CIVIL WRIT

Before Bhandari C.J. and Falshaw J.

IN THE MATTER OF SHRI ISHAR SINGH GROVER,—
Petitioner

versus

UNION OF INDIA ETC.,—*Respondents*

Civil Writ No. 72-D of 1952

1954

Dec., 9th

Constitution of India, Article 226—Power under, who can invoke—Person not sustaining or not in immediate danger of sustaining direct injury from a statute—Such person whether can challenge the Constitutionality of the statute.

Held, that it has long been the policy of law that the judiciary and the Legislature should, if possible, work in harmony with each other and in order to secure this end, the Courts have formulated certain rules and imposed certain restrictions on their own powers. The first and perhaps the most important rule is that one who invokes the power of the Court to declare an Act of the Legislature to be unconstitutional must be able to show, not only that the statute is invalid but that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.

Massachusetts v. *Mellon* (1), *Clark* v. *Kansis City* (2), *Com* v. *Wright* (3), *Charanjit Lal Chowdhuri* v. *The Union of India* (4), *Fairchild* v. *Hughes* (5), *Red River Valley National Bank* v. *Graig* (6), *Darnell* v. *Indiana* (7), *Standard Stock Food Company* v. *Wright* (8), *Oliver Iron Company* v. *Lord* (9), relied upon; *Queen* v. *The Justices of Surrey* (10), *The King* v. *The Groom* (11), *King* v. *Richmond Confirming Authority* (12), distinguished.

(1) 262 U.S. 447
(2) 176 U.S. 114
(3) 79 Ky. 22
(4) 1950 S.C.R. 869, 898
(5) 258 U.S. 126
(6) 181 U.S. 548
(7) 226 U.S. 390
(8) 225 U.S. 540
(9) 262 U.S. 172, 180
(10) (1870) 5 Q.B. 466
(11) (1901) 2 K.B. 157
(12) (1921) 1 K.B. 248

Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to call for the records of the proceedings of the above matter and quash the orders of the Custodian-General, dated 14th May, 1952, (ii) call for the records of the Central Government and quash the certificate issued by the Central Government under section 16 of the said Act, (iii) to issue orders and direction to the respondent No. 2 to take possession of all the property belonging to the said Shri Mohd. Din Chhatriwala which has been restored to him vide his orders dated 3rd March, 1952, by the Respondent No. 2 (iv) such other order writ or direction as may do complete justice to the petitioner in the circumstances of the case may be passed.

VEDA VYASA and S. K. KAPUR, for Petitioner

C. K. DAPHTRY, Solicitor-General, Porus A. MEHTA, BISHAMBAR DAYAL, Government pleader and KALI SHARAN, for Respondent.

ORDER

Bhandari, C.J. BHANDARI, C. J. This petition under Article 226 of the Constitution must be dismissed on the short ground that the petitioner has sustained no damage which would entitle him to apply for the issuance of a writ.

One Shri Mohammad Din Chhatriwala, who owned considerable properties in Delhi, is alleged to have migrated to Pakistan during the communal disturbances which broke out in the year 1947. On the 14th September 1949, the properties belonging to him were notified as evacuee property under the provisions of the Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance, 1949. He preferred a claim to the Custodian on the ground that the properties were not evacuee properties but this claim was dismissed by the Authorised Deputy Custodian on the 4th April, 1950. The order of the Deputy Custodian was later upheld both by the Custodian-General and the High Court. On the 8th January 1951, the Central Government issued a certificate

under section 16 of the Administration of Evacuee Property Act, 1950, stating that the properties belonging to Chhatriwala which had vested in the Custodian be restored to him. The Custodian has complied with the order of the Central Government and the Custodian's order has been confirmed by the Custodian-General.

The petitioner, who is a displaced person from West Pakistan, has presented this petition under Article 226 of the Constitution of India and has challenged the validity of section 16 of the Act of 1950.

The first point for decision in the present case is whether the petitioner can be said to be a person aggrieved, for the validity of a statute can be impugned only by a person whose rights have been or are about to be prejudicially affected by the application or enforcement of the statute. It has long been the policy of the law that the judiciary and the Legislature should, if possible, work in harmony with each other and in order to secure this end, the Courts have formulated certain rules and imposed certain restrictions on their own powers. The first and perhaps the most important rule is that one who invokes the power of the Court to declare an Act of the Legislature to be unconstitutional, must be able to show, not only that the statute is invalid but that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally *Massachusetts* v. *Mellon* (1). Thus a Court will not listen to an objection made to the constitutionality of an Act by a party whose rights it does not affect and who has, therefore, no interest in defeating it

(1) 262 U.S. 447

In the matter of Shri Ishar Singh Grover v. Union of India, etc.

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(*Clark* v. *Kansis City* (1). For example, where a law excludes negroes from a grand jury, a white man may not object to such exclusion, since he is not prejudiced thereby, *Com.* v. *Wright* (2). Nor is it open to an individual share-holder to complain of an Act which affects the fundamental rights of the Company except to the extent that it constitutes an infraction of his own rights as well *Charanjit Lal Chowdhuri* v. *The Union of India* (3).

Mr. Veda Vyasa, who appears for the petitioner, has placed two submissions before us. It is contended in the first place that his client has a right to seek the intervention of this Court as the provisions of section 16 are calculated to operate to his disadvantage. It is argued that ever since the partition of the country in the year 1947, the Government of India have evinced a desire to compensate displaced persons from Pakistan out of the property left by Muslims in India, that all evacuee property in India is to constitute a compensation pool out of which displaced persons are to be compensated and that if any property belonging to an evacuee is restored to him under the provisions of section 16, the size of the pool is likely to be reduced and the amount of compensation payable to each person is likely to be smaller. In any case, it is argued, section 16 violates the provisions of Article 14, inasmuch as it accords a more favourable treatment to certain evacuees than it accords to others.

