Lt. Col. Khajoor Singh

Vs

The Union of India & Another

Civil Appeal No. 37 of 1955

(CJI B. P. Sinha, J. L. Kapur, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

05.12.1960

JUDGMENT

SINHA, C.J. -

This appeal on a certificate of fitness granted by the High Court of Judicature, Jammu and Kashmir, is directed against the judgment and order dated December 7, 1954, in an application under Art. 32(2A) of the Constitution for issue of a writ, directions or order against the Union of India, through the Secretary, Ministry of Defence, New Delhi, as the first respondent and the State of Jammu and Kashmir through the Chief Secretary, Jammu and Kashmir State, as the second respondent.

The petition is based on the following allegations. The petitioner will be referred to as the appellant in the course of this judgment. He was aged 45 years 262 days on August 12, 1954. He was holding a regular commission in the Jammu and Kashmir State Forces, which were amalgamated with the Defence Forces of the Union with effect from September 1, 1949. The appellant holding the substantive rank of Lieut. Col. in the amalgamated forces had the right to continue in service until he attained the age of 53 years, which event will happen on November 20, 1961. The Government of India issued a letter dated July 31, 1954, retiring the appellant from the service with effect from August 12, 1954. This decision of the Government of India is not based on any allegations or charge of inefficiency, indiscipline or any other irregularity on the part of the appellant. The aforesaid decision of the Government of India prematurely retiring the appellant is impugned as illegal, unwarranted and discriminatory and as having been made in contravention of Art. 16(1) of the Constitution.

The petition was opposed on behalf of the respondents aforesaid on a number of preliminary grounds of which it is only necessary to mention the first, namely, that the authority against whom the writ is sought, that is to say, respondent No. 1, being outside the territorial limits of the jurisdiction of the Jammu and Kashmir High Court, the same was not maintainable. This preliminary objection was heard by a Division Bench, (Janki Nath Wazir, C.J. and M. A. Shahmiri, J.) Jammu and Kashmir High Court. By its judgment dated December 7, 1954, the High Court upheld the preliminary objection. The High Court, relying upon the decisions of this Court in Election Commission, India v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.) and K. S. Rashid and Son v. The Income-tax Investigation Commission etc. ([1954] S.C.R. 738.), held that it had no jurisdiction to issue a writ against the first respondent and, therefore, dismissed the petition, but the High Court granted the necessary certificate under Art. 132 of the Constitution; hence this appeal.

The matter was first heard by a Bench of five judges. In the course of hearing it became clear to us that the appellant not only sought to distinguish the two decisions aforesaid of this Court, but

questioned the correctness of those decisions. Hence this larger Bench was constituted in order to examine the correctness of the decisions aforesaid of this Court on the strength of which the High Court had refused to entertain the appellant's petition, on merits.

It has been argued on behalf of the appellant, in the first instance, that the previous decisions of this Court were distinguishable on the ground that they did not, in terms, consider the question whether the Government of India was amenable to the jurisdiction of the High Court under Art. 226 or of the Jammu and Kashmir High Court under Art. 32(2A) of the Constitution; that those provisions, on a true construction, would not stand in the way of the appellant, inasmuch as the Government of India has no location and its authority is present throughout the Union territory; that the correct test is whether or not the cause of action arose within the territorial limits of the High Court's jurisdiction; that the High Court was in error in holding that the term "authority" included a Government.

In answer to these contentions on behalf of the appellant, the learned Solicitor-General contended that, on a proper construction of the relevant provisions of the Constitution, it is clear that Sastri C.J.'s observations relating to "authority" in the case of Election Commission, India v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.) applied with equal force to Government, including the Union Government. The Government of India functions through its officers and, therefore, the location contemplated means the place at which the orders impugned are ordinarily passed. The considerations in a suit with reference to the cause of action for the suit do not stand on the same footing in a writ matter, because the writ has to reach the particular officers of the Government concerned. The expression "in appropriate cases" means that there may be cases where though the Union Government as such is not located within the territorial limits of a High Court yet a writ may be issued against it by the High Courts because an officer of the Union Government is functioning within such limits and it is his order which is the subject matter of the controversy. Therefore, it is not in every case that a High Court can issue a writ against the Union. A writ of mandamus, for example, is directed against a particular named person or authority. Similarly, a writ of certiorari is directed against a particular record. Therefore, the writ must issue to someone within the territorial limits of the High Court's jurisdiction.

The question that we have to determine in this case is of far-reaching importance and is not a matter of first impression. The question was first raised in this Court in 1952 and was determined by a Constitution Bench in the case of Election Commission, India v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.). In that case a writ was applied for in the Madras High Court for restraining the Election Commission from enquiring into the alleged disqualification of the respondent. A single Judge of the High Court of Judicature of Madras issued a writ of prohibition restraining the Election Commission, a statutory authority constituted by the President of India, with its office permanently located at New Delhi, when the matter was heard by the learned single Judge of the High Court. In the High Court the Election Commission demurred to the jurisdiction of the Court to issue any writ against it on the ground that the Commission was not within the territory in relation to which the High Court exercised jurisdiction, apart from other objections. The learned Judge of the High Court overruled the preliminary objection and decided the case on merits, and issued a writ prohibiting the Commission from proceeding with the enquiry. The learned Judge granted the certificate under Art. 132 that the case involved a substantial question of law as to the interpretation of the Constitution. The Election Commission accordingly came up in appeal to this Court and challenged the jurisdiction of the Madras High Court to issue the writ it had purported to do. This Court overruled the contention on behalf of the respondent which was based on the decision of the Privy Council in the Parlakimedi case ((1943) L.R. 70 I.A. 129.) that the jurisdiction of the High Court to issue a writ is analogous to the jurisdiction of a court to grant a decree or order against persons outside the limits

of its local jurisdiction, provided that the cause of action arose within those limits. This Court overruled that contention in these words :-

> "The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Art. 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercise jurisdiction".

The Constitution Bench in that case considered that the language of Art. 226 of the Constitution was "reasonably plain" and that the exercise of the power conferred by that Article was subject to a two-fold limitation, namely, (1) that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" and (2) that the person or authority to whom the High Court is empowered to issue the writs must be "within those territories" In other words, the writ of the Court could not run beyond the territories subject to its jurisdiction and that the person or authority affected by the writ must be amenable to the Court's jurisdiction, either by residence or location within those territories.

The second case of this Court, which dealt with this question is K. S. Rashid and Son v. The Income-Tax Investigation Commissioner ([1954] S. C.R. 738.). That was a case on appeal from the judgment and order dated August 10, 1950, of the High Court of Judicature, Punjab, at Simla, in a number of miscellaneous matters, in which the High Court had down moved under Arts. 226 and 227 of the Constitution praying for quashing proceedings started against the appellants under the Taxation on Income (Investigation Commission) Act (XXX of 1947). It was prayed in the High Court that a writ of prohibition might issue against the Income-Tax Investigation Commission directing it not to proceed with the investigation of cases referred to it under the provisions of the Act. The writ petitions in the High Court were opposed on behalf of the Commission on a number of grounds, one of them being that the Punjab High Court had no jurisdiction to issue the writs prayed for under Art. 226 of the Constitution, simply because the Commission was located in Delhi. Reliance was placed on behalf of the Commission on the decision of the Privy Council in the Parlakimedi case ((1943) L.R. 70 I.A. 129.) that the substance of the matter was that the assessees against whom the investigation had been started belonged to U.P. and all the assessment proceedings, including reference to the High Court, would lie in Uttar Pradesh. The High Court gave effect to this contention and dismissed the application primarily on the ground that the High Court had no jurisdiction to issue the writ to the Commission. The assessees came up in appeal to this Court, and this Court substantially adopted the reasons given by it in its previous judgment in the case of Election Commissioner, India v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.). It is to be noted that when the High Court of Punjab decided the case, the decision of this Court referred to above had not been given. Relying upon its previous decisions, this Court held that the Punjab High Court was in error in holding that it had no jurisdiction to deal with the matter under Art. 226 of the Constitution. The appeal was dismissed by this Court on other grounds, not material to this case.

