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Court : Kolkata

Decided On : Aug-22-1988

Reported in : AIR1989Cal237,(1989)2CALLT31(HC)

Judge : Susanta Chatterji, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.O. No. 12280(W) of 1988

Appellant : Sunit Kumar Mondal and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : S.K. Kundu, Adv. for Nos. 1 and 2 and ;Somnath Chatterjee and ;P.K. Chatterjee, Advs. for Nos. 3 and 4

Advocate for Pet/Ap. : Kanak Kumar Chatterjee, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Susanta Chatterji, J.

1. The present writ petition is one of the glaring examples as to how each and every problem of life is brought to the Court to find its solution. The writ petitioners

have prayed, inter alia, for issuing a writ of mandamus calling upon the respondents and each one of them and their agents to show cause as to why the respondents should not be directed to act in accordance with law and also a writ of certiorari calling upon respondents to certify and to transmit all the records and/or proceedings and papers relating to the proposed agreement of 'Darjeeling Gurkha Hill Council' to this Court so that the members of the public may get information of the said proposed agreement and for an interim order directing the respondents and other officers to take immediate steps for not to use the word 'Gurkha' in the proposed agreement of Darjeeling Hill Council and to take such other necessary steps which would be for the interest of the public at large.

2. It is stated in the writ petition that the petitioners not for their individual interests, but for the sake of the country at large have filed the present writ petition by way of a public interest litigation, stating that the respondents 1 and 2, being Union of India and the Secretary, Ministry of Home Affairs, and the respondents 3 and 4 being the Government of West Bengal and its Secretary, Home Department, are taking steps contrary to and inconsistent with the spirit of the [Constitution of India](#) and/or the acts caused to have been done by the said respondents which would result in spreading communal ill-feeling and the word specially used in the proposed agreement, being 'Gorkha' should be avoided otherwise by conceding to such demand, the steps have been taken in the way of dividing the country and the entire interest of the State is in jeopardy. These facts have been elaborated by making various averments by giving examples of Jharkhand activities and other political activities within the State. It is also stated that by conceding to the demand of a section of people, who have no locus standi to enter into such agreement and/or accord, the spirit of the [Constitution of India](#) is being violated and the people at large have been kept in the dark to know as to the whereabouts of the proposed agreement and by suppressing all facts and by keeping in darkness such steps have been taken prejudicing the interest of the people of the State and in particular the interest of a large section of the people is affected.

3. Upon notice to the respondents the present writ petition is being moved.

4. Mr. Somnath Chatterjee, learned counsel is appearing for the respondents 3. and 4 and Mr. Sushanta Kumar Kundu, learned Advocate is appearing for the respondents 1 and 2.

5. In course of hearing the learned counsel for the respective parties argued at length and while going through the pleadings, it appears that at the outset a copy of the impugned memorandum of settlement has been produced before this Court. Mr. Kanak Kumar Chatterjee, learned Advocate for the petitioner has also got an opportunity to go through the said memorandum of settlement. Mr. K. K. Chatterjee appearing for the petitioner has strongly argued that a prima facie case has been made out by the petitioner for issuance of a rule and to pass an interim order in terms of prayer (c) of the writ petition. He has also submitted that if already the agreement has been signed, this Court should pass an appropriate order restraining the respondents from taking any step to implement the said memorandum of settlement and/or the agreement and/or the accord in the proper perspective. In elaborating his submission, he has submitted that the petitioner has got locus standi to maintain this application and the writ petitioner has got locus standi to maintain this application and this writ petition should be considered as a public interest litigation, and the Court's powers are wide enough to investigate the matter and to question the steps taken by the respondents in entering into such memorandum of settlement with persons who are alleged to be not citizens of country. He draws the attention of this Court to a number of decisions in this respect, namely the decision reported in : (1982)11LLJ454SC (People's Union for Democratic Rights v. Union of India) as to the scope of public interest litigation, and : [1984]2SCR67 (Bandhua Mukti Morcha v. Union of India) to make basic human rights meaningful. He has also cited another decision reported in : (1979)11LLJ217SC (Ramana Dayaram Shetty v. International Airport Authority of India) as well as another decision reported in : AIR 1985 SC1147 . Lastly he has drawn the attention of this Court to the decision reported in AIR 1986 SC 18 (Sic) as to the test of the reasonableness of the act complained of.

