STATE OF JAMMU & KASHMIR AND OTHERS

v.

THAKUR GANGA SINGH AND ANOTHER

1959

November 26.

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Supreme Court, Appellate Jurisdiction of—Special leave to appeal—When can be granted—Substantial question of law as to the interpretation of the Constitution—Meaning of—Constitution of India, Art. 132(2).

The respondents filed a petition in the High Court of Jammu & Kashmir challenging the vires of r. 4-47 of the Jammu and Kashmir Motor Vehicles Rules. The High Court held that the said rule was *ultra vires* as offending Art. 14 of the Constitution. The appellants filed an application in the High Court for a certificate under Art. 132(1) of the Constitution which was rejected on the ground that no substantial question of law as to the interpretation of the Constitution was involved in the case. Thereafter the appellant applied to this Court for special leave under Art. 132(2) of the Constitution, which was granted with liberty to the respondents to raise the question of maintainability of the appeal. There was no controversy between the parties in regard to the interpretation of Art. 14 of the Constitution, and the dispute centered round the question whether the impugned rule stood the test of reasonable classification. The respondents raised a preliminary objection that special leave under Art. 132(2) of the Constitution could be granted by this court only if it was satisfied that the case involved a substantial question of law as to the interpretation of the Constitution, and that since, in the present case, the interpretation of Art. 14 of the Constitution was not in dispute by reason of a series of decisions of this Court and no question of law, much less a substantial question of law, could arise for consideration, no special leave could be granted under the said Article.

It was contended on behalf of the appellants that whenever a question of classification was raised that by itself involved the interpretation of Art. 14 of the Constitution so far as the impugned classification was concerned.

Held, that the principle underlying Art. 132(2) of the Constitution is that the final authority of interpreting the Constitution must rest with the Supreme Court. With that object that Article is freed from other limitations imposed under Arts. 133 and 134 and the right of appeal of the widest amplitude is allowed irrespective of the nature of the proceedings in a case involving only a substantial question of law as to the interpretation of the Constitution.

The interpretation of a provision means the method by which the true sense or the meaning of the word is understood. Where

the parties agree as to the true interpretation of a provision or do not raise any question in respect thereof, the case does not involve any question of law as to the interpretation of the Constitution. A substantial question of law cannot arise where that law has been finally and authoritatively decided by this Court.

In the instant case, the question raised does not involve any question of law as to the interpretation of the Constitution.

T. M. Krishnaswami Pillai v. *Governor General in Council* (1947) 52 C.W.N. (F.R.) 1, *Bhudan Choudhry* v. *The State of Bihar*, [1955] 1 S.C.R. 1045, *Chiranjit Lal Chowdhuri* v. *Union of India*, [1950] S.C.R. 869, *Ram Krishna Dalmia* v. *Justice Tendolkar*, [1959] S.C.R. 279 and *Mohammad Haneef Quareshi* v. *State of Bihar*, [1959] S.C.R. 629, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 217 of 1959.

Appeal by special leave from the judgment and order dated June 20, 1958, of the Jammu and Kashmir High Court, in Writ Petition No. 108 of 1958.

H. N. Sanyal, Additional Solicitor-General of India, N. S. Bindra, R. H. Dhebar and *T. M. Sen*, for the appellants.

R. K. Garg and M. K. Ramamurthy, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the respondents.

1959. November 26. The Judgment of the Court was delivered by

SUBBA RAO J.—This appeal by special leave raises the question of the scope of Art. 132(2) of the Constitution. *Subba Rao J.*

The first respondent is one of the shareholders of the second respondent, M/s. Jammu Kashmir Mechanics And Transport Workers Co-operative Society Limited Jammu (hereinafter called the Society). The Society was registered under the Jammu and Kashmir Co-operative Societies Act No. 6 of 1993 (Vikrimi). They put in a number of applications before the third appellant for the grant of stage carriage and public carrier permits to them for various routes in the State of Jammu & Kashmir, but no permits were granted to them on the ground that under r. 4-47 of the Jammu

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and Kashmir Motor Vehicle Rules (hereinafter called the Rules), service licence could only be issued to a person or a company registered under the Partnership Act and that, as the Society was neither a person nor a partnership, it was not entitled to a licence under the Rules. The respondents filed a petition in the High Court of Jammu & Kashmir under s. 103 of the Constitution of Jammu & Kashmir challenging the vires of r. 4-47 of the Rules. To that petition the appellants herein, viz., the Government of Jammu & Kashmir State, the Transport Minister, the Registering Authority and the Traffic Superintendent, were made party-respondents. The High Court held that the said rule was *ultra vires* as offending Art. 14 of the Constitution, and, on that finding directed a writ of *mandamus* to issue against the appellants herein from enforcing the provisions of the said rule. The appellants filed an application in the High Court for a certificate under Art. 132(1) of the Constitution, but the High Court rejected it on the ground that no substantial question of law as to the interpretation of the Constitution was involved in the case. Therefter the appellants applied for special leave under Art. 132(2) of the Constitution and this Court granted the same. The order giving the special leave expressly granted liberty to the respondents herein to raise the question of the maintainability of the appeal at its final hearing.

