(1924) ILR (Cal) 874

Calcutta High Court

Case No: None

In Re: J.M. Sen Gupta — APPELLANT

Vs

RESPONDENT

Date of Decision: July 7, 1924

Acts Referred:

- Government of India Act, 1915 - Section 72(d)
- Specific Relief Act, 1877 - Section 45

Citation: (1924) ILR (Cal) 874

Hon'ble Judges: C.C. Ghose, J

Bench: Single Bench

Judgement

Ghose, J.

This is an application u/s 45 of the Specific Relief Act (I of 1877) for an order directing the Hon"ble Mr. H.E.A. Cotton, President of the Bengal Legislative Council, to decide on the admissibility of a certain motion, being item No. 6 in the list of business to be brought forward at the session of the Bengal Legislative Council, which commences to-day at 3 P.M., and to disallow the said motion or to forbear putting the same at the said session of the Bengal Legislative Council, and for such further or other order as to this Court may seem fit and proper, and for an order that the said Mr. Cotton and the other respondents do pay the costs of and incidental to this application. The other respondents are the Hon"ble Mr. A.K. Fazlul Huq and the Hon"ble Mr. A.K. Ghuznavi, being the Ministers in charge of the departments of Education and Agriculture of the Government of Bengal. The Hon"ble Mr. Donald, who is a member of the Executive Council of His Excellency the Governor of Bengal, in charge of the Finance Department, was served with notice of this application under Rule 5 of Chapter XXIX of the rules of this Court (Hechle"s Rules, p. 356,) as it appeared from the list of business circulated to the members of the Bengal Legislative Council that it was he who is to move a supplementary demand for a grant of Rs. 1,71,000 for expenditure under the head "11--General Administration (Transferred)" on account of the salaries of the Ministers.

2. This application was brought on before me on Thursday last, when, in view of the urgency of the matter, I directed that it should be renewed before me on Friday morning on notice to the respondents and to the said Mr. Donald. This was done and I heard at length on Friday learned Counsel for the applicant and the learned Advocate-General on behalf of the respondents. The arguments were not concluded till after 4 P.M. on Friday and I then stated that I would deliver judgment at the earliest possible moment, namely, at 11 o''clock this morning.

3. The facts which have given rise to the present application are as follows: At the last session of the Bengal Legislative Council on the 18th day of March 1924, a statement of the estimated annual expenditure and revenue of the Presidency of Bengal for the year 1924-25, commonly called the budget, was presented and in connection therewith a separate demand for grant on account of the salaries of the Ministers was made u/s 72(d), Sub-clause (2) of the Government of India Act. The said demand was for a sum of Rs. 2,20,000 under the head "22 (e)--General Administration--Ministers (Transferred)." At the said last session of the Bengal Legislative Council, to wit, on March 24, 1924, the said demand for a grant on account of the salaries of the Ministers was, on the motion of Maulvi Mohamed Nurul Huq Chowdhuri, a member of the said Bengal Legislative Council, rejected by the Council, as appears from the official report of the proceedings of the said Council held on the 24th March 1924. Although the said demand for grant on account of the salaries of the Ministers was rejected by the said Council, the Ministers have continued to remain in office and are in office now. On or about June 30, 1924, the applicant received a printed list of business to be brought forward at the session of the Bengal Legislative Council which commences to-day, signed by J. Bartley, Officiating Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council, The said printed list included an item being item No. 6, which ran as follows: "Supplementary demands for grants--22 "General Administration (Transfer red)." The Hon. Mr. J. Donald to move that a sum of Rs. 1,71,000 be granted for expenditure under the head 22--General Administration (Transferred) on account of the salaries of the Ministers".

