

Indu Bhusan De and Others

Vs

State of West Bengal and Others

Civil Appeal No. 2065 of 1971

(E. S. Venkataramiah, Ranganath Misra JJ)

12.08.1986

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal by certificate from the Calcutta High Court assails the affirming judgment of the Division Bench upholding the dismissal of a writ petition challenging the vires of the Calcutta City Civil Court Act (21 of 1953) and its later amendment on the ground of want of legislative competence of the State legislature. The City Civil Court Act ('Act' for short), empowered the State Government to establish a civil court to be called the City Civil Court and under Section 5 thereof the local limits and the jurisdiction of the City Civil Court was to be the city of Calcutta. Sub-section (2) of Section 5 provided :

Subject to the provisions of sub-sections (3) and (4), and of Section 9, the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding Rs 10,000 in value.

The value of Rs 10,000 was later enhanced to Rs 50,000 and again to Rs 1 lakh. The appellant moved the Calcutta High Court for a declaration that the Act was ultra vires the State legislature. It was contended that Parliament alone had the legislative competence to make law affecting the jurisdiction of the High Court. The learned Single Judge as also the Division Bench negated the appellant's plea and have held that the Act was intra vires the Constitution.

2. It is appropriate to refer to the relevant legislative entries in the three lists - Union, State and Concurrent - as they stood in 1953 when the Act was enacted. In the Union List entries 77, 78 and 95 are relevant. They provide :

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

Entry 3, List II at the relevant time provided :

3. Administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; officers and servants of the High Courts; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

Entry 65, List II Provides :

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

Entry 46, List III provides :

46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

3. A Constitution Bench of this Court in *State of Bombay v. Narothamdas Jethabhai* (1951 SCR 51 : AIR 1951 SC 69), examined the validity of the Bombay City Civil Court Act of 1948. The provisions of that Act and the impugned Act are almost similar. The challenge to the vires of the Bombay Act had to be examined keeping the provisions of Government of India Act, 1935, in view inasmuch as that was a pre-Constitution legislation. Each of the learned Judges wrote a separate judgment but all of them were agreed that the Bombay Act was a law with respect to a matter enumerated in List II and was not ultra vires. Entry 53 of List I was to the following effect:

53. Jurisdiction powers of all courts, except the Federal Court, with respect to any of the matters in this list....

Entries 1 and 2 of List II were as under :

1. ...The administration of justice, constitution and organisation of all courts, except the Federal Court, and fees taken therein;...

2. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list; procedure in rent and revenue courts.

Entry 15 of List III was to the following effect :

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this List.

The two relevant entries in List II of the Seventh Schedule of the Constitution authorised law making on subject of administration of justice, constitution and organisation of courts and jurisdiction and powers thereof excepting in regard to the Supreme Court. These were the two expressions with reference to which Fazal Ali, J. in *Narotham Das case* (1951 SCR 51 : AIR 1951 SC 69) observed thus : (SCR pp. 55-6)

....the expressions "administration of justice" and "constitution and organisation of courts", which have been used therein without any qualification of limitation, are wide enough to include the power and jurisdiction of courts, for how can justice be administered if courts have no power and

jurisdiction to administer it, and how can courts function without any power or jurisdiction. Once this fact is clearly grasped, it follows that, by virtue of the words used in entry I of List II, the Provincial legislature can invest the courts constituted by it with power and jurisdiction to try every cause or matter that can be dealt with by a court of civil or criminal jurisdiction and that the expression "administration of justice" must necessarily include the power to try suits and proceedings of a civil as well as criminal nature irrespective of who the parties to the suit or proceeding or what its subject-matter may be. This power must necessarily include the power of defining, enlarging, altering, amending and diminishing the jurisdiction of the courts and defining their jurisdiction territorially and pecuniarily.

The other learned Judges constituting the Bench took the same view namely, "administration of justice" authorised making of law conferring on, or taking away from, courts, jurisdiction to entertain cases. This decision of the Constitution Bench clearly negatives the claim of the appellant that the impugned Act was ultra vires the jurisdiction of the West Bengal legislature. Admittedly the Act received Presidential assent and was, therefore, competent to bring about a change in the prevailing position obtaining under the letters patent of the Calcutta High Court.

4. A similar challenge as in the present dispute had also been raised before the Calcutta High court in the case of Amarendra Nath Roy Chowdhury v. Bikash Chandra Ghose (AIR 1957 Cal 534 : 61 Cal WN 630), and a learned Single Judge relying on the decision of the Constitution Bench referred to above had held that the Act was intra vires the State legislature. We are of the view that the decision of the Constitution Bench is a clear and binding precedent against the appellant's stand. The appeal has no merit and is, therefore, dismissed. There will be no order as to costs in this Court.

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