

SUPREME COURT OF INDIA

Maharashtra Chess Association

Vs.

Union of India

C.A.No.5654 of 2019

(Dr.D.Y.Chandrachud and Indira Banerjee,JJ.,)

29.07.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

SLP(C)No.29040 of 2018

1. The present appeal raises the issue of whether a private agreement entered into between the Appellant and the second Respondent in the form of the Constitution and Bye Laws of the latter can, by conferring exclusive jurisdiction on the courts at Chennai, oust the writ jurisdiction of the Bombay High Court under Article 226 of the Constitution.

2 Clause 21 of the Constitution and Bye Laws of the second Respondent is as follows:

“21. Legal Course

(i)The Federation shall sue and or be sued only in the name of the Hon. Secretary of the Federation.

(ii)Any Suits/Legal actions against the Federation shall be instituted only in the Courts at Chennai, where the Registered Office of All India Chess Federation is situated or at the place where the Secretariat of the All India Chess Federation is functioning”

3. The second Respondent, the All India Chess Federation is a society registered under the Societies Registration Act 1860 . It is a central governing authority for chess in India. The Appellant is a society registered under the Act of 1860 and was an affiliated member of the second Respondent since 1978. On 25 December 2016, the Central Council of the second Respondent passed a resolution to disaffiliate the Appellant. After the institution of the writ proceedings, the third Respondent has been affiliated by the second Respondent in place of the Appellant.

4. The Appellant had filed a writ petition before the Bombay High Court under Article 226

of the Constitution impleading, inter alia the second Respondent. The second Respondent raised a preliminary objection that the Bombay High Court did not have jurisdiction to entertain the writ petition on the ground that Clause 21 of the Constitution and Bye Laws conferred exclusive jurisdiction on courts at Chennai in disputes involving the second Respondent and any other party to the Constitution and Bye Laws, including the Appellant. The Bombay High Court held that Clause 21 ousted the jurisdiction of all other courts except the courts at Chennai. The High Court held:

“...In the facts of the present case when there is existence of Clause 21 which we have adverted to herein above, in our view, the jurisdiction of the other Courts except the Courts at Chennai in respect of any Suits/Legal action which are brought against Respondent No. 2 are ousted.”

5. Mr Vinay Navare, learned Senior Counsel appearing on behalf of the Appellant submitted that:

- (i) Article 226 provides a constitutional remedy where fundamental rights or other legal rights are violated or are under a threat of violation;
- (ii) Parties cannot by a privately negotiated agreement oust the writ jurisdiction of the High Court;
- (iii) Whether the writ jurisdiction under Article 226 should be exercised in the facts of a given case has to be determined by the High Court; and
- (iv) In the present case, the High Court has manifestly erred in holding that Clause 21 of the Constitution and Bye Laws of the second Respondent created an absolute bar on the exercise of the writ jurisdiction by the High Court.

6. Mr K M Natraj, learned Additional Solicitor General submitted that:

- (i) There can be no ouster of a public law remedy as is embodied in Article 226;
- (ii) Clause 21 of the Constitution and Bye Laws of the second Respondent is a non-statutory contract, the impact of which has to be considered by the Bombay High Court, which it failed to do; and
- (iii) Judicial review is a part of the basic structure of the Constitution and can neither be confined nor abrogated.

7. Mr Paras Kuhad, learned Senior Counsel appearing on behalf of the second Respondent urged that in essence by the impugned judgment, the High Court has in its discretion, declined to entertain the Writ Petition. Hence, it is urged that properly construed, the High Court did not hold that there was an ouster of its jurisdiction but that in the facts and circumstances, it was not appropriate to exercise the writ jurisdiction when parties had agreed to submit their disputes for resolution before the courts at Chennai.

8. The Constitution and Bye Laws of the second Respondent are a private agreement between the Appellant and the second Respondent. The decision of the Bombay High Court relied solely on Clause 21 to hold that its own writ jurisdiction, and the jurisdiction of all other courts, is ousted. Whether a private agreement can oust the writ jurisdiction of a High Court merits further enquiry.