6. Mr. Somnath Chatterjee, learned counsel appearing on behalf of the respondents Nos. 3 and 4 has submitted by producing a copy of the memorandum of settlement that the said memorandum of settlement is an instrument which

should be implemented after an appropriate legislation and per se it has no legal effect and until and unless a legislation is brought in the appropriate forum there cannot be any implementation of the said accord in any manner whatsoever. He has developed his submission by submitting, inter alia, that the memorandum of settlement is an outcome of the exercise of the executive power which is the residuary power indeed and such a step was taken to bring peace and to avoid conflict and tension in the area in question. By entering into the said memorandum of settlement nothing has been conceded as to the interest of the State of West Bengal or the interest of the people of the State of West Bengal in any manner whatsoever, Besides the said memorandum of settlement would be placed before the legislature to consider whether it is constitutionally valid and if any legislation is enacted thereafter, the same can be questioned before the appropriate court of law if there is any violation of the [Constitution of India](#) itself. It is absolutely premature for the petitioner to challenge the proposed accord at this material point of time alleging that the accord will be prejudicial to the interest of the country itself particularly when steps are being taken to avoid conflict amongst various sections of the people at large. He has further developed his argument by referring to several paragraphs of the writ petition which according to him are not relevant for the purpose of examination by the court and those averments may have certain political interests which ought not to be scrutinised by this Court to find out the legality and validity of the memorandum of settlement in its proper perspective. Furthermore, he has referred to the decision reported in : [1982]1SCR1137 , Bishamber Dayal Chandra Mohan v. State of U. P. and referred to para 20 of the report. He has drawn certain observations in the said report that even assuming that the impugned teleprinter message (as the case was there) is not relatable to the two control orders, the State Government undoubtedly could, in exercise of the executive power of the State introduce a system of verification on movement of wheat from the State of Uttar Pradesh to various other States at the check-posts on the border and place restrictions on inter-districts movement of wheat by traders on private account with the State. The executive power of a modern State is not capable of any precise definition.

7. He has submitted a case reported in : [1978]1SCR1 , and in particular the para 144 of the report. It has been found that it would be dangerous exercise for the

court, both because it is not a fit instrument for determining a question of this kind and also because the court would thereby usurp the function of the Central Government and in doing so, enter the political thicket which it must avoid if it is to retain its legitimacy with the people. In fact, it would not be possible for the court to undertake this exercise, apart from total lack of jurisdiction to do so since by reason of Article 74, Clause (2) of the [Constitution of India](#) the question whether any and if so what advice was tendered by the Minister to the President of India cannot be enquired into by the court and moreover, 'the steps taken by the responsible Government may be founded on information and apprehensions which are not known to and cannot always be made known to those who seek to impugn what has been done.' One thing however has been made certain that if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds the court would have jurisdiction to examine it because in that case there would be satisfaction of the President of India in regard to the matter in which he is required to be satisfied.

8. He has referred to another decision reported in AIR 1980 Delhi 114 (Dinesh Chandra Pande v. Chaudhury Charan Singh). It would appear from the said decision that political questions are unjusticiable by courts. The main reason is that legitimate use of political power is generally non-justiciable since it has political sanction which is sufficient in view of the separation of powers between the executive, the legislature and the judiciary in the [Constitution of India](#). But when it is alleged that political power has not been used in accordance with the Constitution or the law, the courts have to examine if the issues are legal or political and if the latter, if they are justiciable or not. Broadly speaking when there is a general agreement among the dominant political groups as to the rules which should be applied, then there is a legal issue while a political issue is one about which there is a greater conflict, less certainty and less agreement. The question would be more political than legal when the interests are to be subserved by raising them are general or political rather than individual or legal. The courts will not shun to decide seemingly . political question when the Constitution or a statute has to be interpreted to answer them.

9. With regard to the infringement of the legal rights and/or the legal character and/or the court's arena and/or its jurisdiction to enter into the controversies it has been discussed in : [1982]2SCR365 , and in particular paragraphs 17, 22 and 27 of the report and which has been referred to by Mr. Somnath Chatterjee.

