CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Inder Dev Dua, J.

HAKAM DEVI AND OTHERS,—*Petitioners*

versus

PHUMAN SINGH,—*Respondent.*

Civil Miscellaneous No. 2819 of 1959

1962

March., 29th

Constitution of India (1950)—Article 227—Petition under—Impleadment of the Tribunal whose order is impeached—Whether necessary—Nature of the power of the High Court under Article 227.

Held, that in an application under Article 227 of the Constitution it is not necessary to implead the Tribunal whose order is assailed and such a petition cannot be dismissed merely for failure to implead the Tribunal concerned. The power conferred by Article 227 is that of superintendence over all Courts and Tribunals and is in substance a reproduction of section 107 of the Government of India Act, 1915, with this further addition that under Article 227 the High Court can exercise its power of superintendence even over Tribunals which are not Courts. The power of superintendence restored by Article 227 in slightly enlarged form was possessed by all the High Courts under section 107 of the Government of India Act, 1915 and also under the Indian High Courts Act of 1861.

Case referred by Hon'ble Mr. Justice D. K. Mahajan on 20th December, 1961 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. D. Falshaw and Hon'ble Mr. Justice Inder Dev Dua, after deciding the question of law returned the case to the Single Bench on 29th March, 1962 for deciding on merits. The case was finally disposed of on 21st September, 1962, by Hon'ble Mr. Justice D. K. Mahajan.

Petition under Article 227 of the Constitution of India praying that a writ in the nature of certiorari *or any other appropriate writ, order or direction be issued quashing the order of the Chief Settlement Commissioner, dated 4th September, 1959 and restoring the order of the Additional Settlement Commissioner, Ferozepur, dated 20th May, 1959.*

S. P. GOEL, ADVOCATE, FOR MR. NARINDER SINGH, ADVOCATE, for the Petitioners.

H. S. WASU AND B. S. WASU, ADVOCATES, for the Respondents.

ORDER

Dua, J.

DUA, J.—This reference to Division Bench has been necessitated because a learned Single Judge of this Court (D. K. Mahajan, J.) has entertained some doubts about the correctness of the view expressed by Shamsher Bahadur, J. in *Phalgu Dutt* v. *Smt. Pushpa Wanti and others* (1) that authorities whose orders are challenged in a petition under Article 227 of the Constitution must be impleaded as parties to the petition and the defect of their not having impleaded cannot be lightly ignored. We are at this stage only concerned with the question whether it is necessary in a petition under Article 227 of the Constitution to implead the Tribunal whose order is impeached in this Court under the said Article.

In *Phalgu Dutt's* case (1), the learned Single Judge observed that the remedy provided under Article 227 is of an extraordinary nature and there is no difference in principle or analogy in the case of a writ under Article 227 which partakes of the essential characteristics of a writ of *certiorari* which is the subject-matter of Article 226. It is desirable at this stage to reproduce Articles 226 and 227 of the Constitution. Article 226, as its marginal heading expressly suggests, deals with the power

(1) 1960 P.L.R. 302.

of High Courts to issue certain writs and is in the following terms :—

"226. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

Powers of High Court to issue certain writs.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

Article 227 on the contrary is a provision conferring power of superintendence over all Courts and Tribunals by the High Courts, and reads as follows :—

227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

Power of superintendence over all courts by the High Court.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

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"Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

It may here be mentioned that the power of the High Court to issue certain writs, directions and orders as conferred by Article 226 is exercisable notwithstanding anything contained in Article 32 clause 2 of which confers on the Supreme Court power to issue "directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate", for the enforcement of any of the rights conferred by Part III. A comparison of this clause with Article 226 would show that the High Court is in addition empowered to issue directions, orders or writs for any purpose other than the enforcement of the fundamental rights guaranteed by Part III of the Constitution. A bare reading of Articles 226 and 227, which have been reproduced above, shows in clear and unmistakable terms that the power conferred by Article 227 is that of superintendence over all Courts and Tribunals whereas the power conferred by Article 226 expressly refers to directions, orders or writs including writs in the nature of the five categories mentioned therein and they can be issued to any person or authority including in appropriate cases any Government within the territorial jurisdiction of the High Court concerned. Article 226 is a new provision introduced by the Constitution-makers in our Constitution whereas Article 227 is in substance a reproduction of section 107 of the Government of India Act, 1915, with this further addition that under Article 227 this Court can exercise its power of superintendence

