

THE SREE NARAYANA DHARMASANGHOM TRUST

A

v.

SWAMI PRAKASANANDA AND ORS.

APRIL 9, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

B

*Constitution of India, 1950 :*

*Art. 136—Special Leave Petition—Dismissal of in limine—Operates as a final order between the parties and any order passed by the High Court or Tribunal subsequently operates as res judicata as far as the parties thereto are concerned.*

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*State of Maharashtra v. Prabhakar Bhimaji Ingle, [1996] 3 SCC 463 and Yogendra Narayan Choudhary v. Union of India, [1996] 7 SCC 1, relied on.*

D

*Articles 32, 226—Dismissal of writ petition in limine under Art. 32 does not operate as res judicata—Jurisdiction of High Court under Art. 226 not precluded.*

*Indian Oil Corpn. Ltd. v. State of Bihar, [1986] 3 SCR, relied on.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3013 of 1997.

From the Judgment and Order dated 16.1.96 of the Kerala High Court in R.P. No. 204/95 in C.R.P. No. 2727 of 1994.

F

P.S. Poti, E.M.S. Anam and Fazlin Anam for the Appellant.

A.S. Nambiar, C.S. Ananthalingam, S. Balakrishnan, S. Prasad for Mrs. S. Revathy for the Respondents.

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The following Order of the Court was delivered :

Leave granted. This appeal, by special leave, arises from the judgment of the Kerala High Court, made on January 16, 1996 in R.P. No. 204/95 in C.R.P. No. 2724/94.

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A The dispute has arisen with regard to the election to the Committee of Sree Narayana Dharmasanghom Trust. The Trust is governed by the scheme framed by the High Court in A.S. No. 14/56, dated March 26, 1959. Since the term of the elected body was to expire on 10.8.94, the Trust Board on 4.7.94 decided to conduct election on 26.7.94. Disputes had arisen as to the validity of the elections held on 26.7.94 and the suit came to be filed. Ad- interim injunction was granted by the learned Sub-ordinate Judge, Attingal in O.S. No. 247/94 on 22.11.94. Against the interlocutory order passed by the appellate authority in C.M.A. No. 167/94, dated December 2, 1994 C.R.P. No. 2727/94 came to be filed. The High Court by judgment dated June 19, 1995 allowed the revision, set aside the order of the appellate authority and gave certain directions. Calling that matter in question S.L.P. (C) No. 13667/95 came to be filed in this Court. This Court on June 29, 1995 passed the following order :

D "We do not find any ground warranting interference since it is an individual case and that too by an interim order. The S.L.P. is dismissed. However, the trial Court is directed to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of receipt of this order."

E Thereafter, an application came to be filed to review the order passed by the High Court in the revision, which had been dismissed by the High Court holding that the order passed by the High Court stood merged with the order of this Court. As a consequence, the High Court cannot review the order. Thus this appeal, by special leave.

F Shri P.S. Poti, learned senior counsel for the appellant contends that this Court did not decide the matter on merits. When the patent error is apparent on the face of the record, it is always reviewable by the High Court and, therefore, the order dismissing the S.L.P. does not operate as a final order. Therefore, the High Court has the power to review its order. We find no merit in the contention. In *State of Maharashtra v. Prabhakar Bhimaji Ingle*, [1996] 3 SCC 463 this Court has considered the similar controversy. The facts therein were that the Maharashtra Administrative Tribunal passed an order in O.A. No. 1169/93 against which S.L.P. was filed in this Court. It was dismissed by this Court on August 28, 1993. Pending the S.L.P., a review petition was filed in the Tribunal. The H Tribunal reviewed its order. When that order came to be challenged, this

Court held thus :

"4. But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1 CPC or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court.

5. It is next contended by the learned counsel for the respondent that though the Tribunal was communicated with the order of this Court dated 25.8.1995, it has thereafter passed the order. It would mean that though it had the knowledge of dismissal of the order passed by this Court, the Tribunal has exercised the power of review and that, therefore, it cannot be said to be illegal. We are wholly unable to appreciate the contention of the learned counsel. We could appreciate that if the Tribunal had no knowledge of dismissal of the SLP it might, in certain circumstances, review its earlier order, e.g., if it was found that the order was vitiated by any manifest error of law apparent on the face of the record. But having received the communication that this Court has already upheld its order, the Tribunal's exercise of power can be said to be audacious and without any judicial discipline. Under those circumstances, we do not think that the Tribunal is justified in reviewing its own order when this Court had confirmed the order passed earlier."

Therefore, once this Court has passed an order, the order passed by the High Court stands merged with the order passed by this Court. Thereafter, the High Court/Tribunal is devoid of the jurisdiction to review the order. This question also was reiterated in *Yogendra Narayan Choudhary v. Union of India*, [1996] 7 SCC 1, thus :

"It is settled law that even the dismissal of special leave petition in limine without assigning reasons does not operate as *res judicata*. Under these circumstances, we are of the view that the view of the

- A       latter Bench of the CAT, Calcutta and of the Cuttack Bench are clearly consistent with the above reasoning. Therefore, we do not find that there are fit cases warranting interferences."

- B       Thus, it is settled law that even the dismissal of special leave petition *in limine* operates as a final order between the parties and any order passed by the High Court or Tribunal subsequently operates as a *res judicata* as far as the parties thereto are concerned. It is true that in *Indian Oil Corpn. Ltd. v. State of Bihar*, [1986] 3 SCR at 558, this Court had pointed out that when the writ petition was dismissed by this Court *in limine*, the jurisdiction of the High Court under Article 226 is not precluded. The dismissal of the writ petition under Article 32 does not operate as *res judicata*. That principle is entirely different from the review of an order under Order 47 Rule 1. Under these circumstances, we are of the view that the High Court is well justified in refusing to review the order passed in the revision. However, since the records have been called by the High Court and the matter is pending, the trial Court could not dispose of the matter within the time limit, specified earlier, by this Court. Therefore, we cannot find fault with the trial Court for non-disposal of the matter. However, the civil court is directed to dispose of the suit as indicated earlier within six months from now.
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- E       The appeal is accordingly dismissed. No costs.

G.N.

Appeal dismissed.