A

UNION OF INDIA

v.

PREM KUMAR JAIN & ORS. ETC.

April 28, 1976

B [A. N. Ray, C.J., R. S. SARKARIA P. N. SHINGHAL AND JASWANT SINGH JJ.]

Constitution of India Article 312—*All India Service Act,* 1951—*Whether Union Territories are 'States' for the purpose of.*

A new cadre of the Indian Administrative Service was constituted for Delhi and Himachal Pradesh, and recruitment to it was made directly without following the normal method prescribed by Rule 4(1) of the I.A.S. (Recruitment) Rules, 1954. These Rules were amended, to provide for a joint cadre C for the Union Territories and the North East Frontier Agency, and the Central Government formulated a scheme for extending the Delhi-Himachal Pradesh Cadre to all the Union Territories by absorbing its officers and appointing officers from the Indian Frontier Administrative Service and all other Union Territories initially. The joint cadre was brought into existence by the Central Government's orders notified under Sec. 3(1) of the I.A.S. (Cadre) Rules, 1954, published in the Gazette of India, Extraordinary. The creation of the new joint cadre and the appointment of some of the respondents thereto, D were challenged in the High Court on the ground that they were contrary to Art. 312 of the Constitution and the All India Services Act, 1951, as the joint cadre was not common to the Union and the States inasmuch as a Union Territory was not a State, and the recruitment of the respondents concerned, was illegal. The High Court quashed the Central Government's orders and the scheme for the formation of a joint cadre of the I.A.S. and held that the creation of the Delhi Himachal Pradesh Cadre was also ultra vires the Constitution. The question of law which came up before this court was whether Union Territories are 'States' for the purpose of Art. 312 of the E Constitution, and the all India Service Rules, 1951 ?

Allowing the appeals the Court,

HELD : Section 3(58) of the General Clauses Act, 1897, provides inter alia, that the expression 'State' shall mean "a state specified in the First Schedule to the Constitution and shall include a Union Teritory." By virtue of Article 372-A of the Constitution, which was inserted by the Constitution (Seventh Amendment) Act 1956 because of the fact that the power of adaptation under article 372(2) had come to an end, it was that F definition of the expression 'State' which had effect from the 1st day of November, 1956, and the Constitution expressly provided that it could not be questioned in any court of law. It was a special provision which was meant to serve the purpose of making the Seventh Amendment Act workable. Article 372-A thus gave a fresh power to the President which was equal and analogous to the power under article 372(2). As from November 1, 1956, the President therefore had the power to adapt the laws for the purpose of bringing the provisions of any law in force in India in accord with the G provisions of the Constitution. It was under that power that the President issued the Adaptation of Laws (No. 1) Order, 1956, which substituted the new clause (58) in section 3 of the General Clauses Act, 1897, referred to above. The High Court went wrong in taking a contrary view and in holding that "Union Territories" were not "States" [168G, 169AG, 171D]

Management of Advance Insurance Co. Ltd. v. *Shri Gurudasmal & Ors.*, [1970] 3 S.C.R. 881, referred to.

H CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2289-2299 of 1969.

(From the judgment and order dated the 25-9-1969 of the Delhi High Court in Writ Petitions Nos. 405 and 478 to 487 of 1968).

V. P. Raman, Addl. Sol. General with *P. P. Rao,* and *S. P. Nayar,* for the appellant. A

R. B. Datar, for the respondents.

The Judgment of the Court was delivered by

SHINGHAL, J. These appeals by certificate are directed against the judgment of the Delhi High Court dated September 25, 1969, allowing Civil Writ Petition No. 405 of 1968 and connected petitions Nos. 478 to 487 of 1968. The High Court has quashed the orders of the Central Government notified in GSR 42 to 49, published in Gazette of India, Extraordinary, dated January 13, 1968, as well as the scheme for the formation of a joint cadre of the Indian Administrative Service, hereinafter referred to as the Service, for the Union Territories, and has held that the formation of the Delhi-Himachal cadre of the Service was also *ultra vires* the Constitution. As we shall show, the decision has turned on a short point of law, and it will be enough to refer to those facts which bear on it. B C