4. The applicant states that no estimate can be presented to the Bengal Legislative Council at the forthcoming session for a supplementary or additional grant on account of the salaries of the Ministers under Rule 94 of the Bengal Legislative Council Rules and Standing Orders. (See p. 266 of the Bengal Legislative Council Manual, 1924.) The said rule runs as follows:

(1) An estimate shall be presented to the Council for a supplementary or additional grant when (i) the amount voted in the budget of a grant is found to be insufficient for the purposes of the current year; or (ii) a need arises during the current year for expenditure for which the vote of the Council is necessary upon some new service not contemplated in the Budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Council as if they were demands for grants.

5. The applicant further states that he has been since November, 1923, and is a member of the Bengal Legislative Council; that he is the owner of immovable properties in the district of Chittagong, for which he pays Government revenue, and that he has also been assessed for payment of income tax on the income derived from the exercise of his profession as an Advocate of this Court. He states also that he wrote, addressed and sent a letter to Mr. Cotton on July 2, 1924, drawing his attention to the facts hereinbefore recited, and contending that no estimate could be presented to the Bengal Legislative Council for a supplementary or additional grant on account of the salaries of the Ministers in the events which had happened. The applicant went on to add the following: "As President of the Council it is in cumbent on you to decide on the admissibility of a motion and you have authority to disallow a motion even though such a motion appears in the list of business. I contend that there can be no doubt whatsoever that the motion of the Hon. Mr. J. Donald, which is item No. 6 in the said printed list of business, does not comply with the Bengal Legislative Council Rules and Standing Orders and should, therefore, be disallowed. I therefore call upon you to decide on the admissibility of the said motion of the Hon. Mr. J. Donald and to delete item 6 from the said printed list of business, and to forbear from putting that motion before the session of the Council commencing on Monday, July 7, 1924. Unless I hear from you in reply by 11 o"clock to-morrow, I shall assume that you refuse to decide the question of the admissibility of the said motion, or to disallow the said motion, or to delete it from the said printed list of business, and I shall take such steps as I may be advised." The applicant states that the said letter was delivered at the office of Mr. Cotton and that he also telegraphed to Mr. Cotton, who was then at Darjeeling, the substance of the said letter.

6. The applicant goes on to add that notwithstanding the demand made on Mr. Cotton, the latter has declined to decide on the admissibility of the said motion or to disallow the same, or to move at all in the matter, and has denied to him the justice to which he alleges he was and is entitled. Lastly, he states that his property, franchise and personal rights as a member of the said Council and otherwise would be injured, unless Mr. Cotton is directed to decide on the lines indicated above, and that he has no other specific or adequate) legal remedy in the matter, and that the remedy he prays for will be complete.

7. Mr. Sircar, who appeared in support of the application, made it clear to me at a very early stage of his vigorous address, that his contention was that item No. 6 on the said agenda paper was hit by Rule 94 of the said Kales and Standing Orders, and that, therefore, Mr. Cotton had no power or jurisdiction to include the said item in the said agenda, and that in the events which had happened, the applicant was entitled to ask the Court to direct Mr. Cotton to forbear from putting the said item No. 6 before the Bengal Legislative Council for its consideration, or, in other words, to ask the Court to direct Mr. Cotton to delete the said item from the said agenda. Mr. Sircar stated that although his first prayer was for an order directing Mr. Cotton to decide on the admissibility of the said

motion, being item No. 6 in the said agenda, his principal prayer was that Mr. Cotton should be directed to delete the said item as being an item which was hit by Rule 94.

8. As regards the right of the applicant to an order u/s 45 of the Specific Relief Act, Mr. Sircar pointed out that his client paid Government revenue which was an essential part of the fund out of which the Ministers were to be paid their salaries, and that the money which was taken from his client could only be used for legitimate purposes as provided for by law. In the second place, Mr. Sircar contended that having regard to the fact that at the last session of the Bengal Legislative Council, his client had exercised his right to vote and had voted against the grant of salaries to the Ministers, he would be injured so far an his said right, which, according to him, was a "franchise", was concerned. In the third place, the applicant"s contention was that he, as a member of the Council, had a right to see that the business of the Council was conducted according to the provisions of law.

