

Radha Ketchap Vs. Union of India

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Court : Kolkata

Decided On : Feb-27-1995

Reported in : AIR1995Cal267

Judge : M.G. Mukherji, J.

Acts : [Constitution of India](#) - Articles 213, 214, 225, 226, 227, 230, 231, 232, 239, 249, 272 and 372;; Constitution (Amendment) Act, 1956 - Articles 230 to 232;; Calcutta High Court (Extension of Jurisdiction) Act, 1953;; High Court Appellate Side Rules;; Andaman and Nicobar Islands Regulations, 1876 - Regulation - Section 14A

Appeal No. : C.O. 40(W) of 1994

Appellant : Radha Ketchap

Respondent : Union of India

Advocate for Def. : Mr. A.S. Roy and; R.S. Saroop, Advs.;Mr. S.C. Bose and ;Miss Shyamali Ganguly, Advs.

Advocate for Pet/Ap. : Mr. B.K. Das, Adv.

Judgement :

ORDER

1. This writ application was filed by the petitioner, a social worker belonging to a schedule tribe community, as a public interest litigation. Initially a prayer was made for setting up a permanent High Court Bench for the Union Territory of Andaman and Nicobar Islands at Port Blair. As and when a preliminary objection was raised on behalf of the respondents that it was beyond the competence of this Court to give a mandate on the respondents for creation of an independent permanent High Court Bench in the manner prayed for, and particular attention of the Court was drawn to Article 214 of the Constitution 'that there shall be a High Court for each State' and Andaman and Nicobar Islands was not a State but merely a Union Territory, the *Ld. Advocate* for the petitioner in this perspective prayed for an amendment of the writ application and suggested that the writ petitioner would be satisfied if instead of a permanent High Court Bench, a permanent Circuit Bench is created at Port Blair.

2. The proposed amendment was carried into effect and now prayer is confined to creation of a permanent Circuit Bench at Port Blair.

3. This Court appointed Mr. S. C. Bose, Senior Advocate and Miss. Shyamali Ganguly, Advocate as *amicus curiae* to assist the Court.

4. The Bar Association, Port Blair was also heard through its President Mr. D. R. Parekh. The Bar Association however expressed its view holding a meeting that it stood for creation of a permanent Bench for the Union Territory of Andaman and Nicobar Islands and I am afraid unless the Parliament, in its wisdom decides to amend the Constitution to incorporate necessary amendment in Article 214 and consequent amendment in Articles 230 and 231, if found necessary, this Court cannot mandate the Parliament to effect necessary amendment in this regard, since it would be beyond this Court's competence to do so.

5. Articles 230 and 231 were substituted for the original Articles 230 to 232 by the Constitution (7th Amendment) Act, 1956, in view of the reorganisation of territories.

6. While under Article 214 there will be a separate High Court for each State, power will be required to establish common High Court for two or more States.

Power will also be required to extend the jurisdiction of a High Court to a Union Territory, whenever necessary, and to exclude the jurisdiction of a High Court from such territory. The revised Articles 230 and 231 are designed to make these provisions (Bhewal v. Dy. Director, : AIR1977 All488).

7. Prior to the amendment of 1956, Article 230 empowered Parliament to extend the jurisdiction of a High Court to any area outside the State where the principal seat of the High Court was situated or to exclude any area from the existing jurisdiction of a High Court. Coorg was excluded from the jurisdiction of Madras High Court and was placed under the jurisdiction of the then Mysore High Court. This jurisdiction of Parliament was exclusive and corresponding limitations were placed upon the power of the State legislature as regards extra-state jurisdiction of the High Court by Article 231, as it then stood. Under this Parliament made Calcutta High Court (Extension of Jurisdiction) Act, (Act XLI of 1953) extending the jurisdiction of Calcutta High Court to the former French Territory of Chandernagore and the Union Territory of Andaman and Nicobar Islands.

8. Under the amended Constitutional provisions, this power of Parliament is now restricted only to the Union Territories enabling Parliament to extend the jurisdiction of a High Court to, or exclude its jurisdiction from, a Union Territory only, and not with respect to any area included in another State. However, the power to establish a common High Court for more than one States has been conferred by Article 231 as it stands substituted now. A transcendent example is Gauhati High Court which is the common High Court for Assam, Nagaland, Manipur, Tripura, Arunachal, Meghalaya and Mizoram, whereas for as this Court is informed, there are different Circuit Benches in several States catering to the needs of the litigant public, the Bar and the Bench conforming to such needs, even though there is a permanent Bench at Gauhati and very recently there has also been creation of a permanent Circuit Bench at several places.

