RAJASTHAN HIGH COURT

Purshotam Singh

Vs.

Narain Singh

Civil Misc. Writ No. 24 of 1954
(Wanchoo, C.J. and Dave, J.)

16.08.1955

JUDGMENT

Wanchoo, C.J.

1. This is an application by Purshotam Singh for a writ, direction or order in the nature of certiorari or mandamus under Article 226 of the Constitution quashing the order of His Highness the Rajpramukh, which was conveyed to the Additional Jagir Commissioner, Udaipur, on 3-4-1954.

2. The facts put forward by the applicant in support of his application are these :

3. The last holder of the Jagir of Jilola wasThakur Pratapsingh who died in September 1952without leaving any male issue. Pratap Singh had a son Govind Singh who had gone in adoption to the Jagirdar of Amet. Purshotamsingh is the son of this Govind Singh, and says that he was adopted by the widow of Pratapsingh as a son to Pratapsingh after his death. The applicant also says that there was a will by Pratapsingh in his favor bequeathing all his property including the jagir to him. Anyhow disputes arose about the succession to the jagir on the death of Pratapsingh. Eventually the dispute was confined to Purshottam Singh on the one hand, and Narain Singh, opposite party, on the other. The matter was enquired into by the Additional Jagir Commissioner, and he made a report on 1-9-1953. In this report, the Additional Jagir Commissioner said that Purshotamsingh would be entitled to succession if the rule of Murisala was ignored; but that if the rule of Murisala was applied, Narainsingh would be entitled to succeed. This report was sent to the Government, and eventually the Revenue Minister recommended to His Highness the Rajpramukh that Narain Singh should be recognized and this was done.

4. The applicant raised a number of contentions in his application, but the main contention was that after the coming into force of the Constitution of India on 26-1-1950, Article 7(3) of the Covenant under which His Highness the Rajpramukh exercised the power of recognising succession was abrogated. It is also said that His Highness the Rajpramukh was exercising quasi-judicial functions when exercising his powers under Article 7(3) of the Covenant, and the principles of natural justice had not been followed, inasmuch as His Highness the Rajpramukh did not afford the applicant an opportunity of being heard in support of his case. The application has been opposed on behalf of the State as well as by Narain Singh.

5. While the case was being argued in this Court, the Rajasthan Jagir Decisions and Proceedings(Validation) Ordinance (No.6) of 1955 (hereinafter called the Ordinance came into force from 29-7-1955. Consequently the main part of the argument was confined to the effect of this Ordinance on the decision of this Court in *Bahadur Singh v. Rajpramukh of Rajasthan,* [1]We do not think it necessary under the circumstances to set out in detail the reply of the State and of Narain Singh, for the arguments before us were based on the decision in Bahadur Singh's case(A) as well as on the Ordinance. We, propose to indicate the arguments raised before us as we proceed with this judgment.

6. It was urged on behalf the opposite parties that the decision in Bahadur Singh's case, in which this Court decided that powers under Article 7(3) of the Covenant could not be exercised by the Rajpramukh after the coming into force of the Constitution, and therefore a decision by him in the matter of recognition of successor to a jagir from after 26-1-1950, did not bar a civil suit, did not apply to the facts of this case. We are however of opinion that this contention has no force. The argument is put this way. Under the Qanoon Mal Mewar (Act No.5 of 1947), it is provided by Section 107 that succession to a jagir etc. would be with the sanction of Shriji Hazur. Under Rajasthan Administration Ordinance (No.1 of 1949), it was provided in Section 3 that all laws in force in any covenanting State shall continue subject to the modification inter alia that any reference therein to the Ruler of the State shall be construed as a reference to the Rajpramukh. It is urged, therefore, that as Section 107 provided recognition of succession with the sanction of the Ruler (Shriji Hazur), that section continued in force, and the Rajpramukh must be deemed to be substituted in place of the Ruler therein. This argument, however, overlooks the covenant under which the present

State of Rajasthan was constituted. That Covenant also came into force on the same day as Ordinance No.1 of 1949. In the very nature of things that Covenant must be deemed to have come into force before Ordinance No.1 of 1949, for this Ordinance was issued by His Highness the Rajpramukh in pursuance of the powers conferred on him by the Covenant.

