

V. P. Gopala Rao

Vs

Public Prosecutor, Andhra Pradesh

Criminal Appeal No. 271 of 1968

(J.C. Shah, R.S. Bachawat, K.S. Hegde JJ)

07.03.1969

JUDGMENT

BACHAWAT, J. -

1. Messrs. Golden Tobacco Co., Private Ltd., have their head office and main factory at Bombay where they manufacture cigarettes. The appellant is the occupier-cum-manager of the company's premises at Eluru in Andhra Pradesh where sun-cured country tobacco purchased from the local producers is collected, processed and stored and then transported to the company's factory at Bombay. The prosecution case is that the aforesaid premises are a factory. The appellant was prosecuted and tried for contravention of Section 6(1) of the Factories Act, 1948 and Rules 3 and 5(3) of the Andhra Pradesh Factory Rules, 1950, for operating the factory without obtaining a licence from the Chief Inspector of Factories and his previous permission approving the plans of the building. The appellant's defence was that the premises did not constitute a factory and it was not necessary for him to obtain the licence or permission. The 2nd Addl. Munsif i Magistrate, Eluru, accepted the defence contention and acquitted the appellant. According to the Magistrate the prosecution failed to establish that the premises were a factory or that any manufacturing process was carried on or that any worker was working therein. The Public Prosecutor filed an appeal against the order. The Andhra Pradesh High Court allowed the appeal, convicted the appellant under Section 92 for contravention of Section 6(1) and Rules 3 and 5(3) and sentenced him to pay a fine of Rs. 50/- under each count. The present appeal has been filed by the appellant after obtaining special leave.

2. The question in this appeal is whether the company's premises at Eluru constitute a factory. Section 2(m) defines factory. Under Section 2(m) factory means any premises including the precincts thereof "whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on." It is not disputed that more than 20 persons were working on the premises. The points in issue are (1) whether those persons were "workers; and (2) whether any manufacturing process was being carried on therein.

3. For the purpose of proving the prosecution case the respondent relied upon the following materials : (1) the testimony of P.W. 1-A. Subbarao, the Assistant Inspector of Factories; (2) his report of inspection of the premises on December 20, 1965; (Ex. P-1); (3) the show cause notice Ex. P-3, and the appellant's reply, dated January 15, 1966; (Ed. P-5); (4) the testimony of P.W. 2. B.P. Chandrareddi, the Provident Fund Inspector; and (5) six returns (Exs. P-7 to P-12) submitted by the Eluru establishment, to the Regional Provident Fund Commissioner.

4. The materials on the record show that in the company's Eluru premises, sun-cured tobacco leaves bought from the growers were subjected to the processes of moistening, stripping and packing. The tobacco leaves were moistened so that they may be handled without breakage. The moistening was done for 10 to 14 days by sprinkling water on stacks of tobacco and shifting the top and bottom layers. The stalks were stripped from the leaves. The Thukku (wholly spoiled) and Pagu (partly spoiled) leaves were separated. The leaves were tied up in bundles and stored in the premises. From time to time they were packed in gunny bags and exported to the company's factory at Bombay where they were used for manufacturing cigarettes. All these processes are carried on in the tobacco industry. In Encyclopaedia Britannica, 1965 edition, Vol. 22, page 265 under the heading "tobacco industry" it is stated : "After curing, only during humid periods or in special moistening cellars can the leaf be handled without breakage. It is removed from the stalks or sticks and graded according to colour, size, soundness and other recognizable elements of quality. It is tied into bands, or bundles, of 15 to 30 leaves by means of a tobacco leaf wrapped securely around the stem end of the leaves. After grading the leaf is ready for the market."

5. In our opinion, manufacturing processes as defined in Section 2(k)(i) were carried on in the premises. Under Section 2(k)(i) manufacturing process means any process for "making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal." The definition is widely worded. The moistening was an adaptation of the tobacco leaves. The stalks were stripped by breaking them up. The leaves were packed by bundling them up and putting them into gunny bags. The breaking up, the adaptation and the packing of the tobacco leaves were done with a view to their use and transport. All these processes are manufacturing processes within Section 2(k)(i).

6. The reported cases are of little help in deciding whether a particular process is a manufacturing process as defined in Section 2(k)(i). In *State of Kerala v. V. M. Patel* ((1961) 1 LLJ 549) the court held that the work of garbling pepper by winnowing, cleaning, washing and drying it on concrete floor and a similar process of curing ginger dipped in lime and laid out to dry in a warehouse were manufacturing process. With regard to the decision in *Col. Sardar C. S. Angre v. The State* (ITR 1965 (15) Raj 117) it is sufficient to say that the work of sorting and drying potatoes and packing and re-packing them into bags was held not to be a manufacturing process as the work was done for the purpose of cold storage only and not for any of the purposes mentioned in Section 2(k)(i).

