

ITEM NO.1A

COURT NO.6

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. No. 3 & 5/2014 in Original Suit No. 1/2012
WITH I.A.NO.7

STATE OF JHARKHAND

Petitioner(s)

VERSUS

STATE OF BIHAR & ANR

Respondent(s)

Date : 25/11/2014 This matter was called on for pronouncement of
judgment today.

For Petitioner(s) Mr. Devashish Bharuka,Adv.

For Respondent(s) Mr. Gopal Singh,Adv.

Mr. B. Krishna Prasad,Adv.

Hon'ble Mr. Justice J. Chelameswar pronounced the
judgment of the Bench comprising of His Lordship and Hon'ble Mr.
Justice S.A. Bobde.

In terms of the signed non-reportable judgment, the
question is required to be examined by a larger bench of this
Court. We direct the Registry to place the matter before Hon'ble
the Chief Justice of India for appropriate orders in this regard.

[O.P. SHARMA]
COURT MASTER

[INDU BALA KAPUR]
COURT MASTER

(Signed non-reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA**ORIGINAL CIVIL JURISDICTION****I.A. NOS. 3 AND 5 OF 2014****IN****ORIGINAL SUIT NO. 1 OF 2012****WITH****I.A. NO. 7**

State of Jharkhand

... Petitioner

Versus

State of Bihar & Anr.

... Respondents

ORDER**Chelameswar, J.**

I.A. No. 5 of 2014 in Original Suit No. 1 of 2012 is filed by the plaintiff, the State of Jharkhand in the above-mentioned suit.

2. In the said suit, the plaintiff prayed *inter-alia*;

“b. “b. Declare and hold that the basis of “*ratio of number of employees of each successor State*” for apportionment of pension liability contained in Clause 4 of the Eight Schedule to the Bihar Reorganisation Act, 2000 is ultra vires Article 14 of the Constitution of India, or, in the alternative, to read down the aforesaid words contained in Clause 4 of the Eight Schedule to the Bihar Reorganisation Act, 2000 to mean “*population ratio*”.”

3. By Act No. 30 of 2000 by the Parliament, the State of Jharkhand

is brought into existence by carving out certain areas from the territory of the State of Bihar as it existed on that date. The Act is titled Bihar Reorganisation Act, 2000. As necessary sequel to the bifurcation, provisions were required to be made with reference to the various aspects of the rights and liabilities of the State of Bihar as well as the newly formed State of Jharkhand. One of the provisions dealt with the apportionment of the pensionary liabilities of the former employees of the original State of Bihar.

4. I.A. No. 5 is filed seeking certain amendments to the original suit.

“it is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to permit amendment of the Original Suit No. 1 of 2012 titled “State of Jharkhand Versus State of Bihar and Another” as per aforesaid paragraphs and pass an order or orders which may be deemed fit and proper to meet the ends of justice.”

5. When the matter was taken up, a preliminary objection is raised by the State of Bihar to the maintainability of the suit, relying on a decision of this Court in ***State of Madhya Pradesh v. Union of India and Another***, (2011) 12 SCC 268. According to the State of Bihar, the suit on hand which in substance seeks an examination of the constitutionality of certain provisions of Act 30 of 2000 is not maintainable for the reason that a question of *vires* of an enactment cannot be examined in an original suit under Article 131, but could only be examined in the proceeding under Article 226 or Article 32 of

the Constitution of India.

6. The relied upon judgment was rendered in an Interlocutory Application in Original Suit No. 6 of 2004 filed under Article 131 of the Constitution of India before this Court. The said I.A. was filed by the plaintiff-State of Madhya Pradesh wherein the State sought to amend the plaint praying *inter alia* certain sections of the Madhya Pradesh Reorganisation Act to be violative of Article 14 of the Constitution of India.

7. The State of Chhattisgarh “objected to the amendment on the ground that the same is totally misconceived and untenable in law and no recourse whatsoever is permitted to challenge the validity of a central law under the exclusive jurisdiction of this Court under Article 131 of the Constitution of India.”

