Union of India and Another

Vs

S. P. Anand and Others

Civil Appeal No. 3692 of 1998

(S. C. Agarwal, Dr. A. S. Anand, S. Saghir Ahmed JJ)

07.08.1998

JUDGMENT

S. C. AGRAWAL, J. –

1.Leave granted.

2. This appeal arises out of a writ petition (Writ Petition No. 500 of 1998) filed by the respondents (hereinafter referred to as "the petitioners") in the High Court of Madhya Pradesh, Indore Bench. In the said writ petition, the petitioners have prayed for the following reliefs :

> "In view of the submissions made above it is prayed that R. No. 1 herein be kindly directed to appoint INDORE as one of the places where the Hon'ble Supreme Court shall commence sittings w.e.f. first working day after the summer vacations are over and Rs. Nos. 2 and 3 be kindly directed to grant the needed approval as per Article 130 of the Constitution and extend all such funds as may be required to meet the financial requirements recalling that absence of funds is no alibi in law to provide sittings at INDORE to extend the benefits of Article 32 which in itself is a Fundamental Right guaranteed by the Constitution-makers by placing it in Part III of the Constitution and such costs as deemed fit be also kindly allowed with such other reliefs or moulded reliefs as deemed fit by this Hon'ble Court."

3. The said writ petition was heard by a learned Single Judge of the High Court who, on 3-4-1998, passed the following order :

> "Heard the petitioners in person.
>
> Issued notice to other side. PF within three days. The petitioners want a notice also to be sent by registered post AD to lessen up.
>
> The prayer is accepted.
>
> The notice also be sent by registered post AD and also by humdast over and over the normal course."

4. The appellants have filed this appeal to challenge the said order passed by the High Court.

5. The learned Attorney General has urged that the writ petition of the petitioners seeking the above-mentioned relief is not maintainable inasmuch as in exercise of its jurisdiction under Article 226 of

the Constitution, the High Court cannot give a direction to the Chief Justice of India with regard to place or places where the Supreme Court should sit since this is a matter which falls exclusively within the discretionary power vested in the Chief Justice of India under Article 130 of the Constitution. It has also been urged that since the reliefs sought by the petitioners in the writ petition cannot be granted by the High Court in exercise of its jurisdiction under Article 226 of the Constitution, the High Court should have refused to entertain the writ petition and that the learned Judge of the High Court was in error in entertaining the same and passing the impugned order.

6. In response to the notice issued by this Court, the petitioners have appeared in person. S. P. Anand, Petitioner 1, has addressed the Court in support of the impugned order of the High Court in person and the said submissions were adopted by M. L. Bapna, Petitioner 2.

7. A preliminary objection was raised by the petitioners against the maintainability of this appeal. It has been urged that at the stage of preliminary hearing of the writ petition, the High Court has the discretion to either admit it or dismiss it in limine or to entertain the same and before admitting the writ petition, issue notice to the respondents. In the present case, the High Court has exercised this discretion by directing issue of notice to the respondents in the writ petition. The exercise of the said discretion by the High Court cannot be interfered by this Court under Article 136 of the Constitution especially when no injury or loss has been caused by the impugned order directing issue of notice to the respondents in the writ petition. The submission is that in response to the notice, the respondents to the writ petition cam make their submissions before the High Court and if the High Court is satisfied that there is no merit in the writ petition, it would pass an appropriate order on the writ petition. Reliance has been placed by the petitioners on the decision of the Constitution Bench of this Court in Himansu Kumar Bose v. Jyoti Prokash Mitter (AIR 1964 SC 1636 : (1966) 2 LLJ 155).

8. We do not find any merit in this contention. At the stage of preliminary hearing of a writ petition filed under Article 226 of the Constitution, the High Court is required to consider whether on the basis of the averments contained in the writ petition, the petitioner therein is entitled to seek the relief prayed for and such relief can be granted by the Court in exercise of its jurisdiction under Article 226 of the Constitution. If the Court is of the opinion that a prima facie case is made out for granting the relief sough in the writ petition, rule nisi is issued calling upon the person or persons against whom the relief is sought to show cause why such relief should not be granted. But if the Court finds that no such prima facie case is made out, the writ petition has to be dismissed without issuing notice to the person or persons against whom the relief is sought. The object of placing a writ petition before the Court for preliminary hearing is to ensure that a writ petition which is frivolous in nature or in which no relief can be granted by the Court in exercise of its powers under Article 226 of the Constitution is dismissed at the threshold.

