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January, 22.

K. S. RAMAMURTHI REDDIAR

v.

THE CHIEF COMMISSIONER, PONDICHERRY & ANR.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Stage Carriage Permit—Grant to native of Pondicherry—Affirmed by Chief Commissioner as Appellate Authority—Discrimination on ground of place of birth—Jurisdiction of Supreme Court—"The State"—"Under the control of Government of India"—Meaning—Constitution of India, Arts. 12, 15, 32, 136.

The petitioner, a resident of Pondicherry, was an applicant for a stage carriage permit, before the State Transport authority, Pondicherry, alongwith 14 other persons. The Permit was granted to one Perumal Padayatchi taking into account the fact that he was a native of Pondicherry along with other facts. The petitioner, whose application for the permit was rejected, went in appeal to the Appellate Authority who dismissed the appeal. The petitioner filed a writ petition under Art. 32 in this Court and contended that preference on the ground of place of birth is violative of Art. 15 of the Constitution. On the dates of the orders sought to be impugned, Pondicherry was not yet part of the territory of India, but when the petition was heard it had become part of the territory of India. It was contended on behalf of the respondent that in view of the observations in the decision in *N. Masthan Sahib* v. *Chief Commissioner*, [1962] Supp. 1 S. C. R. 981, the writ petition was not maintainable.

Held, that in Art. 12 the words "under the control of the Government of India" qualify the word "authorities" and not the word "territory" and Art. 12 gives an inclusive definition of the word "State".

Held, further, that if no writ could be issued at the time when the order was passed for the reason that Pondicherry was not part of India at that time, no such writ could be issued in respect of past acts after Pondicherry had become part of India

as that would be giving retrospective operation to the Constitution.

Janardan Reddy v. *The State*, [1950] S. C. R. 940. referred to.

Held, also, that judicial or quasi-judicial authorities outside the territory of India but under the administration of the Government of India cannot be said to be 'under the control of the Government of India' as the expression "control" connotes power to issue directions regarding how a thing may be done by a superior authority to an inferior authority, and in the case of a quasi-judicial authority no such directions or orders could be issued. It is only in the case of executive action that a superior authority may direct that a particular thing may be done in a particular way by the subordinate authority. In the very nature of things where rule of law prevails it is not open to a Government, be it the Government of India or the Government of a State, to direct a quasi-judicial or judicial authority to decide any particular matters before it in a particular manner.

N. Masthan Sahib v. *Chief Commissioner*, [1962] Supp. 1 S. C. R. 931, referred to.

Held, also, that the Chief Commissioner who is the Appellate Authority in the case, fell outside the definition of 'State', he being a quasi-judicial authority not under the control of the Government of India and, therefore, Art. 15 of the Constitution did not apply to him and no protection under Art. 15 was available against the Chief Commissioner at the time the impugned order was made.

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 569 of 1961.

Appeal by special leave from the order dated September 9, 1960, of the Chief Commissioner, Pondicherry in Appeal No. 94 of 1960.

WITH

Writ Petition No. 347 of 1960.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

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N. C. Chatterjee, R. K. Garg and *S. C. Agarwala*, for the Appellant.

C. K. Daphtary, Solicitor-General of India, B. R. L. Iyengar and *R. N. Sachthey*, for respondent No. 1 (in C. A. No. 569/61).

R. Mahalinga Iyer, for respondent No. 2 (in C. A. 569/61).

N. C. Chatterjee, R. K. Garg and *S. C. Agarwala*, for the petitioner and the intervener.

C. K. Daphtary, Solicitor-General of India, B. R. L. Iyengar and *R. N. Sachthey*, for respondent No. 1 (in W. P. No. 347/60).

R. Thiagarajan, for respondent No. 3 (in W. P. No. 347/60).

1963. January 22. The Judgment of the Court was delivered by

Wanchoo, J.

WANCHOO, J.—The appeal and the writ petition arise out of the same order of the Chief Commissioner of Pondicherry acting as the appellate authority under the Motor Vehicles Act and will be dealt with together. The petitioner is one of fourteen persons who had applied for a stage carriage permit before the State Transport Authority, Pondicherry. The petitioner's application was rejected and the permit was granted to Perumal Padayatchi, one of the respondents before us. The State Transport Authority considered various factors one of which was that Perumal Padayatchi was a native of Pondicherry and taking all the factors into account, the permit was granted to Perumal Padayatchi. The petitioner went in appeal before the Appellate Authority, who is the Chief Commissioner of Pondicherry. The Appellate Authority dismissed

the appeal and observed that even if it were conceded that the claims of the petitioner were more or less equal to those of Perumal Padayatchi, the latter would be entitled to preference on the ground that he is a native of Pondicherry. We may add that though the petitioner used to live in Pondicherry, he was not a native of Pondicherry. This order rejecting the appeal was passed on September 9, 1960. The appeal has been filed with special leave against this order. The petitioner has also filed the writ petition against this order in which he raises, the same points.