I regret, I am unable to endorse the propositions which have been propounded on behalf of the petitioner. It is true that Government have assumed possession and control of all evacuee

(1) 176 U.S. 114
(2) 79 Ky. 22
(3) 1950 S.C.R. 869, 898

property situate in India but the preambles to the various Acts which have been enacted in this behalf make it quite clear that this was done with the object of safeguarding the property belonging to persons who had migrated to Pakistan and who were not in a position to look after it themselves. Every Custodian was empowered to carry on the business of the evacuee, to take action for the recovery of monies due to the evacuee and for payment of debts due from the evacuee, to make contracts in the name of the evacuee and to institute, defend or continue any legal proceedings on behalf of the evacuee. He was at liberty to grant or cancel leases of evacuee property but was expressly forbidden from selling any immovable property or any shop or business establishment or any undertaking belonging to an evacuee except under orders of the Provincial Government. It was not till the year 1954 that the Central Legislature enacted "The Displaced Persons (Compensation and Rehabilitation), Act, 1954", a measure which constituted for the first time a compensation pool which was to consist of evacuee property acquired by it on payment of compensation, of certain balances lying with the Custodians, of certain contributions made by the Central Government, and of such other assets as were to be prescribed by rules made under the Act. Government reserved to themselves full power to acquire or not to acquire any evacuee property for the purpose of this pool. The size and capacity of this pool were completely unknown and could be varied from time to time. No particular person was entitled to a particular share in the pool; he was entitled to receive only such proportion of his verified claim as was admissible to him under the rules framed by Government. He was not concerned with the size of the pool or with what was taken out of it or what was put into it. Government alone were under an obligation to see that the size of the pool was sufficiently large to enable them to meet their obligations. In these circumstances, it is idle to contend that the rights of the petitioner have been prejudicially affected by

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reason only of the fact that some evacuee property has been released under the provisions of section 16. The petitioner has, in my opinion, no right whatsoever in evacuee property, and if he has any such right, the right is very remote. Courts are extremely reluctant to invalidate legislation when the petitioner's right is considered to be remote. Thus in *Fairchild* v. *Hughes* (1), a voter sought unsuccessfully to enjoin the Secretary of State from proclaiming ratification of the Nineteenth Amendment, and in *Massachusetts* v. *Mellon* (2), the interest of a tax-payer of the United States in the funds of the federal treasury was held too minute and conjectural to justify him in contesting an Act of Congress authorising distribution of public funds. Moreover, the petitioner is neither a member of the class to which preferential treatment has been accorded nor a member of the class to which such treatment has been denied. It seems to me, therefore, that it is not open to him to come forward and plead the cause in a case in which he has no direct interest. One who does not belong to the class that might be injured by a statute, cannot raise the question of its invalidity (*Red River Valley National Bank* v. *Graig* (3), *Darnell* v. *Indiana* (4), *Standard Stock Food Company* v. *Wright* (5), and *Oliver Iron Company* v. *Lord* (6).

Again, it is contended on behalf of the petitioner that he has come to this Court not under the provisions of Article 32 of the Constitution for the enforcement of fundamental right but under the provisions of Article 226 for the issuance of an appropriate writ. According to him, the language of Article 226 is much wider than that of Article 32, for the expression "for any other purpose" appearing at the end of the Article empowers a person to ask for a writ not only for the enforcement of any of the rights conferred by Part III but also for challenging the validity of a statutory enactment. In any case, it is contended, a writ can be

(1) 258 U.S. 126
(2) 262 U.S. 447
(3) 181 U.S. 548
(4) 226 U.S. 390
(5) 225 U.S. 540
(6) 262 U.S. 172, 180

granted *ex debito justitiae* to quash proceedings which the Court has power to quash. Our attention has been invited to *Queen* v. *The Justices of Surrey* (1), *The King* v. *The Groom* (2), and *King* v. *Richmond Confirming Authority* (3). In the first of these cases the learned Judges observed as follows:—

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> "I entirely concur in the proposition that, although the Court will listen to a person who is a stranger, and who interferes to point out that some other Court has exceeded its jurisdiction, whereby some wrong or grievance has been sustained, yet that is not *ex debito justitiae*, but a matter upon which the Court may properly exercise its discretion, as distinguished from the case of a party aggrieved, who is entitled to relief *ex debito justitiae*, if he suffers from the usurpation of jurisdiction by another Court."

These authorities can be of no help to the petitioner. In the first place, these observations were made in connection with an application for the issue of a writ of *certiorari*. This writ issues out of a superior Court and is directed to the Judge or other officer of an inferior Court requiring him to transmit to the Superior Court the record of the proceeding pending in the inferior Court. These observations cannot be regarded as a guide in the present case, for no matter is pending in an inferior Court, and no application has been made for the removal of that matter to this Court. In none of three cases mentioned above was the validity of an Act challenged by a stranger.

For these reasons, I am of the opinion that the petition ought to be dismissed. I would order accordingly.

FALSHAW, J.—I agree.

Falshaw, J.

(1) (1870) 5 Q.B. 466
(2) (1901) 2 K.B. 157
(3) (1921) 1 K.B. 248