9. It is a well settled principle of contract law that parties cannot by contract exclude the jurisdiction of all courts. Such a contract would constitute an agreement in restraint of legal proceedings and contravene Section 28 of the Indian Contract Act 1872 . However, where parties to a contract confer jurisdiction on one amongst multiple courts having proper jurisdiction, to the exclusion of all other courts, the parties cannot be said to have ousted the jurisdiction of all courts. Such a contract is valid and will bind the parties to a civil action. This principle was set out in *A B C Laminart (P) Limited v A P Agencies, Salem*¹, (“A B C Laminart”) where this Court noted:

“16. So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Court. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy.”

(Emphasis supplied)

The decision in *A B C Laminart* has been followed in subsequent decisions.

10. Parties cannot by agreement confer jurisdiction on a court which lacks the jurisdiction to adjudicate. But where several courts would have jurisdiction to try the subject matter of the dispute, they can stipulate that a suit be brought exclusively before one of the several courts, to the exclusion of the others. Clause 21 does not oust the jurisdiction of all courts. Rather, the Appellant and the second Respondent have agreed to submit suits or legal actions to the courts at Chennai. So long as the courts at Chennai have proper jurisdiction over a dispute involving the Appellant and the second Respondent, Clause 21 is not in violation of the principle set out in *A B C Laminart*. However, the decision in *A B C Laminart* was made in the context of an original suit and the jurisdiction of an ordinary civil court. The present case is materially different. The Appellant approached the Bombay High Court under Article 226. The second Respondent seeks to rely on Clause 21 to oust the writ jurisdiction of the High Court of Bombay.

11. Article 226 (1) of the Constitution confers on High Courts the power to issue writs, and

consequently, the jurisdiction to entertain actions for the issuance of writs. The text of Article 226 (1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or “for any other purpose”. A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

“The Court of King’s Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanours [...] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law..”

Echoing the sentiments of Lord Coke, this Court in *Uttar Pradesh State Sugar Corporation Limited v Kamal Swaroop Tondon*¹ observed that:

“35.It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court “to reach injustice wherever it is found.”

12. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In *A V Venkateswaran, Collector of Customs, Bombay v Ramchand Sobhraj Wadhvani*² a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it:

“10.We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the court.” The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

13. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to

exercise its writ jurisdiction are self-imposed. It is a well settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

14. These principles are set out in the decisions of this Court in numerous cases and we need only mention a few to demonstrate the consistent manner in which they have been reiterated. In *State of Uttar Pradesh v Indian Hume Pipe Co. Limited*³, this Court observed that the High Court's decision to exercise its writ jurisdiction is essentially discretionary:

“4...It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably, or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court.”

15. The principle was dwelt upon even prior to this. In *Sangram Singh v Election Tribunal, Kotah*⁴ the court highlighted the discretionary nature of the High Court's writ jurisdiction. The court added that courts had themselves imposed certain constraints on the exercise of their writ jurisdiction to ensure that the jurisdiction did not become an appellate mechanism for all disputes within a High Court's territorial jurisdiction. The court stated:

“14. The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be.”

(Emphasis supplied)

The intention behind this self-imposed rule is clear. If High Courts were to exercise their writ jurisdiction so widely as to regularly override statutory appellate procedures, they would themselves become inundated with a vast number of cases to the detriment of the litigants in those cases. This would also defeat the legislature's intention in enacting statutory appeal mechanisms to ensure the speedy disposal of cases.

16. The observation extracted above raises an important consideration with respect to the present case. If, by the self-imposed rule, the writ jurisdiction of High Courts is circumscribed by the existence of a suitable alternate remedy, whether constitutional,

statutory, or contractual, then a High Court should not exercise its writ jurisdiction where such an alternate remedy exists. Thus, before we address the question of whether or not Clause 21 of the Constitution and Bye Laws compel the Bombay High Court to abstain from entertaining the Appellant's writ petition, we must first address ourselves to whether, even in the absence of Clause 21, the existence of an alternate remedy would create a bar on the Bombay High Court entertaining the Appellant's writ petition.

17. The case of the second Respondent is that the dispute should be heard and decided at Chennai. It follows that if the Respondent's argument is accepted, the High Court of Madras would hear the present matter. Therefore, the alternate remedy (i.e. a writ petition before the High Court of Madras) is equal in every way to the present remedy sought by the Appellant. The High Court of Madras is imbued with the same powers in the exercise of its writ jurisdiction. The submission on the above premises is that the Appellant can avail of the same relief at Chennai as it may in Mumbai. Hence, the agreement between the parties must prevail and the writ jurisdiction of the Bombay High Court under Article 226 stands ousted.