The main contention urged on behalf of the petitioner is that the order of the appellate Authority shows that preference was granted to Perumal Padayatchi on the ground that he was a native of Pondicherry (i. e. he was born in Pondicherry), while the petitioner was merely a resident of Pondicherry (i. e. he was born in Pondicherry). The petitioner contends that such grant of preference on the ground of place of birth is hit by Art. 15 of the Constitution as the petitioner is a citizen of India, and Art. 15 lays down that "the State shall not discriminate against any citizen on grounds only of religion, race, case, sex, place of birth or any of them".

This contention of the petitioner is met on behalf of the respondents in this way. The respondents submit that at the relevant time, Pondicherry was not within the territory of India and the Constitution did not apply to it. Therefore, the petitioner would have no right to apply to this Court for special leave under Art. 136 of the Constitution; nor would the petitioner have a right to proceed by way of a writ petition under Art. 32 against an order which was passed by the Appellate Authority in Pondicherry at a time when Pondicherry was not in the territory of India. Reliance in this connection is placed on behalf of the respondents on the decision of this

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Court in *N. Masthan Sahib v. Chief Commissioner, Pondicherry* (1).

The petitioner also relies on the same decision of this Court. It is conceded on his behalf that in view of that decision it was not open to the petitioner to apply to this Court under Art. 136 and therefore the appeal may not be maintainable. But it is urged that under Art. 12 "the State" for the purpose of part III of the Constitution is defined to include "the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India". It is therefore contended that even though Pondicherry was not a part of India when the order under challenge was passed, the Appellate Authority which passed the order was a "local or other authority under the control of the Government of India" and therefore was amenable to a writ under Art. 32 of the Constitution. Further it is urged that whatever may have been the position when *Masthan Sahib's case* (1), was decided, Pondicherry is now within the territory of India since August 1962 and therefore this Court can now issue a writ to the Appellate Authority if the order under challenge violates Art. 15 of the Constitution.

The respondents however contend that the fact that Pondicherry is now within the territory of India makes no difference in the application of the decision in *Masthan Sahib's case* (1). It is submitted that the reasons which led the majority in that case to refuse to issue a writ clearly imply (even if there is no actual decision in express terms on the question now raised) that a judicial or quasi-judicial authority cannot be said to be an authority "under the control of the Government of India" within the meaning of Art. 12, and therefore the Appellate Authority which was a quasi-judicial authority was not under the

(1) [1962] Supp. 1 S.C.R. 981.

control of the Government of India and could not be amenable to a writ under Art. 32 at the time when the order under challenge was passed. Further as the Constitution is not retrospective in operation the fact that Pondicherry since August 1962 is part of the territory of India would not give this Court jurisdiction to issue a writ now when it could not issue a writ to the Appellate Authority in September, 1960, even reading Art. 32 along with Art. 12 of the Constitution.

Before we come to consider the questions thus raised in the writ petition, we may state that so far as the appeal is concerned, it is concluded by the decision in *Masthan Sahib's case* (1). Article 136 gives power to this Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. Admittedly, Pondicherry was not within the territory of India when the order was passed and therefore Art. 136 would not apply to such an order. We have already indicated that this position is conceded on behalf of the petitioner. So far therefore as the appeal is concerned it must be dismissed on the authority of *Masthan Sahib's case* (1), though in the circumstances we shall pass no order as to costs.

Turning now to the writ petition, the main question that falls for consideration is the effect of Art. 12 and whether on a proper interpretation of that Article, the Appellate Authority could in this case be said to be "a local or other authority under the control of the Government of India". It is submitted on behalf of the respondents that this matter is also concluded by the decision of the majority in *Masthan Sahib's case* (1), and that the effect of that decision is that a judicial or a quasi-judicial authority would not be an authority "under the control of the Government of India". On the

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other hand, the petitioner contends that there was no such decision in that case as will appear from the concluding portion of the judgment and therefore the question is open for consideration before us.