9. In answer to these contentions the learned Advocate-General, on behalf of the respondents, submitted the following points for my consideration:

10. (a) That no Court has ever granted a writ of Mandamus in the form asked for by the applicant, and that the applicant was not entitled to any order directing Mr. Cotton to decide the question of the admissibility of the said motion in a particular manner. (6) That Parliament, in passing the Government of India Act and in constituting Legislative Councils thereunder, had kept in view the English constitutional principle, namely, that the Legislature was supreme and that neither the Judiciary nor the Executive should interfere in any way with the conduct of business in the Legislative Councils. (c) That it has not been shown that the demand for justice made by the applicant has been refused by Mr. Cotton. (d) That the applicant has not shown that he has some interest in the matter other than such as may belong to the community at large in the question now being debated, it being clear that the "personal right" injury which the Courts aim at preventing or remedying, is a right personal to the individual seeking the remedy, and not merely such a right in rem, as every member of a society has independently of any act of his own. (e) That Rule 94 of the Rules and Standing Orders was not exhaustive, and that having regard to Rules 21, 38 and 39 of the said Rules and Standing Orders, taken along with the provisions of Section 72(d) of the Government of India Act, Mr. Cotton had sufficient authority to include the said item No. 6 in the agenda paper.

11. Before I proceed further, I desire to observe that after the conclusion of the arguments in this matter on Friday evening, it was brought to my notice that there had been filed on that date a suit in this Court against the present respondents by certain persons named Kumar Shanker Roy Chaudhuri and Kiran Shanker Roy Chaudhuri on behalf of themselves and all other persons paying revenue and/or taxes allocated under the Government of India Act to the Government of Bengal as sources of provincial revenue, praying for a declaration that the motion contained in item No. 6 in the said agenda paper is incompetent and illegal and ultra vires, and that it cannot in any way affect the rights of the said plaintiffs and of the other persons for whom they are suing; and further praying

for a declaration that the two Ministers are not entitled to the status of Ministers and are not legally entitled to discharge any of the duties of their office as Ministers, and praying for an injunction restraining Mr. Cotton from putting the said motion at the session of the Bengal Legislative Council; which commences today, and restraining the two Ministers from drawing any monies by way of salary or otherwise in pursuance of the said motion, or from discharging any of the duties of the office of Minister. I have referred to the suit because it may be argued that many of the points which were the subject of debate on this application and in particular the points (b) and (e) raised by the Advocate-General are covered by the issues likely to arise in the said suit, and that a pronouncement on the merits raised on this application is inadvisable. I cannot, however, anticipate the course of events in the said suit and must confine myself to the present application. And in dealing with the present application, the first question which I have got to consider is whether the applicant has satisfied the requirements of the Statute.

12. It is well settled that the jurisdiction of the High Court to make orders u/s 45 of the Specific Relief Act is entirely discretionary and in dealing with an application under Chapter VIII of the Specific Relief Act, the principles applicable to a writ of mandamus should, generally speaking, be followed. [See Provas C. Roy, In re I.L.R (1913) Cal 588, Manindra v. Provas I.L.R (1924) 51 Cal 279, 292.] The writ is of very ancient origin, dating back, at any rate, to the time of Edward II. In Bacon"s Abridgment it is said to be founded on Magna Charta, by which the Crown was bound neither to deny justice to anybody nor to delay anybody in obtaining justice. It seems originally, according to Mr. High (see High on Extraordinary Legal Remedies), to have been one of that large class of writs or mandates by which the Sovereign of England directed the performance of any desired act by his subjects, the word "mandamus" in such writs or letters missive having given rise to the present name of the writ. These letters missive or mandates to which the generic term "mandamus" was applied, were in no sense judicial writs, being merely a command issuing directly from the Sovereign to the subjects without the intervention of the Courts and they have long become entirely obsolete. The term "mandamus" seems gradually to have been confined in its application to the judicial writ issued by the King"s Bench which has by steady growth developed into writ of mandamus. It is a high prerogative writ and is granted to ampliate justice and to preserve a right where there is no specific legal remedy. And it has been said that the Court, in the exercise of this authority to grant the writ of mandamus, will render it as far as it can be the suppletory means of substantial justice in every case where there is no other specific legal remedy for a legal right, and will provide as effectively as it can that others exercise their duty wherever the subject matter is properly within its control.

