

M.R. Deo Vs. State

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Court : Madhya Pradesh

Decided On : Nov-14-1949

Reported in : AIR1950MP28; 1950CriLJ813

Judge : Mehta and; Sanghi, JJ.

Appellant : M.R. Deo

Respondent : State

Judgement :

Mehta, J.

1. This is an application by Mr. M. K. Deo, Advocate, Madhya Bharat High Court that a writ of certiorari should issue to the Subha and District Magistrate Indore to bring up, in order to be quashed, an order passed on 22nd October 1949 by District Magistrate Under Section 3.E. Madhya Bharat Maintenance of Public Order Act. The said order prohibits the applicant for three months from participating in any meeting, public or private, organised by any association. It further prohibits the applicant from issuing any leaflet or newspaper, propagating communist views or that of Karmachari sangh. A preliminary objection was raised by the learned Advocate-General that Madhya Bharat High Court is not invested with the jurisdiction to issue the high prerogative writ of certiorari. This would involve an inquiry into the nature and origin of the writ of certiorari as well as the constitution and jurisdiction of the power and authority of this Court.

2. The ancient writ of certiorari in England is an original but which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. The writ is so named because, in its original Latin form, it required that the King should 'be Certified' of the proceedings to be investigated and the object is to them by the exercise of the authority of Supreme Court, that the jurisdiction of the inferior tribunal should be properly exercised. The remedy, in point of principle, is derived from the Superintending Authority which the Sovereign's Superior Court and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits in British India; vide *Ryots of Garabandho v. Zamindar of Parlakvmedi A.I.R. (30) 1943 P.C. 164 : I. L.R. (1944) Kar P. C. 119.*

3. Now it was contended by Mr. Homi Daji, learned pleader for the applicant that according to Section 20, Madhya Bharat High Court of Judicature Act, Samvat 2005, the High Court shall be Court of record. He further contended that according to Section 21, the High Court possesses extraordinary jurisdiction to remove and transfer to itself and to try and determine as a Court of extraordinary jurisdiction, both civil and criminal any suit, case or other proceeding being or falling within the jurisdiction of any Court, civil or criminal, subject to its superintendence, when the High Court may think proper to do so in the interest of justice.

4. Section 28 (22?) provides that the High Court shall be the highest Court of appeal and revision in the United State and shall have jurisdiction to entertain and dispose of such appeals, revisions and other cases, civil and criminal, as it may be empowered to do under this Act. He also referred to Section 32 of the Act by which all Court, civil and criminal, in the United State shall be subordinate to the High Court and the High Court shall have superintendence over all the Courts for time being.

5. Mr. Homi Daji argued that having regard to the aforesaid provisions, Madhya Bharat High Court is a Superior Court of record with a general jurisdiction throughout the territories of Madhya Bharat and, therefore, it must have an

inherent power to issue the prerogative writs, unless that power is taken away by express terms, He relied on In the matter of Pyn Maung A I. R. (27) 1940 Bang. 84 : 1940 Bang. L. it. 325 (SB.) In my opinion, the argument of Homi is not acceptable. The power to issue writs of certiorari and mandamus has to be expressly conferred by Charter and there is no such thing as inherent jurisdiction with regard to the exercise of high prerogative writs. The Madhya Bharat High Court Act does not confer power on the High Court to issue those writs. On the contrary Section 82, Clause (3), clearly states that nothing in this section shall be construed as giving to the High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision. These words clearly take away the power of High Court to issue high prerogative writs of certiorari and mandamus. The wordings of Section 33, Clause (a) limit the powers and jurisdiction of the High Court within the four corners of Section 486, Criminal P.C. and Section 115, Civil P.O.

6. In the case of Annie Basant v. Advocate General of Madras A.I.R. [6] 1919 P.C. 31 : 20 Cr. L j. S93, their Lordships held that the High Courts of Calcutta, Bombay and Madras, possessed the power of issuing the writ of certiorari whether any of the other Courts which are by definition High Courts for the purposes of this Act have the power to issue writs of certiorari is another question. This pronouncement of their Lordships of the Privy Council goes to show that they entertained a doubt and that doubt was warranted by the fact that while the three Presidency High Courts had that common law power derived from their Charters, the other High Courts had not. It, therefore, appears dear to me that this High Court and other High Courts in India have not the power to issue the prerogative writ of certiorari either under the Statute or Letters Patent or the Government of India Act.

