

MANU/BH/0031/1957

Equivalent Citation: AIR1957Pat102, 1957(5)BJR9

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Supreme Court Appeal Nos. 31, 52 to 61, 66, 73 to 77 and 103 of 1956

Decided On: 26.11.1956

Appellants:**Collector of Monghyr and Ors.**
Vs.

Respondent:**Maharaja Pratap Singh Bahadur and Ors.**

Hon'ble Judges/Coram:

Vaidynathier Ramaswami , C.J., Chaudhuri and Raj Kishore Prasad , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Adv. General, Purendu Narayan and Basudeo Prasad, Advs. In Nos. 52 to 61 of 1956, Adv. General, Purendu Narayan and Basudeo Prasad, Advs. In Nos. 73 to 77 to 1956, Govt. Adv. In No. 103 of 1956, Govt. Pleader In No. 31 of 1956 and Govt. Pleader In No. 66 of 1956

For Respondents/Defendant: Baldeva Sahai, Ugrah Singh and Sitaram Singh, Advs. In Nos. 52 to 61 of 1956, Baldeva Sahai, ugrah Singh, Sitaram Singh and Amla Kant Choudhary, Advs. In Nos. 73 to 77 of 1956, Baldeva Sahai, Ugrah Singh, Sitaram Singh and Aml Kant Choudhary, Advs. In No. 103 to 1956, A.B.N. Sinha, Ranen Roy and T.K. Das, Advs. In No. 31 of 1956 and Balghadra Prasad Singh, L.M. Sharma, S.P. Jamuar and Janardan Prasad Singh, Advs. In No. 66 of 1956

JUDGMENT

Vaidynathier Ramaswami, C.J.

1. In Supreme Court Appeals Nos. 52 to 61 of 1956 the petitioners have applied for leave to appeal to the Supreme Court against the judgment of the High Court in Miscellaneous Judicial Case Nos, 349 to 358 of 1955, dated 14-3-1956. In Supreme Court Appeals Nos. 73 to 77 of 1956 the petitioners pray for the grant of certificate to appeal to the Supreme Court against the judgment of the High Court in Miscellaneous Judicial Case Nos. 141, 142, 271, 272 and 273 of 1955, dated 20-4-1956. In Supreme Court Appeal No. 103 of 1956 the petitioners have applied for the leave to appeal to the Supreme Court against the Judgment of the High Court in Miscellaneous Judicial Case No. 256 of 1955, dated 12-7-1956.

2. The question of law involved in these cases was one relating to the proper interpretation of Section 5A, Bihar Private Irrigation Works Act (Bihar and Orissa Act V of 1922). The learned Judges of the Division Bench granted a writ of certiorari against the petitioner, relying upon a previous decision, Shah Qasim Ghani v. Kirti Prasad1 Sinha, 1956 Pat LR 63 (A). The contention of the learned Advocate General is that the view taken by the learned Judges is not correct and that the mat-ter requires further consideration by the Supreme Court.

It was submitted that the question raised was a question of great public importance, because a number of cases under the same statute have either been disposed of or

are pending In the High, Court from other districts of the State. It was argued that a proper decision of the question is necessary for the guidance of all the revenue officers and also because the question would affect the revenues of the State Government to a considerable extent.

I agree with the submission of the learned Advocate General that the question at issue is a question of public importance, but the question at issue is whether the decision of the High Court is given in a "civil proceeding" within the meaning of Article 133(1)(c) of the Constitution and whether the petitioners are entitled to grant of a certificate for leave to appeal to the Supreme Court under the provisions of that article.

The contention of Mr. Baldeva Sahai on behalf of the opposite parties is that the proceeding in the High Court for grant of a writ under Art 226 of the Constitution is not a "Civil proceeding" within the meaning of Article 133 of the Constitution and the petitioner has no right of appeal to the Supreme Court under that article. In my opinion the contention of Mr. Baldeva Sahai is correct and the proceeding in the High Court! under Article 226 of the Constitution is not a "civil proceeding" for the reasons which I shall presently state.