8. By the said judgment, this Court held as follows:-

“20. By way of the present amendment, the plaintiff State of M.P. is seeking to challenge the validity of the Central law in a proceeding (suit) initiated under Article 131 of the Constitution. Normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India in a writ petition and not an original suit filed under Article 131 which vests exclusive jurisdiction on this Court as regards the disputes enumerated therein. It is relevant to point out that Article 131-A of the Constitution inserted by the Constitution inserted by the Constitution (forty-second Amendment) Act, 1976, provides for exclusive jurisdiction to this Court in regard to questions as to constitutionality of Central laws. The said Article 131-A viewed as substantially curtailing the power of judicial

review of the writ courts, that is, the High Courts under Article 226 and this Court under Article 32 was omitted vide the Constitution (forty-third Amendment) Act, 1977. It follows that when the Central laws can be challenged in the State High Courts as well and also before this Court under Article 32, normally, no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Article 131."

9. On the other hand, it is argued on behalf of the State of Jharkhand that this Court in ***State of Madhya Pradesh v. Union of India*** (referred to supra) recorded an erroneous conclusion. According to the learned counsel, in the light of an earlier Constitution Bench judgment of this Court in 1964 1 SCR 371, the question whether the vires of an enactment by the Parliament could be examined in an original suit under Article 131 was no more *res integra* and unfortunately, the said decision was not brought to the notice of this Court when it was considering the objections of the State of Chhattisgarh.

10. ***State of West Bengal v. Union of India***, 1964 1 SCR 371 is a case wherein an original suit under Article 131 filed by the State of West Bengal challenging the Union of India the constitutionality of the Coal Bearing Areas (Acquisition and Development) Act, 1957¹ and the

¹ This is a suit by the State of West Bengal against the Union of India for a declaration that Parliament is not competent to make a law authorizing the Union Government to acquire land and rights in or over land, which are vested in a State, and that the Coal Bearing Areas (Acquisition and Development) Act (XX of 1957) which hereinafter will be referred to as the Act enacted by the Parliament, and particularly Ss.4 and 7 thereof, were ultra vires the legislative competence of Parliament, as also for an injunction restraining the defendant from proceeding under the provisions of those sections of the Act in respect of the coal bearing lands vested in the plaintiff.

Court held the Act to be constitutionally valid. The question whether in an original suit under Article 131, the constitutional validity of an enactment could be examined was not one of the issues examined by this Court in the said judgment. Perhaps nobody thought it fit to raise such an objection!. Therefore, the said judgment is not an authority for the proposition that this Court could examine the constitutional validity of an enactment in a suit under Article 131 of the Constitution of India.

11. We regret our inability to agree with the conclusion recorded in the case of ***State of Madhya Pradesh v. Union of India and Anr.*** (supra), that in an original suit under Article 131, the constitutionality of an enactment cannot be examined. Since the above decision is rendered by a coordinate Bench of two judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the above-mentioned decision.

12. The Constitution of India invests this Court with jurisdiction, both original and appellate, under various provisions of Part V, Chapter V of the Constitution. Such jurisdiction of this Court is in addition to the jurisdiction created under Article 32 of the

Constitution of India for the enforcement of fundamental rights guaranteed under Part III of the Constitution.

13. Article 131 deals with the exclusive original jurisdiction of this Court. It reads as follows:-

“131. Original jurisdiction of the Supreme Court Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute”

14. It can be seen from the language of Article 131 that the exclusive jurisdiction of this Court extends to any dispute between the Government of India and any one or more states and the disputes arising between two or more states in various possible combinations specified in the said Article. The dispute could be on a question of fact or law or fact.