9. In Gunwant Kaur v. Municipal Committee, Bhatinda ((1969) 3 SCC 769 : AIR 1970 SC 802) this Court has laid down : (SCC p. 774, para 14)

> "Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

10. In Himansu Kumar Bose (AIR 1964 SC 1636 : (1966) 2 LLJ 155) this Court was dealing with a case involving dispute regarding the date of birth of a Judge of the High Court. On the basis of the

date of birth as determined by the Government of India, the Chief Justice of the High Court had passed an order whereby the said Judge was required to demit his office of puisne Judge of the High Court with effect from a particular date. The Judge concerned filed a writ petition challenging the said order of the Chief Justice of the High Court. The said writ petition was placed for preliminary hearing before a learned Single Judge of the High Court who held that there was no substance in the contentions sought to be raised in the writ petition and the writ petition was dismissed in limine. The said order of the learned Single Judge was reversed in appeal by the High Court. The matter was first heard by a Division Bench of two learned Judges of the High Court and there was difference of opinion between them, one holding that the learned Single Judge was justified in refusing to issue rule nisi, while the other taking a contrary view. The matter was thereafter placed before a Special Bench of three learned Judges of the High Court which held that the trial Judge was in error in refusing to issue a rule nisi. The appeal was allowed and it was directed that rule nisi be issued in the writ petition. The said order of the Special Bench of the High Court was challenged before this Court. Dismissing the appeal, this Court said :

> "Experience shows that in writ petitions filed in High Courts under Article 226 which raise arguable issues of much less significance and importance, rule nisi is usually issued and speaking broadly, there seems to be no justification for holding that in the present case which undoubtedly raises questions of considerable importance, that course should be adopted."

11. In support of the appeal before this Court, it was urged by the learned Attorney General that four questions fell to be considered in the appeal and answers to those four questions would be decisively against the petitioners who had filed the writ petition and, therefore, refusal of the learned Single Judge to issue rule nisi was justified. This Court, after examining the said questions, came to the conclusion that issues which fell to be considered in the writ petition were, in a sense, triable issues and so it would be inappropriate to dismiss the petition in limine. The decision in Himansu Kumar Bose (AIR 1964 SC 1636 : (1966) 2 LLJ 155) thus holds that a writ petition cannot be dismissed in limine if it raises triable issues, but if it is found that the writ petition on its face does not raise any triable issue, it is liable to be dismissed in limine.

12. The question for consideration, therefore, is whether the writ petition filed by the petitioners in the High Court raises a triable issue. The submission of the learned Attorney General is that the writ petition does not raise any triable or arguable issue and was, therefore, liable to be dismissed in limine and the High Court was in error in issuing notice on the writ petition to the parties impleaded as respondents therein. The petitioners have, on the hand, urged that the writ petition raises triable issues regarding the interpretation of Article 130 of the Constitution and the High Court has rightly entertained the writ petition and issued notice on it. These submissions of the learned counsel show that the impugned order of the High Court cannot be upheld unless it can be said that the writ petition raises an arguable question relating to the interpretation of Article 130 of the Constitution. As to whether the writ petition filed by the petitioners raises an arguable issue relating to the interpretation of Article 130 of the Constitution, is a matter which can be agitated before this Court by the appellants in order to assail the impugned order under Article 136 of the Constitution. We are, therefore, unable to accept the preliminary objection raised by the petitioners and the same is accordingly rejected.

