

Union of India

Vs

State of Rajasthan

Special Leave Petition (Civil) No. 284 of 1982

(O. Chinnappa Reddy, A. P. Sen, E. S. Venkataramiah JJ)

04.09.1984

ORDER

VENKATARAMIAH, J. -

1. The precise question which arises for consideration in this petition is whether a suit filed by the State of Rajasthan against the Union of India for recovery of compensation for loss on account of the damage caused to the goods despatched through the Indian Railways in a civil court at Rajasthan is maintainable or whether it should be filed in this Court under Article 131 of the Constitution.

2. The facts of the case are these. The District Administrator of Barmer in Rajasthan was in need of a certain number of tents and their accessories and at his request 170 bundles of tents and their accessories were despatched by the Chief Commandant, Mana Shivir (Raipur) Madhya Pradesh to the Collector, Barmer through the Indian Railways under R.R. No. 423978 dated February 17, 1972 to be delivered at Barmer. No intimation was received about the arrival of the consignment at Barmer till August 6, 1972. On hearing that the consignment had reached Barmer on August 6, 1972, the Additional Collector and the District Rehabilitation Officer went to Barmer on August 6, 1972 for taking delivery but it was found that the packings of the goods had been seriously damaged and as a consequence thereof the tents as well as the accessories had become unfit for use. The delivery was not, therefore, taken and a request was made for assessing the damages. The goods were auctioned and a sum of Rs. 15,000 was fetched in the auction. Since the claim of the consignee was not settled by the Railway Administration, after issuing necessary notice to the General Manager, Northern Railway, New Delhi, a suit was filed by the State of Rajasthan through the District Rehabilitation Officer, Barmer claiming damages amounting to Rs. 1,57,825.80 against the Union of India in the Court of the District Judge, Balotra on July 23, 1977. The suit was contested by the Union of India and the Railway Administration on various grounds and one of them was that the suit was not maintainable in the District Court in view of Article 131 of the Constitution which according to them conferred exclusive jurisdiction on the Supreme Court to decide all disputes arising between a State and the Union. The sixth issue framed in the suit related to the competence of the District Court to entertain the said suit. The above issue was heard as a preliminary issue and the District Judge held by his order dated April 16, 1981 that he had jurisdiction to try the suit. Against the order of the District Judge a revision petition was filed before the High Court of Rajasthan and that petition came to be dismissed on September 2, 1981. This petition for special leave is preferred under Article 136 of the Constitution against the order of the High Court.

3. After the case was heard for some time, the learned Additional Solicitor-General very fairly stated that the suit could be allowed to be proceeded with before the District Court. Since the

question was of importance and that every suit instituted by any State Government against the Railway Administration may give rise to a similar issue, we propose to dispose of this special leave petition with our reasons.

4. Article 131 of the Constitution read thus :

131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute -

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

5. The provision corresponding to Article 131 of the Constitution in the Government of the India Act, 1935 was Section 204 of that Act. That section prior to its amendment by the India (Provisional Constitution) Order, 1947, read as :

204. Original jurisdiction of Federal Court. - (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 Federated States, if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent 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 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 make 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.

6. It may be noted that while the main part of sub-section (1) of Section 204 of the Government of India Act, 1935 is more or less similar to Article 131 of the Constitution, there is a difference between the structure of the proviso to Article 131 and structure of the proviso to Section 204(1). Article 131 of the Constitution provides that subject to the provisions of the Constitution, the Supreme Court shall to the exclusion of any other court, have original jurisdiction in any dispute - (a) between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) between two or more States, if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. That means that if there is any dispute involving any question about the existence of a legal right or even where the existence of legal right is admitted if there is a dispute about its scope between or amongst the States and the Government of India as stated therein, the Supreme Court would have exclusive jurisdiction to decide the question whether of law or fact. No other court has jurisdiction to deal with it. Similarly under Section 204 of the Government of India Act, 1935 the Federal Court had exclusive jurisdiction to decide similar question which arose between or amongst the Federation any of the Provinces or any of the Federated States. Under the proviso to that section, however, it was provided that the said jurisdiction would not extend to a dispute to which a State (a Federated State) was a party, unless the dispute concerned matters mentioned in clauses (i) to (iii) thereof. Under the proviso to Article 131 of the Constitution the original jurisdiction of the Supreme Court does not extend to matters referred to therein. In the State of Bihar v. Union of India ((1970) 2 SCR 522 : (1970) 1 SCC 67 : AIR 1970 SC 1446) after reviewing the constitutional history which led to the enactment of Article 131 of the Constitution, a Constitution Bench of this Court observed at pages 529-30 thus : (SCC p. 73, para 10)

Although Article 131 does not define 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.