9. In ordinary States like Uttar Pradesh, Madhya Pradesh and Bihar, there are permanent Benches at Lucknow (apart from the main High Court sitting at Allahabad), Gwalior and Indore (where the principal seat of the High Court is at Jabalpur) and at Ranchi (through there the principal High Court is at Patna). In

Maharashtra and Goa, there is a combined High Court for the two States being the common Bombay Court, with permanent Circuit Benches at Panaji (Goa), Aurangabad and Nagpur. For Rajasthan, the High Court simultaneously sits both at Jaipur and Jodhpur. There is also a proposal for creation of a permanent Circuit Bench of Calcutta High Court for the North Bengal Districts either at Jalpaiguri or at Siliguri, Darjeeling being the third claimant and the venue is the subject matter of controversy litigations having been pending, the matter is sub judice.

10. There is no controversy on the point that with the abolition of the Judicial Commissioner's Court in Port Blair, by virtue of Calcutta High Court (Extension of Jurisdiction) Act 1953 (Act XLI of 1953), Andaman and Nicobar Islands came within the extended jurisdiction of Calcutta High Court, along with Chandernagore. The latter however merged with the State of West Bengal and lost its separate identity, but Andaman and Nicobar Islands, which is a Union Territory, came to have a common High Court with West Bengal being Calcutta High Court. The Calcutta High Court was also empowered to make rules in relation to Andaman and Nicobar Islands.

11. It is needless to point out that under Article 372 there is continuance in force of the existing laws. That apart the Calcutta High Court is changing its Rules from time to time with regard to its applicability in Andaman and Nicobar Islands. Chapter XVIII of the High Court Appellate Side Rules was applicable in relation to Andaman and Nicobar Islands which were framed by the Calcutta High Court in exercise of powers conferred on it by Article 225 of the Constitution read with Section 14A of the Andaman and Nicobar Islands Regulation 1876 (III of 1876). It is needless to advert to Chapter XVIII of the previous Appellate Side Rules since the same has undergone a drastic change by virtue of Notification No. 7087/G dated 14-10-1991 which was published in the Calcutta Gazette on 22-11-1991. Previously since notification No.4636 dated 13-7-1961, one or more judges of the High Court used to visit the Andaman and Nicobar Islands, by way of Circuit, whenever the Chief Justice from time to time might appoint, in order to exercise in respect of cases arising in the Islands the jurisdiction and powers, vested in the High Court by the Constitution and it was provided that such visits shall be made at least once a year or another if the volume of work so requires, unless the Chief

Justice with the approval of the Central Government otherwise directs. The Administrative Committee meeting held on 8-6-1983 however resolved that the sittings of Circuit Bench should be held during 1st half of March, last half of September and last half of December every year. By virtue of the amendment engrafted in Chapter XVIII of the Appellate Side Rules by Notification No. 7087/G dated 14-10-1991, it was brought in the amended Rules that such visit of one or two judges, by way of Circuit, would take place whenever the Chief Justice from time to time so appoints which shall be at least once a month unless the Chief Justice otherwise directs.

This practice has been followed since then continuously and except during the Summer Holidays prevailing in A. & N. Islands between April 15 and May 15 each year and during the long Holidays or the Piya Holidays of the Calcutta High Court and the Christmas Holidays of the Calcutta High Court, two Judges have been visiting Port Blair by way of Circuit Benches, sitting both singly as well as in the Division Bench taking appropriate matters according to the Appellate Side Rules of the High Court.

12. It may be pointed out that while the Circuit Bench is not in session, appeals before the Division Bench under Clause 15 of the Letters Patent from the Judgment and/or order of one of the judges of the Bench or an urgent application under Article 226 and Article 227 of the [Constitution of India](#) may be filed with the leave of the Chief Justice and heard in Calcutta. It is provided in the Rules that all such appeals and applications shall stand transferred to the Islands for being dealt with and disposed of by the next Circuit Bench if they are not already disposed of in the meantime. Every case in respect of which all the parties in writing request the Registrar, Appellate Side, High Court for being heard in Calcutta and the Chief Justice agrees to the same, may be filed and heard in Calcutta. All cases arising out of the Islands but filed and/or pending in Calcutta but not heard in part, stand transferred to the Islands for being placed before the Circuit Bench for disposal. Urgent applications for bail in any Criminal Appeal and/or Criminal Revision and/or . Reference may be filed before the Registrar of the Islands who shall have power to grant bail pending the orders of the next Circuit Bench. The registrar of the Islands is also the Taxing Officer of the Court and the Chief Ministerial Officer of

