Privy Council Appeal No. 74 *of* 1945

Moulvi Hamid Hassan Nomani - - - - - *Appellant*

v.

Banwarilal Roy and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1947

Present at the Hearing:

LORD THANKERTON
LORD PORTER
LORD SIMONDS
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from an Order of the High Court of Judicature at Fort William in Bengal, made on the 19th July, 1944.

On the 14th June, 1944, the High Court, on the application of the respondents, issued a rule nisi calling upon the appellant to show cause why an information in the nature of quo warranto should not be exhibited against him "as to by what authority he is exercising and performing or claiming to exercise or perform the powers and duties which may be performed or exercised by the Chairman and the Commissioners of the Howrah Municipality." By the said Order of the 19th July, 1944, the High Court made absolute the rule nisi. On the 14th December, 1944, the High Court ordered that the appellant's appeal to His Majesty in Council against the said Order of the 19th July, 1944, be admitted.

The facts leading to the issue of the said Orders of the High Court are simple. On the 9th June, 1944, His Excellency the Governor of Bengal, purporting to act under the powers conferred on him by Rule 51F of the Defence of India Rules, made an Order superseding the Commissioners of the Howrah Municipality for a period of one year, with effect from the 9th June, 1944, and directing that the appellant should exercise and perform all the powers and duties which might be exercised, or performed, by or on behalf of the Chairman and the Commissioners during the period of supersession.

The appellant in his case raised two questions:—

(1) whether the High Court had jurisdiction to make the order of the 19th July, 1944, and, if so

(2) whether there was any evidence before the High Court which justified the making of that Order.

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In argument, however, the appellant, mindful of the fact that the period of supersession of the Howrah Municipality had expired, confined his case entirely to the first question, namely, that of jurisdiction. Their Lordships, therefore, find it unnecessary to express any opinion upon the merits of the dispute leading to the said appointment of the appellant, and they confine themselves in this judgment entirely to the question of the jurisdiction of the High Court to make the Order under appeal.

An information in the nature of quo warranto is the modern procedure replacing the obsolete High Prerogative Writ of quo warranto. It is used to try the civil right to a public office. For the purpose of this appeal it is conceded by the appellant:—

(1) That, by virtue of the Order of the Governor of Bengal, made on the 9th June, 1944, the appellant took possession of an office of a nature for which the information might be granted;

(2) That the Municipality of Howrah is outside the territorial limits of the Ordinary Original Civil Jurisdiction of the said High Court, though within the Presidency of Bengal, and

(3) That the appellant resides outside the limits of such jurisdiction, but is a servant of Government, being a Deputy Magistrate.

The leading judgment in the High Court was given by Mr. Justice Das; the Acting Chief Justice concurring in a less detailed judgment. Mr. Justice Das dealt fully with the origin and extent of the Original Civil Jurisdiction of the High Court of Calcutta and its predecessor, the Supreme Court of Calcutta, in relation to the power to issue High Prerogative Writs. This subject had been discussed in many of its aspects in the recent decision of this Board in *Parlakimedi's* Case (1943) L.R. 70 I.A. 129.

The conclusions of the High Court may be summarised as follows:—

(1) By virtue of the Regulating Act of 1773, the Charter of 1774, and the Act of Settlement of 1781, the Supreme Court of Calcutta possessed Original Civil Jurisdiction of a territorial nature over all persons within the town of Calcutta, and a personal jurisdiction over certain classes of persons, including British subjects and servants of the East India Company, outside such territorial limits, but within what may be roughly called the Presidency of Bengal, but such personal jurisdiction was confined by the Act of 1781 to actions for wrongs and trespass.

(2) The appellant in taking possession of the office and property of the Howrah Municipality under an Order which the High Court held to be invalid was guilty of an act of trespass.

(3) After the passing of the Government of India Act, 1858, servants of the East India Company must be taken to mean and include, for the purpose of determining jurisdiction of the Supreme Court, servants of Government.

(4) The jurisdiction of the Supreme Court included the right to grant an information in the nature of quo warranto against persons falling within its territorial or personal jurisdiction.

(5) Under the High Courts Act 1861 and the amended Letters Patent of 1865, the High Court inherited from the Supreme Court on its abolition its Original Jurisdiction both territorial and personal over (inter alios) British subjects and servants of Government.

(6) That accordingly the rule should be made absolute against the appellant.

