

2025 LiveLaw (SC) 594

**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION**

SURYA KANT; J., DIPANKAR DATTA; J., NONGMEIKAPAM KOTISWAR SINGH; J.
WRIT PETITION (C) No. 578 OF 2001; APRIL 22, 2025

JAMMU & KASHMIR NATIONAL PANTHERS PARTY *versus* UNION OF INDIA & ORS.

Jammu and Kashmir Reorganisation Act, 2019 - Jammu and Kashmir Grant of Permit for Resettlement in (or Permanent Return) to the State Act, 1982 - Constitutional Validity of – Held, the issue of its constitutionality no longer survives as the Act was never enforced and was repealed by the Act, 2019. The 1982 Act, enacted to permit pre-1954 state subjects who migrated to Pakistan after 1947 to return to Jammu and Kashmir, was stayed by the Supreme Court in 2002 and never came into force. The Act was repealed under Section 95(2) read with Section 96 and Table-3 of the Fifth Schedule of the Act, 2019. An affidavit filed by the erstwhile State of Jammu & Kashmir confirmed that no Competent Authority was notified under the 1982 Act, and thus, no benefits were conferred under it. The challenge to the Act’s constitutionality became infructuous due to its repeal. Writ petitions disposed of as the 1982 Act was repealed and never enforced. (Para 15)

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ORDER

1. This batch of Writ Petitions lays challenge to the constitutionality of the Jammu and Kashmir Grant of Permit for Resettlement in (or Permanent Return to) the State Act, 1982 (for short, ‘the Impugned Act’). The Impugned Act was enacted by the State Legislature of Jammu and Kashmir in 1982, *inter alia*, with the aim to allow individuals who were state subjects of the State before 14.05.1954 and who migrated to Pakistan after 01.03.1947, to return to the State of Jammu and Kashmir for permanent resettlement. The Impugned Act also intended to extend this right to their descendants, spouses, and widows, regardless of whether they were ever Indian citizens or not, provided they apply for a permit and swear allegiance to the Constitutions of India and Jammu and Kashmir.

2. The Jammu and Kashmir Grant of Permit For Resettlement In (Or Permanent Return To) The State Bill, 1980, which culminated into the above-stated Impugned Act, was passed by both the Houses of Legislature of the State of Jammu and Kashmir in April 1982. On 18.09.1982, the Governor of the State expressed certain reservations and sent the Bill back. Meanwhile, the President of India, in exercise of the power under Article 143 of the Constitution, made a reference (registered as Special Reference No. 1 of 1982) to this Court on 30.09.1982 to answer the following question:

“...whether the Jammu and Kashmir Grant of Permit for Resettlement in (or Permanent Return to) the State Bill, 1980 or any of the provisions thereof, if enacted, would be constitutionally invalid.”

3. After the Bill was sent back by the Governor, the State Legislature passed it again in the form in which it originally stood. Therefore, the Governor of the State gave assent to the legislation on 06.10.1982 and the Bill became an Act.

4. Some of the instant Writ Petitions, thus, came to be filed, questioning the competence of the State Legislature to pass the impugned Act and challenging its constitutionality. They were, however, directed to be listed after Special Reference 1 of 1982 was answered.

5. Taking stock of these developments, on 06.11.2001, a Constitution Bench of this Court declined to answer the reference and returned it unanswered with the following order:

“5. Having regard to the fact that the Bill became an Act as far back as in 1982, it appears to us inexpedient to answer the question posed to us in the Reference. Even if we were to answer the question in the affirmative, we would be unable to strike down the Act in this proceeding. We think, therefore, that the Reference must be, respectfully, returned unanswered.

6. Order accordingly.”

6. As a result, two more Writ Petitions, which are part of this batch, were filed to challenge the Impugned Act. *Vide* an order dated 01.02.2002, this Court imposed a stay on the Impugned Act.

7. Meanwhile, these Writ Petitions came up for hearing before a two-Judge Bench of this Court on 23.10.2008. Having regard to fact that the questions raised involved interpretation of the Constitution of India as also the provisions of the erstwhile Constitution of Jammu and Kashmir, the matters were referred to a Constitution Bench.

8. However, the then Hon’ble the Chief Justice of India passed an order on 11.11.2008, directing the listing of these matters before a three-Judge Bench.

9. The record reveals that the matter was listed from time to time and some meaningful hearings took place, including brief arguments on 09.01.2019, when the matter was requested to be posted for hearing after an elected Government was in place, in the State.

10. During the pendency of these proceedings, the State of Jammu and Kashmir, in compliance to the order passed by this Court on 13.12.2018, filed an affidavit dated 07.01.2019, *inter alia*, acknowledging that the Competent Authority, as defined in Section 2(a) of the Impugned Act, was never notified by the State Government and as such, no applications were invited or received to confer any rights under the impugned Act.

11. Learned Senior Counsel for the petitioner(s) as well as learned Additional Solicitor General of India are also in-tandem that in the absence of appointment of a Competent Authority and no application having been ever invited or received, the Impugned Act remained merely on the statute book from 1982 to 2002, after which it has been under stay as per the directions of this Court. No provision thereof was thus ever given effect for the purpose of conferring any actual benefit to any person(s).

12. Thus, the Impugned Act never came into force as it had not been acted upon in any manner.

13. It is also a matter of record that after the last order in these Writ Petitions was passed on 09.01.2019, the Parliament has enacted the Jammu and Kashmir Reorganisation Act, 2019 (for short, ‘the 2019 Act’), which came into force with effect from 09.08.2019. Sections 95(2) and 96 of the 2019 Act are to the following effect:

“95. Territorial extent of laws.—

(1)

(2) All other laws in Fifth Schedule, applicable to existing State of Jammu and Kashmir immediately before the appointed day, shall apply in the manner as provided therein, to the Union territory of Jammu and Kashmir and Union territory of Ladakh.

96. Power to adapt laws.—For the purpose of facilitating the application in relation to the successor Union territories, of any law made before the appointed day, as detailed in Fifth Schedule to this Act, the Central Government may, before the expiration of one year from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.”

14. It may, thus, be seen that the laws enlisted in the Fifth Schedule to the 2019 Act, which were applicable to the erstwhile State of Jammu and Kashmir immediately before the appointed date, have been applied in the manner as provided therein to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh. The power to adapt or modify these laws before the expiry of one year from the Appointed Date, whether by way of repeal or amendment, to facilitate the application of these laws also vests in the Central Government.

15. We find that there are four Tables appended to the Fifth Schedule of the Act. Table-3 therein is a list of “State Laws including Governor’s Acts which are repealed in Union Territory of Jammu and Kashmir; and the Union Territory of Ladakh”. The impugned Act is included at Serial Number 56 of Table-3. In this manner, the Impugned Act stands repealed by virtue of Section 95(2) read with Section 96 along with Table-3 of the Fifth Schedule of the 2019 Act. The Impugned Act having been repealed, the very challenge to its constitutionality no longer survives.

16. The Writ Petitions stand, accordingly, disposed of in the above terms.

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