Learned counsel for the appellant has contended that the two decisions of this Court referred to above are distinguishable from the facts of the present case, inasmuch as in those cases the Election Commission and the Income-tax Investigation Commission were statutory bodies, which had their location in Delhi, and, therefore, this Court held that the Punjab High Court was the High Court within whose jurisdiction those bodies functioned and had their location and were, therefore, amenable to its jurisdiction. He further contended that the Union Government functioned throughout the territory of India and could not be said to be located only in Delhi simply because the capital for

the time being was in Delhi. In this connection, strong reliance was placed on the decision of the Full Bench of the Allahabad High Court in Maqbulunnissa v. Union of India (I.L.R. (1953) 2 All, 289.). That case does lend a great deal of support to this contention on behalf of the appellant. It was held by the High Court in that case that the words "any Government" in Art. 226(1) of the Constitution clearly indicated that the Allahabad High Court had jurisdiction to entertain the petition under Art. 226, not only against the State of Uttar Pradesh, but also against the Union Government for the issue of a writ in the nature of mandamus, directing the Government to forbear from giving effect to the order asking the petitioner to leave India. The ratio of the decision was that, even though the capital of the Government of India is in Delhi, its executive power extends throughout the territory of India and that the real test to determine the jurisdiction would be the residence of the petitioners and the effect of the impugned order upon them. After holding that the High Court had the jurisdiction to entertain the petition, the Court dismissed it on other grounds, not material to this case. The Allahabad High Court distinguished the decision of a Division Bench of the Calcutta High Court dated January 17, 1951, in the case of The Lloyds Bank Limited v. The Lloyds Bank Indian Staff Association (Calcutta Branches) (I.L.R. [1954] 2 Cal. 1.) which was unreported till then. In that case, Harries, C.J., speaking for the Court, had held that though Art. 226 of the Constitution had gone beyond the English practice by providing that writs in the nature of prerogative writs could issue even against a Government, that Government must be located within the territorial limits of the Court which was moved to exercise its power under that Article. He further observed that the Government of India could not be said to be located in the State of West Bengal and, therefore, writs under Art. 226 could not issue against that Government by the High Court of Calcutta. That decision of the Calcutta High Court was distinguished by the Allahabad High Court on the ground that "the effects of the orders of the Union Government were not operative within the jurisdiction of the Court". It may be added that that decision came up in appeal to this Court in Civil Appeal No. 42 of 1952 but the appeal was dismissed by this Court by its judgment dated April 20, 1952, on other grounds. It will be noticed that when the Allahabad decision, so strongly relied upon by the appellant, was given, the two decisions referred to above of this Court were not there. The Allahabad High Court may not have given that judgment if the two decisions of this Court had then been in existence.

The two main questions which arise, therefore, are : (i) whether the Government of India as such can be said to have a location in a particular place, viz., New Delhi, irrespective of the fact that its authority extends over all the States and its officers function throughout India, and (ii) whether there is any scope for introducing the concept of cause of action as the basis of exercise of jurisdiction under Art. 226. Before, however, we deal with these two main questions, we would like to clear the ground with respect to two subsidiary matters which have been urged on behalf of the appellant.

The first argument is that the word "authority" used in Art. 226 cannot and does not include Government. We are not impressed by this argument. In interpreting the word "authority" we must have regard to the clause immediately following it. Art. 226 provides for "the issue to any person or authority including in appropriate cases any Government" within those territories. It is clear that the clause "including inappropriate cases any Government" goes with the preceding word "authority", and on a plain and reasonable construction it means that the word "authority" in the context may include any Government in an appropriate case. The suggestion that the said clause is intended to confer discretion on the High Courts in the matter of issuing a writ or direction on any Government seems to us clearly unsustainable. To connect this clause with the issuance of a writ or order and to suggest that in dealing with cases against Government the High Court has to decide whether the case is appropriate for the issue of the order is plainly not justified by the rules of grammar. We have no hesitation in holding that the said clause goes with the word "authority" and that its effect is that the

authority against whom jurisdiction is conferred on the High Court to issue a writ or appropriate order may in certain cases include a Government. Appropriate cases in the context means cases in which orders passed by a Government or their subordinates are challenged, and the clause therefore means that where such orders are challenged the High Court may issue a writ against the Government. The position, therefore, is that under Art. 226 power is conferred on the High Court to issue to any person or authority or in a given case to any Government, writs or orders there specified for enforcement of any of the rights conferred by Part III and for any other purpose. Having thus dealt with the two subsidiary points raised before us, we may now proceed to consider the two main contentions which arise for our decision in the present appeal.

This brings us to the first question, namely, whether the Government of India as such can be said to be located at one place, namely, New Delhi. The main argument in this connection is that the Government of India is all-pervasive and is functioning throughout the territory of India and therefore every High Court has power to issue a writ against it, as it must be presumed to be located within the territorial jurisdiction of all State High Courts. This argument in our opinion confuses the concept of location of a Government with the concept of its functioning. A Government may be functioning all over a State or all over India; but it certainly is not located all over the State or all over India. It is true that the Constitution has not provided that the seat of the Government of India will be at New Delhi. That, however, does not mean that the Government of India as such has no seat where it is located. It is common knowledge that the seat of the Government of India is in New Delhi and the Government as such is located in New Delhi. The absence of a provision in the Constitution can make no difference to this fact. What we have to see, therefore, is whether the words of Art. 226 mean that the person or authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ ? The relevant words of Art. 226 are these -

> "Every High Court shall have power... to issue to any person or authority... within those territories....". So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories ? Now it is clear that the jurisdiction conferred on the High Court by Art. 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Art. 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226. The introduction of such a concept may give rise to confusion and conflict of

> jurisdictions. Take, for example, the case of an order passed by an authority in Calcutta, which affects six brothers living, say, in Bombay, Madras, Allahabad, Jabalpur, Jodhpur and Chandigarh. The order passed by the authority in Calcutta has thus affected persons in six States. Can it be said that Art. 226 contemplates that all the six High Courts have jurisdiction in the matter of giving relief under it ? The answer must obviously be 'No', if one is to avoid confusion and conflict of jurisdiction. As we read the relevant words of Art. 226 (quoted above) there can be no doubt that the jurisdiction conferred by that Article on a High Court is with respect to the location or residence of the person or authority passing the order and there can be no question of introducing the concept of the place where the order is to have effect in order to determine which High Court can give relief under it. It is true that this Court will give such meaning to the words used in the Constitution as would help towards its working smoothly. If we were to introduce in Art. 226 the concept of the place where the order is to have effect we would not be advancing the purposes for which Art. 226 has been enacted. On the other hand, we would be producing conflict of jurisdiction between various High Courts as already shown by the illustration given above. Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Art. 226. Now, functioning of a Government is really nothing other than giving effect to the orders passed by it. Therefore it would not be right to introduce in Art. 226 the concept of the functioning of Government when determining the meaning of the words "any person or authority within those territories". By introducting the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in Art. 226. There can, therefore, be no escape from the conclusion that these words in Art. 226 refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories.