As both parties rely on that decision we may quote the relevant part thereof. Before we do so we may mention that the decision in that case was in two parts, the first part being delivered on April 28, 1961 and the final part on December 8, 1961, though the report contains only the final part. Relevant part of that decision which appears in the first part delivered on April 28, 1961, is as below :—

> "Learned counsel pointed out that for the purpose of the exercise of this Court's power under Art. 32 of the Constitution for the enforcement of the fundamental rights its jurisdiction was not limited to the authorities functioning within the territory of India but that it extended also to the giving of directions and the issuing of orders to authorities functioning even outside the territory of India, provided that such authorities were subject to the control of the Government of India. This submission appears to us well-founded and the power of this Court under Art. 32 of the Constitution is not circumscribed by any territorial limitation. It extends not merely over every authority within the territory of India but also those functioning outside, provided that such authorities are under the control of the Government of India".

Then after considering Arts. 142 and 144 of the Constitution and pointing out that in view of the limitations imposed by Art. 142 on the territory within which alone the orders or directions of this Court could be directly enforced, a question was posted whether a writ in the nature of *certiorari* or

other appropriate order or direction to quash a quasi-judicial order passed by an authority outside the territory of India, though such authority is under the control of the Government of India could issue. The majority judgment observed as follows in answer to the question thus posed :—

> "If the order of the authority under the control of the Government of India but functioning outside the territory of India was of an executive or administrative nature, relief could be afforded to a petitioner under Art. 32 by passing suitable orders against the Government of India directing them to give effect to the decision of this Court by the exercise of their powers of control over the authority outside the territory of India. Such an order could be enforceable by virtue of Art. 144, as also Art. 142. But in a case where the order of the outside authority is of a quasi-judicial nature, as in the case before us, we consider that resort to such a procedure is not possible and that if the orders or directions of this Court could not be directly enforced against the authority in Pondicherry, the order would be ineffective and that the Court will not stultify itself by passing such an order."

In the final order, however, at p. 1009 of the Report, the majority observed as follows :—

> "The writ petitions must also fail and be dismissed for the reason that having regard to the nature of the relief sought and the authority against whose orders relief is claimed they too must fail. They are also dismissed. We would add that these dismissals would not preclude the petitioners from approaching this Court, if so desired in the event of Pondicherry becoming part of the territory of India".

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It is contended on behalf of the petitioner that the majority decision in that case seems to imply that the Appellate Authority was under the control of the Government of India as otherwise it would not have been necessary to put the two questions which were put to the Government of India by the first part of the decision. Further it is contended that the observations in the final part of the judgment that the petitioners in that case were not precluded from approaching this Court, if so desired, in the event of Pondicherry becoming part of the territory of India, also show that it was not held in that decision that judicial or quasi-judicial authorities could not be under the control of the Government of India. On the other hand, it is contended on behalf of the respondents that judicial or quasi-judicial authorities were not under the control of the Government of India, for if they were a writ would have been issued in that case in the same way as in the case of an executive or administrative authority, i.e. a writ could issue to the Government of India "directing them to give effect to the decision of this Court by the exercise of their powers of control over the authority outside the territory of India". We have carefully considered the observations in the majority decision in this connection and it must be held that that decision is not a direct authority on the question that is now posed before us, for the point was not then specifically raised; and expressly decided, though as we will later point out, the implication of the said decision is against the contention raised by the petitioner. We have therefore to examine the contentions of either party as to the exact scope and effect of the words "all local or other authorities within the territory of India or under the control of the Government of India", as if the question is *res integra*.

The first contention on behalf of the petitioner is that the words "under the control of the Government

of India" in Art. 12 do not qualify the word "authorities" therein but qualify the word "territory". The petitioner would therefore read the relevant words of Art. 12 like this: "All local or other authorities within the territory of India or all local or other authorities within the territory under the control of the Government of India". Thus, according to the petitioner, all that is required is that the territory even if it is not the territory of India, should be under the control of the Government of India, and if the territory is under the control of the Government of India all local or other authorities in such territory would be included in the words "the State". On the other hand, the contention on behalf of the respondents is that the words "under the control of the Government of India" qualify the word "authorities" and not the word "territory" in the relevant part of Art. 12 and that that part on its true interpretation would read thus: "all local or other authorities within the territory of India or all local or other authorities under the control of the Government of India".