18. This argument of the second Respondent is misconceived. The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.

19. This understanding has been laid down in several decisions of this Court. In *Uttar Pradesh State Spinning Co Limited v R S Pandey*⁵ this Court held:

“11. Except for a period when Article 226 was amended by the Constitution (Forty- Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy.”

20 The principle that the writ jurisdiction of a High Court can be exercised where no adequate alternative remedies exist can be traced even further back to the decision of the Constitution Bench of this Court in *State of Uttar Pradesh v Mohammad Nooh*⁶, where Justice Vivian Bose observed:

“10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Ed., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken

into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

21. The mere existence of alternate forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration by the High Court amongst several factors. Thus, the mere fact that the High Court at Madras is capable of granting adequate relief to the Appellant does not create a legal bar on the Bombay High Court exercising its writ jurisdiction in the present matter.

22. This brings us to the question of whether Clause 21 itself creates a legal bar on the Bombay High Court exercising its writ jurisdiction. As discussed above, the writ jurisdiction of the High Court is fundamentally discretionary. Even the existence of an alternate adequate remedy is merely an additional factor to be taken into consideration by the High Court in deciding whether or not to exercise its writ jurisdiction. This is in marked contradistinction to the jurisdiction of a civil court which is governed by statute. In exercising its discretion to entertain a particular case under Article 226, a High Court may take into consideration various factors including the nature of the injustice that is alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of constitutional interpretation. These factors are not exhaustive and we do not propose to enumerate what factors should or should not be taken into consideration. It is sufficient for the present purposes to say that the High Court must take a holistic view of the facts as submitted in the writ petition and make a determination on the facts and circumstances of each unique case.

23. At this juncture it is worth discussing the decision of this Court in *Aligarh Muslim University v Vinay Engineering*⁷. In that case, the contract between the parties contained a clause conferring jurisdiction on the courts at Aligarh. When the High Court of Calcutta exercised its writ jurisdiction over the matter, this Court held:

“2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the

Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.”

24. The court examined the facts holistically, noting that the contract was executed and to be performed in Aligarh, and the arbitrator was to function at Aligarh. It did consider that the contract conferred jurisdiction on the courts at Aligarh, but this was one factor amongst several considered by the court in determining that the High Court of Calcutta did not have jurisdiction.

25. In the present case, the Bombay High Court has relied solely on Clause 21 of the Constitution and Bye Laws to hold that its own writ jurisdiction is ousted. The Bombay High Court has failed to examine the case holistically and make a considered determination as to whether or not it should, in its discretion, exercise its powers under Article 226. The scrutiny to be applied to every writ petition under Article 226 by the High Court is a crucial safeguard of the rule of law under the Constitution in the relevant territorial jurisdiction. It is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.

26. It is certainly open to the High Court to take into consideration the fact that the Appellant and the second Respondent consented to resolve all their legal disputes before the courts at Chennai. However, this can be a factor within the broader factual matrix of the case. The High Court may decline to exercise jurisdiction under Article 226 invoking the principle of forum non conveniens in an appropriate case. The High Court must look at the case of the Appellant holistically and make a determination as to whether it would be proper to exercise its writ jurisdiction. We do not express an opinion as to what factors should be considered by the High Court in the present case, nor the corresponding gravity that should be accorded to such factors. Such principles are well known to the High Court and it is not for this Court to interfere in the discretion of the High Court in determining when to engage its writ jurisdiction unless exercised arbitrarily or erroneously. The sole and absolute reliance by the Bombay High Court on Clause 21 of the Constitution and Bye Laws to determine that its jurisdiction under Article 226 is ousted is however one such instance.

27. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 25 September 2018. Writ Petition No. 7770 of 2017 is accordingly restored to the file of the High Court for being considered afresh. No costs.

28. Pending application(s), if any, shall stand disposed of

Judgment Referred.

¹(1989) 2 SCC 0163

²(2008) 2 SCC 0041

³(1962) 1 SCR 0753

⁴(1977) 2 SCC 0724

⁵(1955) 2 SCR 0001

⁶(2005) 8 SCC 0264

⁷1958 SCR 0595

⁸(1994) 4 SCC 0710