13. The writ of mandamus being a high prerogative writ, it follows that it cannot be demanded ex debito justitice, but that it issues only in the discretion of the Court. [See the observations of Cockburn C.J. in R. v. Garland (1870) L.R. 5 Q.B. 272 and also of Lord Chelmsford in R. v. All Saints, Wigan (1876) 1 A.C. 620.] It follows from the discretionary character of the process that the rights to be enforced must be of a public nature;

affecting the public at large and also those, which although of a public nature, specially affect the rights of individuals. The person applying must show that he has a real and special interest in the subject matter under specific legal right to enforce. [See R. v. Guardians of Lewisham Union [1897] 1 Q.B. 498.] In addition to these conditions precedent to the issue of the writ, it has been laid down from very early times that there must be a sufficient demand to perform the act sought to be enforced and a refusal to perform it. It is not indeed necessary that the word "refuse" or any equivalent to it should be used, but that there should be enough to show that the party withholds compliance and distinctly determines not to do what is required of him. There must also be the possibility of effective enforcement of the writ and the writ will not issue if alternative remedies, or, remedy are and is open to the applicant.

14. These being the principles applicable to a writ of mandamus, let us turn to Section 45 of the Specific Relief Act, which in India embodies these principles. Five conditions are laid down, in the section, being provisos (a) to (e) which the applicant invoking the jurisdiction must satisfy. These conditions are cumulative, and all of them must be fulfilled. The Court is invested with very large powers, and the remedy is of a summary nature and coercive in its character. And it is elementary that the wider the power, the greater must be the caution with which the power is exercised.

15. In view of the importance of the questions raised on this application, I have very anxiously considered the facts to which my attention has been drawn in order to determine if and by how far the applicant has succeeded in; bringing his case within the purview of Section 45 of the Specific Relief Act. In doing this, I am relieved of the necessity of considering the questions raised in provisos (c, (d) and (e), because no argument was raised is respect thereof. Provisos (a) and (6) prescribe the ambit of controversy in this case. Provisos (a) requires that the applicant must be some person whose "property", "franchise" or "personal right" would be injured by the forbearing or doing (as the case may be) of the specific act to be done or forborne. Proviso (b) lays down that the applicant must also show that such doing or forbearing is, under any law for the time being in force, clearly incumbent on the respondents.

16. Has the applicant; here shown that his "property" or "franchise" or "personal right" would be injured? As to injury to property, it has been stated before me that the applicant pays Government revenue in respect of his immovable properties in the district of Chittagong, and that the money so paid by him being part of the fund out of which the salaries of Ministers are met, his "property" would be injured if in pursuance of Mr. Donald"s motion, the supplementary demand is acceded to by the Bengal Legislative Council. I am clearly of opinion that what has been shown by the applicant in this connection is insufficient to make him a competent relator. The applicant pays Government revenue, it is true; but he pays it along with thousands of other people, a fact of which I am entitled to take judicial notice. This by itself cannot in my opinion constitute such "injury" to the applicant"s "property" as the proviso contemplates.