13. We may now examine whether an arguable issue can be said to have been raised in the writ petition. After perusing the writ petition, we are constrained to say that it suffers from the same defects as were pointed out by this Court in S. P. Anand v. H. D. Deve Gowda ((1996) 6 SCC 734)

which arose out of a writ petition filed by Petitioner 1 herein, under Article 32 of the Constitution. In that case, this Court has observed : (SCC p. 739-40, para 10)

> "10. We cannot but observe that the averments in the petition are of a rambling nature and lack cohesion. It is regrettable that a petition challenging the appointment to the high office of the Prime Minister of this country should have been drafted in such a cavalier fashion betraying lack of study, research and seriousness. The petition abounds in casual and irrelevant averments ranging from cases on freedom of speech to fraternity, from judicial independence to judicial review, from civil code to cow slaughter and so on and so forth."

14. The present writ petition is no different. The President was impleaded as a respondent to the writ petition notwithstanding the bar contained in Article 361 of the Constitution since, according to the petitioners, the said bar does not preclude the President from being joined as a party. Reference has been made to the decision of a Special Bench of seven Judges of this Court in Samsher Singh v. State of Punjab ((1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192) and the correctness of the said decision has been assailed but the reason why the said decision should be reviewed is not indicated. As regards Article 130, the case of the petitioners is that the said provision postulates that the Supreme Court should sit throughout the country and therefore at Indore also and that the omission to provide for sittings of the Supreme Court at Indore or nearby places, viz., Dewas, Ujjain, Mhow, Dhar, is ex facie unconstitutional and discriminatory. It is claimed that Article 130 contains a binding mandate which cannot be disregarded. The petitioners have stated that the writ petition is not in the nature of public interest litigation, but it is for enforcement of the individual rights of the petitioners who have agricultural and urban properties situate at and around Indore. It is stated that the omission to provide sittings at Indore is causing hostile discrimination between citizens and residents of New Delhi and those residing in and around Indore like the petitioners on account of absence of availability of the judicial remedy under Article 32 of the Constitution. Petitioner 2 is practising as an advocate at Indore and his grievance is that because of omission to provide sittings of the Supreme Court at Indore, he is suffering loss of practice and resultant financial loss as compared with the advocates at New Delhi. At the stage of arguments, Petitioner 1 also submitted written submissions.

15. Article 130 of the Constitution reads as follows :

> "130. Seat of Supreme Court. - The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

The submission of the petitioners is that under Article 130, a mandatory duty has been cast on the Chief Justice of Indian to appoint a place or places other than Delhi in various parts of the country for the seat of the Supreme Court and that failure on the part of the Chief Justice of India to carry out this mandatory duty can be enforced by seeking appropriate direction from the High Court under Article 226 of the Constitution. It has been urged that the said power conferred on the Chief Justice of India under Article 130 is justiciable and is subject to judicial review by the courts. Reliance has been placed on the observations in the majority judgment of Verma, J. (as the learned Chief Justice then was) and in the concurring judgment of Pandian, J. made in the context of Article 216 of the Constitution in Supreme Court Advocates-on-Record Assn. v. Union of India ((1993) 4 SCC 441). It has been submitted that the language used in Article 216 of the Constitution is very similar to that used in Article 130 and the said observations are, therefore, applicable in the present

case. This contention, in our opinion, is without substance. Article 130 makes provision for the seat of the Supreme Court and lays down that the Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint. It is in the nature of an enabling provision which empowers the Chief Justice of India, with the approval of the President, to appoint a place or places other than Delhi as the seat of the Supreme Court. Article 130 cannot be construed as casting a mandatory obligation on the Chief Justice of India to appoint a place or places other than Delhi as the seat of the Supreme Court. The questions as to whether the Supreme Court should sit at a place other than Delhi involves taking a policy decision by the Chief Justice of India which must receive the approval of the President of India. If after taking into consideration the relevant factors, the Chief Justice of India forms an opinion that the Supreme Court should sit at a particular place or places other than Delhi, he has to seek the approval of the President for the proposal and, if the President approves the proposal, an order appointing the place or places where the Supreme Court shall sit is passed. Exercise of the power under Article 130 thus postulates, (i) a decision by the Chief Justice of India as to whether the Supreme Court should sit at a particular place or places other than Delhi; and (ii) approval of the President to the proposal made by the Chief Justice of India for appointing the particular place or places for the sitting of the Supreme Court. Thus making of an order under Article 130 of the Constitution providing for sitting of the Supreme Court at a place or places than Delhi requires in the first place, a decision by the Chief Justice of India in that thereafter, the approval of the proposal of the Chief Justice of India by the President on the advice of the Council of Ministers. No court can give a direction either to the Chief Justice of India or the President to exercise the power conferred under Article 130 and to pass an order appointing Indore and/or any other place or places in India as the seat/seats for the sitting of the Supreme Court as sought by the petitioners in the writ petition.

