

Shri Balwantrai Chimanlal Trivedi

Vs

M. N. Nagrashna and Others

Review Petition No. 37 of 1959

(CJI B.P. Sinha, J.L. Kapur, P.B. Gajendragadkar, K. Subha Rao, K.N. Wanchoo JJ)

03.08.1960

JUDGEMENT

WANCHOO J. -

This is an application for review of the judgment delivered by this Court, to which three of us were party, on October 29, 1959. The ground on which review is sought is that there are mistakes and/or errors apparent on the face of the record and therefore the judgment in question should be reviewed. The petitioner contends further that the judgment under review had dealt with the matter of issue of writs by High Courts under Art. 226 of the Constitution and this involved a question which could only have been dealt by a bench of not less than five judges - and that is why the review application has been placed before a bench of five judges. Lastly it is contended that this Court should have decided the question of jurisdiction as various other parties had agreed to be governed by the decision in this case and that would have saved multiplicity of proceedings.

Before we deal with the points urged in support of the petition we should like to state what exactly has been decided by the judgment under review. The appeal in which the judgment under review was given came up before the Court on special leave granted under Art. 136 of the Constitution from a decision of the Bombay High Court in a writ petition filed there under Art. 226 against an order of the Payment of Wages Authority. The question of jurisdiction of the Payment of Wages Authority was raised before this Court and reliance in that connection was placed on the decision in *A. V. D'Costa v. B. C. Patel* and another ([1955] 1 S.C.R.1333). It was remarked in the judgment under review that there appeared to be some force in the contention relating to the jurisdiction of the Payment of Wages Authority; but this Court did not go further and decide that question on the view that as there had been no failure of justice this Court would not interfere under its powers under Art. 136 of the Constitution, particularly as the matter came before it from a decision of the Bombay High Court and not directly from the Authority. In that connection reference was made to the case of *A. M. Allison v. B. L. Sen* ([1957] S.C.R. 359), in which in similar circumstances this Court had refused to decide the question of jurisdiction, because it was satisfied that there had been no failure of justice. All that therefore the judgment under review decided was that where this Court is of the view that there is no failure of justice it is not bound to interfere under its powers under Art. 136 of the Constitution. Reference to *Allisons' Case* ([1957] S.C.R. 359) was made only to show that in almost similar circumstances (except that *Allison's Case* came to this Court on a certificate granted under Art. 133(1)(c) of the Constitution), this Court had refused to decide the question of jurisdiction as there was no failure of justice. The judgment under review did not deal with the powers of the High Court under Art. 226 of the Constitution and nowhere laid down anything in conflict with the previous decision of this Court in *H. V. Kamath v. Syed Ahmad Ishaque and others* ([1955] 1 S.C.R. 1104). Thus the narrow point decided by the judgment under review was that when

dealing with an appeal under Art. 136 of the Constitution this Court comes to the conclusion that there is no failure of justice, it is not bound to decide and interfere even when a question of jurisdiction of the original court or tribunal is raised in a case where the matter had been considered by a higher tribunal, which undoubtedly had jurisdiction, and the appeal to this Court is from the decision of the higher tribunal.

The being the decision of this Court in the judgment under review, let us see if there is any reason to review that judgment on the grounds urged in the petition. Before we consider the main ground in support of the review we should like to observe that the fact that other parties had agreed to be governed by the decision in the judgment under review can be no ground for review. Are there then such mistakes and/or errors apparent on the face of record which would justify a review? It is said that in dealing with whether there has been failure of justice in this case, this Court omitted to consider certain provisions of the Bombay Industrial Relations Act, 1946. Assuming this to be correct, the question still is whether even after a consideration of those provisions the decision of this Court on the question of failure of justice would have been different. On a further consideration of the reasons given in the judgment under review for holding that there was no failure of justice we feel that the decision on this point would have been still the same even if the provisions referred to had been considered. In the circumstances we are of opinion that there is no ground for review of the judgment even if it be assumed that certain provisions of the Bombay Industrial Relations Act, 1946, were relevant and had not been considered.

The main plank however of the petitioner is that this Court was bound to consider the question of jurisdiction and the question whether there was failure of justice or not was bound up with the question of jurisdiction and a decision on that question was necessary to arrive at the conclusion that there was no failure of justice. This contention also must in our opinion be rejected, specially in the context of the narrow point which, as we have already indicated, was decided in the judgment under review. Besides it is not unknown to law that decisions of original courts and tribunals may be allowed to stand even though there may be some doubt as to the jurisdiction of such courts or tribunals. There are provisions in the revenue laws where in case of doubt whether the civil court or the revenue court has jurisdiction the decision of the original court is allowed to stand in certain circumstances if there has been no failure of justice : (see, for example, ss. 290 and 291 of the U.P. Tenancy Act, 1939). Therefore when the judgment under review left the question of jurisdiction open on the ground that there was no failure of justice and in consequence this Court refused to exercise its jurisdiction under Art. 136, it cannot be said that something was done which was unknown to law. It is necessary to remember that wide as are our powers under Art. 136, their exercise is discretionary; and if it is conceded, as it was in the course of the arguments, that this Court could have dismissed the appellant's application for special leave summarily on the ground that the order under appeal had done substantial justice, it is difficult to appreciate the argument that because leave has been granted this Court must always and in every case deal with the merits even though it is satisfied that ends of justice do not justify its interference in a given case. In the circumstances we are of opinion that this Court was not bound to decide the question of jurisdiction on the facts and circumstances of this case when it had come to the conclusion in dealing with an appeal under Art. 136 of the Constitution that there was no failure of justice. The review application therefore fails and is hereby dismissed with costs.

Review application dismissed.

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