Learned Counsel for the respondents raises a preliminary objection to the maintainability of the appeal. Shortly stated his objection is that under Art. 132(2) of the Constitution special leave can be given only if the Supreme Court is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution that in the present case the interpretation Art. 14 of the Constitution has been well-settled and put beyond dispute by a series of decisions of this court, that, therefore, no question of law as to the interpretation of the Constitution, much less a substantial question of law in regard to that mattter, arises for consideration and that, therefore, no special leave can be granted under the said Article.

This argument is sought to be met by the learned Additional Solicitor-General in the following manner: Whenever a question of classification is raised, it involves the interpretation of Art. 14 of the Constitution with reference to the classification impugned. To state it differently, the argument is that the question in each case is whether the classification offends the principle of equality enshrined in Art. 14. Therefore, whether a registered firm, a limited company and a person have equal attributes is a question of interpretation of Art. 14 of the Constitution.

Before considering the validity of the rival contentions it would be convenient to ascertain precisely what was the question raised in the High Court and what was the decision given thereon by it. The argument advanced before the High Court on behalf of the Society was that under r. 4-47 a licence can be issued only to a person or a firm registered under the Partnership Act and not to a corporation registered under the Co-operative Societies Act or otherwise, and, therefore, the said rule, being discriminatory in nature, offends Art. 14 of the Constitution. The learned Advocate-General appearing for the appellants contended that under Art. 14 of the Constitution rational classification is permissible and the legistature has framed the impugned rule on such a basis, the object of which is to safeguard the interest of the public. The High Court, after considering the rival arguments, expressed the opinion that the said rule did not proceed on any rational basis of classification and that, as a corporation had been arbitrarily singled out for discriminatory treatment, the impugned rule offended the equality clause of the Constitution. The appellants in their petition for special leave filed in this Court questioned the correctness of the conclusion of the High Court. They asserted that the said rule was based upon reasonable classification and therefore could not be struck down as repugnant to Art. 14 of the Constitution. In other grounds they elaborated the same point in an attempt to bring out the different attributes of the two classes affording an intelligible differentia for

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classification. They clearly posed the question proposed to be raised by them in the appeal as under :

Ground iv : "The aforesaid rule 4-47 (of the Motor Vehicles Rules) is based upon reasonable classification and is and was perfectly *intra vires* and valid and could not be struck down as repugnant to Art. 14 of the Constitution of India."

Ground vi : "There is a marked difference between a corporate body and partnership registered under the provisions of the Partnership Act and these points of difference provide an intelligible differentia for classification. The Hon'ble High Court has only referred to one point of difference and has overlooked other points of distinction and has erred in striking down the aforesaid rule 4-47."

Ground viii : "Rule 4-47 was framed in the light of local conditions prevailing. Co-operative Societies and Corporations in the matter of transport were not considered to be proper objects for the grant of licence or permit. The classification is rational and reasonable. The exclusion of artificial persons from the ambit of the Rule is natural and not discriminatory."

The other grounds are only a further clarification of the said grounds. In part II of their statement of case the appellants stated as follows ;

"It is now well-established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation."

The respondents, in their statement of case, accepted the said legal position but contested the position that there was reasonable classification. It is therefore manifest that throughout there has never been a controversy between the parties in regard to the interpretation of Art. 14 of the Constitution, but their dispute centered only on the question whether the impugned rule stood the test of reasonable classification.

In the premises, can special leave be granted to the appellants under Art 132(2) of the Constitution ? Article 132(2) reads :

"Where the High Court has refused to give such a certificate, the Supreme Court may, if it is

satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, grant special leave to appeal from such judgment, decree or final order."

