission, would have to be taken by the Income-tax authorities in the U.P., and if a case had to be stated, it would be stated to the High Court at Allahabad. Taking, therefore, as the Privy Council had said, that the question of jurisdiction is one of substance, it was held that no jurisdiction in the present case could be vested in the Punjab High Court, for that jurisdiction could be avoided simply by removal of the Commission from Delhi to another place.

This line of reasoning does not appear to us to be proper and we do not think that the decision in the Parlakimedi case is really of assistance in determining the question of jurisdiction of the High Courts in the matter of issuing writs under Article 226 of the Constitution. The whole law on this subject has been discussed and elucidated by this Court in its recent pronouncement in Election Commission v. Venkata Rao where the observations of the Judicial Committee in the Parlakimedi case upon which reliance has been placed by the Punjab High Court, have been fully explained. It is to be noted first of all, that prior to the commencement of the Constitution the powers of issuing prerogative writs could be exercised in India only by the High Courts of Calcutta, Madras and Bombay and that also within very rigid and defined limits, the writs could be issued only to the extent that the power in that respect was not taken away by the Codes of Civil and Criminal Procedure [Vide in this connection Because v. The Advocat-General of Madras and they could be directed only to persons and authorities within the original civil jurisdiction of these High Courts. The Constitution introduced a fundamental change of law in this respect. As has been explained by this Court in the case referred to above, while Article 225 of the Constitution preserves to the existing High Courts the powers and jurisdictions which they had previously, Article 226 confers, on all the High Courts, new and very wide powers in the matter of issuing writs which they never possessed before. "The makers of the Constitution," thus observed Patanjali Sastri. C.J., in delivering the judgment of the Court, "having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to

provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc., 'for any other purpose' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England." There are only two limitations placed upon the exercise of these powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction," that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 226 of the Constitution is to be determined. The observations of the Judicial Committee in Parlakimedi's case have strictly speaking no direct bearing on the point. It is true as the Privy Council said in that case the question of jurisdiction must be regarded as one of substance, but the meaning and implication of this observation could be ascertained only with reference to the context of the facts and circumstances of that case. As was pointed out by this Court in the case referred to above "Their Lordships considered, in the peculiar situation they were dealing with, that the mere location of the appellate authority alone in the town of Madras was not a sufficient basis for the exercise of jurisdiction whereas both the subject-matter, viz., the settlement of rent for lands in Ganjam, and the Revenue Officer authorised to make the settlement at first instance were outside the local limits of the jurisdiction of the High Court. If the Court in Madras were recognised as having jurisdiction to issue the writ of certiorari to the appellate authority in Madras, it would practically be recognising the Court's jurisdiction over the Revenue Officer in Ganjam and the settlement of rents for lands there, which their Lordships held it never had. That was the 'substance' of the matter they were looking at." In our opinion, therefore, the first contention raised by Dr. Tek Chand must be accepted as sound and the view taken by the Punjab High Court on the question of jurisdiction cannot be sustained.

So far as the second point is concerned, the High Court relies upon the ordinary rule of construction that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which could be pursued. It is said that the Taxation on Income (Investigation Commission) Act, 1947, itself provides a remedy against any wrong or illegal order of the Investigating Commission and under Section 8(5) of the Act, the aggrieved party can apply to the appropriate Commissioner of Income-tax to refer to the High Court any question of law arising out of such order and thereupon the provisions of Sections 66 and 66-A of the Indian Income-tax Act shall apply with this modification that the reference shall be heard by a Bench of not less than three Judges of the High Court. We think that it is not necessary for us to express any final opinion in this case as to whether Section 8(5) of the Act is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under Article 226 of the Constitution. For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. So far as the present case is concerned, it has been brought to our notice that the appellants before us have already availed themselves of the remedy provided for in Section 8(5) of the Investigation Commission Act and that a reference has been made to the High Court of

Allahabad in terms of that provision which is awaiting decision. In these circumstances, we think that it would not be proper to allow the appellants to invoke the discretionary jurisdiction under Article 226 of the Constitution at the present stage, and on this ground alone, we would refuse to interfere with the orders made by the High Court. Dr. Tek Chand argues that the Income-tax authorities have not referred all the matters to the High Court which the appellants wanted them to do. But for this there is a remedy provided in the Act itself and in case a proceedings occasions a gross miscarriage of justice, there is always the jurisdiction in this Court to interfere by way of special leave. In the result, we dismiss the appeals but in the circumstances of the case make no order as to costs.

Appeals dismissed.

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