The seat of a Government is sometimes mentioned in the Constitutions of various countries but many a time the seat is not so mentioned. But whether the seat of a Government is mentioned in the Constitution or not, there is undoubtedly a seat from which the Government as such functions as a fact. What Art. 226 requires is residence or location as a fact and if therefore there is a seat from which the Government functions as a fact even though that seat is not mentioned in the Constitution the High Court within whose territories that seat is located will be the High Court having jurisdiction under Art. 226 so far as the orders of the Government as such are concerned. Therefore, the view taken in Election Commission, India v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.) and K. S. Rashid and Son v. The Income-tax Investigation Commission ([1954] S.C.R. 738.) that there is two-fold limitation on the power of the High Court to issue writs etc. under Art. 226, namely, (i) 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, and (ii) the person or authority to whom the High Court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories, is the correct one.

This brings us to the second point, namely, whether it is possible to introduce the concept of cause of action in Art. 226 so that the High Court in whose jurisdiction the cause of action arose would be the proper one to pass an order thereunder. Reliance in this connection has been placed on the judgment of the Privy Council in Ryots of Garabandho v. Zamindar of Parlakimedi. ((1943) L.R. 70 I.A. 129.) In that case the Privy Council held that even though the impugned order was passed by the Board of Revenue which was located in Madras, the High Court would have no jurisdiction to issue a writ quashing that order, as it had no jurisdiction to issue a writ beyond the limits of the city of Madras except in certain cases, and that particular matter was not within the exceptions. This decision of the Privy Council does apparently introduce an element of the place where the cause of action arose in considering the jurisdiction of the High Court, to issue a writ. The basis of that decision, however, was the peculiar history of the issue of writs by the three Presidency High Courts as successors of the Supreme Courts, though on the literal construction of cl. 8 of the Chapter of 1800 conferring jurisdiction on the Supreme Court of Madras, there could be little doubt that the Supreme Court would have the same jurisdiction as the Justices of the Court of King's Bench Division in England for the territories which then were or thereafter might be subject to or depend upon the Government of Madras. It will therefore not be correct to put too much stress on the decision in that case. The question whether the concept of cause of action could be introduced in Art. 226 was also considered in Saka Venkata Subba Rao's case ([1953] S.C.R. 1144.) and was repelled in these words :-

> "The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Art. 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction."

Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Art. 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories ? It seems to us that it would be going in the face of the express provision in Art. 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it. Nor do we think that it is right to say that because Art. 300 specifically provides for suits by and against the Government of India, the proceedings under Art. 226 are also covered by Art. 300. It seems to us that Art. 300 which is on the same line as section 176 of the Government of India Act, 1935, dealt with suits as such and proceedings analogous to or consequent upon suits and has no reference to the extraordinary remedies provided by Art. 226 of the Constitution. The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226. But the argument of

inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it.

We have given our earnest consideration to the language of Art. 226 and the two decisions of this Court referred to above. We are of opinion that unless there are clear and compelling reasons, which cannot be denied, we should not depart from the interpretation given in these two cases and indeed from any interpretation given in an earlier judgment of this Court, unless there is a fair amount of unanimity that the earlier decisions are manifestly wrong. This Court should not, except when it is demonstrated beyond all reasonable doubt that its previous ruling, given after due deliberation and full hearing, was erroneous, go back upon its previous ruling, particularly on a constitutional issue. In this case our reconsideration of the matter has confirmed the view that there is no place for the introduction of the concept of the place where the impugned order has effect or of the concept of functioning of a Government, apart from the location of its office concerned with the case, or even of the concept of the place where the cause of action arises in Art. 226 and that the language of that Article is plain enough to lead to the conclusion at which the two cases of this Court referred to above arrived. If any inconvenience is felt on account of this interpretation of Art. 226 the remedy seems to be a constitutional amendment. There is no scope for avoiding the inconvenience by an interpretation which we cannot reasonably, on the language of the Article, adopt and which the language of the Article does not bear.

In this view of the matter the appeal fails and is hereby dismissed with costs.

SUBBA RAO, J. -

I have had the advantage of perusing the judgment prepared by may Lord the Chief Justice. I regret my inability to agree. I would not have ventured to differ from his weighty opinion but for the fact that the acceptance of the contention of the respondents would practically deprive the majority of citizens of our country of the benefit of cheap, expeditious and effective remedy given to them under Art. 226 of the Constitution against illegal acts of the Union Government. If the relevant provisions are clear and unambiguous, the said contention must prevail however deleterious the effect may be to public interest. But if the words of the Article are capable of two or more interpretations, one that will carry out the intention of the Constituent Assembly and the other that would defeat it, the former interpretation must necessarily be accepted. We must also bear in mind that the provisions of the Constitution are not "mathematical formulae which have their essence in mere form". It being an organic statute, its provisions must be construed broadly and not in a pedantic way, but without doing violence to the language used.

The facts have been fully stated in the judgment of my Lord the Chief Justice and it would be redundant to restate them. It would be enough if I formulate the point of law raised and express my opinion thereon. The question is whether the appellant, who is a citizen of India and is residing in the State of Kashmir, can enforce his fundamental right under Art. 32(2A) of the Constitution by filing an appropriate writ petition in the High Court of Jammu & Kashmir, if his right is infringed by an order of the Union Government. The Constitution of India has been made applicable to the State of Jammu & Kashmir by the Constitution (Application to Jammu & Kashmir) Order, 1954 (Order No. 48 dated May 14, 1954) with certain exceptions and modifications. By the said Order, cl. (3) of Art. 32 of the Constitution was deleted, and a new clause (2A) was inserted after cl. (2). The question falls to be decided on a true construction of the said cl. (2A) which reads :

> "Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercise jurisdiction to issue to any person or authority, including in appropriate cases any Government within these territories, directions or 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 this Part."

The operative part of this clause is in pari materia with Art. 226 of the Constitution with the difference that the words "for any other purpose" found in the latter Article are omitted in the former. Though the power of the High Court of Jammu & Kashmir is limited to that extent, in other respects it is as extensive as that of the other High Courts under Art. 226. The object of the amendment is self-evident; it was enacted to enable the said High Court to protect the fundamental rights of the citizens of India in that part of the country.

The learned Solicitor-General broadly contends that this Court has construed the analogous provisions of Art. 226 of the Constitution and held that the writs under that Article do not run beyond the territories in relation to which a High Court exercises jurisdiction and that a High Court cannot issue a writ thereunder unless the person or authority against whom the writ is sought is physically resident or located within the territorial jurisdiction of that High Court; and that, therefore, on the same parity of reasoning, the High Court of Jammu & Kashmir cannot issue a writ to run beyond the territories of that State against the Union Government functioning through its officers in New Delhi.

Learned counsel for the appellant contends, on the other hand, that neither Art. 32(2A) not Art. 226 bears any such limited construction and that on a liberal and true construction of the said constitution provisions it must be held that the High Court can issue a writ against any Government, including the Union Government, exercising the functions within the territories of a State, if it infringes the right of a person in that State.