Therefore we have to see the effect of Art.VII (3) on Section 107 of the Qanoon Mal Mewar, and we cannot substitute the Rajpramukh in place of Shriji Hazur in that section at the moment at which the covenant creating the present State of Rajasthan came into force. We have, therefore, first to consider the effect of the Covenant on the laws of the covenanting State existing at the moment when the covenant came into force. It is obvious that the covenant being the Constitution of the new State would abrogate any law not consistent with it. The covenant provided by Art.VII (3) that the exclusive jurisdiction to recognise succession would be in the Rajpramukh of the new State This provision was clearly inconsistent with the provision in Section 107 of the Qanoon Mal Mewar, modified by the United State of Rajasthan Administration Ordinance (No.1 of 1948) of the former State of Rajasthan, by which the Rajpramukh of the former State was substituted in place of the Ruler. In Art.VII of the Covenant relating to the former State of Rajasthan, there was no provision corresponding to Art.VII(3) of the present Covenant. Therefore, the Rajpramukh of the former State of Rajasthan was substituted in Qanoon Mai Mewar by virtue of Ordinance No.1 of 1948 of the former State of Rajasthan. But the Rajpramukh of the former State of Rajasthan was a different person from the Rajpramukh of the new State of Rajasthan which came into existence on 7-4-1949. Under the Covenant of the present State of Rajasthan, the power to recognize succession was specifically conferred on the Rajpramukh of the new State under Art.VII(3) excluding every other authority. This Rajpramukh was different from the Rajpramukh of the former State of Rajasthan, and therefore as soon as the Covenant, by which the present State of Rajasthan was erected, came into force, Section 107 of the Qanoon Mal Mewar adopted as it was by Ordinance No.1 of 1948 was clearly abrogated as being inconsistent with the Covenant. Consequently when Ordinance No.1 of 1949 came into force, there was no Section 107 left in which the Rajpramukh of the present State of Rajasthan could be substituted for the Ruler. Section 107 of the Qanoon Mal Mewar therefore cannot be availed of by the opposite parties now to support the order of His Highness the Rajpramukh. It may also be mentioned that this case arose in 1942 long before the Qanoon Mal Mewar came into force in 1947. In Section 2(1) of Qanoon Mal Mewar it is provided that any proceeding pending in a civil or revenue Court at the time this Act came into force

would be carried on according to the rules and orders in force before the Act came into force. This provision does not directly apply to the present case for it was not pending in any civil or revenue Court, but, at the same time, it is rather doubtful whether Qanoon Mal Mewar of 1947 would apply to this case. Anyhow, even if it does Section 107, which is relied upon by the opposite parties, as giving power to the Rajpramukh, must be deemed to have been abrogated by Art.VII(3) of the Covenant of the present State of Rajasthan. There was thus no power in His Highness the Rajpramukh to pass such an order under Qanoon Mal Mewar. The power could only arise under Art.VII (3) of the Covenant, and that came to an end as held in Bahadur Singh's case on 25-1-1950. The decision, therefore, in Bahadur Singh's case fully applies to the facts of this case.

7. It was next urged that apart from the provisions of Qanoon Mal Mewar, the Rajpramukh hadpower under Art.VI(2) of the Covenant of the present State of Rajasthan to make a decision regarding succession to jagir. We are of opinion that Art.VI(2)does not help the opposite parties. It provides that, after the administration has been made over by the Ruler of the Covenanting State to the Rajpramukh, all rights, authority and jurisdiction belonging to the Ruler which appertain or are incidental to the Government of the Covenanting State shall vest in the United State, and shall thereafter be exercisable only as provided by this Covenant or by the Constitution to be framed there under, and that all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the United State and shall be discharged by it.

