

PRIVY COUNCIL

Delhi Cloth and General Mills Co., Ltd.

Vs.

Income-tax Commissioner, Delhi
(Lords Sinha Blanesburgh and Sir John Wallis. JJ.)

26.07.1927

JUDGMENT

LORD BLANESBURGH J.

1. These petitions are each of them for special leave to appeal from orders made by the High Court of Judicature at Lahore on references to that Court under Section 66(2), Indian Income-tax Act, 1922. In each case the sum in dispute exceeds Rs. 10,000. In each the order in question was made before the 1st April 1926, that in the first of the two cases being of date the 12th January 1926, and that in the second having been made on the 6th January 1926. In each case, also, the High Court refused to certify that the case was a fit one for appeal to His Majesty in Council. With these facts for its foundation, an interesting argument was addressed to the Board upon the nature of the statutory appeal in such cases as these, and upon the question whether in the present instances there is any such appeal at all.

2. The learned Judges of the High Court were of opinion that the petitioners had a right of appeal to His Majesty in Council provided they could, in effect, bring their cases within the requirements of Section 109(c), Civil Procedure Code, but not otherwise. They dealt with the applications for certificates on that footing, and they dismissed them. Hence the present petitions.

3. At the hearing before the Board, the view of the High Court was resolutely challenged by the petitioners. It sufficed, it was contended, that the cases should fall within the requirements of Section 110 of the Code : the petitioners' right of appeal was in no way conditional on compliance with the requirements of Section 109(c). The respondents, on the other hand, supported, as applied to the general case, the view of the High Court, but, contended that, for the petitioners here, there was, for reasons which will appear in the sequel, no statutory right of appeal at all.

4. These rival contentions raise questions of great general importance. It has seemed to their Lordships to be convenient that they should definitely pronounce upon them.

5. The legislative history of the subject is a short one. No express provision for appeals to His Majesty in Council from orders of a High Court in India made upon references either under section 51, Indian Income-Tax Act, 1918, or under Section 66 of the Act of 1922, is to be found in either statute, but until the case of *Radhakrishna Ayyar v. Sundaraswami Iyer* was decided by the Board, it was apparently generally supposed in India that appeals from such orders were regulated by Sections 109 and 110, Civil Procedure Code, to which reference has already been made. The effect of the judgment in the case cited was, however, definitely to lay it down that from these orders there was, in fact, no statutory right of appeal at all. and such was the position until the 1st April 1926, when the Indian Income-tax (Amendment) Act, 1926, came into force, by Section 8 of which it is provided that immediately after Section 66, Indian Income-tax Act, 1922, a section should be inserted, of which it is convenient to transcribe the first three sub-sections :

66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of Section 98 Civil Procedure Code, 1908, shall, so far as may be, apply, notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered, on a reference made under Section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Civil Procedure Code, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court.

6. It is upon these sub-sections that the question now under discussion depends, and as to them it will be noticed that the appeal thereby given is by Sub-Section 2 confined to a case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

7. These words are textually the same as the concluding words of Sub-Section (c), section 109, Civil Procedure Code, and, coupled with the carefully limited referential word to the Civil P. C. in Sub-Section 3, suffice in their Lordships' judgment, to

exclude from any right of appeal cases which fall within the requirements of Section 110 of the Code and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. It was conceded in argument that if Sub-Section 2 of the section had stood alone, it would be difficult to escape from the construction of it which has just been indicated. It was contended, however, that the reference to the Code in Sub-Section 3 was made in terms sufficiently comprehensive to include within the class of appealable cases all that are defined in the provisions incorporated by reference. Their Lordships cannot agree with this contention. The words of qualification, "so far as may be," in Sub-Section 3 are, in their judgment, apt to confine the statutory right of appeal to the cases described in Sub-Section 2. To this extent, therefore, their Lordships are in agreement with the High Court.

8. But a further point remains. Is there under this section any appeal at all from an order of the High Court made before the Act of 1926 came into force ?

9. The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the *Colonial Sugar Refining Co. v. Irving* where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect. On the contrary, they think there is a clear suggestion that a judgment of the High Court referred to in Sub-Section 2 is one which under Sub-Section (1) has been pronounced, by "not less than two Judges of the High Court," a condition which was not itself operative until the entire section came into force. In their Lordships' judgment, therefore, the petitioners in these cases have no statutory right of appeal to His Majesty in Council. Only by an exercise of the prerogative is either appeal admissible.

10. Both petitions their Lordships have, from this point of view, carefully considered. They have not forgotten that the circumstances are somewhat special : that the right of appeal introduced by the Act of 1926 is very probably conceded in order to rectify an

omission inadvertently made from previous legislation, and is not one thought of for the first time. Even so, however, their Lordships are unable to find in the circumstances of either case sufficient ground for any exercise of the prerogative in favor of the petitioners.

11. Their Lordships will accordingly humbly advise His Majesty that both petitions should be dismissed and with costs.

Petitions dismissed.

Cases Referred.

AIR 1922 PC 257 : 45 Mad. 475 : 49 I. A. 211,

[1905] A. C. 369 : 74 L. J. P. C. 77 : 21 T. L. R. 513 : 92 L. T. 738,