3. The Jurisdiction of the High Court under Article 226 is an extraordinary jurisdiction vested in the High Court not for the purpose of declaring the civil rights of the parties but for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. In other words, the jurisdiction of the High Court under Article 226 is a supervisory jurisdiction, a jurisdiction meant to supervise the work of the tribunals and public authorities and to see that they act within the limits of their respective jurisdiction.

In a proceeding under Article 226 the High Court is not concerned with the determination of the civil rights of the parties; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction. Article 226 states that the High Court shall have power to Issue to any person or authority, including in appropriate cases any Government, directions, orders of writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari.

All these writs are known in English law as prerogative writs, the reason being that they are specially associated with the King's name. These writs were always granted for the protection of public interest and primarily by the Courts of the King's Bench. As a matter of history the Court of the King's Bench was held to be coram rege ipso and was required to perform quasi-governmental functions.

The theory of the English law is that the King himself superintends the due course of justice through his own Courts preventing cases of usurpation of jurisdiction and insisting on vindication of public rights and personal freedom of his subjects. That is the theory of the English law and our Constitution-makers have borrowed the conception of prerogative writs from the English law.

The interpretation of Article 226 must, therefore, be considered in the background of English law and so interpreted. It is obvious that the remedy provided under Article 226 is a remedy for the vindication of a public right.

4. It is important in this connection to notice that Holdsworth has described the jurisdiction of the King's Bench as a three-fold jurisdiction, namely, (1) a criminal jurisdiction, (2) a civil jurisdiction, and (3) a general superintendence over Government officials by issue of prerogative writs (see Holdsworth's History of English Law, Volume I, 6th Edn., at page 212).

There is a similar statement as to the functions of the King's Bench in Maitland's Constitutional History of England at page 134 :

"Still to the very end of its. career in 1875 the King's Bench was theoretically a court held coram ipso domino rege : any suitor ordered to come before it, was bidden to appear coram nobis ubicunque fuerimus in Anglia. As to its functions, it was in the first place the Central court for pleas of the Crown.

Criminal cases had to be begun in the countries in which the crime was committed, before those itinerant justices of whom hereafter : but the King's Bench had criminal jurisdiction as a court of first instance over the county in which it sat. But further it had a general superintendence over criminal justice; it could order that any criminal case should be removed from the courts of the itinerant judges and brought before it.

Secondly, it had a large power of superintendence over all royal officers, sheriffs, and the like would entertain complaints against them and bid them do their duties. Thirdly, it had a large civil jurisdiction; it could entertain any civil action in which the defendant Was charged with a breach of the King's peace".

The problem may be approached also from a different aspect. Section 9 of the High Courts Act, 1861 (24&25 Vict., C. 104) provides that each of the High Courts to be established under the Act shall have and exercise "all such Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdiction original and appellate and all such powers and, authority for, and in relation to, the administration of Justice." Clause 9 of the Letters Patent deals with extraordinary Original Civil jurisdiction and is in the following terms :

"9. And We do further ordain in that the High Court of Judicature at Patna shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction any suits being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

Purposes of justice are served when the question Involved is of public importance and of unusual difficulty and neither party would be prejudiced by the suit being tried by the High Court. Clause 10 states :--

"And we do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section

107, Government of India Act, or in the exercise of Criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108, Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one judge of any Division. Court, pursuant to Section 108, Government of India. Act, made in the exercise of appellate jurisdiction in respect of a decree or order made on or after 1-2-1929, in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgment of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in our or Their Privy Council, as hereinafter provided "

Clause 11 deals with appeals from other Civil Courts in the Province of Bihar and Orissa. Clause 12 relates to the jurisdiction conferred upon the High Court as to infants and lunatics. It is, therefore, manifest that a proceeding for grant of a writ under Article 226 of the Constitution does not fall within Clauses 9, 10, 11 and 12, which relate to civil jurisdiction of the High Court under the Letters Patent.

The proceeding for grant of a writ under Article 226 is, therefore, not a proceeding in exercise of Civil jurisdiction of the High Court, and for this reason also it must be held that a proceeding under Article 226 is not "Civil proceeding" within the meaning of Article 133 of the Constitution.