A new cadre of the Service was constituted for the Union Territories of Delhi and Himachal Pradesh, and recruitment to that cadre was made directly without complying with the requirement of rule 4(1) of the Indian Administrative Service (Recruitment) Rules, 1954, hereinafter referred to as the Recruitment Rules, which prescribed the normal method of recruitment to the Service. The Rules were amended on December 21, 1967, by providing for a Joint Cadre in relation to the Union Territories and the North East Frontier Agency, and the Central Government formulated the aforesaid scheme to extend the Delhi-Himachal Pradesh Cadre to all Union Territories by absorbing the officers of that cadre and by appointing to it officers of the Indian Frontier Administrative Service and all other Union Territories at its initial constitution. The Joint Cadre for all the Union Territories was brought into existence from January 1, 1968, by GSR 42 under rule 3(1) of the Indian Administrative Service (Cadre) Rules, 1954, hereinafter referred to as the Cadre Rules, published (along with certain consequential changes in the other rules of the Service) in Gazette of India, Extraordinary, dated January 13, 1968. The petitioners in the High Court challenged the creation of the new Joint Cadre for all the Union Territories, and the appointment of some of the respondents thereto. It was urged in the High Court that the constitution of the new Joint Cadre was illegal as it was contrary to the provisions of article 312 of the Constitution and the All India Services Act, 1951. as it was not common to the Union and the State inasmuch as a Union Territory was not a State, and the recruitment of the respondents concerned to the Joint Cadre was contrary to the provisions of section 3 of the All India Services Act, 1951, and the Cadre Rules. D E F G

The High Court examined the question whether the Union Territories were States, and reached the conclusion that this was not so. It therefore held that rule 4(5) of the Recruitment Rules was *ultra vires* the Constitution and the All India Services Act, for the Cadre in ques- H

A tion could not be said to be common to the Union and the States. The High Court also observed that as the Central Government was itself the State Government for purposes of a Union Territory, the Central Government could not consult itself within the meaning of section 3 of the All India Services Act and the Recruitment and the Cadre Rules. It therefore quashed the orders and the scheme mentioned above.

B It appears, however, that it was not brought to the notice of the High Court that, in so far as the Service was concerned, it was not necessary for Parliament to make a law providing for its creation as a service common to the Union and the States, under clause (1) of article 312 of the Constitution, because clause (2) of that article expressly provided as follows,—

C "312. (2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article."

The Service did not therefore have to be created under the provisions of clause (1) of article 312 of the Constitution, or section 2A of the D All India Services Act. Section 3(1) of that Act however made provision for the making of rules for the regulation of recruitment and conditions of service of persons appointed to an All-India Service "after consultation with the Governments of the States concerned." It was under that provision that the Cadre Rules were made by the Central Government, and the question which engaged the attention of the E High Court was whether the Union Territories could be said to be States for purposes of such consultation. In that connection the High Court examined the question whether the Union Territories could be said to be States merely because rule 2(c) of the Cadre Rules defined a "State" to mean a State specified in the First Schedule to the Constitution and including a Union Territory, and answered it in the negative.

F The expression "State" has not been defined in the Constitution, but it has been defined as follows in section 3(58) of the General Clauses Act (Act X of 1897),—

"State"—

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, G shall mean a Part A State, a Part B State or a Part C State; and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory."

This was however not the original definition, for it was substituted by the Adaptation of Laws (No. 1) Order, 1956. Before that Order, the H expression "State" meant "a Part A State, a Part B State or a Part C State." That definition was, in its turn, brought in by adaptation under article 372 of the Constitution by the Adaptation of Laws Order, 1950, for the purpose of bringing the provisions of any law in force in

the territory of India in accord with the provisions of the Constitution. The original definition has thus been adapted twice to suit the requirements of the Constitution.

Clause (1) of article 367, which deals with "interpretation" of the Constitution, provides as follows,—

> "367(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372 apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India."

A cross-reference to article 372(2) shows that while the purpose of the adaptation was to bring the provisions of any law in force in the country "into accord with" the provisions of the Constitution, clause (3) thereof expressly stated, *inter alia*, as follows,—

> "(3) Nothing in clause (2) shall be deemed—
>
> (a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution;"

The power of adaptation or modification was therefore spent after the expiry of three years, and the High Court has taken the view that as it were only the adaptations made in the General Clauses Act under article 372(2) which applied to the interpretation of the Constitution in view of article 367(1), the adaptations made later, by article 372A, were not so applicable.

