

**CASE COMMENT: N. MASTAN SAHIB V. CHIEF COMMISSIONER,
PONDICHERRY**

Muskan*

INTRODUCTION

According to Article 1(3)(c), the term ‘acquired’ means any accession by India should be considered to be a part of the territory but this leaves ambiguity concerning the mode or purpose of acquisition leaving the question as it is considered a part of the territory or not. The present case of Pondicherry which is a part of India was taken from French Government by signing the treaty between the Indian and French Governments but the question arises when a person filed a writ petition regarding the territory whether it is a part of India or not. Justice Shankar and Justice Ayyangar pronounced a landmark judgment i.e. *N. Mastan Sahib v. Chief Commissioner, Pondicherry*¹ in 1962 clarifying whether it is a part of India or not and also defining Article 12 whether it includes authorities outside the territory of India.

FACTS OF THE CASE

The court is considering two civil appeals that were brought by special leave. The respective appellants also filed two writ petitions seeking the same relief as the appeals, which is to set aside orders passed by the Chief Commissioner of Pondicherry, acting as the State Transport Appellate Authority under the Motor Vehicles Act, 1939. These cases are being heard together since they raise a common jurisdictional question of whether the court can entertain both the appeals and petitions.

In December 1958, the State Transport Commission of Pondicherry invited applications for the grant of a stage carriage, including the route from Pondicherry to Karaikal. Nineteen people, including the petitioner Sivarama Reddiar and the respondent Gopal Pillai, submitted their applications before the February 1959 deadline. However, the Indian Motor Vehicle Act, of 1939 was extended to Pondicherry on June 1959, before the government could process these applications. Consequently, on July 1959, the Chief Commissioner of Pondicherry constituted

*BA LLB, FIRST YEAR, GUJARAT NATIONAL LAW UNIVERSITY, GANDHINAGAR.

¹ N. Mastan Sahib v. Chief Commissioner, Pondicherry, AIR 1962 SC 797.

the State Transport Authority for Pondicherry with the powers conferred on him by Section 44 of the Motor Vehicle Act, of 1939.

Both Sivarama Reddiar and Gopal Pillai provided the necessary information in response to the December 1958 notification, and their applications were scrutinized and verified. Eventually, Sivarama Reddiar was granted the permit. However, the other applicants appealed to the Chief Commissioner, who acts as an Appellate Authority under Section 64 of the Motor Vehicle Act. The Chief Commissioner then set aside the order of the State Transport Authority and issued orders to grant the permit to Gopal Pillai instead.

LEGAL ISSUES

1. Whether Pondicherry is a part of the Territory of India or not.
2. When a territory is said to be acquired.
3. When a territory is said to be 'acquired' and what will constitute 'acquisition'?

Scope of Article 32

- Can SC issue writ or directions if the authority is within the control of the government of India but not within the territory of India?
- Whether Quasi-Judicial authorities fall within the ambit of Article 12.

Scope of Article 136

- Does SC have the power to grant a special leave petition against the order of any court or tribunal which is under the Control of the Government of India but not within the territory of India?

OBSERVATIONS OF THE SUPREME COURT

The respondent argues that Special leave was made under Art. 136(1)² but according to this article it can be applied to the territory of India, so it is not applicable. Whereas the appellant argues that Art. 12³ defines State which also includes that territory that is under the control of the Government. So, Article 32⁴ is not limited to territorial jurisdiction. But SC observed that there is an anomaly between Article 142, 144, and Article 32 as the order came from Quasi-

² INDIA CONST. art. 136, cl 1.

³ INDIA CONST. art. 12.

⁴ INDIA CONST. art. 32.

judicial authority and outside the territory of India which makes the order of SC not enforceable as administration of Pondicherry was being conducted by the Government under the Foreign Jurisdiction Act, 1947. So to ascertain the status of Pondicherry whether it is an acquired territory or not, the SC seeks the assistance of the Government which is mentioned in sec. 6 of the Foreign Jurisdiction Act, 1947.

The SC asked 2 questions to the Government to know the status of Pondicherry⁵ :

(1) *“whether Pondicherry which was a former French Settlement is or is not at present comprised within the territory of India as specified in Article 1(3) of the Constitution by virtue of the Articles of the Merger Agreement dated October 21, 1954, between the Governments of India and France and other relevant agreements, arrangements, acts, and conduct of the two Governments”?*

(2) *“If the answer to Question 1 is that Pondicherry is not within the territory of India, what is the extent of the jurisdiction exercised by the Union Government over the said territory and whether it extends to making all and every arrangement for its civil administration, its defense and in regard to its foreign affairs. The Government of India might also state the extent of jurisdiction which France possesses over the area and which operates as a diminution of the jurisdiction ceded to or enjoyed by the Government of India”?*

DECISION

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The Government claims that, despite having de facto control over Pondicherry, it is not officially considered a part of India under clause 3 of Article 1, as there has been no de jure transfer. Nonetheless, the Government asserts its full jurisdiction over Pondicherry in terms of executive, legislative, and judicial matters by citing the Foreign Jurisdiction Act of 1947. As a result, the Supreme Court has determined that if Pondicherry is not officially part of India, the writ petitions and special leave are considered to have failed and are dismissed. The relief sought and the authority against which relief was claimed are also deemed to have failed. However, the Court has made it clear that the dismissal of these petitions does not prevent the petitioners from approaching the Court in the future if Pondicherry becomes part of the Indian territory.

⁵ *Supra* note 1.

And also Court said, “*By appropriate action under the Foreign Jurisdiction Act, or by Parliamentary Legislation under the entry 'Foreign Jurisdiction' the Appellate Jurisdiction of the High Court or of this Court be enlarged under Arts. 225 and 138[1] respectively so as to afford an adequate remedy for the inhabitants of these areas. To this aspect of the matter, we consider that the attention of Government should be drawn*”⁶.

ANALYSIS AND CONCLUSION

This case provides a strong precedent for cases related to annexation. This case tries to define Art. 12 which also includes that part that is under the control of the Government irrespective of whether it is part of the territory or not. And also clarify the jurisdiction of appeals from a quasi-judicial authority outside India. And it is decided that the word ‘acquired’ under Article 1 (3)(c)⁷ should be interpreted as acquisition. The courts would be bound to recognize "acquisition" if the government of India made a public notification, assertion, or declaration or treated a territory as an integral part of India. As a result, the territory would become a part of India under Article 1(3)(c), the territory of the Union.

⁶ *Supra* note 1.

⁷ INDIA CONST. art. 1, cl 3.