Having given our anxious consideration to this matter we are of opinion that the interpretation put on the relevant words on behalf of the respondents is the right one, both gramatically and otherwise. Art. 12 gives an inclusive definition of the words "the State" and within these words of that Article are included, (i) the Government and Parliament of India, (ii) the Government and the legislature of each of the States, and (iii) all local or other authorities. These are the only authorities which are included in the words "the State" in Art. 12 for the purpose of Part III. Then follow the words which qualify the words "all local or other authorities". These local or other authorities which are included within the words "the State" of Art. 12 are of two kinds, namely, (i) those within the territory of India, and (ii) those under the control of the

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Government, of India. There are thus two qualifying clauses to "all local or other authorities." These clauses are : (i)within the territory of India and (ii) under the control of the Government of India. It would in our opinion be gramatically wrong to read the words "under the control of the Government of India" as qualifying the word ' territory". From the scheme of Art. 12 it is clear that three classes of authorities are meant to be included in the words "the State", there; and the third class is of two kinds and the qualifying words which follow "all local or other authorities" define the two types of such local or other authorities as already indicated above. Further all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous authorities which may not be under the control of the Government at all. In contradistinction to this the second qualifying clause refers only to such authorities as are under the control of the Government of India and so the second qualifying clause must govern the word "authorities". Therefore, the interpretation put forward on behalf of the respondents seems to us to be correct both gramatically and otherwise. "All local or other authorities" would thus be of two kinds, namely, (i) those within the territory of India, and (ii) those under the control of the Government of India. In the latter case there is no qualification that they should be within the territory of India. It is enough if they are under the control of the Government of India wherever they may be. We are therefore of opinion that no writ could issue to the appellate authority at the time when the order under challenge was passed, unless it could be called "other authority under the control of the Government of India". Further, there can be no doubt that if no writ could issue to the Appellate Authority at the time the order was passed, no writ could issue now after

Pondicherry has become part of the territory of India, for that would be giving retrospective operation to the Constitution for this purpose which obviously cannot be done : (see *Janardan Reddy* v. *the State*(1)).

The next question is whether a judicial or quasi-judicial authority outside the territory of India but within the territory under the administration of the Government of India can be said to be under the control of the Government of India. For this purpose we have to find out the meaning of the words "under the control of the Government of India" as used in Art. 12. It is submitted on behalf of the petitioner that if an authority is appointed by the Government of India, is paid by the Government of India and is liable to disciplinary action by the Government of India, it would be an authority "under the control of the Government of India". It is urged that as the Chief Commissioner, who is the appellate Authority, was appointed by the Government of India, was paid by the Government of India and was under the disciplinary control of the Government of India, he would be an authority under the control of the Government of India and this court would therefore have been entitled to issue a writ against him even when the order was passed and therefore all the more so, when Pondicherry is now within the territory of India. The contention however that this Court could issue a writ under Art. 32 against the Appellate Authority even at the time when the order was passed, is clearly negatived by the majority decision in *Masthan Sahib's case* (2), for if that could be done, writ would have been issued in that case. The reason why writ was not issued in *Masthan Sahib's case* (2), was that the quasi-judicial authority was outside the territory of India and this Court held that if the authority were of an executive or administrative nature, a writ could have been issued to the Government of India "directing them to give effect to the decision of this Court by the exercise of their powers

(1) [1950] S.C.R. 940. (2) [1962] Supp. 1 S.C.R. 981.

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of control over the authority outside the territory of India". But as the authority in that case just like the authority in the present case was a quasi-judicial authority resort to such a procedure was not possible and if the orders or directions could not be directly enforced against the authority in Pondicherry, the order would be ineffective. This clearly implies that the quasi-judicial authority was not under the control of the Government of India like an executive or administrative authority and therefore it was not possible for this Court to issue a direction to the Government of India to direct a quasi-judicial authority to give effect to the decision of this Court "by the exercise of their powers of control over the authority outside the territory of India". It follows from these observations in the majority decision in that case that the control envisaged by the words "under the control of the Government of India" in Art. 12 is not the control which arises out of mere appointment, payment and the right to take disciplinary action; the control envisaged under Art. 12 is a control of the functions of the authorities concerned, and the right of the Government of India by virtue of that control to give directions to the authority to function in a particular manner with respect to such functions. Now if the authorities were administrative or executive the control of the Government of India would not only be by virtue of appointment, payment and disciplinary action, but it would also extend to directing the authority to carry out its functions in a particular manner and a purely executive or administrative authority can always be directed by the Government of India under which it is functioning to act in a particular manner with respect to its functions. This, however, cannot be said of a quasi-judicial or judicial authority even though the Government of India may have appointed the authority and may be paying it and may have the right to take disciplinary action against it in certain eventualities. It was not open