8. It is clear however that rjghts, authority and jurisdiction have to be exercised as provided by the Covenant, and there is a specific provision in Art.VII(3) how the right to recognize succession would be exercised. In the face of that specific provision, it isin our opinion, not possible to take recourse to the general provision of Art.VI(2). Besides Art.VI(2) gives a power to the United State. It does not mention the power of the Rajpramukh, which is specifically mentioned in Art.VII(3). As a matter of fact, Art.VI(2) is a general Article giving all powers of Government to the new State, which include legislative judicial and executive powers of the Rule R.1 he remaining Articles of the Covenant then lay down how the various powers legislative, judicial and executive, which are conferred on the United State by Art.VI(2) are going to be exercised. There is, therefore, no force in the argument that Art.VI(2) gives this particular power to the Rajpramukh.

9. Then it was urged that the power of recognizing jagirs is an executive power of the State, and the executive power of the State would vest in the Rajpramukh under Article 154 of the Constitution. Reference in this connection was made to *Amar Singhji v. State of Rajasthan,* [2] where the Supreme Court held that the power conferred under Art.VII(3) on the Rajpramukh was executive power. This argument is based on some confusion. It is true that the power under Art.VII(3) has been held by the Supreme Court to be executive power; but from that it does not follow that the executive power mentioned in the Constitution in Article 154 includes the power to recognize succession to jagirs. We must read the Constitution along with the laws in force which the Constitution has preserved including the Civil Procedure Code. Section 9, Civil Procedure Code says that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. As pointed out, in Bahadur Singh's case a dispute as to succession to a jagir can only result in a suit of a civil nature, and would be in a civil Court unless it was expressly or impliedly barred. The reason why before the Constitution came into force, civil suits of this nature were not possible was that Art.VII (3) of the Covenant conferred exclusive jurisdiction on the Rajpramukh in the matter of deciding questions of succession to the jagirs. When Art.VII (3) became abrogated by virtue of the Constitution coming into force on 26-1-1950, there was no bar left to suits of this nature being filed in the civil Court.
It would, therefore, be not right to say that after the coming into force of the Constitution the power of recognition of succession to jagirs would still be a matter covered by the executive power conferred on the Governor or the Rajpramukh under Article 154. Such a question has to be decided in the civil Courts unless there is an express or implied bar.

10. Then it was urged that the jagirs were grants by the Rulers, and as such it was for the State to recognize succession to jagirs. There is, in our opinion, no such principle of law that succession to agrant can only be recognized by the grantor. Whatever might have been the original incidents of ajagir, it is clear that by the time the Constitution came into force in 1950, succession to jagirs was recognized in every State, though the jagirdar was not an absolute owner of the jagir, and there were certain restrictions on his dealing with the jagir and on his right to adopt a son. But there was certainly a limited right to succession to jagirs subject to payment of certain succession fees etc., and the laws of most of the covenanting States provided that the

forum for recognizing succession was either some Court or the Ruler. It cannot, therefore, be said that merely because jagirs are grants, the grantor has an absolute right to say whom he will recognize. It was only for specific reasons that the grantor could resume the jagir. In these circumstances, unless it can be shown that there was some specific term in the grant relating to a particular jagir that its succession depended upon the absolute sweet will of the grantor, the right to succession will be a matter liable to be fought out in case of dispute before such forum as the State might provide. The fact therefore that the jagirs are grants does not by itself confer any right on the Rajpramukh to recognize succession to jagir.

11. Lastly it was urged that even if the Constitution impliedly repealed Art.VII(3) of the Covenant, Section 6(e), General Clauses Act will apply, and the Rajpramukh would still have the power to recognize succession to jagirs. Assuming, but not deciding, thatS.6, General Clauses Act applies to the circumstances of this case, we have to see what clause (e) of that section provides. It lays down that the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege etc. This clause has, in our opinion, nothing to do with the forum where the investigation, legal proceeding or remedy has to be pursued. If the repealing Act provides a new forum where a legal proceeding coming on from before the repealing Act came into force can be pursued thereafter, the forum must be as provided in the repealing Act, and no party can insist' that the forum of the repealed Act must continue. In the present case he Constitution has repealed Art.VII(3) of the Covenant. The new forum after the repeal of Art.VII(3) is the civil Court by virtue of Section 9, Civil Procedure Code. Therefore, it is not possible for any one to insist that the old forum mentioned in Art.VII(3), namely the Rajpramukh must still continue even with regard to pending proceedings. There is no force therefore in this argument either.