Under cl. (2) of Art. 132 there is no scope for granting a special leave unless two conditions are satisfied: (i) the case should involve a question of law as to the interpretation of the Constitution; and (ii) the said question should be a substantial question of law. The principle underlying the Article is that the final authority of interpreting the Constitution must rest with the Supreme Court. With that object the Article is freed from other limitations imposed under Arts. 133 and 134 and the right of appeal of the widest amplitude is allowed irrespective of the nature of the proceedings in a case involving only a substantial question of law as to the interpretation of the Constitution.

What does interpretation of a provision mean? Interpretation is the method by which the true sense or the meaning of the word is understood. The question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision—one party suggesting one construction and the other a different one. But where the parties agree on the true interpretation of a provision or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution. On an interpretation of Art. 14, a series of decisions of this Court evolved the doctrine of classification. As we have pointed out, at no stage of the proceedings either the correctness of the interpretation of Art. 14 or the principles governing the doctrine of classification have been questioned by either of the parties. Indeed accepting the said doctrine, the appellants contended that there was a valid classification under the rule while the respondents argued contra. The learned Additional Solicitor General contended, for the first time, before us that the appeal raised a new facet of the doctrine of equality, namely, whether an artificial person and a natural person have equal attributes

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within the meaning of the equality clause, and, therefore, the case involves a question of interpretation of the Constitution. This argument, if we may say so, involves the same contention in a different garb. If analysed, the argument only comes to this: as an artificial person and a natural person have different attributes, the classification made between them is valid. This argument does not suggest a new interpretation of Art. 14 of the Constitution, but only attempts to bring the rule within the doctrine of classification. We, therefore, hold that the question raised in this case does not involve any question of law as to the interpretation of the Constitution.

Assuming that the case raises a question of law as to the interpretation of the Constitution, can it be said that the question raised is a substantial question of law within the meaning of cl. (2) of Art 14. This aspect was considered by the Federal Court in *T. M. Krishnaswamy Pillai* v. *Governor General In Council* (1). That decision turned upon the provisions of s. 205 of the Government of India Act, 1935. The material part of that section says:

> *S. 205*: "(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder . . . "

The Madras High Court gave a certificate to the effect that the case involved a substantial question of law as to the interpretation of s. 240(3) of the Government of India Act, 1935. Under s. 240(3) of the said Act, no person who was a member of civil service of the Crown in India or held any civil post under the Crown in India could be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The High Court, on the facts found, held that the appellant therein had been offered a reasonable opportunity of showing cause within the meanin

(1) (1947), 52 C.W.N. (F.R.) 1.

of the said section, but gave a certificate under s. 205(1) of the Government of India Act, 1935. In dealing with the propriety of issuing the certificate in the circumstances of that case, Zafrulla Khan, J., speaking on behalf the Court, concisely and pointedly stated at p. 2:

> "It was urged before us that the case involved a question relating to the interpretation of sub-section (3) of section 240 of the Act. To the extent to which any guidance might have been needed for the purposes of this case on the interpretation of that sub-section that guidance was furnished so far as this Court is concerned in its judgment in *Secretary of State for India* v. *I.M. Lal* [(1945) F.C.R. 103]. The rest was a simple question of fact. In our judgment no "substantial question of law" as to the interpretation of the Constitution Act was involved in this case, which could have formed the basis of a certificate under section 205(1) of the Act."

On the question of interpretation of Art. 14 of the Constitution this Court in *Budhan Choudhry* v. *The State of Bihar* (1) explained the true meaning and scope of that Article thus:

> "It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statue in question. The classification may be founded on different bases: namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be nexus between the basis of classification and the object of the Act under consideration."

(1) [1955] 1 S.C.R. 1045, 1049.

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This in only a restatement of the law that has been enunciated by this Court in *Chiranjit Lal Chowdhuri* v. *The Union of India* (1) and in other subsequent decisions. The said principles were reaffirmed in the recent decisions of this Court in *Rama Krishna Dalmia* v. *Justice Tendolkar* (2) and in *Mohammed Haneef Qureshi* v. *State of Bihar* (3). In view of the said decision there is no further scope for putting a new interpretation on the provisions of Art. 14 of the Constitution *vis-a-vis* the doctrine of classification. The interpretation of Art. 14 in the context of classification has been finally settled by the highest Court of this land and under Art. 141 of the Constitution that interpretation is binding on all the Courts within the territory of India. What remained to be done by the High Court was only to apply that interpretation to the facts before it. A substantial question of law, therefore, cannot arise where that law has been finally and authoritatively decided by this Court.

In the result we accept the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.

(1) [1950] S.C.R. 869. (2) [1959] S.C.R. 279.
(3) [1959] S.C.R. 629.