the Registry shall be Stamp Reporter for all cases arising in the Islands. During the absence of the Registrar from the Head Quarters in the Islands, the jurisdiction and duties of the Registrar are exercised and performed by the Sessions Judge who shall report daily to the High Court all orders of judicial or quasi-judicial character passed by him. During the absence of the Registrar, a Memorandum of Appeal or application which is ordinarily required to be presented to the Registrar, may be presented to the Sessions Judge. All Memorandum of Appeals and applications so received by the Sessions Judge are submitted for orders to the Registrar if he is at the headquarters on the next day. The Chief Justice has been given powers to appoint the Registrar and the necessary staff including the Deputy Registrar. In so far as the working of the rules are concerned, it may not be out of place that for all exigencies, the learned District and Sessions Judge, A. and N. Islands is working as the Registrar of the Circuit Bench at Port Blair.

13. Mr. Bimal Kumar Das, the learned Advocate appearing for the petitioner, contended before this Court that the Circuit Bench ordinarily sits for about two weeks in a month both as a Division Bench and also in two Single Benches and only two Hon'ble Judges are available at one Circuit. Mr. Das submitted that while immense benefit was available to the litigants by reason of frequent holdings of the Court at Port Blair by Calcutta High Court, the people of Andaman and Nicobar Islands could ill afford to go to Calcutta for the purpose of litigation in the High Court when the Circuit Bench does not sit. Mr. Das in that context submitted that the Circuit Bench should be made a permanent one and at least one Hon'ble Judge of the High Court should remain permanently in the Circuit Bench at Port Blair throughout the year, and the choice of the said single Judge may be done by the Hon'ble Chief Justice by way of rotation amongst the Hon'ble judges for a period of three or four months at a stretch. Unless the exigencies of the situation during emergency can be met by providing a permanent Circuit Bench at Port Blair, the poor litigant in the Islands could ill afford to go to Calcutta by incurring heavy expenses and which on many occasions would be beyond the financial capability of the average litigant to go to Calcutta during such interregnum when the Circuit Bench does not sit. He illustrated his grievances as follows:--

(a) If any order was passed in between one Circuit Bench and another which would seriously affect the lives, liberty, property of the citizens or any other persons and infringed any of the fundamental rights or any legal right, such illegalities could not be brought to the notice of the High Court by filing applications under Articles 226 or 227 of the Constitution because the High Court was not sitting at Port Blair at that time. Many orders are often executed by demolition of houses, evicting people from their home and hearth by illegal means.

(b) Had there been a permanent Circuit Bench at Port Blair with only one Hon'ble Judge then in urgent cases an application under Article 226 and/or Article 227 of the Constitution could be made immediately to the Hon'ble High Court at Port Blair itself for admission of the petition and for interim relief.

(c) Such facility which was available to the litigants at the High Court sitting at Calcutta was denied to the people of Andaman and Nicobar Islands.

14. Mr. Das admitted that indeed there was a provision in the Appellate Side Rules of the High Court that when the Circuit Bench is not sitting at Port Blair, matters relating to Andaman and Nicobar Islands could be entertained in Calcutta. But the long distance, lack of adequate transport, and the enormous expenses involved are factors which make it much too burdensome for almost every average litigant to approach the costly citadel of justice of the High Court sitting in Calcutta. It was, therefore, submitted that a writ or direction under Article 226 of the Constitution may be issued upon the respondents for establishing a permanent Circuit Bench at Port Blair. On being asked by me as to whether a representation to that effect was ever made by the petitioner at any point of time. Mr. Das answered in the negative and submitted that the present writ application itself may be treated as such a representation and the order passed on the basis of this application may be forwarded to the appropriate authority of the Calcutta High Court for such purposes.

15. Mr. A. S. Roy, learned Advocate, appearing on behalf of the Andaman and Nicobar Administration drew my attention to the constitutional provisions leading to the conferment of jurisdiction by an Act of Parliament enacted in 1953 over the Union Territory of Andaman and Nicobar Islands to the Calcutta High Court itself.