5. It is also important to state in this connection that in dealing with the appellate jurisdiction of the Supreme Court the Constitution does not adopt rigorous classification of proceedings into two categories, namely, civil and criminal, which are mutually exclusive and together exhaustive. There is no such dichotomy in the scheme of the Constitution

This view is borne out by the examination of the relevant article of the Constitution. Article 132 enacts that appeals shall lie from judgment, decrees or orders of a High Court "whether in a civil, criminal or other proceeding", if the cases involve a substantial question of law as to the interpretation of the Constitution. This clearly indicates that the Constitution-makers contemplated that there might be proceedings in the High Court which are neither civil nor criminal. Article 133 provides for appeals against orders passed in civil proceedings and Article 134 provides for appeals against orders passed in criminal proceedings.

Article 135 reserves the Jurisdiction and powers of the Supreme Court in matters not falling within Article 133 or Article 134, if the federal Court has jurisdiction over such matters at the time of the Constitution.

Article 136(1) provides as follows :

"136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

It is manifest that Articles 133 and 134 are limited to orders passed in civil or criminal proceedings. But the jurisdiction of the Supreme Court under Article 136 to grant special leave extends to orders passed "in any cause or matter by any Court or

Tribunal." The articles of the Constitution, therefore, clearly contemplate that there may be proceedings other than civil and criminal proceedings and that in respect of such other proceedings the governing provisions are Articles 135 and 136.

In *Pritam Singh v. State*, MANU/SC/0015/1950 : 1950 SCR 453 at p. 458 : (AIR 1950 SC 169 at p. 171) (B) it was observed by the Supreme Court that the words used in Article 136 are "cause or matter" which are of very wide import. A similar view has been expressed by the Supreme Court in a subsequent case, *Bharat Bank, Ltd., Delhi v. Employees of the Bharat Bank Ltd, Delhi* MANU/SC/0030/1950 : 1950 SCR 459 : (AIR 1950 SC 188) (C). In *Tobacco Manufacturers (India) Ltd. v. The State*, (MANU/BH/0153/1950 : ILR 30 Pat 174 : AIR 1951 Pat 29) (PB) (D) also, the majority of the Full Bench rejected the argument of the petitioner that a civil proceeding means and includes all proceedings except those that are criminal, and referred to the decisions under the Income Tax Act in which it had been held that an order passed by the High Court on a reference under Section 66 was not open to appeal to the Privy Council and held that the contention that all proceedings which were not criminal were civil was not warranted by the language of Articles 132 to 136 of the Constitution.

A similar view was expressed by the Nagpur High Court in *Zikar v. State* MANU/NA/0101/1951 : AIR 1952 Nag 130(E) where the question at issue was whether a conviction for contempt of court was appealable under Article 134. It was held by the Nagpur High Court that proceedings for punishment for contempt were not criminal in character since the proceedings for contempt were not regulated by the ordinary law of criminal procedure. It was held that the jurisdiction of the High Court in such a proceeding was of a disciplinary nature and there was no right of appeal to the Supreme Court under Article 134 of the Constitution.

The same opinion has been expressed by a Division Bench of the Madras High Court, consisting of Rajamannar, C.J. and Venkatarama Aiyar, J., in *M. S. Krishnaswami v. Council of the Institute of Chartered Accountants of India* MANU/TN/0079/1953 : AIR 1953 Mad 79 (F). It was held in that case that an order of the High Court removing the name of the petitioner from the roll of Chartered Accountants under Section 21 of Act 38 of 1949 was not an order passed in a "civil proceeding" within the meaning of Article 133 of the Constitution, and there was no right of appeal to the Supreme Court under Article 133(1)(c) of the Constitution.

It was held that proceedings under Section 21 of Act 38 of 1949 were in the nature of disciplinary proceedings and were not "civil proceedings" within the meaning of Article 133 of the Constitution. It was observed by Venkatarama Aiyar, J. in the course of his judgment that there may be proceedings which are neither civil nor criminal within the meaning of Article 133 and Article 134 and it cannot be affirmed that every order passed in proceedings other than criminal is open to appeal under Article 133 as made in civil proceedings.