to the Government of India to control the functions of a quasi-judicial or judicial authority and direct it to decide a particular matter before it in a particular way. It seems to us therefore that the control envisaged under Art. 12 is control of the functions of the authorities and it is only when the Government of India can control the function of an authority that it can be said that the authority is under the control of the Government of India. Such control is possible in the case of a purely executive or administrative authority; it is impossible in the case of a quasi-judicial or judicial authority, for in the very nature of things, where rule of law prevails, it is not open to the Government, be it the Government of India or the Government of a State, to direct a quasi-judicial or judicial authority to decide a particular matter before it in a particular manner. Therefore, this being the nature of the control which the Government of India must exercise in order that an authority functioning outside the territory of India may be said to be an authority under the control of the Government of India within the meaning of Art. 12, a quasi-judicial or judicial authority cannot be said to be an authority under the control of the Government of India within this meaning. We are therefore of opinion that the Appellate authority being quasi-judicial could not be directed by the Government of India to decide a particular matter before it in a particular manner and therefore it cannot be said that it is an authority under the control of the Government of India. As we have already indicated, this follows from the reasoning of the majority in *Masthan Sahib's Case* (1), though it was not decided specifically as such in that case. We are therefore of opinion that judicial or quasi-judicial authorities functioning in territories administered by the Government of India but outside the territory of India cannot be said to be authorities under the control of the Government of India within the meaning of Art. 12, and therefore Art. 12 would not apply to

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such authorities functioning outside the territory of India. Consequently it would not be open to this Court to issue a writ under Art. 32 read with Art. 12 against a quasi-judicial authority outside the territory of India even though that authority might have been appointed by the Government of India, might be paid by the Government of India or the Government of India might have the power of disciplinary action against it. The Appellate Authority being a quasi-judicial authority would thus not be under the control of the Government of India within the meaning of Art. 12. Therefore it would not have been open to this Court to issue a writ against the order under challenge when it was passed. In consequence it is not open to this Court now that Pondicherry has become part of India to issue a writ to the Appellate Authority with respect to an order passed by it before Pondicherry became part of India, as the Constitution for this purpose is not retrospective.

The matter can be looked at in another way. Art. 15 prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Therefore it is only when the State as defined in Art. 12 (for there is nothing in the context of Art. 15 to require otherwise) discriminates, that a citizen can complain of the breach of Art. 15 and ask for relief from this Court under Art. 32. We have however held that the Chief Commissioner being a quasi-judicial authority was not under the control of the Government of India within the meaning of Art. 12. Therefore, he could not be the State within that Article. If so, it follows that the discrimination (assuming there was any) was by an authority which was not the State. The protection of Art. 15 is against discrimination by "the State." The petitioner therefore would not be entitled to any protection under Art. 15 against the Chief Commissioner at the time the impugned order

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was made. That is another reason why the present petition must fail.

We therefore dismiss the appeal and pass no order as to costs in respect thereof. We dismiss the writ petition with costs.

Appeal dismissed.
Writ petition dismissed.

M. RAMAPPA

v.

GOVERNMENT OF ANDHRA PRADESH AND ANOTHER

1963

January, 22.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH and J. C. SHAH, JJ.)

State Service—Dismissal of employee—Appointment of Tribunal—Validity—Hyderabad Public Servants (Tribunal of Enquiry) Act, 1950 (Hyd. XXIII of 1950), ss. 3, 4—Andhra Civil Services (Disciplinary Tribunal) Rules, 1953—States Reorganisation Act, 1956 (XXXVII of 1956), ss. 115, 120, 121, 122, 127.

The appellant was a servant in the Hyderabad Revenue Service and was holding the post of Deputy Secretary to the Government in the Public Works Department. The Government of Andhra Pradesh ordered an enquiry by the Tribunal for Disciplinary proceedings. The Tribunal enquired into the charges and recommended the dismissal of the appellant from service and after due notice to the appellant the Government of Andhra Pradesh ordered his dismissal. The appellant thereupon moved a petition under Art. 226 of the Constitution for quashing the aforesaid order, which was dismissed by the High Court. In this Court it was urged by the appellant that the appointment of Mr. Sriramamurthy was incompetent as he was