15. A Constitution Bench of this Court in ***State of Karnataka v. Union of India & Anr***, (1977) 4 SCC 608 had an occasion to examine the scope and amplitude of Article 131. Justice Chandrachud in his concurring judgment at para 162 held as follows:

“162. The jurisdiction conferred on the Supreme Court by Article 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly confers ‘original jurisdiction’ on the Supreme Court and the commonest form of a legal proceeding which is tried by a Court in the exercise of its original jurisdiction is a suit. But a constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of its original jurisdiction, cannot be equated with a provision conferring a right on a Civil Court to entertain a common suit so as to apply to an original proceeding under Article 131 the canons of a suit which is ordinarily triable under Section 15 of the Code of Civil Procedure by a Court of the lowest grade competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Article 131 as a ‘suit’ and significantly, Article 131 uses words and phrases not commonly employed for determining the jurisdiction of a Court of first instance to entertain and try a suit. It does not speak of a ‘cause of action’, an expression of known and definite legal import in the world of witness actions. Instead, it employs the word ‘dispute’, which is no part of the elliptical jargon of law. But above all, Article 131 which in a manner of speaking is a self-contained code on matters falling within its purview, provides expressly for the condition subject to which an action can lie under it. That condition is expressed by the clause: “if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”. By the very terms of the article, therefore, the sole condition which is required to be satisfied for involving the original jurisdiction of this Court is that the dispute between the parties referred to in clauses (a) to (c) must involve a question on which the existence or extent of a legal right depends.”

In the same case, Justice Bhagwati examined the scope of Article 131 and held as follows:

“201. Now, plainly there are two limitations in regard to the dispute which can be brought before the Supreme Court under Article 131. One is in regard to parties and the other is in regard to the subject matter. The article provides in so many terms that the dispute must be between the Government of India and one or more States or between two or more States. The object of the article seems to be that since in a federal or quasi-federal structure, which the Constitution seeks to set up, disputes may arise between the Government of India and one or more States, or between two or more States, a forum should be provided for the resolution of such disputes and that forum should be the highest Court in the land, so that final adjudication of such disputes could be achieved speedily and expeditiously without either party having to embark on a long, tortuous and time-consuming journey through a hierarchy of Courts. The article is a necessary concomitant of a federal or a quasi-federal form of Government and it is attracted only when the parties to the dispute are the Government of India or one or more States arrayed on either side. This is the limitation as to parties. The other limitation as to subject matter flows from the words “if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”. These words clearly indicate that the dispute must be one affecting the existence or extent of a legal right and not a dispute on the political plane not involving a legal aspect. It was put by Chandrachud, J., very aptly in his judgment in the *State of Rajasthan v. Union of India* (supra) when he said; “Mere wrangles between Governments have no place under the scheme of that article.....:”. It is only when a legal, as distinguished from a mere political, issue arises touching upon the existence or extent of a legal right that the article is attracted. Hence the suit in the present case would obviously not be maintainable unless it complies with both these limitations.”

16.. If the question of constitutionality of a statute (either of the Parliament or the State Legislature) were to be raised by a party other than the persons specified under Article 131, both this court as well as the High Courts are competent to examine. This proposition is too well settled in our jurisprudence for the period of last sixty years. What is more significant is that if the Parliament chooses to repeal the

proviso to Section 113 of the Code of Civil Procedure, even an ordinary civil court functioning in accordance with the procedure prescribed under the Code of Civil Procedure would be competent to examine such a question.

“113. Reference to High Court.-- Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court.”

It is only the proviso of Section 113 of the Code of Civil Procedure which obliges an ordinary civil court to refer the same for the opinion of the High Court. Therefore, we find it difficult to accept the statement of law enunciated by this Court in ***State of Madhya Pradesh v. Union of India & Anr***, (supra).

17. We are unable to agree with the proposition that this Court cannot examine the constitutionality of a statute in exercise of its exclusive original jurisdiction under Article 131.

18. We, therefore, deem it appropriate that the question is required to be examined by a larger bench of this Court. We direct the Registry

to place the matter before Hon'ble the Chief Justice of India for appropriate orders in this regard.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

New Delhi;
November 25, 2014