7. In Dattatraya Vishnu v. Registrar Co-operative Societies, G P.& Berar, Nagpur A. I. R. (28) 1941 Nag. 282 : I. L. R. (1941) Nag. 397. Niyogi J. has distinctly held that the High Courts in India other than the Chartered High Court (e. g. the Nagpur High Court) have not the power to issue the prerogative writ of certiorari either under Letters Patent or the Government of India Act. The High Court of Nagpur has no other jurisdiction or authority except as provided under B, 24 and Section 115, C. P.C. or Section 435 and 439, Criminal P.C. Such is the legal and

constitutional position of Madhya Bharat High Court. It is not a Court of King's Bench and this High Court cannot issue writs of certiorari or mandamus. In the matter *Pyu Maung A.I.R. (27) 1940 Rang 84 : 1940 Rang. L. R. 325 S. B.*, decision is based on the fact that it is akin to King's Bench and has inherited the same power which were possessed by King's Bench Court.

8. In *Surajmull Brijlal v. Commr. of Income-tax B & O. A. I. R (17) 1930 Pat. 538 : 11 P L. T 839 F. B.*), the question arose whether the Patna High Court has the jurisdiction and power to issue high prerogative writ of mandamus and it was held in that case that by the phrase 'prerogative writ' is meant a writ issued not as an ordinary writ of strict right, but at the discretion of the Sovereign, acting through that Court in which the Sovereign is supposed to be personally present. So far as this country is concerned, Section 46, Specific Relief Act now empowers the High Courts of Calcutta, Madras and Bombay and Rangoon to make orders which secure the same results as the writ of mandamus, issued by the King's Bench Division and the conditions set forth in that section are substantially the same as those under which the writ of mandamus is issued in England. It was further held that Patna High Court does not possess any powers either Under Section 4, Specific Relief Act or Letters Patent, to issue writs of mandamus similar to those possessed by the Calcutta High Court and the High Court of Bombay and Madras. In *Gopal v. Emperor A.I.R. (30) 1943 Pat. 245 : 45 Cr.L.J. 177 S. B.*, it is clearly held that the Patna High Court has no power to issue a writ of certiorari. Only the Chartered High Courts have the power to issue the writ and it does not follow that that power has descended to any other Court.

9. In my opinion, 8 32, Clause (2), Madhya Bharat High Court of Judicature Act which is similar to Section 224(2), Government of India Act, gives to this High Court jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision.

10. On a careful consideration of the authorities and having regard to the constitution of the Madhya Bharat High Court of Judicature Act, I am of opinion that this Court has got no right to issue a writ of certiorari which is only possessed by Chartered High Courts and which was expressly conferred on them by Charters

and Letters Patent.

11. I would, therefore, reject this application for the issue of a writ of certiorari.

Sanghi, J.

12. On October, 1949, the District Magistrate, Indore made an order Under Section 3 (e), Maintenance of Public Order Act No. 7 of 1949, prohibiting the applicant from participating in any public or private meeting or making any speech at any such meeting or carrying on any propaganda in any manner in the interest of the communists or the Karmachari Sangh.

13-14. There is no law in force in the state under which the validity of the order made against the applicant imposing restrictions on him can be challenged. He has applied to this Court praying that an order in the nature of the writ of certiorari in use in England be made and the validity of the order made by the Magistrate be examined. The order can be examined on merits only if this Court has the jurisdiction to make an order for certiorari:

By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by (the statute, charter or commission under which the Court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited ' see Halsbury's Laws of England, 2nd Edn, Vol. 8, pp. 681 and 583.

This Court was constituted under Act no. 8 of 1919 and the limits to its authority to take cognizance of and adjudicate matters coming before it are prescribed in Section 22 of the Act which reads as follows: The High Court shall be the highest court of appeal and revision in the United State-and shall have jurisdiction to entertain and dispose of such appeals, revisions and other case, civil and criminal as it may be empowered to do under this Act any enactment in force in the United State.

15. The authority to entertain and dispose of cases has to be found in the Act itself or in some other enactment in force in the State, There is no provision in Act No. 8 of 1948 which confers on this Court the jurisdiction to revise the order in question made under the Maintenance of Public Order Act. By Section 20 of the Act, the High Court is declared to be a Court of record. The power of a Court of record is to fine and imprison for contempt of itself or for other substantive offences, see Halsbury's Laws of England 2 Edn. vol. 8 p. 527. This is of no assistance to the applicant.

