The Printers (Mysore) Private Ltd. Vs. Pothan Joseph

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Court : Karnataka

Decided On : Nov-18-1959

Reported in : AIR1961Kant98; AIR1961Mys98; ILR1960KAR19

Judge : K.S. Hegde and ;Ahmed Ali Khan, JJ.

Acts : Government of India Act, 1935 - Sections 205 and 205(1); Code of Civil Procedure (CPC), 1908 - Sections 2(9), 109 and 110; Constitution of India - Articles 132, 133, 133(1), 133(3) and 134; Indian Arbitration Act, 1898 - Sections 19 and 34; Code of Civil Procedure (CPC), 1882 - Sections 594 and 595

Appeal No. : Civil Petn. No. 468 of 1959

Appellant : The Printers (Mysore) Private Ltd.

Respondent : Pothan Joseph

Advocate for Def. : R. Karanth and ;K.R.D. Karanth, Advs.

Advocate for Pet/Ap. : M.K. Nambiyar and ;S. Suryanarayana Rao, Advs.

Judgement :

ORDER

1. The petitioner who was the appellant in Miscellaneous Appeal No. 68 of 1959 prays for a certificate under Article 133(1)(c) of the Constitution. The respondent resists the same on two grounds; (i) that the order in appeal (M. A. No. 68/59) is not a judgment, decree or final order' as contemplated in Sub-clause (c) of Clause (1) of Article 133; and (ii) that the case is not a fit one for issuing the certificate prayed for. As we are in agreement with the respondent that the impugned order is not a 'judgment, decree or final order' as contemplated in Article 133, we find it unnecessary to consider whether the case is one where the certificate prayed for should be granted.

2. According to Sri M. K. Nambiar, the learned Counsel for the petitioner the order in question is a 'final order' or at any rate it comes within the scope of the word 'judgment'. The expression 'final order' found in Article 133 is not a new expression. The same words were found in Section 109 of the Civil Procedure Code, 1908. The scope of that expression had been decided by numerous decisions. It has been repeatedly held that 'final order' is an order which finally determines the joint under dispute and brings the case to an end.

To constitute a 'final order' it is not sufficient merely to decide an important or even a vital issue in the case. The decision must not keep the matter alive. According to Sri

Nambiar, an application under Section 34 of the Arbitration Act is in substance an original proceeding though in form it may appear as an interlocutory application. We do not think that this contention is any more open for consideration in view of the decision of the Privy Council in Firm Ramchand Manjimal v. Firm Goverdhandas Vishandas Ratanchand, AIR 1920 PC 86. In that case the Privy Council had to consider the scope of Section 19 of the Indian Arbitration Act, 1898, which is similar to Section 34 of the present Arbitration Act. Viscount Cave, who delivered the opinion of the Privy Council observed:

'The question as to what is a final order was considered by the court of appeal in the case at Salaman v. Warner, 1891-1 QB 734 and that decision was followed by the same court in the case of Bozson v. Altricham Urban District Council, 1903-1 KB 547. The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way.'

That decision has been followed by the Privy Council in subsequent cases. The Federal Court at well as the High Courts in this country have unanimously adopted that view as the correct view of the Law.

3. It is unnecessary to refer to the various decisions rendered on this point, excepting the decision in Gaya Electric Supply Co. Ltd. v. State of Bihar, AIR 1951 Pat 619, which is exactly on the point. We respectfully agree with that decision.

4. Undeterred by a catena of decisions against him, Sri Nambiar attempted to break fresh grounds to show that the order in question comes within the scope of the word 'judgment' found in Article 133(1). He was well aware of the fact that several High Courts in India had taken a view contrary to his contention, e.g., AIR 1951 Pat 619; Manoharlal v. Hiralal : AIR1957MP47 ; Dhana-Lakshmi Animal v. Income-tax Officer, AIR 1958 Mad 151. Vallury Mangaraju v. Vallury Varaba-lamma; AIR 1956 Andhra 47, Kuldip Singh v. Maqbul Kaur. and West Jamuria Coal Co., v. Bholanath Roy, : AIR1954Cal424 .