He drew my attention to the Appellate Side Rules of the High Court specially Chapter 18 as it stands now. He placed Articles 213, 230, 232, 239, 249, 272, 225 of the [Constitution of India](#) and the Act of Parliament of 1953 itself extending the jurisdiction of the Calcutta High Court to the Union Territory of Andaman and Nicobar Islands as referred to earlier. His version is that Chapter 18 of the Appellate Side Rules of the Calcutta High Court governs the field and if the Hon'ble Chief Justice and the Full Court decide upon the continuity of the Circuit Bench in such a manner, there may be a permanent Bench of the Circuit at Port Blair. He submitted that it could only be done by the Hon'ble Chief Justice in the Full Court and that too only on a consideration of viability including the assessment of the needs of the people and the infrastructure. There should also be a proper assessment of the exact number of cases filed in High Court from these Islands as otherwise the Hon'ble the Chief Justice and the Full Court would be unable to give any correct position about the justification or otherwise of creating a permanent Circuit Bench. The frequency of holding Circuit Courts at Port Blair can only be regulated by the Hon'ble Chief Justice and the Full Court on appreciation of the correct materials available both at Port Blair as well as at Calcutta.

16. Mr. Roy submitted further for and on behalf of the Administration that he does not have any objection for setting up of a permanent Circuit Bench, if so desired by the Calcutta High Court. He, however, disputed the allegations made by the petitioner that the local administration has been acting in any manner arbitrary or illegal at such times when the Circuit Bench is not sitting at Port Blair.

17. Mr. D. K. Parekh, the President of the Bar Association, on due consultation with the members of the Bar submitted before me an affidavit in opposition and submitted that the Bar wants an independent permanent High Court of its own. He however admitted that it is not possible to set it up without appropriate constitutional amendments and without the Parliament taking a decision in this context in its legislative wisdom. Mr. Parekh further submitted on behalf of the Bar Association that there was an assurance given by the Administration previous, to their demand and drew the Court's attention to letter dated 26-2-1991 by the then Judicial Secretary. The Bar Association is of the view that such assurance is still in force as was resolved in its meeting dated 20-2-1995. Mr. Roy, appearing for the

Andaman and Nicobar Administration says that the situation is now changed with more frequent visits of Circuit Benches. Mr. Parekh submitted ultimately that till such time an independent High Court of its own for these Islands be created by Parliament for the Union Territory of Andaman and Nicobar Islands at Port Blair, the present system of holding the Circuit Court should continue. He, however, left the choice of the frequency of such Circuit Benches to the Judicial as well as the administrative discretion of the Hon'ble Chief Justice and the Full Court. But sitting at least for a fortnight in a month might be a workable solution for the present. Mr. Parekh prayed for the rejection of the writ application in the present context.

18. Mr. S. C, Bose, learned Senior Advocate who appeared in the matter with Miss. Shyamali Ganguli as amicus curiae, submitted before this Court that before this Court decides upon to issue a Writ directing the Hon'ble Chief Justice and the High Court to consider the question of having a permanent Circuit Bench, a representation should first and foremost be sent to the Chief Justice and the High Court should be impleaded through its Chief Justice as a party respondent without which no appropriate relief could be made available to the petitioner. Till such time a representation is considered by the Hon'ble Chief Justice and the Full Court of the Calcutta High Court, the petitioner will not be satisfying the essential pre-requisites for invoking the writ jurisdiction of this Court. Mr. Bose further conceded that a writ might be maintainable even against the Chief Justice and the High Court and there was no legal bar in this context.

19. Mr. Bose highlighted the importance of the right to judicial review which would be available to every citizen. He conceded that every citizen living in the Islands has every such right to have a judicial review in respect of all arbitrary and mala fide actions taken by not only the Government but also the administrative authorities. He contended further that judicial review has now been considered to one of the basic structures of the Constitution being an integral part and parcel of the democratic institution taken as a whole. In order to elaborate the point he referred to the decisions in *Sankari Prasad v. Union of India*, reported in AIR 1951 SC 458, *Sajjan Singh v. State of Rajasthan*, reported in : [1965]1SCR933 , *Golaknath v. State of Punjab*, reported in : [1967]2SCR762 , *Keshavananda Bharati v. State of Kerala*, reported in : AIR 1973 SC1461 and contended that the

ratio of the decision in *Keshavananda Bharati* was to the effect that the basic structure of the Constitution cannot be changed by effecting any amendment of the Constitution. The ratio of the said decision in *Keshavananda Bharati's* case (ibid) was applied in the case of *Indira Gandhi v. Rajnarain*, reported in : [1976]2SCR347 wherein the 39th Amendment of the Constitution was declared to be invalid on the ground that the said Amendment purported to abrogate one of the basic structures of the Constitution namely democracy. Democracy means that there shall be not only a fair and free election by the people for electing its representatives in the Parliament and also in the Assembly, but there shall be an independent and impartial judicial forum. By such process, judicial review is made a part and parcel of democracy. In *Minerva Mills v. Union of India*, reported in : [1981]1SCR206 , *Sampat v. Union of India* reported in AIR 1987 SC 386 and *R. K. Jain v. Union of India and others*, reported in : 1993(65)ELT305(SC) the right to have a judicial review was taken to be a basic structure of our Constitution.