17. Next let us see whether his "franchise" would be injured. What is the franchise which the applicant claims? He contends that having regard to the fact that he was one of those who at the last session of the Bengal Legislative Council had succeeded by their votes in turning down the demand for grant for Ministers" salaries, the effect of the said vote of the Council in which the applicant had participated would be entirely nullified if Mr. Cotton be not directed to delete the said item No. 6 or to forbear from putting the same before the Council. I am not at all sure that the word "franchise" includes the right to vote in the Legislative Council. The right to vote at the election for Parliament, or for the Indian Legislative; Assembly, or for the various provincial Legislative Councils is certainly a "franchise", but I know of no instance where the word has been held to include the power to vote on matters coming before a legislative body. The term "franchise" is defined by Blackstone, following older authorities, as a royal privilege or a branch of the King"s prerogative in the hands of the subject. It is also said to be synonymous with the term "liberty", though the latter is usually applied to the class of franchises, conferring immunity of jurisdiction. Franchises are of various kinds and an excellent account of their origin will be found in Pollock and Maitland"s History of English Law. The term "franchise" in its electoral sense denotes both the right of voting at elections and the qualifications upon which that right is based.

18. But assume I am wrong in the construction I am putting on the word "franchise", has there been any injury in the applicant"s franchise such as it is? The "injury" to "franchise" must be some act interfering with the exercise of the applicant"s franchise, namely, his right to vote. How can I say that there will be interference with the applicant"s franchise, or right to vote, by Mr. Cotton putting before the Legislative Council for its consideration the motion of Mr. Donald? I am entitled to assume that the proceedings of the Council will be conducted in accordance with the traditions of the Houses of Parliament and that there will be no interference with the rights and privileges of the members of the Council. No question of any injury to the "franchise" or right exercised, in the part can be gone into by me on this application, nor is it possible for me to foreshadow what may happen in the future, nor am I satisfied that even in the event of Mr. Donald"s present motion being accepted by the Bengal Legislative Council there will accrue, of a certainty, injury to the applicant"s franchise in the manner suggested by him.

19. Let us next see if there will be any injury to the applicant"s "personal right". What is his personal right? He says that it is his undoubted right to see that the business of the Bengal Legislative Council is conducted in accordance with the provisions of the law. This right the applicant enjoys along with 139 other members of the Legislative Council, the present strength of the Council being 140. Can I say that the applicant has shown to my satisfaction any special circumstances within the meaning of the rule laid down in the case of In re Rasul I.L.R (1913) Cal 518 ? The answer to my mind is in the negative.

20. It seems to be clear, therefore, that there is no injury threatened to the present applicant. The applicant seeks for a direction on Mr. Cotton to disallow or delete from the agenda item No. 6 or to forbear from putting the same before the Council. Suppose Mr.

Cotton is not so directed, what follows? How would the applicant be hurt? Except that it will hurt the applicant''s notion of what is legal or illegal under the Rules and Standing Orders, except that it will offend against his view that the motion in question is ultra vires, I cannot see what injury will be caused to the applicant''s property, franchise and personal right within the meaning of that; section.

21. The conclusion, therefore, I come to on an examination of the applicant''s contentions under the head ''Proviso (a)'' is that the applicant has failed to satisfy the requirements of the Statute.

22. There is another ground upon which the application must fail. The applicant has no doubt made his demand of justice, but I am not satisfied that there has been any denial thereof. I have already said that it is not necessary that the word ''refuse'' or any equivalent to it should have been used, and I accept the applicant''s contention that refusal may be inferred from conduct. The facts and the dates I have set out negative, to my mind, the argument that Mr. Cotton has been guilty of conduct which shows that he has distinctly determined not to do what has been required of him. Whether there has been a denial of justice or not is a mixed question of law and fact and taking into consideration the entire facts and circumstances of the case, and being not unmindful of the grounds of urgency urged on behalf of the applicant, I hold that there has been no denial of justice on the part of Mr. Cotton.

23. In view of what I have said above, I must reserve for the present any discussion on the merits of the applicant''s case as bearing on proviso (6) of Section 45, or of the intensely interesting questions of constitutional law and procedure suggested by learned Counsel on both sides. At a proper time and on a proper occasion I shall not fail to express my opinion thereon.

24. The result, therefore, is that this application fails and must be dismissed with costs.