But he asked for a fresh consideration of the whole matter. We had the advantage or hearing very learned arguments from the counsel appearing on either side. We were taken through the legislative history of Article 133. Under Sub-clauses (a) and (b) of Section 595 C. P. C. of 1882, an appeal lay to the Privy Council from 'any final decree', but under Clause (c) of that section, an appeal lay from 'any decree' if the High Court certified the case to be a fit one for appeal.

The decrees applicable under each of these clauses were separately described and in the case of those appealable under Clause (c), no qualifying word was used. Section 594 of that Code defined the word 'decree' as including 'judgment and order'. Consequently under Clauses (a) and (b) of Section 595 an appeal lay from 'any final decree', 'final judgment', or 'final order' but under Clause (c) an appeal lay against any 'decree' even though the same was not final, if the High Court certified the case to be a fit one for appeal.

Under Clauses (a) and (b) of Section 109 of the Civil Procedure Code, 1908, an appeal lay from 'any decree or final order', while under Clause (c) an appeal lay from 'any decree or order' provided the High Court certified the fitness of that case for appeal. But the Constitution made substantial changes in these provisions. At present before

a certificate can be granted either under Sub-clauses (a), (b), and (c) of Article 133, it is necessary that the decision in question should be a 'judgment, decree or final order'. Hence according to Sri Nambiar the Constitution has conferred on the unsuccessful party in the High Court a right to appeal to the Supreme Court if the decision in question is either a 'judgment or a decree' or a 'final order'.

According to him, the word 'judgment' is used in the relevant articles of the Constitution in contradiction with terms 'decree' or 'final order'. He urges with some force that if the word 'judgment' is synonymous either with the word 'decree' or 'final order', there was no need to bring in that word. He says as a matter of well accepted construction that no word in the Constitution should be considered as superfluous and every word found therein should be given a reasonable meaning.

For finding out the true meaning of the word 'judgment', he placed reliance on the definition of 'judgment' given in Section 2(9) of the Civil Procedure Code, according to which 'judgment' means 'the statement given by the Judge of the grounds of a decree or order'. In this connection he has invited our attention to the adaptations made to Sections 109 and 110 of the Civil Procedure Code to bring those provisions in conformity with Article 132 to 134 of the Constitution. Sri Nambiar contends that the word 'judgment' found in Section 109 of the C. P. C. must be read in the light of the definition given in Section 2(9) and if so, read, the impugned order is a 'judgment'.

5. We are unable to agree with Sri Nambiar that the adaptations made in Sections 109 and 110 C. P. C. can either limit or enlarge the scope of Article 133. Nor do we think that the definitions given in the Civil Procedure Code can control the meaning of the words found in the Constitution The definitions given in the Civil Procedure Code can only govern the provisions therein. In this case, it is not necessary to consider the true effect of the adaptations made to Sections 109 and 110 C. P. C. There are doubts whether those sections have any real existence at all.

In this case we do not propose to pronounce on the same as there is no need to do so. Here, we are merely concerned with the scope of Article 133. But we are not impressed with the argument of Shri Nambiar that the advisers of the President must be deemed to have carried out the intention of the Constitution when they made the changes in Ss. 109 and 110 of the Civil Procedure Code and consequently we must fall back on the definition of 'judgment' given in the Civil Procedure Code.

Such an interpretation, if valid amounts to conferring powers on the President to alter the Constitution itself by exercising his power of adaptation. An interpretation fraught with so much mischief, can find no acceptance at the hands of Courts. We have found no authority for the contention that an ancillary legislation can control or even influence the basic law and particularly if it is the constitutional law. Hence, we have no hesitation in rejecting that contention. But this conclusion does not dispose of the contention of Sri Nambiar.

Why did the Constituent Assembly incorporate the word 'judgment' in Articles 132 to 134 if the intention was to provide for an appeal only against a 'decree' and a 'final order'? This question is not free from difficulty. But it must be remembered that the words 'judgment, decree or final order' were bodily lifted from Section 205(1) of the Government of India Act, 1935 and incorporated in Articles 132 to 134. Long before the draft Constitution was prepared, the scope of the words ' 'judgment', decree or

final order' found in Section 205 of the Government of India Act, 1935, were the subject matter of decisions by the Federal Court. In the case of Kuppuswami Rao v. The King , their Lordships held that:

'The term 'judgment' Indicates a judicial decision given on the merits of the dispute brought before the Court'. Their Lordships further observed:

'In our opinion the decisions of the Courts in India show that the word 'judgment' as in England, means the determination of the rights of the parties in the mutter brought before the Court', and again;

'Indeed, if 'judgment' were to mean or include an interlocutory order, the words 'final order' in section 205(1) Government of India Act, 1935, will be superfluous.'