6. The learned Government Advocate, who appeared on behalf of the petitioners in Supreme Court Appeal No, 103 of 1950, made the submission that the question must be examined not from the nature of jurisdiction exercised by the High Court but from the result of the proceeding achieved.

It was argued that if the result of the proceeding was that it indirectly or directly affected the property or other civil right of the petitioner, the proceedings would be of civil nature. The argument was also put differently as follows. It was said that in

all cases where a civil suit was possible for the same relief the proceeding under Article 226 would be a civil proceeding. I am unable to accept this argument as correct. There is a fallacy lurking in the argument and that fallacy is the confusion made between the nature of the proceeding and the quality of the claim or the relief sought.

In my opinion, the nature of the proceeding depends on the nature of the jurisdiction of the Court which the petitioner happens to invoke. The expression used in Article 133 is "a civil proceeding of a High Court" and not the expression "civil cause or matter" which is manifestly of wider import. On its general acceptation, the term 'proceeding' means the form in which the action is brought or defended, the manner of intervention by parties, the mode of deciding issues, of opposing judgment and of executing (Bouvier's Law Dictionary), it follows that the expression "civil proceeding of a High Court" must be interpreted to mean the form of proceeding of the High Court-in the exercise of its civil jurisdiction.

7. In the course of his argument the learned Government Advocate placed much reliance upon the decision of the House of Lords in the case of Clifford and O'Sullivan In re 1921 2 AC 570 (G). It was held by Lord Sumner in that case that the subject-matter of the proceedings before the Military Court was criminal in nature and that an appeal was not competent under Section 50 of the Supreme Court of Judicature Act (Ireland), 1877, which prohibited an appeal from a judgment of the High Court "in any criminal cause or matter". This decision is not relevant in the present case for the observation of Lord Sumner was made In a different context.

It is also obvious that the expression "any criminal cause or matter" is of much wider Import and significance than the expression "any criminal proceeding". The majority of Law Lords in that case also took a different view from that expressed by Lord Sumner and held that A proceeding before a Military Court was not in a criminal cause or matter and that an appeal was competent from the decision of Powell, J., under Section 50 of the Supreme Court of Judicature Act (Ireland,) 1877. Viscount Cave in the course of his speech. expressed the view that the question did not depend merely on the quality of the Act but was a question of procedure, and referred with approval to the Judgment of Brett M. R. in Attorney General v. Bradlaugh (1884) 14 QBD 667 at p. 693 (H), to the following effect :

"The Judicature Act was dealing with procedure alone, and when the Judicature Act was passed there were forms of civil proceeding such as actions at law and suits in the Court of Chancery, and there were proceedings by indictments, there-were criminal information filed by the Queen's Co-oner or by the Attorney-General & there were criminal proceedings before magistrates. It seems tome that the Judicature Act recognised those divisions and intended that those which were clearly criminal proceedings, and were always recognised as criminal proceedings those which I have enumerated should not be brought before the Court of Appeal, but that all others should."

In this connection Mr. Baldeva Sahal arguing on behalf of the opposite parties, referred to another English case, The King v. Port of London Authority 1919 1 KB 176 at p. 186 (I) in which Bankes, L.J. expressed the view that an application for a prerogative writ or mandamus was not "an action, prosecution, or other proceeding" within the mean-Ing of Section 1 of the Public Authorities Protection Act, 1893. It was observed by Bankes, L.J. in that case :--

"The essence of the prerogative writ of mandamus is a common to a tribunal to do something which it has omitted or refused to do, and an application for the writ is not an action, prosecution or other proceeding for any act done in pursuance or execution or intended execution, nor as I think, for any neglect or default in the execution, of any Act of parliament or public duty or authority. But apart from that, the Act seems to contemplate, something which results, if successful, in the payment or damages or in the enforcing of some penalty and the words, action, prosecution or other proceeding were not intended to include a prerogative writ calling upon a public authority to perform a public duty.