12. Let us now turn to the effect of the Ordinance which came into force on 29-7-1955. We are concerned only with Section 3 which relates to validation of certain decisions, and is in the following terms :

> "Notwithstanding anything contained in the Covenant or in any judgment, decree or order of any Court, all final decisions given by the various grades of revenue Courts or officers, or by the Rajpramukh, in cases or proceedings arising out of, or under, the laws of the covenanting States providing for the resumption of jagirs in those States and the recognition of succession to the

rights and titles of Jagirdars therein shall be valid and shall be deemed always to have been valid and shall not be liable to be called in question in any Civil Court."

We are not concerned here with orders passed by authorities other than the Rajpramukh. So far as the Rajpramukh is concerned, it is provided that final decisions by the Rajpramukh in cases or proceedings arising out of or under the laws of the covenanting States for recognition of succession to jagirs shall be valid, and shall not be liable to be called in question in any suit. The contention on behalf of the applicant is that this section cannot validate the decisions of the Rajpramukh, and cannot override the effect of this Court's decision in - 'Bahadur Singh's case'. In support of this contention, two arguments are advanced before us. In the first place it is contended that the decision in the present case was not given in any case or proceeding arising out of or under the laws of the covenanting States. The word 'law' has been defined in the Ordinance as having the same meaning as was attached to it in the Rajasthan Administration Ordinance (No.1) of 1949. There 'law' has been defined as any Act, Ordinance, regulation, rule, order or bye-law which, having been made by a competent Legislature or other competent authority in a Covenanting State, has the force of law in that State. It is submitted that there was no law within this meaning in the former State of Mewar in 1942 when this case arose and therefore Section 3 of the Ordinance does not validate the decision in this case.

We find, however, that on 6-12-1940, the Government of the then State of Mewar issued a notification by which certain amendments were made in the Constitution sanctioned by His Highness on 28-12-1939. There was a statement of powers (Appendix B) in this notification, which mentioned matters which required the previous sanction of His Highness. Item (1) of Appendix B was 'grant or resumption of jagirs or other lands'. Item 35 was 'all important matters relating to jagirdars'. Now succession to jagirs would not, in our opinion, be covered by the words 'grant or resumption of jagirs'. But it is certainly covered by the words 'all important matters relating to the agirdars'. Succession is certainly one of the most important matters relating to jagirdars, and under this law previous sanction of His Highness would be required in this connection. There ore these proceedings for sanction to recognize one of the disputants as jagirdar of Jilola arose under the law which required that such matters required the previous sanction of His Highness. Section 3 of the Ordinance therefore applied to these proceedings also as they arose under a law of the covenanting State which provided that all important matters relating to jagirdars would

require the previous sanction of His Highness and succession was certainly such a matter.