Before I attempt to construe the provisions of cl. (2A) of Art. 32, I think it would be convenient to trace briefly the history of Art. 226, for it throws a flood of light on the legislative intention expressed in Art. 32(2A). In pre-independence India the High Courts, other than the High Courts in the presidency towns of Bombay, Calcutta and Madras, had no power to issue prerogative writs; even in the case of the said presidency High Courts the power to issue writs was very much circumscribed; their jurisdiction to issue the said writs was confined only to the limits of their original jurisdiction and the Governments were excluded from its scope. But the framers of our Constitution with the background of centuries of servility, with the awareness of the important role played by the High Court of England in protecting the rights of its citizens when they were infringed by executive action, with the knowledge of the effective and impartial part played by the High Courts in pre-independence India within the narrow limits of their jurisdiction to protect the rights of the citizens of our country, with a vision to prevent autocracy raising its ugly head in the future, declared the fundamental rights in Part III of the Constitution, conferred powers on the High Courts to issue to any person or authority, including in appropriate cases any Government, directions, orders or writs for the enforcement of the fundamental rights or for any other purpose. In short, any person of India can approach an appropriate High Court to protect his rights against any persons, authority or any Government if his fundamental right or any other right is infringed by the said person, authority or Government. If the contention of the respondents be accepted, whenever the Union Government infringes the right of a person in any remote part of the country, he must come all the way to New Delhi to enforce his right by filing a writ petition in the Circuit Bench of

the Punjab High Court. If a common man residing in Kanyakumari, the southern-most part of India, is illegally detained in prison, or deprived of his property otherwise than by law, by an order of Union Government, it would be a travesty of fundamental rights to expect his to come to New Delhi to seek the protection of the High Court of Punjab. This construction of the provisions of Art. 226 would attribute to the framers of the Constitution an intention to confer the right on a person and to withhold from him for all practical purposes the remedy to enforce his right against the Union Government. Obviously it could not have been the intention of the Constituent Assembly to bring about such an anomalous result in respect of what they conceived to be a cherished right conferred upon the citizens of this country. In that event, the right conferred turns out to be an empty one and the object of the framers of the Constitution is literally defeated.

The scope of Art. 226 vis-a-vis the reach of the High Courts' power has been considered in two decisions of this Court, namely, Election Commission, India v. Saka Venkata Rao ([1953] S.C.R. 1144.) and K. S. Rashid and Son v. The Income-tax Investigation Commission ([1954] S.C.R. 738.). As this Bench of seven Judges is constituted to enable this Court to approach the problem with a fresh mind unhampered by precedents, I propose to scrutinize the provisions of Art. 32(2A) free from the curbs imposed by the earlier decisions.

The core of the Article is discernible in the following clause and phrases : "throughout the territories in relation to which it exercises its jurisdiction", "any Government", "within those territories", "directions or orders or writs, including writs in the nature of habeas corpus, etc." The words "throughout the territories, etc." delimit the territorial jurisdiction of the High Courts in the matter of issuing directions or writs. A High Court exercises jurisdiction throughout the State in which it is located. Its writs run only throughout the State and not beyond its territorial limits. The main object of the power is to keep the authorities or tribunals within their and to prevent them from infringing the fundamental or other rights of citizens. At the instance of an aggrieved person it can issue one or other of the writs or orders or directions against the offending authority in respect of an act done or omitted to be done by it. It is implicit in the limitation that the impugned act must affect a person or property amenable to its territorial jurisdiction.

This question, in a different context, has been considered by the Judicial Committee of the privy Council in Ryots of Garabandho v. Zamindar of Parlakimedi ((1943) L.R. 70 I.A. 129.). There the Board of Revenue situated in the State of Madras under section 172 of the Madras Estates Land Act, 1908, enhanced the rents payable by the ryots in three villages, including Parlakimedi village, in the district of Ganjam in the Northern Circars. The question was whether the Madras High Court had power to issue a writ to quash the order of the Board of Revenue, as the parties to that litigation were not subject to the original jurisdiction of the Madras High Court. The Judicial Committee held that the Madras High Court had no jurisdiction to issue a writ of certiorari to run beyond the territorial limits of that High Court. When it was contended that, as the Revenue Board was in Madras, the High Court had jurisdiction to quash its order, the Judicial Committee repelled that contention with the following remarks at p. 164 :

> "The Board of Revenue has always had its offices in the Presidency Town, and in the present case the Collective Board, which made the order complained of, issued this order in the town. On the other hand, the parties are not subject to the original jurisdiction of the High Court, and the estate of Parlakimedi lies in the north of the province..... 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 the town. Such a view would give jurisdiction to the Supreme Court, in the matter of 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."

This decision in clear terms lays emphasis on the substance of the matter and holds that mere physical presence of an authority within the jurisdiction of a High Court does not enable that Court to issue writs against the said authority in respect of an order made in a dispute between persons residing outside the territorial jurisdiction of the said High Court. Therefore, a High Court's jurisdiction to issue an appropriate writ depends on the co-existence of two conditions, namely, (i) the cause of action has accrued within the territories in relation to which it has jurisdiction, and (ii) the said authority is "within" the said territories. This interpretation may give rise to a criticism; it may be asked, which High Court could give the relief if the cause of action accrues within the territorial jurisdiction of one High Court and the authority concerned is located within that of another High Court ? There may be statutory authorities with all-India jurisdiction, but for convenience located in a particular State. In exercise of the powers conferred under statutes, they may make orders affecting the rights of parties residing in different States. I am prima facie of the view that the said authorities, in so far as their orders operate in a particular territory, will be "within" those territories and the High Court, which exercises its jurisdiction throughout that territory, can issue a suitable writ against the said authorities. This interpretation avoids the anomaly of one High Court issuing a writ against an authority located "within" its territorial jurisdiction in respect of a cause of action accruing in another State or territory over which it has no jurisdiction. But this question does not arise in this case, for we are mainly concerned with the Union Government.

Article 226 of the Constitution is expressed in wide and most comprehensive terms. There is no difficulty about the words "person or authority", but the phrase "including any Government gives rise to a conflict of opinion. If the framers of the Constitution intended to extend simply the power of the High Court to issue writs only against the Government of the State, they could have stated "or the Government of the State", instead they designedly used the words "any Government" which at first sight appear rather involved but on a deeper scrutiny reveal that the words "any Government" cannot mean only the Government of the State. The word "any" clearly presupposes the existence of more than one Government functioning in a State. Under the Constitution two Governments function in each State. Under Art. 1, India shall be a Union of States and the territory of India shall comprise, inter alia, the territories of the States. Part II provides for one class of citizens, that is, citizens of India. In whatever State a person with the requisite qualifications of a citizen may reside, he is a citizen of India and not of that particular State. All the three departments of the Union as well as the State function in the State; both Parliament and the Legislature of the State make laws which govern the State in respect of matters allotted to them respectively. Both the Union and the State executive powers extend to the State, and the former is exercised in regard to matters with respect to which Parliament has power to make laws and the latter in regard to matters with respect to which the Legislature of the State has power to make laws : see Arts. 73 and 162. The Judiciary consists of an hierarchy of courts and all the courts from the lowest to the Supreme Court exercise jurisdiction in respect of a cause of action arising in that State. The demarcation between the Union Government and the State Government is, therefore, not territorial but only subjectwise and both the Governments function within the State. With this background it is easy to perceive that "any Government" must include the Union Government, for two State Governments cannot administer the same State, though for convenience or as a temporary arrangement, the offices of one State may

be located in another State. Then it is asked why the Article confers power to issue writs against any Government only in appropriate cases. There are two answers to this question. Till the Constitution was framed there was no power in a High Court to issue a writ even against the Provincial Government. The Constitution conferred for the first time a power on the High Court to issue a writ not only against the State Government but also the Union Government. As the Union Government has sway over not only the State in question but beyond it, it became necessary to administer a caution that a writ can only be issued in appropriate cases. The High Court's jurisdiction is limited in the matter of issuing writs against the Union Government, for it cannot issue writs against it in respect of a cause of action beyond its territorial jurisdiction. There may also be a case where the secretariat of one of the State Governments is located in another State temporarily. In such a case also the High Court of the latter State cannot issue writs against that State Government as it is not appropriate to issue such writs, for the cause of action accrues within the former State.