7. The Constitution Bench ultimately held in the above case that if a private person, firm or corporation was also impleaded as a party the dispute could not be tried by the Supreme Court under Article 131 of the Constitution.

8. In Union of India v. State of Mysore ((1977) 1 SCR 842 : (1976) 4 SCC 531 : AIR 1977 SC 127), the question was whether a writ petition filed in the High Court by a State against the Union of India questioning the correctness of the order of the Central Government passed on a revision petition filed under the Central Excises and Salt Act, 1944 rejecting the contention of the State

Government against the levy of excise duty on goods in stock with the State's Implements Factory was maintainable. The High Court held that the Central Government being a Tribunal as such while disposing of the revision petition in the exercise of power conferred on it by Section 36 of the Central Excises and Salt Act, 1944 could not be a disputant in the dispute it decided. The Central Government was only interested in the recovery of duty which was properly payable but that by itself did not transform it from a Tribunal into a disputant. The High Court observed that :

A dispute falls within Article 131 of the Constitution only when the Central Government is a disputant as such. The dispute must directly arise between the State and the Central Government as the repository of the executive power of the Union. An indirect interest in the collection of the revenue in the form of excise duty if the excise duty demanded by the Central Excise is exigible, is far too slender a foundation for the postulate that in a very controversy arising under the provisions of the Central Excise Act, the Central Government is necessarily a disputant. The acceptance of such interpretation would make the Central Government a party to every proceeding under the Central Excise Act in the role of a disputant, and, that consequence can scarcely fit into its constitution as a tribunal under Section 36 of the Act. (Vide *State of Mysore v. Union of India* (AIR 1968 Mys 237, 239-40 : (1968) 1 Mys LJ 178))

9. Accordingly the contention raised by the Union of India was negated by the High Court. This Court affirmed the above view of the High Court in the case of *Union of India v. State of Mysore* ((1977) 1 SCR 842 : (1976) 4 SCC 531 : AIR 1977 SC 127) at page 845 thus : (SCC p. 533, para 6)

Mr. Raman tried to argue that the High Court erred in not applying Article 131 of the Constitution to the controversy even though the writ petition was barred thereunder as it fell exclusively within the jurisdiction of this Court under Article 131 of the Constitution as dispute between the Government of India and the State of Mysore. The argument is however futile because there is nothing on the record to show that there was any such dispute between the Central and the State Governments. As the High Court has pointed out, the Union of India was made a party to the writ petition merely because it had dismissed the revision application of the State Government.

10. In the *State of Rajasthan v. Union of India* ((1978) 1 SCR 1 : (1977) 3 SCC 592 : AIR 1977 SC 1361) while explaining the scope of Article 131 of the Constitution Chandrachud, J. (as he then was) said at page 54 : (SCC p. 638, para 110)

The dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State. 'In office' means 'in power' but the use of the latter expression may prudently be avoided with the realization of what goes with power. But there is a further prerequisite which narrows down the ambit of the class of disputes which fall within Article 131. That requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Article 131.... The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or existent of a legal right.

11. In *State of Karnataka v. Union of India* ((1978) 2 SCR 1, 92 : (1977) 4 SCC 608, 685-86 : AIR 1978 SC 68), Beg C.J. stated as under : (SCC pp. 685-86 para 146)

It has to be remembered that Article 131 is traceable to Section 204 of the Government of India Act. The jurisdiction conferred by it thus originated in what was part of the federal structure set up by the Government of India Act, 1935. It is a remnant of the federalism found in that Act. It should, therefore, be widely and generously interpreted for that reason too so as to advance the intended remedy. It can be invoked, in my opinion, whether a State and other States or the Union differ on a question of interpretation of the Constitution so that a decision of it will affect the scope or exercise of governmental powers which are attributes of a State. It makes no difference to the maintainability of the action if the powers of the State, which are Executive, Legislative, and Judicial, are exercised through particular individuals as they necessarily must be. It is true that a criminal act committed by a Minister is no part of his official duties. But, if any of the organs of the State claim exclusive power to take cognizance of it, the State, as such, becomes interested in the dispute about the legal competence or extent of powers of one of its organs which may emerge.