13. The next argument in this connection is that it was not possible at all for the State of Rajasthan to validate these decisions after the decision of this Court in Bahadur Singh's case. The argument is put this way. In Bahadur Singh's case this Court held that Article 7(3) of the Covenant was abrogated on coming into force of the Constitution as the power conferred by that Article being inconsistent with Article 154 could not be exercised by the Rajpramukh. Therefore, when Section 3 validates the decisions of the Rajpramukh given under the provisions of the now abrogated Article 7(3), it is doing indirectly the same thing which is inconsistent with the Constitution, namely validating executive decisions of the Rajpramukh which he could not arrive at under his executive functions as contained in Article 154 of the Constitution. There would be force in this argument, if these decisions of the Rajpramukh can still be called executive decisions after their validation under Section 3 of the Ordinance. As we look to Section 3, we feel that it is really in two parts. It was decided in Bahadur Singh's case that there was no forum provided for the decision of disputes relating to succession to jagirs except of course a civil Court under Section 9, Civil Procedure Code, after 25-1-50. What Section 3 of the Ordinance, in our opinion, does is firstly to provide a forum retrospectively for the decision of such disputes, and then to say that the decisions given by such authorities would be valid and would be deemed to have always been valid, and would not be liable to be called in question in any civil Court.
This, to our mind, is clear also from the fact that Section 3 not only validates the decisions of the Rajpramukh, but also the 'decisions given by the various grades of revenue Courts or officers, which had become invalid in view of the provisions of Article 7(3) of the Covenant by which the exclusive jurisdiction was vested in the Rajpramukh for the period between 7-4-49 to 25-1-50. What Section 3 does is to validate the decisions of the revenue officers and Courts also in the matter of succession to jagirs and this clearly shows that the
forum which was provided by the laws of the convenanting States has again been made the forum by Section 3 of the Ordinance, and the decisions given by such authorities have been validated. We are therefore of opinion that by virtue of Section 3 of the Ordinance, the various grades of revenue Courts or officers or the Rajpramukh must be deemed to have been created the forum for decision of cases relating to recognition of succession to jagirs in cases arising out of the laws of the covenanting States, and these decisions have further been validated by the same section, and

prevented from being questioned in civil Courts, as they could have been questioned in view of the decision in Bahadur Singh's case.

14. The next question is what is the nature of this forum (i.e. the Rajpramukh) which has been created, and whose decisions given from 26-1-1950, have been validated by Section 3. This forum cannot, in our opinion, be an executive authority, for the Raj-pramukh's executive authority is to be exercised in accordance with Article 154, and.we have already pointed out that the decision as to succession to a jagir does not come within the ambit of that Article. As such the Rajpramukh can only be treated as a quasi-judicial tribunal which has been specifically created by Section 3 and whose decisions as such tribunal have been validated. In our opinion the decisions could not be validated in any other manner or on any other hypothesis. That the forum is quasi-judicial tribunal is also clear from Section 4 of the Ordinance, which provides that all pending cases shall remain with the revenue Court or officer competent to deal with it under the laws of the covenanting states or be decided by the Board of Revenue if they are pending before the Rajpramukh, the State Government or any Minister of the State Government. Further, Section 6 provides forum for institution or disposal of new cases, and appeals there from right up to the Board of Revenue, and it is obvious that this forum is also a quasi-judicial tribunal.

15. If, therefore, the Rajpramukh was a quasi-judicial tribunal in the matter of this decision which as been validated by Section 3 of the Ordinance, the question arises whether the Rajpramukh violated the principles of natural justice in deciding this matter, and it he did, whether this Court has power to interfere in spite of Section 3 of the Ordinance.

16. So far as the power of this Court is concerned, it is enough to say that Section 3 of .the Ordinance, when it says that the final decision of the Rajpramukh shall not be liable to be called in question in any civil Court, does not bar the jurisdiction of this Court under Article 226 of the Constitution. That jurisdiction cannot be barred by any legislation by any State, and can only be taken away by an amendment of the Constitution, even though this Court maybe exercising civil jurisdiction when dealing with a matter of this kind. As, therefore, the Rajpramukh is to be treated as a quasi-judicial tribunal for purposes of these decisions, this Court has the power to issue such appropriate writ, direction or order as it may deem fit under Article 226.

17. The next question is whether any such writ, direction or order should be issued in the case. In that connection, we have to see what is the minimum requirement that the Rajpramukh as a quasijudicial tribunal should have fulfilled. We are of opinion that the minimum requirement that a quasi-judicial tribunal should fulfill in deciding matters of this kind is to give a hearing to the parties before it. If there is any evidence to be taken, that evidence may be taken by some authority designated by the Rajpramukh. Even in Courts, it is not unusual for appellate Courts to direct evidence being taken by subordinate Courts, and further to direct that the subordinate Court should submit its opinion on the evidence to the appellate Court, but thereafter the appellate Court gives a hearing to the parties and decides on that evidence alter taking into account the opinion of the subordinate Court. The same thing can be done by the Rajpramukh as a quasi-judicial tribunal.