even over Tribunals which are not Courts. Previously, the three Presidency High Courts undoubtedly used to exercise the power of issuing prerogative writs, but this jurisdiction was claimed by those High Courts as successors of the old Supreme Court and was, therefore, confined only to the limits of the Presidency towns. The other High Courts had never possessed any such jurisdiction prior to the introduction of the Constitution. The power of superintendence restored by Article 227 in slightly enlarged form was, however, possessed by all the High Courts under section 107 of the Government of India Act, 1915, and, as I will presently show, also under the Indian High Courts Act of 1861. I may here reproduce section 107:—

> "107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—
>
> (a) call for returns;
>
> (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
>
> (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
>
> (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
>
> (e) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of courts:
>
> Provided that such rules, forms and tables shall not be inconsistent with the provisions of any Act for the time being in force, and shall require the previous approval, in the case of the high court

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at Calcutta, of the Governor-General in Council, and in other cases of the local Government."

This section used to be quite frequently utilised by suitors for invoking the power of superintendence of the High Courts in keeping the subordinate Courts within their bounds in cases where section 115, Code of Civil Procedure, was, for certain reasons, held to be inapplicable, but there was hardly a case in which the provisions of this section were considered to confer on the High Court power to issue writs in the popular sense as understood in law. As a matter of fact this very question came up before me in *Hudi* v. *Sudi*, etc. Civil Miscellaneous No. 630 of 1960 when a preliminary objection was raised on the ground of non-impleading of the Tribunal whose order was challenged under Article 227 of the Constitution. *Phalgu Dutt's case* was of course not cited at the bar. But I repelled the objection holding that Article 227 does not confer on this Court writ jurisdiction which is created by Article 226 with the result that the presence of the Tribunal in the array of respondents is not mandatory. There I also pointed out the distinction between Articles 226 and 227 as postulated by the rules framed by this Court for petitions under Article 226. A couple of months later again this very question was raised before me in *Faqir Chand Anant Ram* v. *Gopi Chand and others* (2). On this occasion, *Phalgu Dutt's case* was relied upon in support of the objection, but I felt considerable doubt about the correctness of the view taken in that case. However, in spite of my doubt, I did not refer the matter to a larger Bench because, on the merits, I felt that the petition in any case deserved to be dismissed.

That the jurisdiction under Article 227 is not completely identical with the jurisdiction which this Court exercises under Article 226 would also appear to find support from the view consistently taken by this Court that orders under Article 227 are not subject to appeal under clause 10 of the

(2) A.I.R. 1962 Punj. 117.

Letters Patent, unlike orders under Article 226. This view has been taken in the following decisions, among others:—

Raj Kishan Jain v. *Tulsi Dass, etc.* (3), and *Shri Braham Dutt and others* v. *The Peoples Co-operative Transport Society Ltd.* (4).

It is true that in the Government of India Act 1935, the power of judicial superintendence which used to be exercised by the High Courts under section 107 of the Act of 1915 was expressly taken away, but then the present Constitution by incorporating Article 227 has restored the position which prevailed under the 1915 Act with the additional inclusion of Tribunals within the fold of this Court's power of judicial superintendence. See *Warayam Singh, etc.* v. *Amar Nath, etc.* (5), and *Satyanarayan Laxminarayan Hegde and others* v. *Mallikarjun Bhavanappa Tirumale* (6). That section 107 of the Act of 1915 was never considered to confer writ jurisdiction which we have apparently borrowed from the practice of the English Courts hardly admits of any reasonable doubt. Identical power of superintendence as contained in section 107 appears to me to have also existed in the Charter of various High Courts since 1861. This is obvious from section 15 of the Indian High Courts Act, 1861 enacted by the British Parliament which reads as follows:—

> "15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to make and issue general rules for regulating the practice and proceedings of such

(3) I.L.R. 1959 Punj. 859.
(4) 1960 P.L.R. 917.
(5) A.I.R. 1954 S.C. 215.
(6) A.I.R. 1960 S.C. 137.

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> Courts, and also to prescribe forms for every proceeding in the said courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts, and from time to time to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled shall be used and observed in the said courts, provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall before they are issued have received the sanction, in the Presidency of Fort William, of the Governor General in Council, and in Madras or Bombay of the Governor in Council of the respective Presidencies."