16. In this context, it may be mentioned that a question regarding justiciability can raise only in respect of an action that has been taken under a provision of the Constitution or a law. Since no action has been taken in the present case under Article 130 of the Constitution, the question of justiciability of such action does not arise in the present case. We, therefore, do not consider it necessary to go into the question whether an order passed under Article 130 of the Constitution would be justiciable.

17. In Supreme Court Advocates-on-record Assn. ((1993) 4 SCC 441) this Court, while dealing with the question regarding fixation of Judges' strength in the High Courts, has referred to the provisions of Article 216 of the Constitution and, having regard to the need for speedy disposal of cases and to secure that the operation of the legal system promotes justice, it was held that fixation of Judges' strength is justiciable and that, if it is shown that the existing strength is inadequate to provide speedy justice to people in spite of the optimum efficiency of the existing strength, a direction can be issued to assess the felt need and fix the strength of the Judges commensurate with the need to fulfil the State obligation of providing speedy justice. The observations made in the context of Article 216 have, however, no bearing on the construction of Article 130 of the Constitution.

18. The petitioners have also invited our attention to the answer given by Dr. B. R. Ambedkar to a query by Shri Jaspat Roy Kapoor during the course of debates in the Constituent Assembly. The said query and the answer to it, as contained in the report of the Constitutional Assembly Debates dated 27-5-1949, are reproduced as under :

> "Query : May I seek a small clarification from Dr. Ambedkar ? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court any where else in this Court simultaneously ?

Answer : Yes, certainly. A circuit court is only a bench."

19. We are unable to appreciate how the aforesaid answer given by Dr. Ambedkar lends support to the submissions of the petitioners. In the said answer, Dr. Ambedkar has only stated that it would be open to the Supreme Court, so long as it is sitting in Delhi, to have a circuit court anywhere else in the country simultaneously and that such circuit court would only be a bench. There is nothing in the said answer of Dr. Ambedkar which may suggest that a mandatory obligation has been cast on the Chief Justice of India and the President to set up benches of the Supreme Court at a place other than Delhi.

20. On this view of Article 130 of the Constitution, the whole edifice of the case set up by the petitioners in the writ petition falls to the ground. We, therefore, arrive at the conclusion that the relief sought by the petitioners in the writ petition filed by the petitioners in the High Court could not be granted by the High Court in exercise of its jurisdiction under Article 226 of the Constitution and the said writ petition could not be entertained. The issuing of a notice to the respondents in the writ petition would serve no useful purpose and would only distract the respondents from performing their other important functions. In our opinion, this was a case which should have been dismissed in limine and the High Court was in error in issuing a notice to the respondents to defend the writ petition.

21. Deprecating the growing tendency to make use of the court as a forum to seek some cheap publicity, this Court has said : (SCC p. 700, para 13)

> "We regret to say that seeing one's name in newspapers everyday has lately become the worst intoxicant and the number of people who have become victims of it is increasing day by day."
>
> (See Mithilesh Kumar v. R. Venkataraman (1987 Supp SCC 692 : (1988) 1 SCR 525))

22. At the stage of preliminary hearing of a writ petition, the High Court, before issuing a notice to the respondent, has to guard against the court being used as a forum for gaining publicity by the person or persons moving the writ petition. The need for such caution is greater when a person holding a high constitutional office is impleaded as a respondent in the writ petition or when matters of policy are involved. In the instant case, we are constrained to say that in passing the impugned order issuing notice on the writ petition, the learned Judge of the High Court has failed to bestow the requisite care and circumspection. We are, therefore, unable to uphold the impugned order.

23. The appeal is accordingly, allowed, the impugned order dated 3-4-1998 is set aside and the writ petition filed by the petitioners is dismissed. No order as to costs.