I have, therefore, no doubt that the words "any Government" must necessarily take in the Union Government.

Much of the argument turns upon the words "within those territories". It is said that the Union Government is not within the territories of the State, for its headquarters are in Delhi. The Article does not use the word "headquarters", "resident" or "location". The dictionary meaning of the word "within" is "inside of, not out of or beyond". The connotation of the words takes colour from the context in which they are used. A person may be said to be within a territory if he resides therein. He may also be within a territory if he temporarily enters the said territory or is in the course of passing through the territory. Any authority may be in a territory if its office is located therein. It may also be within a territory if it exercise its powers therein and if it can make orders to bind persons or properties therein. So too a Government may be within a State if it has a legal situs in that State. It may also be said to be within a State if it administers the State, though for convenience some of its executive authorities are residing outside the territory. We must give such meaning to these words as would help the working of the Constitution rather than retard it. To put it differently, can it be said that the Union Government is within a particular State ? Union Government in the present context means the executive branch of the Government. Where is it located ? To answer this question it is necessary to consider what is "Union Government". The Constitution in Part V under the heading "The Union" deals with separate subjects, namely, the executive, the Parliament and the Union judiciary. Under Art. 53, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 74 provides for a council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. By Art. 77, all executive action of the Government of India shall be expressed to be taken in the name of the President; and cl. (3) thereof authorizes the President to make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business. Article 73 says that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exerciseable by the Government of India by virtue of any treaty or agreement. The Constitution nowhere fixes the seat of the Union Government or even that of the President. Shortly stated, the Union Government is the President acting on the advise of the Ministers directly or through officers subordinate to him in accordance with the Constitution and the jurisdiction of the said Government extends, so far as is relevant to the present purpose, to matters in respect of which Parliament has power to make laws. The question that immediately arises is, what is the situs of such a Government ? There is no statutory situs. For convenience of administration, the officers of such Government may stay at one place, or they may be distributed in

different places; the President may resides in one place, the Prime Minister in another, the Ministers in a third place and the officers through whom the President exercises his powers in a place different from the rest. What happens when the Secretariat remains in New Delhi and the President resides for some months in a year in, say, Hyderabad ? Contrary-wise, what would be the position if the President stays in New Delhi and the entire or part of the Secretariat or some of the Ministers stay in Hyderabad ? It is, therefore, not possible to apply the test of residence or location in the absence of any statutory situs. The Union Government has to no fixed legal abode; it is present throughout the territories over which it exercise jurisdiction and in respect whereof it can make effective and binding orders in the field allotted to it by the Constitution. The constitutional situs of the Union Government is the entire territories of the Union and it is "within" the territories of India and, therefore, within the territories of every State.

Let us look at the problem from another standpoint. Under Art. 300 of the Constitution, the Government of India may sue or be sued by the name of the Union of India. The word "sued" is used in a general sense and cannot be narrowly construed in the Constitution as to comprehend only action by way of filing a suit in a civil court. According to Webster, it means to seek justice or right by legal process. Generally speaking, it includes any action taken in a court. The practice followed in the various High Courts and the Supreme Court is also consistent with the wide meaning attributed to it, for writs are filed against the Government of India only in the name of the Union of India. Union of India is a juristic person and it is impossible to predicate its residence in a particular place in the Union. Its presence synchronizes with the limits of the Union territories. That is the reason why that Order XXVII, rule 3, Code of Civil Procedure, says that in suits by or against the Government instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79. Section 79 of the Civil Procedure Code is in terms analogous to Art. 300 of the Constitution, and under that section,

> "In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be -
>
> (a) in the case of a suit by or against the Central Government, the Union of India, and
>
> (b) in the case of a suit by or against a State Government, the State."

As the Union of India has no statutory situs, Order XXVII, rule 3, Code of Civil Procedure, exempts its place of residence being given in the plaint or the written statement, as the case may be. The suit by or against the Union Government shall be filed in a court which has jurisdiction to entertain such a suit, having regard to the provisions of ss. 15 to 20 of the said Code. On the same analogy. It may be held that the Union of India has no legal situs in a particular place and a writ petition can be filed against it in a place within the jurisdiction of the High Court wherein the cause of action accrues.

It is said that the limits of the power to issue a writ are implicit in the nature of a particular writ. What is the nature of the principal writs, namely, habeas corpus, mandamus, prohibition, quo warranto and certiorari ? The writ of habeas corpus "is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody". The writ of mandamus "is, in form, a command directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty." An order of prohibition is an order directed to an inferior tribunal forbidding it to continue with the

proceedings pending therein. An information in the nature of a quo warranto lies against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim. A certiorari is directed to an authority "requiring the record of the proceedings in some cause or matter to be transmitted into the High Court to be dealt with there." (See Halsbury's Laws of England, Vol. II, 3rd edition).

It was asked how could the liberty of a subject be secured, the command be issued, the proceedings of an injury be prohibited, the credentials of a person to hold office be questioned, the records of a proceeding be directed to be transmitted to the High Court, if the authority concerned was located, or the person directed resided, outside the territorial jurisdiction of the High Court ? It was also asked how, if the said authority, or person, disobeyed the order of the High Court, it could be enforced against the said authority or person. On the parity of the same reasoning the argument proceeded that, as the officers acting for the Government of India reside in Delhi, a writ which would become brutum fulmen could not be issued by the High Court.

The questions so posed are based on a misapprehension of the relevant provisions of the Constitution. They also mix up the nature of the writs with the procedure in dealing with the writs or enforcing the orders made therein. As I have already indicated, the Article confers a power on the High Court to issue writs against the Union Government. If the said Government is "within the State", is it an answer to it that an officer of the Government dealing with a particular paper or papers is residing outside the territorial jurisdiction of the High Court ? If the Union Government is bound by the order of the High Court, the question of service of notice on a particular officer acting for the Government or to enforce an order against him is a matter pertaining to the realm of procedure and appropriate rules can be framed by the High Court or the requisite law made by the Parliament. If the Union Government disobeys the order it would certainly be liable for contempt of court under the Contempt of Courts Act, 1952. Even if the contemner happens to be an officer of the said Government residing outside the territorial limits of the High Court, the High Court has ample power to reach him under section 5 of the said Act.

The analogy drawn from English law is rather misleading. England is comparatively a small country and it has only one Government functioning throughout the State. The problem that has arisen now could not have arisen in England, for the jurisdiction of the Queen's Bench Division of the High Court extends throughout England. In England the manner of the exercise of the jurisdiction was also regulated by a procedure brimming with technicalities, but later on simplified by statute. The framers of our Constitution therefore designedly used the words "in the nature of" indicating that they were not incorporating in the Constitution the entire procedure followed in England, for the procedure will have to be evolved having regard to the federal structure of our Government. How can the procedural law of England in the matter of writs be bodily lifted and implanted in India ? This Court shall have to put a reasonable construction on the words without being unduly weighed down by the historical background of these writs and construe the Article in such a way, if legally permissible, to carry out the intention of the Constitution-makers. That apart, Article 226 of the Constitution is not confined to the prerogative writs in vogue in England. The Article enables the appropriate High Court to issue also directions or orders, and there is no reason why the High Court could not, in an appropriate case, give a suitable direction to, or make a proper order on, the Union Government. Such directions or orders are certainly free from the procedural technicalities of the said writs.

