

State of Bihar

Vs

Union of India and Another

C.M.Ps. Nos. 512-513, 5754-175, 578-679, 581-582, 583-584, 587-588, 609-610 and 1466-1467 of 1969, O.S. Nos. 3 of 1967 and 1 to 3 and 9 1968

(CJI M. Hidayatullah, J. C. Shah, V. Ramaswami-I, G.K. Mitter, A.N. Grover JJ)

19.09.1969

JUDGMENT

MITTER, J. -

1. This group of applications can be divided into two parts. The object of one group is to get the plaints in nine suits filed in this Court rejected while that of the other group is to stay the hearing of the suits. The suits are all of the same pattern in each of which the State of Bihar figures as the plaintiff. The Union of India is the first defendant in all of them while the second defendant in six is Hindustan Steel Ltd. and in three others the Indian Iron and Steel Company Ltd. The cause of action in all the suits is of the same nature. Briefly stated the plaintiff's case in all the suits is that "due to the negligence or deliberate action of the servants of both defendants there was a short delivery of iron and steel material ordered by the plaintiff to various sites in the State of Bihar in connection with the construction work of the Gandak Project". As the goods were in all cases booked by rail for dispatch to the project site, both defendants are sought to be made liable for short delivery, the first defendant as the owner of the railways and the second defendant as the consignor of the goods under contract with the State of Bihar for supply of the material. In each case there is a prayer for a decree for a specific sum of money to be passed either against the first defendant "or alternatively against the second defendant". Normally all suits of this Kind are instituted all over India in different courts beginning from the courts of the lowest jurisdiction to the High Court exercising original jurisdiction. The only distinguishing feature of this series of suits from others of every day occurrence in different courts is that a State is the plaintiff in each case. In all suits of a similar nature which are filed in courts other than this Court, a notice under Section 80 of the Code of Civil Procedure is an essential pre-requisite. No such notice has been served in any of these cases. The applications were set down for trial of three issues sought to be raised by way of preliminary issues. They are as follows :-

1. Whether the alleged cause or cause of action in this suit are within the scope of Article 131 of the Constitution ?
2. Whether this suit is within the scope of Article 131 of the Constitution in view of a non-state, viz., defendant No. 2, having been made a party to the suit ?
3. Whether the suit is barred by the provisions of Section 80 C.P.C. for want of notice to defendant No. 1 ?

2. The question before this Court is, whether the dispute in these cases is within the purview of that

article (quoted in the foot-note). It must be noted that the article confer jurisdiction on this Court to the exclusion of all other courts in any dispute between the parties mentioned therein. There is however an over-riding provision that such jurisdiction is subject to the provisions of the Constitution and our attention was drawn to a few of these provisions where the disputes specified are to be adjudicated upon in entirely different manner. The most important feature of Article 131 is that it makes no mention of any party other than the Government of India or any one or more of the States who can be arrayed as a disputant. The other distinguishing feature is that the Court is not required to adjudicate upon the disputes in exactly the same way as ordinary courts of law are normally called upon to do for upholding the rights of the parties and enforcement of its orders and decisions. The words in the article "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends" are words of limitation on the exercise of that jurisdiction. These words indicate that the disputes should be in respect of legal rights and not disputes of a political character. Moreover this Court is only concerned to give its decision on questions of law or of fact on which the existence or extent of a legal right claimed depends. Once the Court comes to its conclusion on the cases presented by any disputants and gives its adjudication on the facts or the points of law raised, the function of this Court under Article 131 is over. Article 131 does not prescribe that a suit must be filed in the Supreme Court for complete adjudication of the dispute envisaged therein or the passing of a decree capable of execution in the ordinary way as decree of other courts are. It is open to an aggrieved party to present a petition to this Court containing a full statement of the relevant facts and praying for the declaration of its rights as against the other disputants. Once that is done, the function of this Court under Article 131 is at an end. The framers of the Constitution do not appear to have contemplated the contingency of a party to an adjudication by this Court under Article 131 not complying with the declaration made. Our law is not without instances where a court may be called upon to make an adjudication of the rights of the parties to an agreement or an award simpliciter on the basis of such rights without passing a decree. A case in point is Section 33 of the Indian Arbitration Act. Further, all adjudications by a court of law even under decree in a suit need not necessarily be capable of enforcement by way of execution. Section 42 of the Specific Relief Act, 1877 now replaced by Section 34 of the new Act enables a person entitled to any legal character or to any right as to any property to institute a suit against any person denying or interested to deny his title to such character or right without asking for any further relief subject to the limitations prescribed by the section. We need not however lay much stress on this aspect of the case as we are only concerned to find out whether the suits can be entertained by this Court.

3. Clauses (a), (b) and (c) of the article specify the parties who can appear as disputants before this court. Under clause (a) it is the Government of India and one or more States; under clause (b) it is the Government of India and one or more States on one side and one or more other States on the other, while under clause (c) the parties can be two or more States without the Government of India being involved in the dispute. The specification of the parties is not of an inclusive kind. The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or a corporation figuring as disputant either along or even along with a State or with the Government of India in the category of a party to the dispute. There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other. Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State or the Government of India. The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131.