A comparison of the provisions of articles 372 and 372A shows, however, that while the purpose of both the articles was to bring the provisions of any law in force in India "into accord" with the provisions of the Constitution, article 372 was a general provision enabling the making of adaptations and modifications in such laws by an order of the President, whereas article 372A was a special provision which was made specifically for purposes of the Constitution (Seventh Amendment) Act, 1956, inasmuch as clause (1) thereof provided as follows,—

> "372A (1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution *as amended by that Act*, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to

A the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law" (Emphasis added)

It is obvious therefore that as the power of the President to make any adaptation or modification of any law under clause (2) of article 372 B was spent after three years, Parliament felt the necessity of giving such a power to the President once again for the purpose of bringing the provisions of any law in force immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of the Constitution as amended by that Act. That was therefore a necessary power as it was meant to make the amended Constitution workable. For instance, section 3 (58) of the General C Clauses Act, 1897, as it stood before the coming into force of the Seventh Amendment Act, defined a "State" to mean "a Part A State, a Part B State or a Part C State." As has been stated, that definition had itself been substituted by the Adaptation of Laws Order, 1950, to make it workable, and it served the purpose, for the country had those three types of States at that time. But an important change was made by the Constitution (Seventh Amendment) Act, 1956, which abolished D the distinction of Part A, Part B and Part C states and provided, *inter alia,* that the territory of the country shall comprise the territories of the States and the Union Territories specified in the First Schedule. The definition of the expression "State" as it stood before November 1, 1956, became unsuitable and misleading on the coming into force of the Constitution (Seventh Amendment) Act, 1956, from November 1, 1956, and it will, for obvious reasons, be futile to contend that it E should have continued to be applicable for all time to come and remained "the final definition of "State" " merely because the period of three years provided by clause (3) (a) of article 372 of the Constitution expired and was not extended by an amendment of that clause, or because article 367(1) was not amended by the Seventh Amendment Act "to say that adaptations made in the General Clauses Act otherwise than those made under article 372(2) would be applicable to the F interpretation of the Constitution." The High Court also erred in thinking that such "abstention seems to be deliberate." On the other hand, it is quite clear from the fact that Parliament inserted article 372A by the Constitution (Seventh Amendment) Act, 1956, that it was aware that the power of adaption under article 372(2) had come to an end, and was alive to the necessity of giving a similar power of G adapting the laws once again to the President for the purposes of bringing the provisions of any law in force in the country immediately before the commencement of that Act "into accord" with the provisions of the Constitution. It is therefore futile to contend that the definition of the expression "State" which was applicable upto November 1, 1956, remained the final definition for all time to come. That view is incorrect, for it overlooks or ignores the anxiety of the Parliament to H remove any such misapprehension by inserting article 372A. It was a special provision, and it was meant to serve the purpose of making the Seventh Amendment Act workable. As has been held by this Court in *Management of Advance Insurance Co. Ltd.* v. *Shri Gurudas-*

mal and others(1), article 372A gave a fresh power to the President which was equal and analogous to the power under article 372(2). A

It follows therefore that, as and from November 1, 1956, when the Constitution (Seventh Amendment) Act, 1956, came into force, the President had the power to adapt the laws for the purpose of bringing the provisions of any law in force in India into accord with the provisions of the Constitution. It was under that power that the President issued the Adaptation of Laws (No. 1) Order, 1956, which, as has been shown, substituted a new clause (58) in section 3 of the General Clauses Act providing, *inter alia,* that the expression "State" shall, as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956, mean "a State specified in the First Schedule to the Constitution and shall include a Union Territory." It cannot be said with any justification that there was anything repugnant in the subject or context to make that definition inapplicable. By virtue of article 372A(1) of the Constitution, it was that definition of the expression "State" which had effect from the 1st day of November, 1956, and the Constitution expressly provided that it could "not be questioned in any court of law." The High Court therefore went wrong in taking a contrary view and in holding that "Union Territories are not 'States' for purposes of Article 312(1) of the Constitution and the preamble to the Act of 1951." That was why the High Court erred in holding that the definition of "State" in the Cadre Rules was *ultra vires* the All India Services Act, 1951 and the Constitution, and that the Union Territories Cadre of the Service was "not common to the Union and the States" within the meaning of article 312(1) of the Constitution, and that the Central Government could not make the Indian Administrative Service (Cadre) Rules, 1954 in consultation with the State Governments as there were no such governments in the Union Territories. B C D E

The High Court has held further that section 3 of the All India Services Act, 1951 and rule 5 of the Cadre Rules have been contravened by the "direct appointment of respondents 2 to 37 to the Union Territories Cadre and by their being not recruited first to the IAS." But no such ground appears to have been taken in the writ petition. Moreover, the validity or rule 4(5) of the Recruitment Rules, which contained a *non-obstante* clause providing for recruitment to the Joint Cadre of the Union Territories on its initial constitution by such method as the Central Government may, after consultation with the Union Public Service Commission prescribe was not examined by the High Court. F G

For the reasons mentioned above, the appeals are allowed, the impugned judgment of the High Court dated September 25, 1969 is set aside and the writ petitions are dismissed. There will however be no orders as to the costs. H

M.R. *Appeals allowed.*

(1) [1970] 3 S.C.R. 881.