I shall now notice briefly the decisions cited at the Bar. The first is the decision of this Court in Election Commission, India v. Saka Venkata Rao ([1953] S.C.R. 1144.). There the Governor of

Madras referred to the Election Commission, which had its offices permanently located in New Delhi, the question whether the respondent was disqualified and could be allowed to sit and vote in the Assembly. The respondent thereupon applied to the High Court of Madras under Art. 226 of the Constitution for a writ restraining the Election Commission from enquiring into his alleged disqualification for membership of the Assembly. This Court held that the power of the High Court to issue writs under Art. 226 of the Constitution was subject to the two-fold limitation : (i) that such writs cannot run beyond the territories subject to its jurisdiction; and (ii) that the person or authority to whom the High Court is empowered to issue writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction. On that basis the writ petition was dismissed. At the outset it may be noticed that there is one obvious difference between that case and the present one. In that case the respondent was not the Union of India but an authority which could have and had its location in a place outside the Madras State. The present case satisfies both the conditions : the writ does not run beyond the territorial jurisdiction of the High Court, as the Union Government must be deemed to be "within" the said territories, the second condition is also satisfied, as the Union Government, being within the State, is also amenable to its jurisdiction.

The next case relied upon by the learned Solicitor General is a converse one. It is the decision of this Court in K. S. Rashid & Sons v. The Income-tax Investigation Commission ([1954] S.C.R. 738.). In that case the Income-tax Investigation Commission located in Delhi was investigating the case of the petitioners under section 5 of the Taxation on Income (Investigation Commission) Act, 1947, although the petitioners were assessees belonging to Uttar Pradesh and their original assessment were made by the Income-tax authorities of that State. It was contended that the Punjab High Court had no jurisdiction to issue a writ under Art. 226 of the Constitution to the said Commission. This Court, after restating the two limitations on the power of the High Court to issue a writ, held that the Commission was amenable to the jurisdiction of the Punjab High Court and, therefore, the Punjab High Court had jurisdiction to issue the writ. This decision also deals with a case of statutory authority located in Delhi and it has no application to the case of the Union Government. The question whether the principles that apply to the Government of India would equally apply to statutory authorities situate in one State but exercising jurisdiction in another, does not arise for consideration in this case; though, as I have already expressed, I am prima facie of the view that there is no reason why they should not.

Now coming to the decision of the High Courts, there is a clear enunciation of the relevant principles in Maqbul-Un-Nissa v. Union of India (I.L.R. [1953] 2 All. 289.). The Full Bench of the Allahabad High Court directly decided the point now raised before us. The importance of the decision lies in the fact that the learned Judges approached the problem without being oppressed by the decision of this Court in Saka Venkata Rao's case ([1953] S.C.R. 1144.), which was decided only subsequent to that decision. After considering the relevant Articles of the Constitution, Sapru, J., speaking for the Full Bench, observed at pp. 293-294 thus :

> "The analogy between a government and a corporation or a joint stock company which has its domicile in the place where its head office is situate is misleading. To hold that the jurisdiction of this Court does not extend to the Union Government as it has its capital at Delhi and must be deemed to have its domicile at Delhi would be to place the Union Government not only in respect of the rights conceded in Part III but for any other purpose also beyond the jurisdiction of all State High Courts except the Punjab High Court."

The learned Judge proceeded to state at p. 294 -

> "In our opinion, the jurisdiction of this Court to intervene under Article 226 depends not upon where the Headquarters or the Capital of the Government is situate but upon the fact of the effect of the act done by Government, whether Union or State being within the territorial limits of this Courts."

Adverting to the words "any Government" in Art. 226, the learned Judge observed at p. 292 thus :

> "They indicate that the founding fathers knew that more than one government would function within the same territory."

I entirely agree with the observations of the learned Judge, for they not only correctly construe the provisions of Art. 226 but also give effect to the intention of the Constitution-makers.

After the decision of this Court in Saka Venkata Rao's case ([1953] S.C.R. 1144.) the High Court of Madhya Pradesh considered the question in Surajmal v. State of M. P. (A.I.R. 1958 M.P. 103.) There, the Central Government rejected an application for a mining lease and the order rejecting the application was communicated to the applicant who was residing in the State of Madhya Pradesh. It was held by the High Court that the writ asked for could not be issued so as to bind the Central Government because, "(a) the Central Government could not be deemed to be permanently located or normally carrying on its business within the jurisdiction of the High Court; (b) the record of the case which the Central Government decided was not before the High Court and could not be made available from any legal custody within the State; (c) the order of the State Government must be deemed to have merged in that of the Central Government; (d) the order of the State Government could not be touched unless the order of the Central Government could be brought before the High Court and quashed." We are concerned here with the first and second grounds. The learned Chief Justice, who delivered the judgment on behalf of the Full Bench, applied the principle of the decision of this Court in Saka Venkata Rao's case ([1953] S.C.R. 1144.) to the Union Government; and for the reasons already mentioned I am of opinion that the decision is not applicable to the case of the Union Government. The second reason in effect places the procedure on a higher pedestal than the substantive law. It is true that in a writ of certiorari the records would be called for; but, if once it is held that the Union Government is within the State within the meaning of Art. 226 of the Constitution, I do not think why the High Court in exercise of its constitutional power cannot direct the Union Government to bring the records wherever its officers might have kept them. This second ground is really corollary to the first, viz., that the Union Government is not within the territorial jurisdiction of the High Court concerned. The Bombay High Court in Radheshyam Makhanlal v. The Union of India (A.I.R. 1960 Bom. 353.) also held that a writ cannot issue against the Union Government whose office is located outside the territorial jurisdiction of the High Court. Shah, J., applying the principle of the decision in Saka Venkata Rao's case ([1953] S.C.R. 1144.) to the Union Government held that as the office of the Union Government was not located within the State of Bombay, the Bombay High Court could not issue a writ to the Union Government. But S. T. Desai, J., was not willing to go so far, and he based his conclusion on a narrower ground, namely, that even if the writ was issued it could not be enforced. I have already pointed out that both the grounds are not tenable. The Union Government is within the State of Bombay in so far as it exercise its powers in that State and the High Court has got a constitutional power to issue writs to the Union Government and, therefore, their enforceability does not depend upon its officers residing in a particular place.

The foregoing discussion may be summed up in the following propositions : (1) The power of the High Court under Art. 226 of the Constitution is of the widest amplitude and it is not confined only to issuing of writs in the nature of habeas corpus, etc., for it can also issue directions or orders against any person or authority, including in appropriate cases any Government. (2) The intention of the framers of the Constitution is clear, and they used in the Article words "any Government" which in their ordinary significance must include the Union Government. (3) The High Court can issue a writ to run throughout the territories in relation to which it exercises jurisdiction and to the person or authority or Government within the said territories. (4) The Union Government has no constitutional situs in a particular place, but it exercise its executive powers in respect of matters to which Parliament has power to make laws and the power in this regard is exercisable throughout India; the Union Government must, therefore, be deemed in law to have functional existence throughout India. (5) Where by exercise of its powers the Union Government makes an order infringing the legal right or interest of a person residing within the territories in relation to which a particular High Court exercises jurisdiction, that High Court can issue a writ to the Union Government, for in law it must be deemed to be "within" that State also. (6) The High Court by issuing a writ against the Union Government is not travelling beyond its territorial jurisdiction, as the order is issued against the said Government "within" the State. (7) The fact that for the sake of convenience a particular officer of the said Government issuing an order stays outside the territorial limits of the High Court is not of any relevance, for it is the Union Government that will have to produce the record or carry out the order, as the case may be. (8) The orders issued by the High Court can certainly be enforced against the Union Government, as it is amenable to its jurisdiction, and if they are disobeyed it will be liable to contempt. (9) Even if the Officers physically reside outside its territorial jurisdiction, the High Court can always reach them under the Contempt of Courts Act, if they choose to disobey the orders validly passed against the Union Government which cannot easily by visualized or ordinarily be expected. (10) The difficulties in communicating the orders pertain to the rules of procedure and adequate and appropriate rules can be made for communicating the same to the Central Government or its officers.