18. The next question then is what is the nature of this hearing which the Rajpramukh should have given to the parties before arriving at his decision should the hearing be by allowing the parties to present their case by word of mouth, and is it necessary, according to the principles of natural justice, that this should be done, or is it enough that the parties should have an opportunity of presenting their ease before some officer who took the evidence on behalf of the Rajpramukh and heard them and considered their representations, whether oral or in writing, and passed on the papers with his opinion to the Rajpramukh? We have been referred to a number of cases in this connection.

19. In *'Board of Education v. Rice',* [3] the question arose about the duties of the Board of Education, and how it should be exercised. That was, however, a case of an administrative kind and Lord Loreburn made the following observations at p.182 :

> "In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses.

They can obtain information in any way they think best always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting . any relevant statement prejudicial to their view."

20. In *'Local Government Board v. Arlidge',* [5] there was an appeal before the Local Government Board. The law provided that the procedure on any such appeal shall be such as the Local Government Board might by rules determine, provided that the rules shall provide that the Board shall not dismiss any appeal without having first held a public local enquiry. It was then held that an appellant to the Local Government Board was not entitled as of right, as a condition precedent to the dismissal of his appeal, to be heard orally before the deciding officer. The observations of Lord Loreburn in *'Board of Education v. Rice'* were approved even in a case of appeal.

21. In *'Mohandas Mulji Sicka v. Collector of Bombay',* [6] these two cases wererelied on, and the order of the Collector dismissing the appeal under the Bombay Rent Restriction Order after reading the memorandum of appeal and the record and proceedings before the Controller but without any further communication with the appellant and without hearing him in support of the appeal was held as not contrary to principles of natural justice.

22. The two Houses of Lords' cases, 1911 AC 179 and 1915 AC 120 which we have referred to above were more of an administrative character, though in 1915 AC 120(D) there was a question of an appeal. The Board of Education v. Rice was an administrative case out and out, and it was in that connection that Lord Loreburn made the observations we have quoted above. In *Local Government Board v. Arlidge,* the law provided that the appeal shall be heard in such manner as the Local Government may by rules determine, subject to one provision namely that the appeal shall not be dismissed without first holding a public inquiry. In these circumstances, it was held that as the Board had arranged for a local enquiry in the manner provided by its rules, it was not bound to hear the parties orally.

So far as Mohandas Mulji Sicka's case is concerned, we must say with all respect that it can hardly be supported on the basis of these two English cases, one of which was of an administrative character, and the other turned on the special provisions of the law and the rules. It seems to us that if there was any rule a law which provided that the Rajpramukh would appoint some subordinate officer to hear the representations

and make the report upon which he would pass such orders as he thought proper, something might be said for the Rajpramukh not hearing the parties himself. But no such rule a law has been pointed out in this case and it is all a matter of chance which officer makes an enquiry and hears the parties. In these circumstances, it seems necessary that the Rajpramukh as a; quasi-judicial tribunal should have given a personal hearing to the applicant. It was urged that a hearing was given by the Minister concerned, but we feel that in the absence of a rule or law to that effect the hearing by the Minister is not the same thing as the hearing by a quasi-judicial tribunal like the Raj pramukh in the present case by virtue of Section 3 of the Ordinance.

We are, therefore, of opinion that as the applicant was not given a hearing by the Rajpramukh before the order in dispute was passed, we should set aside that order and direct that the case of the applicant should now be heard in the manner provided by Section 4 (d) of the Ordinance.

23 We, therefore, allow the application, and quashing the order of the Rajpramukh communicated to the applicant on 3-4-1954, order that the applicant should be heard in the manner provided by Section 4 (d) of the Ordinance. Considering, however, the circumstances of the case, we are of opinion that parties should bear their own costs before this Court.

Application allowed.

Cases Referred.

1. AIR 1955 Raj 135
2. AIR 1955 SC 504
3. 1911 AC 179
4. 1911 AC 179
5. 1915 AC 120
6. AIR 1948 Bom 63