Sir Walter Monckton, for the appellant, based his argument upon two alternative grounds. On his first ground he contended that the Supreme Court would not have had power to grant the information in this case and the High Court could not therefore have inherited such power. In support of this argument he concentrated his attack upon the High Court's judgment mainly upon two points. First he maintained that the foundation of jurisdiction to issue the writ of quo warranto, or information in the nature of quo warranto, rests on the location of the office to be protected,

and not upon the place of residence, or the personal status, of the person usurping such office, the writ or information being concerned with the office, and not with the person. Secondly, he contended that the appellant, though a servant of Government, could not be regarded as in the position of a servant of the East India Company in relation to the Jurisdiction of the High Court.

His second ground was that, assuming that the Supreme Court would have had power to grant the information in the present case, the High Court has no such power because it has not inherited the personal jurisdiction of the Supreme Court over classes of persons residing outside the limits of its Ordinary Original Civil Jurisdiction. This alternative argument was not touched upon in the decision of this Board in *Parlakimedi's* case.

It is clear that the appeal must succeed if the appellant is right on either of his two alternatives. As the Board has formed a clear opinion that the appellant is right upon his second alternative it is unnecessary to discuss the first alternative. Their Lordships, therefore assume for the purpose of this appeal that the Supreme Court before its abolition in 1861 would have had power to grant the information in this case. In making this assumption, however, their Lordships must not be taken as agreeing with all the views expressed in the judgment of the High Court on this part of the case. In particular they would keep an open mind upon the two matters on which Sir Walter Monckton concentrated his argument upon his first ground of appeal as already noted.

The question whether the High Court of Calcutta inherited the personal jurisdiction of the Supreme Court in its Original Civil Jurisdiction depends primarily upon the construction of the High Courts Act 1861 and the Letters Patent issued thereunder. Before, however, discussing those enactments, it is necessary to notice that by the Government of India Act 1858 the government of the territories then in the possession, or under the government, of the East India Company, and all powers in respect thereto, ceased to be vested in the Company and became vested in the British Crown. Section 58 of the Act provided that all persons who at the time of the commencement of the Act held any offices, employments or commissions under the said Company in India should, thenceforward, be deemed to hold such offices, employment and commissions under Her Majesty as if they had been appointed under the Act, and should be paid out of the revenue of India; and Section 64 provided, inter alia, that all enactments applicable to the offices and services of the said Company in India and to the appointments to office or admissions to service by the said Court of Directors, should, subject to the provisions of the Act, remain applicable to the offices and services continued and to the officers and servants appointed, or employed, in India, and to appointments to office or admissions to service under the authority of the Act.

By the High Courts Act 1861, it was provided in Section 8, that upon the establishment of a High Court in the Presidency of Fort William in Bengal, the Supreme Court should be abolished. Section 9 is in the following terms:—

> "Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdiction original and appellate and all such powers and authority for, and in relation to, the administration of justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid, grant and direct subject, however, to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency Towns as may be prescribed thereby; and save as by such Letters Patent may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of *India* in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts."

Under that Section the powers of the High Court were to be conferred by Letters Patent and so far as those powers, or any legislative Acts of the Governor-General of India in Council did not otherwise provide, the High Court was to exercise all jurisdiction and every power and authority which had been vested in the Supreme Court; but the words in the middle of the Section: " subject, however, to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency Towns as may be prescribed thereby " seem to indicate that the limits of the Original Jurisdiction of the Court was to be a matter specially within the ambit of the Letters Patent.

Letters Patent were granted under the Act establishing the High Court of Calcutta (under the name of the High Court of Judicature at Fort William in Bengal) in the year 1862, and amended Letters Patent repealing the former Letters Patent, and re-establishing the said High Court were issued in the year 1865. Those Letters Patent, by virtue of Section 106 of the Government of India Act 1915, and Section 223 of the Government of India Act 1935, are still in force.

Clause 11 of the Letters Patent of 1865 is in these terms:—

> " And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise ordinary original civil jurisdiction within such local limits as may, from time to time, be declared and prescribed by any law made by competent legislative authority for India, and until some local limits shall be so declared and prescribed, within the limits declared and prescribed by the proclamation fixing the limits of Calcutta issued by the Governor-General in Council on the Tenth day of September, in the year of Our Lord, one thousand seven hundred and ninety-four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction."

Clause 12 defines the extent of the Ordinary Original Civil Jurisdiction. Later clauses confer upon the High Court appellate and criminal jurisdiction and special jurisdiction in insolvency and in Admiralty, Testamentary and matrimonial matters and over infants, idiots, and lunatics. Apart from the Ordinary Original Civil and Ordinary Original Criminal Jurisdiction the Jurisdiction of the High Court extends beyond the town of Calcutta.