This decision was followed in the case of Mohammad Amin Brothers Ltd. v. Dominion of India, AIR 1950 FC 77. The framers of the Constitution must be deemed to have been familiar with these decisions and if still they chose to use the words in question in the Constitution, we must take it that those words are intended to carry the meaning given to them by the decisions of the highest court in the land. Sri Nambiar wants us to refrain from drawing such an inference, as according to him, it is not unlikely that the Constitution makers took into consideration not merely the provisions in the Government of India Act, 1935, but also the provisions in the Letters Patent of the several High Courts providing for appeals to the Privy Council. Let us examine the correctness of this contention.

6. Relevant clauses in the Letters Patent grant-ed to the Madras High Court are Clauses 39 and 40. There are similar provisions in the Letters Patent granted to the other High Courts. These Clauses, between themselves, provide for appeals to the Privy Council, in civil proceedings under certain conditions, both against 'final judgment, decree or order' as well as against 'preliminary or interlocutory judgments'. Sri Nambiar contends that in order to bring about the same consummation it is likely the words 'judgment, decree or final order' were incorporated in Articles 132 to 134. We do not think that this contention can be accepted as correct. By the time the Draft Constitution was prepared, the right of appeals to Privy Council had been removed and as such Clauses 39 and 40 of the Letters Patent, above referred, had become dead.

Moreover, from the internal evidence available from the relevant provisions of the Constitution itself, it is clear that the framers of the Constitution used the word 'judgment' in Articles 132 to 134 not in contradiction with the words 'decree or final order', but to be read collectively. If Sri Nambiar'i' contention is right, then there was no necessity to provide any explanation to Article 132, as the exception provided in the proviso is implicit in the word 'judgment', because every order which is not a 'final order' would have come within the meaning of the word 'judgment'. The Supreme Court in Election Commission India v. Saka Venkata Rao, AIR 1933 SC 210 had occasion to consider, the reasons for the insertion of this proviso, Therein Their Lordships observed:

'While it is true that constitutional questions could be raised in appeals filed without a certificate under Article 132, the terns of that Article make it clear that an appeal is allowed from 'any judgment, decree or final order of a High Court' provided, of course, the requisite certificate is given and no restriction is placed on the right of

appeal having reference to the number of Judges by whom such judgment, decree or final order was passed. Had it been intended to exclude the right of appeal inthe case of judgment, etc., by one Judge, it would have been easy to include a reference to Article 133 also in the opening words of Article 133(3) as in the immediately preceding clause. If the respondent's contention were accepted, not only would Article 132 become redundant so far as it relates to Civil Pro-ceedings, but the object of the Explanation to that article, 'which was designed to supersede the decision of the Federal Court in AIR 1949 FC 1' and thus to secure a speedy determination of Constitutional issues going to the root of a case, would be deleated, as the explanation is not made applicable to the same expression 'final order' used in Article 133(1)'. (Under, lining (here in ' ') is ours).

7. By implication it follows that except to the extent the law is changed by the proviso in question, the interpretation given in S. Kuppuswanu Rao's case, AIR 1949 FC 1 is still good Law. This conclusion gains further support when we consider the last five lines of Article 133(1), which says:

'where the judgment, decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred in Sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.'

8. The affirmation of the decision of the Court below contemplated in this clause, must be necessarily by a final disposal of the appeal. Interim or interlocutory decision cannot in the very nature of things be called an affirmation of the decision of the Court below. As such, at any rate in that context, the word 'judgment' will have to be understood as 'final judgment'. Ordinarily, the same word must carry the same meaning in a Statute and it ought to be more so in one and the same Article.

9. Viewed from any angle, we do not think that our order in M. A. No. 68 of 1959, can be considered as a ''judgment, decree or final order'. In view of this finding, it is unnecessary for us to consider whether it is a fit case to be taken in appeal to the Supreme Court.

10. In the result, the petition fails and the same is dismissed. There will be no order as to costs.

11. Petition dismissed.