4. Like many of the provisions of our Constitution this article had a fore-runner in the Government of India Act, 1935. Section 204 of that Act provided for conferment of original jurisdiction of the Federal Court of India. That section ran as follows :

"(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federal States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or existent of a legal right depends :

Provided that the said jurisdiction shall not extend to -

(a) a dispute to which a State is a party, unless the dispute -

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to made laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment."

Clause (a) of the proviso to the section defined the categories of disputes which might be raised before the Federal court while clause (b) permitted the parties to provide for the exclusion of such jurisdiction in the agreement in respect whereof the dispute arose. It will be noted that the scope of the dispute under sub-clause (i) of clause (a) was limited to the interpretation of the Government of India Act or Order in Council or to the extent of legislative or executive authority vested in the Federation while under sub-clause (ii) the dispute had to relate to the administration in a State of a law of the Federal Legislature or otherwise concerned with some matter relating to the legislative competency of the said Legislature. Under sub-clause (iii) the dispute could only be one under an agreement made after the establishment of the Federation between the State and the Federation or a Province subject to the condition therein specified. A dispute of the nature which is raised in this series of a case was outside the ken of Section 204 of the Government of India Act.

5. It may not be out of place to trace the origin of Section 204. The proceedings of the Joint Committee on Indian Constitutional Reform, Session 1933-34, Vol. I, Part II, Paragraph 309 read as follows :

"A Federal Court is an essential elements in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation. The establishment of a Federal Court is part of the White Paper Scheme, and we approve generally the proposals with regard to it. We have, however, certain comments to make upon them, which we set out below."

The report of the Joint Committee on Indian Constitutional Reform, Session 1933-34, Vol. I, Part I contained two paragraphs bearing on this matter. Paragraph 322 was a reproduction of paragraph 309 quoted above. Paragraph 324 ran as follows :

"324. It is proposed that the Federal Court shall have an original jurisdiction in -

(i) any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are (a) the Federation and either a Province or a State, or (b) two Provinces or two States, or a province and a State;

(ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Federal Unit or between Federal Units, unless the agreement otherwise provides.

This jurisdiction is to be an exclusive one, and in our opinion rightly so, since it would be altogether inappropriate if proceedings could be taken by one Unit of the Federation against another in the Courts of either of them. For that reason we think that, where the parties are Units of the Federation or the Federation itself, the jurisdiction ought to include not only the interpretation of the Constitution Act, but also the interpretation of Federal laws, by which we meant any laws enacted by the Federal Legislature."

It is clear from the above that the framers of the Government of India Act 1935 thought that the Federal Court should be the tribunal for the determination of disputes between the constituent units of the Federation and it sought to lay down the exact nature of the dispute which that Court could be called upon to examine and decide.

6. The Constitutional Proposals of the Sapru Committee show that they had the said report and the said proceedings of the Committee in their mind when they advocated the strengthening of the position of the Federal Court in India and widening its jurisdiction both on the original side and the appellate side but maintaining at the same time that it should "act as an interpreter and guardian of the Constitution, and as a tribunal for the determination of disputes between the constituent units of the Federation."

7. It is also to be noted under Section 204 of the Government of India Act, 1935 the Federal Court's jurisdiction was limited to the pronouncement of a declaratory judgment.

8. Article 109 of the Draft Constitution of India prepared by the Constituent Assembly was in the same terms as Article 131 of the Constitution as it came into force in 1950. The proviso to the original article was substituted by the new proviso in the year 1956 as a result of the Seventh Amendment by reason of the abolition of the part B States and the changes necessitated thereby.

Reference was made at the Bar in this connection to the Debates in the Constituent Assembly, Vol. IV, 13th July, 1947 to 21st July, 1947. They however do not throw any additional light.

9. So far as the proceedings of the Joint Committee on Indian Constitutional Reform and the report of the Committee on the same are concerned, they make it clear that the object of conferring exclusive original jurisdiction on the Federal Court was that the disputes of the kinds specified between the Federation and the Provinces as the constituent units of the Federation, should not be left to be decided by courts of law a particular unit but be adjudicated upon only by the highest tribunal in the land which would be beyond the influence of any one constituent unit.

10. Although Article 131 does not defines the scope of the disputes which this Court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find it necessary to do so this much is certain that the legal right which is the subject of dispute must arise in the context of the constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India.