Now, though this power of superintendence has been in existence since 1861 (except for the period of operation of the Government of India Act, 1935, when the judicial power was expressly excluded) it has never been considered to equate with the power to issue writs. Here I may quote a passage from the judgment of Patanjali Sastri, C.J., who spoke for the Court in *Election Commission* v. *Saka Venkata Rao* (7):—

> "Turning now to the question as to the powers of a High Court under Article 226, it will be noticed that Article 225 continues to the existing High Courts the same jurisdiction and powers as they possessed immediately before the commencement of the Constitution. Though there had been some conflict of judicial opinion on the point, it was authoritatively decided by the Privy

(7) A.I.R. 1953 S.C. 210.

Council in *Ryots of Garabandho* v. *Zamindar of Parlakimedi* (8), that the High Court of Madras—the High Courts of Bombay and Calcutta were in the same position—had no power to issue what were known as high prerogative writs beyond the local limits of its original civil jurisdiction, and the power to issue such writs within those limits was derived by the Court as successor of the Supreme Court which had been exercising jurisdiction over the Presidency Town of Madras and was replaced by the High Court established in pursuance of the Charter Act of 1861. The other High Courts in India had no power to issue such writs at all.

In that situation, the makers of the Constitution, having decided to provide for certain basic safeguards for the people in the new set-up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the State's sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc., 'for any other purpose' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England."

As this passage suggests the power conferred by Article 226 is a new power to issue writs, etc.,

(8) A.I.R. 1943 P.C. 164.

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which never vested in the High Courts except in the three Presidency High Courts and that too as successors of the old Supreme Court, exercisable only within the territories included in the Presidency towns, and the power of superintendence was scarcely, if at all, considered to be identical with this power of issuing writs, etc. I am conscious of the fact that sometimes aggrieved parties have asked for reliefs by way of writs, directions and orders, etc., and have labelled their petitions with Article 227, either simply or read with Article 226, and certain High Courts have actually considered such applications on merits without adverting to the distinction in language between the two Articles pointed out by me earlier. May be that those Courts have, in those cases, not attached much importance to the label, but this, in my opinion, would not detract from the legal position that Article 227 does not, as such, provide for writs and, therefore, such a petition cannot be dismissed on the sole ground that the Court or the Tribunal concerned, as the case may be, whose order is impugned, has not been impleaded as a party respondent.

It is no doubt true that the origin of the power to issue the necessary writ of *certiorari* lay in the power of superintendence of the superior Court over inferior bodies doing judicial acts, but then that specific and precise power has in express terms been conferred on High Courts by Article 226 of the Constitution and not by Article 227. An application under Article 227 would thus not entail dismissal as a matter of law merely on the ground that the Tribunal whose order is challenged has not been arrayed as party respondent in the petition. I am not called upon to, and I need not, advert to the question whether a prayer for a direction, order or writ, etc., can be technically entertained in a petition specifically filed under Article 227 for that is not the point referred.

In view of the foregoing discussion, in my opinion, in an application under Article 227 of the Constitution, it is not necessary to implead the

Tribunal whose order is assailed and such a petition cannot be dismissed merely for failure to implead the Tribunal concerned. The case would now go to back to the learned Single Judge for final disposal. Costs of these proceedings would be costs in the cause.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

DURGA DASS,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER, REVENUE, PUNJAB, AND OTHERS,—*Respondents.*

Civil Writ No. 199 of 1961.

1962

April, 26th

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 51—Explanation—"Which the State Government may, by notification in the Official Gazette, specify"—Whether governs only such institutions which fall under clause (v)—Interpretation of statutes—Statute capable of two interpretations—Which interpretation to be preferred.

Held, that the concluding words of the Explanation to section 51 of the Pepsu Tenancy and Agricultural Lands Act, 1955, "which the State Government may, by notification in the Official Gazette, specify" govern such institutions only which fall under clause (v) of the Explanation and do not govern the first four clauses of the same. The reason for this power is obvious and based on public policy. That is it is meant to avoid private people trying to avoid the operation of the Act by transferring their lands to institutions covered by clause (v) and reserving bulk of the benefits of those lands to themselves.

Held, that where a statute is capable of two interpretations, one which makes it invalid and the other which gives effect to it, the interpretation which will make it invalid would be ruled out in favour of the interpretation which does not impair its validity.