16. The learned Counsel for the applicant submitted that this Court was the highest Court of justice in the State and as such the power was inherent in it to act as King's Courts in England were wont to do. He relied on the dictum of Sulaiman J. in Hadi Husain v. Nasiruddin A.I.R. (13) 1926 ALL. 623 at p. 632 : 48 ALL 711F.B. In this case it was held that the Court had the power to punish persons for contempt of civil Courts subordinate to it. The learned Judge after quoting observations made in English cases in which the power had been exercised by the High court proceeded to lay down the reason for the assumption of jurisdiction in these words:

This High Court Is In an equal degree the guardian and protector of public justice throughout these provinces and has superintendence over the inferior civil Courts and must therefore have duty cast upon it to protect such Courts, otherwise their independence and usefulness would be considerably impaired. I have, therefore, no hesitation in holding that such a power exists. I might add that the new Contempt of Court if Act has been enacted in order to remove doubts which had arisen as to the power of a High Court. That enactment does not imply that the legislature has recognised that no such power did in fact exist.

Jurisdiction was assumed on the ground of the Court being the guardian and protector of public justice. With great respect I am unable to agree with the opinion of the learned Judge. The High Court in England has exercised the power to punish for contempt of subordinate Courts and to issue writs of certiorari, prohibition and mandamus not on the ground of demands of public justice but because the common law of England invested the Court with unlimited jurisdiction,

also expressed as general jurisdiction. It is thus expressed in Halsbury's Laws of England, volume and edition as above, at p. 530:

Prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so.

When exercising the general jurisdiction, the Judges necessarily give 'reasons for exercising the undefined and unlimited jurisdiction but the reasons assigned are not the foundation of the jurisdiction, The general jurisdiction to do justice has been conferred on superior Courts in England by the common law, Jenkins C. J. in Governor of Bengal v. Motilal Ghosh 41 Cal. 173 : A.I.R. (1) 1914 Cal. 69 : 14 Cr.L.J. 321 S.B. observed as follows at p. 213:

It is true that the High Court not only has superintendence over the Courts of mofussil Magistrates, but also is a Court of record, if I am right, however in my reading of Rex v. Davies, (1806-1 K. B. 32; 75 L.J.K.B. 104), superintendence does not give jurisdiction, while the power of the King's Bench to punish for the interference with the lower Courts did not arise from its being a Court of record but from its Common law powers as custos morum.

It is the law which invests the superior Courts in England classified as the King's with the general jurisdiction to do justice between subjects and the Courts and subjects and the executive. To enable a High Court in India to issue the writs of certiorari, its jurisdiction should either be unlimited or the common law jurisdiction to issue any of the writs should have been conferred on it by its Charter, Letters Patent or the Act constituting the Court. Charters and the subsequent Letters Patent conferred the common law jurisdiction to issue the writ on the Calcutta, Bombay and Madras High Courts. The Nagpur High Court in Dattatraya Vishnu v. Registrar, Co-operative Societies, O. P. and Berar, Nagpur, I. L. R. (1941) Nag. 897 : A.I.R. (28) 1941 Nag. 282 and the Patna High court in Gopal v. Emperor A.I.R. (80) 1943 Pat. 245 : 45 cr. l. R. 177 S. B. have disclaimed the jurisdiction to issue the writ of certiorari. In In the matter of Pyu Maung A.I.R. (27) 1940 Hang. 84 : 1940 Bang. L. E. 825 S. B., it was held that the Rangoon High court had the authority to issue general certiorari because it was the King's Court with general jurisdiction. It is not explained in what sense the word 'general' was used. If by

'general' was meant unlimited jurisdiction conferred by the Charter of the Court, then un-doubtedly the Court could issue the writ unless the authority had been expressly taken away. The Rangoon High Court is the King's court in the sense that it was established by His Majesty the King but it is not the King's Court in England to which the- common law would apply. The common jurisdiction to issue the writ has to be conferred on a Court, however high, outside England.

17. To sum up, jurisdiction has to be conferred by the authority constituting the Court. If it is unlimited, there is no matter of which it cannot take cognizance. The jurisdiction conferred on this Court by Section 23, High court Act is a limited jurisdiction and within the prescribed limits there is no enactment under which the application can be entertained. For this reason the application is rejected.

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