12. On a careful consideration of the whole matter in the light of the decisions of this Court referred to above, we feel that Article 131 of the Constitution is attracted only when a dispute arises between or amongst the States and the Union in the context of the constitutional relationship that exists between them and the powers, rights, duties, immunities, liabilities, disabilities etc. flowing therefrom. Any dispute which may arise between a State in the capacity of an employer in a factory, a manufacturer of goods subject to excise duty, a holder of a permit to run a stage carriage, a trader or businessman carrying on business not incidental to the ordinary functions of Government, a consumer of railway services etc. like any other private party on one hand and the Union of India on the other cannot be construed as a dispute arising between the State and the Union in discharge of their respective executive powers attracting Article 131 of the Constitution. It could never have been the intention of the framers of the Constitution that any ordinary dispute of this nature would have to be decided exclusively by the Supreme Court. It is well to remember that the constitutional proposals of the Sapru Committee advocated the strengthening of the position of the Federal Court in India and widening its jurisdiction on the original side so that the Federal Court could act as an interpreter and guardian of the Constitution and as a tribunal for the determination of the disputes between the constituent units of the Federation. The Joint Committee on Indian Constitutional Reforms was also of opinion that the object of conferring exclusive original jurisdiction on the Federal Court was that the disputes of the kind 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 of 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. The Special Committee consisting of Sriyuts S. Varadachariar, Alladi Krishnaswami Ayyar, B. L. Mitter, K. M. Munshi and B. N. Rau appointed by the Constituent Assembly to consider and report on the constitution and powers of the Supreme Court suggested "that the Supreme Court, like the Federal Court under the 1935 Constitution, would be the best available forum for the adjudication of all disputes between the Union and a unit and between one unit and another and proposed that the court should have an exclusive original jurisdiction in such disputes". (Vide *The Framing of India's Constitution - A Study* by Shri B. Shiva Rao at p. 483). Considered in the light of the foregoing the conclusion becomes inevitable that disputes of the nature involved in this case could not have been in the contemplation of the framers of the Constitution when they adopted Article 131 of the Constitution.

13. In the instant case the legal right of the State of Rajasthan to sue for damages for the loss suffered by it on account of the damage caused to the goods transported through the Railway Administration as such is not in dispute between the Union Government and the State of Rajasthan. The State of Government has made a claim like any other consignee of goods despatched through the railway for compensation and its success or failure in the suit depends on proof of facts which

have to be established in the same way in which a private person would have to be establish. This is not even a case where a formal contract is entered into between the Union of India and the State of Rajasthan in accordance with the requirements of Article 299 of the Constitution. It is just a commercial contract under which an officer of the State of Rajasthan was entitled to claim delivery of the goods consigned as any ordinary consignee. It may be noticed that the jurisdiction of the Supreme Court under Article 131 of the Constitution is subject to the other provisions of the Constitution. Under Article 298 of the Constitution the executive power of the Union and of each State extends to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making contracts for any purpose. That article further provides that the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State and the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament. The claim involved in this case is one based on Section 80 of the Indian Railways Act, 1890. Under that section a suit for compensation for loss of life of, or personal injury to, a passenger, or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted if the passenger was or the animals or goods were booked from one station to another on the railway of the same Railway Administration against that Railway Administration and if the passenger was or the animals or goods were booked through over the railways of two or more Railway Administrations against the Railway Administration from which the passenger obtained his pass or purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the Railway Administration on whose railway the destination station lies, or the loss, injury, destruction or damage or deterioration occurred and in either case the suit may be instituted in a court having jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies or the loss, injury, destruction, damage or deterioration occurred. Section 80 of the Indian Railways Act, 1890 indicates that the claim made under it is essentially against the Railway Administration concerned. The Union of India is impleaded as a party to suits instituted thereunder being the owner of the Indian Railways by virtue of Article 300 of the Constitution. The statute, however, treats the dispute as one between the Railway Administration concerned and person instituting the suit. Neither of the parties to these proceedings is questioning the applicability of the provisions of the Indian Railways Act, 1890 to these proceedings. It is, therefore, difficult to hold that in these proceedings there is any question which fall within the scope of Article 131 of the Constitution.

14. The High Court and the District Judge were, therefore, right in holding that the suit was entertainable by the District Court.

15. For the foregoing reasons, this special leave petition fails and is hereby dismissed.

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