For the aforesaid reasons, I hold that Art. 32(2A) of the Constitution enables the High Court of Jammu & Kashmir to issue the writ to the Union Government in respect of the act done by it infringing the fundamental rights of the parties in that State.

In the result, I allow the appeal, set aside the order of the High Court and direct it to dispose of the matter in accordance with law. The appellant will have his costs.

DAS GUPTA, J. -

I have had the advantage of reading the judgments prepared by my Lord the Chief Justice and Mr. Justice Subba Rao. I agree with the conclusions reached by the Chief Justice that the appeal should be dismissed. As, however, I have reached that conclusion by a slightly different process of reasoning I propose to indicate those reasons briefly.

The facts have been fully stated in the judgment of My Lord the Chief Justice and it is not necessary to repeat them. It is sufficient to state that the appellant filed an application to the High Court of Jammu & Kashmir under Article 32(2A) of the Constitution for the issue of an appropriate writ, order or directions restraining the Union of India and the State of Jammu & Kashmir from enforcing an order conveyed in the Government of India's letter dated July 31, 1954, whereby the Government of India ordered the premature compulsory retirement of the appellant with effect from August 12, 1954. A preliminary objection was raised on behalf of the respondents that Government of India is

not a Government within the territorial limits of the jurisdiction of the Jammu and Kashmir High Court and so the application was not maintainable. The High Court accepted this objection as valid and dismissed the application. The sole question in controversy in appeal is whether the High Court had jurisdiction, on the facts and circumstances of this case, to issue a writ to the Government of India under Art. 32(2A) of the Constitution.

Article 32(2A) of the Constitution under which the appellant asked the High Court for relief is in the following words :-

> "Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercise jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or 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 this Part."

Except for the fact that "the High Court" in this Article means only the High Court of the State of Jammu & Kashmir, while Art. 226 of the Constitution refers to all other High Courts and the further fact that power granted by this Article is for the enforcement only of the rights conferred by Part III of the Constitution while Art. 226 gives power to the High Courts in the Union for the enforcement not only of the rights conferred by Part III but for any other purpose, the provisions of the two articles are exactly the same. Power is given to the High Court to give relief in certain matters by issuing appropriate writs and orders to (1) any person; (2) any authority other than the Government and (3) any Government. The exercise of this power is subject to the existence of the condition precedent that the person or the Government or the authority other than the Government must be "within the territories in relation to which the High Court exercises jurisdiction". A special limitation in respect of the issue of writs or orders to a Government is introduced by the words "in appropriate cases" before the words "any Government". Leaving for later consideration the effect of the words "in appropriate cases" we have first to examine the question : when is a Government within the territories under the jurisdiction of a particular High Court ? On behalf of the first respondent, the Union of India, it is urged that to be within the territories under the jurisdiction of a High Court the Government must be located within those territories. It is pointed out that "any person" to be within any specified territories has to be present within those territories; an authority other than Government has also, before it can be said to be within any particular territories, a physical existence within those territories by having its office therein. The same requirement of location within the particular territories, it is argued, should apply to the case of Governments. The argument is no doubt attractive and at first sight even plausible. On closer examination however it becomes evident that this argument oversimplifies the problem by slurring over the fallacious assumption that a Government has a location in the same way as any person or any authority other than Government. Has the Government any location in a similar sense-in the same way as a person has a location at any point of time by being present at a particular place or an authority other than the Government can be said to be located at the place where its office is situated ? There is no doubt that when we think of a Government, whether of the States or of the Union we are thinking of the executive organ of the State. The executive power of the Union is under Art. 53 vested in the President and is to be exercised by him. The executive power of the States is vested in the Governors of the States and has to be exercised by them. Does it follow however that the Government of India is located at the place where the President resides and similarly the Government of each State is located at the place where the Governor resides ? It has to be noticed that while the Constitution contains specific provisions in Art. 130 as to where the Supreme Court

shall sit, no such provision is made as to where the President of India shall reside or exercise his executive power vested in him. Art. 231 of the Constitution speaks of a principal seat for the High Court of each State. We search in vain however for any mention of any principal seat "for the President of India or the Governors of the States". The fact that the President of India has a special place of residence, the Rashtrapati Bhawan in Delhi and the Governors of States have also special places of residence at some places in the State known as Raj Bhavan, is apt to make us forget that the Constitution does not provide for any place of residence for the President or Governors. There is nothing to prevent the President of India from having more than one permanent place of residence within the Union. If this happens and places of residence are provided for the President of India in, say, Bombay, Calcutta and Madras in addition to the residence at Delhi, can it be said that the Government of India is located in Delhi when the President of India resides in Delhi, it goes to Calcutta when he resides in Calcutta, it goes to Bombay when the President resides in Bombay and to Madras when the President goes and resides in Madras ? This may seem at first sight a fantastic illustration; but when we remember that in fact in the days of British rule, the Viceroy had a permanent place of residence at Simla for part of the year and another permanent place of residence at Calcutta for part of the year before 1911 and after 1911 one permanent place of residence in Delhi and another in Simla, it is easy to see that what has been said above by way of illustration is by no means improbable. If therefore a Government is to be held to be located at the place where the head of the State - the President of India in the case of the Government of India and the Governor in the case of each State - resides, it may well become impossible to speak of any particular place as the place where the Government is located throughout the year. This may not affect the question of any State Government being within the territories of the High Court of the State. For whatever place the Governor may have for his residence is bound to be within the territories of the State. The position will however become wholly uncertain and difficult as regards the Government of India being within the territorial jurisdiction of any particular High Court. For part of the year it may be, if the residence of the President be the criterion for ascertaining the location of the Government, that the Government of India will be within the territories of one High Court and for other parts of the year in another High Court. It will be wholly unreasonable therefore to accept the test of residence of the President of India for deciding where the Government of India is located.