It will be noticed that the concluding sentence of Clause 11 provides that the Ordinary Original Civil jurisdiction of the High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction, which limits admittedly are confined to the town of Calcutta. High prerogative writs are not mentioned in the Letters Patent, and it may be noted in passing that the writ of Mandamus has been superseded in India by Sections 45 to 50 of the Specific Relief Act, and the writ of Habeas Corpus has been superseded by Section 491 of the Code of Criminal Procedure. If the power to issue the other high prerogative writs falls within the Ordinary Original Civil jurisdiction of the High Court their issue outside the local limits of such jurisdiction is expressly barred by Section 11. It cannot be disputed that the issue of such writs is a matter of original jurisdiction. As to its being of a civil nature, it was held as long ago as 1788 in *The King* v. *Francis* (2 Term Reports, page 484) that information in the nature of quo warranto is in the nature of a civil proceeding so that a new trial may be ordered. That leaves only the adjective " ordinary " and it was contended, on behalf of the respondent, that the issue of a high prerogative writ could not be regarded as falling within the Ordinary Original Civil Jurisdiction; that it would be an act of Extraordinary jurisdiction. But the expression " Ordinary Original Civil Jurisdiction " appears to be used in the Letters Patent in distinction to the Extraordinary Original Civil Jurisdiction conferred by Section 13. The marginal note to that section is " Extraordinary Original Civil Jurisdiction " and the section empowers the High Court to remove and to try and determine as a Court of Extraordinary Original Jurisdiction any suit being, or falling within the

jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William subject to its superintendence when the said High Court shall think proper to do so either on the agreement of the parties to that effect, or for purposes of justice. With Sections 11 and 13 must be read Sections 19 and 20. Section 19 provides that in the exercise of its ordinary original civil jurisdiction the law or equity to be applied shall be the law or equity which would have been applied by the said High Court to such case if those Letters Patent had not issued. By clause 20, the marginal note to which is " In the exercise of extraordinary original civil jurisdiction ", it is enacted that with respect to the law or equity and the rule of good conscience to be applied in each case coming before the said High Court of Judicature in Fort William in Bengal in the exercise of its extraordinary original civil jurisdiction, such law or equity and the rule of good conscience shall be the law or equity and the rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein. It is plain that in a matter coming before the Court on a high prerogative writ there could be no local Court having jurisdiction. Any such proceedings clearly do not come within the expression " Extraordinary Original Civil Jurisdiction " which is only used in clauses 13 and 20. In their Lordships' opinion any Original Civil Jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of Ordinary Original Civil Jurisdiction.

Their Lordships feel no doubt on the construction of Section 9 of the High Courts Act, 1861, and the Letters Patent of 1865, that the Original Civil Jurisdiction which the Supreme Court of Calcutta possessed over certain classes of persons outside the territorial limits of that jurisdiction has not been inherited by the High Court, that the power to grant an information in the nature of quo warranto arises in the exercise of the Ordinary Original Civil Jurisdiction of the High Court, that such jurisdiction is confined to the town of Calcutta and that, as the appellant does not reside and the office which he is alleged to have usurped is not situate within those limits, the Court had no power to grant the information in this case. That this restriction upon the power which the High Court inherited from the Supreme Court was deliberate is suggested by the omission of the Legislature to afford any guidance as to the sense in which expressions, appropriate to that jurisdiction in former times, were to be understood in the altered conditions introduced in 1858. After the Government of British India was assumed by the British Crown it is clear that the meaning to be attached in the future to such expressions as " British subject " and " Servants of the Company " urgently required clarification if those expressions were to remain in use. Before that date Indians were not British subjects, and a jurisdiction confined to British subjects was, in effect, one confined to British Nationals. After 1858 all inhabitants of British India became British subjects, and if the old distinction was to continue it would have to be between British subjects who were British Nationals and British subjects who were Indian Nationals. Again, servants of the Company ceased to exist after 1858, and whether Section 64 of the Government of India Act, 1858, had the effect, as the High Court thought, of bringing all government servants however appointed within the description of servants of the Company for the purpose of determining jurisdiction of the High Court would be a question open to debate. Their Lordships think that the rational explanation of the omission by the Legislature to define terms plainly calling for definition is that in the view of the Legislature such terms were no longer to be in force.

For these reasons their Lordships will humbly advise His Majesty that this appeal be allowed and that the Order of the High Court of Calcutta dated 19th July, 1944, be set aside. In accordance with the arrangement made at the hearing of the appeal the appellant must pay the respondents' costs of this appeal and there will be no alteration of the Orders of the Lower Court as to costs.

(56007) Wt. 8013—5 180 3/47 D.L. G. 338

In the Privy Council

MOULVI HAMID HASSAN NOMANI

v.

BANWARILAL ROY AND OTHERS

DELIVERED BY SIR JOHN BEAUMONT

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