11. There is no decision either of the Federal Court of India or of this Court which throws much light on the question before us. Reference was made at the Bar to the case of *The United Provinces v. The Governor-General in Council* (1939 FCR 124) where the United Provinces filed a suit against the Governor-General in Council for a declaration that certain provisions of the Cantonments Act, 1924, were ultra vires the then Indian Legislature. A claim was also made that all fines imposed and realised by criminal courts for offences committed within the cantonment areas in the United Provinces ought to be credited to the provincial revenues and that the plaintiffs were entitled to recover and adjust all such sums wrongly credited to Cantonment Funds since 1924. The Governor-General in Council contended inter alia that the dispute was not one which was justiciable before the Federal Court. On the question of jurisdiction, Gwyer, C.J. was not inclined to think "that the plaintiffs would in any event have been entitled to the declarations for which they originally asked, in proceedings against the Governor-General in Council". According to the learned Chief Justice "their proper course would have been to take proceedings against a named Cantonment Board, though ... such proceedings could not have been brought to this Court." He was of the view that it was competent for the court to entertain a suit for a declaration "that Section 106 of the Act of 1924 was ultra vires," and said that as the dispute between the parties depended upon the validity of the assertion of the Province to have the fines under discussion credited to provincial revenues and not to the Cantonment funds the dispute involved a question of the existence of a legal right. According to him the question might have been raised in proceedings to which a Cantonment Board was a party but "it was convenient to all concerned that it should be disposed of in the proceedings before the court."

12. The only other Indian case cited at the Bar in this connection was that of *the State of Seraikella and others v. Union of India and Another*, (1951 SCR 474) where Mahajan, J. expressed the view that Section 80 of the Code of Civil Procedure would not affect suits instituted in the Federal Court under Section 204 of the Government of India Act.

13. Our attention was drawn to some provisions of the American Constitution and of the Constitution Act of Australia and several decisions bearing on the interpretation of provisions which are some what similar to Article 131. But as the similarity is only limited, we do not propose to

examine either the provisions referred to or the decisions to which our attention was drawn. In interpreting our Constitution we must not be guided by decisions which do not bear upon provisions identical with those in our Constitution.

14. The Constitution makes special provisions for settlement of certain disputes in a manner different from that laid down in Article 131. For instance, Article 143 gives an over-riding power to the president of India to consult the Supreme Court when he is of the view that the question is of such a nature and of such public importance that it is expedient to do so. Under clause (1) of that Article the President is empowered to obtain the opinion of the Supreme Court upon any question of law or fact which has arisen or is likely to arise and is of such a nature and of such public importance that the President considers it expedient to obtain such opinion. In such a case the Court after giving such hearing as it thinks fit has to report to the President its opinion thereon. Clause (2) of the article shows that this power of the President over-rides the proviso to Article 131.

15. Article 257 provides for control of the Union over the State in certain cases. Under clause (2) thereof the executive power of the Union also extends to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance. Under clause (4) where such directions are given and "costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given", the Government of India must pay to the State such sum as may be agreed, or, in default or agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

16. Again, when there is a dispute or complaint with regard to the use, distribution or control of the waters of, or in any inter-State river or river valley clause (2) of Article 262 gives Parliament the power by law to provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of such dispute or complaint as is referred to in clause (1). Such a law ousts the jurisdiction of the court which would normally be attracted by Article 131. Article 290 contains a provision somewhat similar to Article 257 (4) with regard to certain expenses and pensions and makes the same determinable by an arbitrator to be appointed by the Chief Justice of India.

17. Apart from these special provisions a dispute which falls within the ambit of Article 131 can only be determined in the forum mentioned therein, namely, the Supreme Court of India, provided there has not been impleaded in any said dispute any private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative. A dispute in which such a private party is involved must be brought before a court, other than this court having jurisdiction over the matter.

18. It was argued by counsel on behalf of the State of Bihar that so far as the Hindustan Steel Limited, is concerned it is 'State' and the suits in which the Government of India along with Hindustan Steel Limited, have been impleaded are properly filed within Article 131 of the Constitution triable by this Court in its original jurisdiction. Reference was made to the case of Rajasthan State Electricity Board v. Mohan Lal. There the question arose between certain persons who were permanent employees of the Government of the State of Rajasthan and later placed at the disposal of the State Electricity Board and one of the questions was whether the appellant Board could be held to be 'State' as defined in Article 12. This Court by a majority held that the Board was "other authority" within the meaning of Article 12 and therefore was a 'State' to which appropriate directions could be given under Article 226 and 227 of the Constitution. It will be noted that under Article 12 all local or other authorities within the territory of India or under the control of the

Government of India are 'States' for purposes of Part III which defines and deals with the Fundamental Rights enshrined in the Constitution. The expression "the State" has the same meaning in Part IV of the Constitution under Article 36. No reason was shown as to why the enlarged definition of 'State' given in Parts III and IV of the Constitution would be attracted to Article 131 of the Constitution and in our opinion a body like the Hindustan Steel Limited cannot be considered to be "a State" for the purpose of Article 131 of the Constitution.

19. In the result we hold that the suits do not lie in this Court under Article 131 of the Constitution and issue No. 2 must be answered in the negative. It is not necessary to give any answer to issue No. 1 nor to issue No. 3. On the view we take the plaints must be returned for the purpose of presentation to courts having jurisdiction over the disputes. Let the plaints be returned for presentation to the proper court after endorsing on them the date of presentation of the plaints in this Court and the date on which they were returned. We make no order as to costs of these applications.

</html