Finding the test of the President's residence illusory, one may try to say that the Government of India or of a State is situated at the place where the offices of the Ministry are situated. Under Art. 77 the President allocates the business of the Government of India among the Ministers while under Art. 166 the Governor of a State allocates the business of the Government of a State-except business with respect to which the Governor is required to act in his discretion-among the Ministers of the State. If therefore it was correct to say that all the Ministers of the Government of India had to perform their functions in respect of the business allocated to them at one particular place, it might be reasonable to say that the Government of India is located at that place. Similarly if all the Ministers of a State had to perform their functions in respect of the business allocated to them at one particular place the Government of the State might well be said to be located at that place. The Constitution however contains no provision that all the Ministers of a State shall perform their functions at one particular place in the State nor that the Ministers of the Union will perform their functions at one particular place in the State. Situations may arise not only in an emergency, but even in normal times, when some Ministers of the Government may find it necessary and desirable to dispose of the business allocated to them at places different from where the rest of the Ministers are doing so. The rehabilitation of refugees from Pakistan is part of the business of the Government of India and for the proper performance of this business there is a Ministry of Rehabilitation for Refugees. It is well-known that the Minister in this Ministry has to perform a great portion of his

business at Calcutta in West Bengal and stays there for a considerable part of the year. Many of the offices of this Ministry are situated in Calcutta. What is true of this Ministry, may happen as regards other Ministries also. Special circumstances may require that some portion of the business of the Ministry of Commerce be performed at places like Bombay, Calcutta or Madras in preference to Delhi, and if this happens the Minister to whom the business of Government of India in respect of commerce has been allocated will be transacting his business at these places instead of at Delhi. If public interest requires that the greater portion of the business of the Ministry of Defence should for reasons of security or other reasons be carried on at some place away from Delhi the Defence Minister will have to transact its business at that place. It is clear therefore that while at any particular point of time it may be possible to speak of any Ministry of the Government of India being located at a particular place, the Government of India as a whole may not necessarily be located at that place. In my opinion, it is therefore neither correct nor appropriate to speak of location of any Government. Nor is it possible to find any other satisfactory test for ascertaining the location of the Government of India.

In Election Commission v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.) this Court held that before a writ under Art. 226 could issue to an authority, the authority must be located within the territories under the jurisdiction of the High Court. There however the Court was not concerned with the case of any Government, and had no occasion to consider whether a Government could be said to have a location. The decision in that case and in the later case of K. S. Rashid and Son v. The Income-tax Investigation Commission, etc., ([1954] S.C.R. 738.) does not therefore bind us to hold that a Government has a location in the same way as an authority like an Election Commission or an Income-tax Investigation Commission. It appears reasonable therefore to hold that all that is required to satisfy the condition of a Government being within the territories under the jurisdiction of a High Court is that the Government must be functioning within those territories. The Government of India functions throughout the territory of India. The conclusion cannot therefore be resisted that the Government of India is within the territories under the jurisdiction of every High Court including the High Court of Jammu and Kashmir.

The use of the words "any Government" appears to me to be an additional reason for thinking that the Government of India is within the territories under the jurisdiction of the Jammu & Kashmir High Court."Any Government" in the context cannot but mean every Government. If the location test were to be applied the only Government within the territories of the State of Jammu and Kashmir would be the Government of Jammu and Kashmir. It would be meaningless then to give the High Court the power to give relief against "any Government" within its territories. These words "any Government" were used because the Constitution- makers intended that the High Court shall have power to give relief against the Government of India also.

But, contends the respondent, that will produce an intolerable position which the Constitution-makers could not have contemplated. The result of the Government of India being within the territories of every High Court in India will, it is said, be that the Government of India would be subjected to writs and orders of every High Court in India. A person seeking relief against the Government of India will naturally choose the High Court which is most convenient to him and so the Government of India may have to face applications for relief as against the same order affecting a number of persons in all the different High Courts in India. If a position of such inconvenience to the Government of India, though of great convenience to the persons seeking relief, did in fact result from the words used by the Constitution-makers, I for one, would refuse to shrink from the proper interpretation of the words merely to help the Government. I do not however think that that result follows. For, on a proper reading of the words "in appropriate cases", it seems to me that there will

be, for every act or omission in respect of which relief can be claimed, only one High Court that can exercise jurisdiction.

It has first to be noticed that the limitation introduced by the use of these words "in appropriate cases" has not been placed in respect of issue of writs to persons and to authorities other than government. It has been suggested that the effect of these words is that in issuing writs against any Government the High Court has not got the same freedom as it has when issuing writs against any person or authority other than Government and that when relief is asked against a Government the High Court has to take special care to see that writs are not issued indiscriminately but only in proper cases. I have no hesitation in rejecting this suggestion. It cannot be seriously contemplated for a moment that the Constitution-makers intended to lay down different standards for the courts when the relief is asked for against the Government from when the relief is asked for against other authorities. In every case where relief under Art. 226 is sought the High Court has the duty to exercise its discretion whether relief should be given or not. It is equally clear that in exercising such discretion the High Court will give relief only in proper cases and not in cases where the relief should not be granted.

Why then were these words "in appropriate cases" used at all ? It seems to me that the Constitution-makers being conscious of the difficulties that would arise if all the High Courts in the country were given jurisdiction to issue writs against the Central Government on the ground that the Central Government was functioning within its territories wanted to give such jurisdiction only to that High Court where the act or omission in respect of which relief was sought had taken place. In every case where relief is sought under Art. 226 it would be possible to ascertain the place where the act complained of was performed or when the relief is sought against an omission, the place where the act ought to have been performed. Once this place is ascertained the High Court which exercises jurisdiction over that place is the only High Court which has jurisdiction to give relief under Art. 226. That, in my view, is the necessary result of the words "in appropriate cases".

On behalf of the appellant it was contended on the authority of the decision of the Privy Council in Ryots of Garabandho v. Zamindar of Parlakimedi ((1943) L.R. 70 I.A. 129.) that all that is necessary to give jurisdiction to a High Court to act under Art. 226 is that a part of the cause of action has arisen within the territories in relation to which it exercises jurisdiction. The question whether the cause of action attracts jurisdiction for relief under Art. 226 of the Constitution as in the case of suits was considered by this Court in Saka Venkata Subba Rao's Case ([1953] S.C.R. 1144.) and the answer given was in the negative. Referring to the decision of the Privy Council in Parlakimedi's Case ((1943) L.R. 70 I.A. 129.) this Court pointed out that the decision did not turn on the construction of a statutory provision in-scope, purpose or wording to Art. 226 of the Constitution, and is not of much assistance in the construction of that article. Delivering the judgment of the Court Patanjali Sastri C.J. also observed :-

> "The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Art. 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction."

This decision is binding on us, and I may respectfully and that I find no reason to doubt its correctness.

It is true that in that case the Court had to consider the question of jurisdiction in respect of an authority other than Government. It is difficult to see however why if cause of action could not attract jurisdiction against persons and authorities other than Government it would attract jurisdiction as against a Government. It seems to me clear that the principle of basing jurisdiction on cause of action has not been introduced in the Constitution under Art. 226 or Art. 32(2A) of the Constitution.

It may seem at first sight that to hold that the High Court within whose jurisdiction the action or omission, complained of took place will have jurisdiction, is in effect to accept the accrual of cause of action as the basis of jurisdiction. This however is not correct. The High Court within the jurisdiction of which the act or omission takes place, has jurisdiction, not because a part of the cause of action arose there, but in consequence of the use of the words "in appropriate cases".

The several cases in the High Court in which the question now before us has been considered have been referred to in the majority judgment and also in the judgment of Mr. Justice Subba Rao and no useful purpose would be served in discussing them over again.

For the reasons discussed above I have reached the conclusion that while the Government of India is within the territories of every High Court in India the only High Court which has jurisdiction to issue a writ or order or directions under Art. 226 or Art. 32(2A) against it is the one within the territories under which the act or omission against which relief was sought took place.

In the present case the act against which the relief has been sought was clearly performed at Delhi which is within the territories under the jurisdiction of the Punjab High Court and the Jammu and Kashmir High Court cannot therefore exercise its jurisdiction under Art. 226.

In the result, I agree with my Lord the Chief Justice that the appeal should be dismissed with costs.

BY COURT.

In accordance with the opinion of the majority of the Court, this appeal is dismissed with costs.

Appeal dismissed.

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