

1941.

Nov. 27.
Dec. 4.

K. L. GAUBA

v.

THE HON'BLE THE CHIEF JUSTICE AND
JUDGES OF THE HIGH COURT OF JUDI-
CATURE AT LAHORE AND ANOTHER.

[SIR MAURICE GWYER, C. J., SIR SRINIVASA
VARADACHARIAR AND SIR MUHAMMAD ZAFRULLAH
KHAN, JJ.]

*Government of India Act, 1935, ss. 205, 210 and
212—Withholding of certificate by High
Court—Refusal cannot be questioned by Federal
Court—Jurisdiction of Federal Court.*

No appeal lies to the Federal Court in the absence of a certificate under s. 205 of the Constitution Act; a certificate is a condition precedent to every appeal.

The Federal Court cannot question the refusal of a High Court to grant a certificate or investigate the reasons which prompted the refusal, if the High Court has given none.

Pashupati Bharti v. Secretary of State for India in Council:
[1939] F. C. R. 13, applied.

PETITION.

The Applicant in person. The application was heard *ex-parte*.

The facts and arguments in the case sufficiently appear from the Judgment.

Cur. adv. vult.

The Judgment of the Court was delivered by GWYER, C. J.—In this case the petitioner, Mr. K. L. Gauba, has filed a petition praying that the respondents, the Hon'ble the Chief Justice and other the Judges of the High Court of Judicature at Lahore, may be ordered to transmit the records of a certain case to this Court, and that this Court after perusing the same may adjudge the respondents to have acted in contempt of this Court, on the ground that they have refused to grant a certificate to the petitioner under s. 205 of the Constitution Act, and that the refusal was perverse, deliberate, illegal and oppressive, and for the purpose of

preventing the petitioner from having a hearing before this Court.

In view of the unusual nature of the petition and of the relief sought, we thought it right to invite the petitioner at a preliminary hearing to satisfy us that we had jurisdiction to entertain such proceedings. Mr. Gauba accordingly appeared before us and argued his case in person.

It appears that Mr. Gauba has for some time past been involved in litigation at Lahore of various kinds, including litigation connected with his insolvency. It is unnecessary to go into the details of this litigation, and it is sufficient to say that in the course of certain proceedings Mr. Gauba raised two points which according to him involved the interpretation of the Constitution Act; that is, whether a particular Special Bench of the High Court was validly constituted and whether a particular Judge was any longer qualified to sit upon the Bench at all. In each case the point of law raised by Mr. Gauba was decided against him and a certificate under s. 205 of the Act was refused. Such very briefly are the facts which have given rise to the present petition.

Mr. Gauba, who argued with ability and moderation admitted that in face of the decisions of this Court in *Pashupati Bharti v. Secretary of State for India in Council*⁽¹⁾, *Lakhat Ram v. Behari Lal Misir*⁽²⁾, and *Kishori Lal v. Governor in Council, Punjab*⁽³⁾, he could not seek to appeal from the refusal of the High Court to grant the certificate. But, he said, that does not conclude the matter; and he contended that if it is possible to show that the refusal was perverse or malicious, that is to say, that no reasonable man could have come to such a decision or that the refusal was inspired by wicked or improper motives, then the High Court has deliberately deprived this Court of a jurisdiction which Parliament has entrusted to it and is therefore guilty of a contempt of this Court.

(1) [1939] F.C.R. 13. (2) [1939] F.C.R. 121.
(3) [1940] F.C.R. 12.

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If we assume for the moment that a High Court can in such circumstances be guilty of a contempt of this Court, what follows? Even Mr. Gauba does not suggest punishment by fine or imprisonment; he would be content that the High Court should be served with an order to grant the certificate hitherto perversely or maliciously withheld. But what is that but to ask this Court to do by indirect means what it is admitted that it cannot do directly? The law of contempt of Court has at times been stretched very far in British India; but no one has ever contended that a Court could use its power to punish for contempt for the purpose of extending its jurisdiction in other matters.

This Court being the creation of statute, it is to the statute which created it that we must look for a definition of its jurisdiction, original or appellate. It is not suggested, nor could it be, that its original jurisdiction could be invoked for the purpose of Mr. Gauba's petition; and it is to the provisions relating to its appellate jurisdiction that reference must be made. These are contained in ss. 205 and 207 of the Act; but since s. 207 has no effect until the Federation is established, we are only concerned with s. 205. We have had occasion more than once to construe the provisions of s. 205, and we repeat what we have already said, that no appeal lies to this Court in the absence of the certificate prescribed by that section; a certificate is the necessary condition precedent to every appeal. We cannot question the refusal of a High Court to grant a certificate or investigate the reasons which have prompted the refusal: we cannot even inquire what those reasons were, if the High Court has given none. The matter is one exclusively for the High Court; and, as this Court observed in an earlier case, it is not for us to speculate whether Parliament omitted *per incuriam* to give a right of appeal against the refusal to grant a certificate or trusted the High Courts to act with reasonableness and impartiality: *Pashupati Bharti v. Secretary of State for India in Council*(¹). The jurisdiction of the Court being thus limited by the statute in this way, how could it be

(¹) [1939] F.C.R. 13, at p. 16.

extended by a High Court acting even perversely or maliciously in withholding the certificate?

Mr. Gauba however stated that he based his petition, not on s. 205, but on ss. 210 and 212. These sections do not help him. Section 210 (1) requires all authorities, civil and judicial, to act in aid of the Federal Court. If, as is plain, they could not by giving it their assistance extend its jurisdiction, surely still less could they extend it by refusing that assistance, as Mr. Gauba in effect contends. Section 210 (2) confers powers, not jurisdiction; and unless in any given case the Court has jurisdiction it has no powers to exercise. Mr. Gauba laid stress upon the words of the sub-section which refer to the investigation or punishment of contempt of court. This Court being a Court of Record has all the powers which belong to such a Court, including the power to punish for contempts of itself: and s. 210 (2) does no more than give it the same machinery for making that power effective as the High Courts themselves possess. Section 212, which enacts that the law declared by this Court shall be recognized as binding on all Courts in British India, does not appear to us to have any relevance for the purpose of the present case.

The petition thus fails *in limine* and must be dismissed; but we think it right to add two things. It has not been necessary for us to go into all the facts alleged in the petition, but we must not be taken as assenting to the proposition that proceedings by way of contempt of court could ever be the appropriate remedy against a High Court, even if all the facts alleged were true. Secondly, whether the High Court was right or wrong in withholding the certificates (on which it is not for us to express any opinion), we see no reason to suppose that it did in fact act either perversely or maliciously in doing so; and it is only just to the High Court that we should state this.

Application dismissed.

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