10. Mr. Somnath Chatterjee has summed up his argument by submitting that if any political solution has been arrived at to end any conflict and the steps taken in proper spirit and this political question should not be brought to any court confusing the issues and according to him there is no merit at all in the writ petition and the court should not interfere with this matter.

11. Mr. Sushanta Kumar Kundu, learned Advocate appearing for the respondents 1 and 2 broadly supported the view taken by the learned counsel appearing for the respondents 3 and 4. He has submitted that already a copy of the memorandum of settlement has been produced before this Court and there is nothing to apprehend about infringement of the rights of the petitioner.

12. Having heard all the submissions made by the learned counsel appearing for the respective parties, this court with all anxieties has gone through the entire writ petition and considered the submissions made on behalf of the rival parties. It is true that not only the averments if made in the writ petition are only to be considered to decide the case as made out therein but real issues may be investigated by the Court and/or necessary facts be enquired into as to the background and/or the developments of the issues in an appropriate case, when such situations are warranted, but after going through the materials on record, this court finds that with regard to the executive power it has been considered in details in a case reported in : [1955]2SCR225 (Ram Jawaya Kapur v. State of Punjab). In that case Hon'ble Chief Justice Mukherjee was pleased to find that the executive function comprised both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, maintenance of law and order, the promotion of socio-economic welfare, the direction of foreign policy and in fact, the carrying on and supervision of the general administration of the State. All these questions have been very elaborately considered and dealt with in the cases reported in : [1960]3SCR250 , : [1966]1SCR430 , (Ram Kishore Sen v.

Union of India) and : AIR 1971 SC1594 . :

This Court has further found out that the Memorandum of Settlement per se has got no legal entity. Mr. Somnath Chatterjee has very fairly submitted that there is nothing in the Memorandum of Settlement itself and there is no machinery to enforce the same in any forum by any of the parties who have signed the same. There must be proper legislation to that effect. Without an appropriate legislation, the settlement and/or accord, is nothing but an empty rhetoric. Before legislation it has per se no legal effect. It is true that peace is required but peace cannot be purchased. Peace is a gift of God which is seldom given to the people. The people have to secure the same by sorrows and sufferings. To have peace, there must be prudence and toleration. In the life of a nation a statesman has a preference to a politician. With regard to the historical background and/or political background, the court has nothing to do in this respect. This Court is to see that what is the legal validity and/or the Constitutional validity of the accord. The petitioners amongst others have apprehension and/or anxiety as to the proposed step to enter into the accord and/or implementation of the same, but those apprehensions and/or the anxieties are not enough. This court has to examine as to any step taken by the executive is contrary to law. A matter cannot be questioned in a court unless such steps are mala fide indeed. But if an accord has been reached or a step has been taken which is to be considered by the appropriate legislature and in that case such apprehensions become nugatory because the legislature will have to go into details as to the memorandum of settlement and/or accord and if the wisdom of the legislature finds it sufficient then it has to pass an appropriate legislation. The petitioners may question the said law before the Court as to its constitutional or legal validity if any infirmity is found in such case. So there are two more safety valves to consider as to whether the accord which is alleged to have been signed would be implemented by the appropriate legislation or not and even after the legislation it can be considered in an appropriate case if challenge is made. It is true that every person and/or section of people have got right to come to Court and the Court will try to solve the problem by enlarging the horizon. But in this case this Court finds that the petition is a premature one at this stage. The legislature will examine in details the accord and the petitioners or any person or persons have liberty to file an appropriate case if the situation so demands. Considering this

aspect of the matter this Court finds that at this stage it would be futile to entertain this writ petition and to cause further enquiry as to the background be it political or historical as to the outcome of the Memorandum of Settlement. All these questions as raised by the petitioner may be canvassed at a later stage, if any appropriate case is made out by the petitioner.

The writ petition is thus rejected without any order as to costs. It is made clear that by , rejection of this writ petition this court has not decided anything as to the proposed steps likely to be taken by the respondents, if any, subsequent to signing of the accord.

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