8. In the course of his argument the learned Government Advocate, referred, to a decision in *Gopeshwar Prasad Sahi v. State of Bihar* AIR 1951 Pat 626 (J), where a Division Bench of this High Court held that there is a right of appeal to the Supreme Court under Article 133(1) of the Constitution from an order of the High Court rejecting an application for a writ or mandamus under Article 226 of the Constitution against the Court of Wards requiring it to withdraw from the management of the Hatwa estate. It was held in that case that the proceeding under Article 226 was a civil proceeding within the meaning of Article 133 of the Constitution.

For the reasons already expressed I hold that the decision of the Patna High Court in AIR 1951 Pat 626 (J) does not lay down the correct law and must be overruled. Reliance was placed by Mr. Baldeva Sahai, counsel, for the opposite parties, on the decision of a Division Bench of this Court in *Alien Berry & Co. Ltd. v. Income Tax Officer, Patna* MANU/BH/0044/1956 : AIR 1956 Pat 175 (K) where it was held that an application for a writ under Article 226 to quash an Income Tax assessment was not a civil proceeding within the meaning of Article 133(1)(c) and there was no right to appeal to the Supreme Court against the order rejecting the application for a writ.

I think that the actual decision of this case is correct, but with great respect I do not accept the reasoning of this case as wholly correct.

9. For these reasons I hold that Counsel for the petitioners are unable to make good their submission that the proceedings, taken by the opposite parties under Article 226 are civil proceedings within the meaning of Article 133 of the Constitution. It follows that the petitioners are not entitled to the grant of a certificate for leave to appeal to the Supreme Court Under Article 133(1)(c) of the Constitution. The application in Supreme Court Appeals Nos. 52 to 61, 73 to 77 and 103, of 1956 must be dismissed with costs.

There will be a hearing fee of Rs. 100/- which will be divided equally between Maharaja Pratap Singh Bahadur and the other set of opposite parties.

10. In Supreme Court Appeal No. 31 of 1956 the petitioner applied for grant of a certificate for leave to appeal to the Supreme Court from a decision of the High Court dated 13-1-1956, in Miscellaneous "Judicial Case No. 95 of 1955, which arose out of an application by the opposite parties under Article 226 for grant of writ of certiorari to quash the reference made by the State Government under Section 10 of the Industrial Disputes Act.

The application was allowed by the High Court and a writ in the nature of prohibition was granted under Article 226 of the Constitution, restraining the Industrial Tribunal from proceeding with Reference No. 2 of 1955 made by the State Government. It was submitted on behalf of the Petitioner that leave ought to be granted under Article 133

of the Constitution but for the reasons I have already expressed, I hold that the proceeding before the High Court was not a civil proceeding within the meaning of Article 133(1) of the Constitution. The application in Supreme Court Appeal No. 31 of 1956 accordingly fails and must be dismissed with costs. Hearing fee Rs. 50/-.

11. In Supreme Court Appeal No. 66 of 1958 the petitioners have applied for a certificate to appeal to the Supreme Court from a decision of a Division Bench of the High Court, dated 20-4-1956, in Miscellaneous Judicial Case No. 562 of 1955. The proceedings in the High Court arose out of an application made by the opposite parties for grant of a writ under Article 226 of the Constitution for quashing a settlement made by one of the petitioners and also for prohibiting the petitioners from interfering with the collection of tolls from a Mela. The application was allowed by the High Court and writs were issued against the petitioners under Article 226 of the Constitution.

Counsel for the petitioners prayed for leave to appeal under Article 133(1)(c) of the Constitution; but for the reasons I have given, I hold that the proceedings in the High Court were not "civil proceedings" within the meaning of Article 133 of the Constitution. In my opinion the application fails and it should be dismissed with costs. Hearing fee Rs. 50/-.

Chaudhuri, J.

12. I entirely agree with the view taken by my Lord the Chief Justice.

Raj Kishore Prasad, J.

13. I fully concur in the Judgment of my Lord the Chief Justice, which has been just delivered, and which I had the privilege to read and consider before.

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