20. Mr. Bose further submitted that if there be no forum for the people of these Islands during the interregnum period when the Calcutta High Court Circuit Bench is not having its sitting Art. A. & N. Islands at Port Blair for about 15 days a month as also during summer and Puja Holidays and Christmas Holidays, having regard to the enormous disadvantage of the people of these Islands to approach either the High Court at Calcutta or the Supreme Court at New Delhi in order to have a judicial review there could thus be a practical denial of justice to them and the basic structure of the Constitution to have a judicial review is also negated to them for such time. Hence, they can definitely file a writ application with a modified prayer that continuity of the Circuit Bench may be extended by way of taking appropriate decision in this regard. Mr. Bose submitted that there is no doubt that if a proper representation is made to the Hon'ble High Court, instead of filing a writ application, due consideration will be given by the High Court in its administrative jurisdiction and as such propriety demands with a prayer of filing a writ application, a representation in a proper manner should be made available to the High Court at Calcutta to that effect.

21. Mr. Bose, however, conceded that the ambit of its jurisdiction of Article 226 of the Constitution is wide enough for issue of a writ against the High Court and he

has stated by way of ready references by cases of Pradyat Kumar Bose v. Chief Justice, reported in : [1955]2SCR1331 Promotha v. Chief Justice, reported in : AIR1961 Cal545 and Himangshu Kumar Bose v. Jyoti Prakash Mitter, reported in : (1966)IILLJ155SC for such a proposition where it was found that the jurisdiction under Article 226 of the Constitution against the High Court was not disputed. However, as a matter of propriety Mr. Bose submitted that the petitioner cannot be granted any relief without making a representation to the High Court to that effect.

22. In answer to the stand taken by the Bar Association of Port Blair that it wanted to set up a separate High Court of its own and till such time it was done, the present system should continue, Mr. Bose submitted that if the grievance of the petitioner could be appropriately met by having one Hon'ble Judge holding Court in these Islands all throughout the year, after considering all aspects of the matter, there could not be any inconvenience of the Bar Association in having a permanent Circuit Bench.

23. To summarise the arguments of Mr. Bose it may be said that he conceded that the right of judicial review is a basic structure of the Constitution and in a writ application if it can be established by the petitioner that even after all such representations for having a permanent Circuit Bench at Port Blair turned out to be abortive and all persecutions failed without any just cause, and as corollary the right of judicial review is denied or destroyed to a Citizen, an appropriate relief may be granted by issuance of a writ or direction under Article 226 of the Constitution in an application made by the aggrieved party.

24. Mr. Bose further admits that judicial propriety demands that a proper representation should be made before the Hon'ble High Court at Calcutta through its Chief Justice giving out all the relevant facts and figures relating to the difficulties experienced by the people of these Island in not having a permanent Circuit Bench at Port Blair. Last but not least Mr. Bose submitted that in the present state of affairs no relief can be granted on the basis of the present application.

25. On giving the matter my anxious consideration I am constrained to hold that without the High Court and its Chief Justice being impleaded as a party

respondent, no relief can at all be given to the petitioner by way of asking the Hon'ble Chief Justice and the Full Court to consider the question of having a permanent Circuit Bench at Port Blair. As the matter stands now, the only relief available to the petitioner is that he can with proper data and with the supporting views of the different institutions having litigations in Port Blair, ventilate the grievances of the people of the Andaman and Nicobar Islands to the Hon'ble Chief Justice of Calcutta High Court for consideration by His Lordship in the Full Court, the question of having a permanent Circuit Bench at Port Blair. If such a representation is made in appropriate way, I have every faith and hope that the Hon'ble Chief Justice in the Full Court should give the matter a due consideration in an appropriate manner in accordance with law.

26. With these observations, the writ application stands disposed of. There will be no order as to costs.

27. Let certified xerox copies of this order be made available to the parties on payment of usual fees.

28. Order accordingly.