7. The next question is whether 20 or more persons worked on the premises. On behalf of the appellant it is admitted that more than 20 persons work there, but his contention is that they are employed by independent contractors and are not workers as defined in Section 2(1). Section 2(1) reads : "'worker' means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."

8. In *Sri Chintaman Rao and Another v. State of Madhya Pradesh* (1958 SCR 1340, 1340) the court gave a restricted meaning to the words "directly or through an agency" in Section 2(1) and held that a worker was a person employed by the management and that there must be a contract of service and a relationship of master and servant between them. On the facts of that case the court held that certain sattedars were independent contractors and that they and the coolies engaged by them for rolling bidis were not "workers".

9. It is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen. The relationship is characterized by contract of service between them. In *Short v. J. W. Henderson Limited* (1946 SC HL 24, 3311) Lord Thankerton recapitulated four indicia of a contract of service. As stated in *Halbury's Laws of England*, 3rd Ed. Vol. 25, page 448, Article 872 :

"The following have been stated to be the indicia of a contract of service, namely : (1) the master's power of selection of his servant; (2) the payment of wages or other remuneration; (3) the master's right to control the method of doing the work; and (4) the master's right of suspension or dismissal (*Short v. J. W. Henderson Ltd.*, (1946) SC (HL) 24, at pp. 33, 34; *Gould v. Minister of National Insurance*, 1951) 1 KB 731 at p. 734. (1951 All ER 368 at p. 371; *Pauley v. kenaldo Ltd.*, (1953) 1 All ER 226, CA at p. 228); but modern industrial conditions have so affected the freedom of the master that it may be necessary at some future time to restate the indicia; e.g., heads (1), (2) and (4) and probably also head (3), are affected by statutory provisions *Short v. J. W. Henderson Ltd.*, (supra) at p. 34."

10. In *Dharangadhara Chemical Work's v. State of Saurashtra* (1957 SCR 152) the court held that the critical test of the relationship of master and servant is the master's right of superintendence and control of the method of doing the work. Applying this test workmen rolling bidis were found to be employees of independent contractors and not workers within Section 2(1). In *State of Kerala v. Patel, V. M.* (supra) and *Shankar Balaji Waje v. State of Maharashtra* ((1962) 1 Lab LJ 119) while they were found to be workers within Section 2(1) in *Bridhichand Sharma v. First Civil Judge, Nagpur* and workmen within the meaning of Section 2(s) of the Industrial Disputes Act in *D. C. Dewan Mohinder Sahab and Sons v. United Bidi Workers Union.* ((1964) 2 Lab LJ 638)

11. There is no abstract a priori test of the work control required for establishing a contract of service. In *Short v. J. W. Henderson Ltd.* (supra), Lord Thankerton quoting Lord Justice Clerk's dicta in an earlier case said that the principal requirement of a contract of service was the right of the master "in some reasonable sense" to control the method of doing the work. As pointed out in *Bridhichand's case* (supra) the fact that the workmen have to work in the factory imply a certain amount of supervision by the management. The court held that the nature and extent of control varied in different industries and that when the operation was a of a simple nature the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard.

12. In the present case, the prosecution relied on (1) Exts. P-7 to P-12, (2) the testimony of P.W. 1 and (3) Exts. P-1 and P-6 to prove that the persons working at the company's premises at Eluru were employed by the management. Exhibits P-7 to P-12 are monthly returns for July to December, 1966, submitted by the company's Eluru establishment to the Regional Provident Fund Commissioner, under paragraph 38(2) of the Employees Provident Fund Scheme, 1952. The returns disclosed the number and names of about 200 persons employed every month and the recoveries from the wages and the company's contributions on account of the provident fund of each employees. At the top of each return it was stated that the employees were contract employees. Section 2(f) of the Employees Provident Fund Act, 1952 defines "employee" as including any person employed by or through a contractor. Paragraph 29 and 30 of the Employees Provident Fund Scheme, 1952, shows that the employer is required to pay contributions in respect of all such employees. Paragraph 26 of the Scheme shows that employees who have actually worked for not less than 12 months or less in the factory or establishment is entitled and required to become a member of the fund. In view of the fact

that the returns are in respect of all persons employed in the establishment either by the management or by or through a contractor they are not of much help in determining whether the employee were employed by the management or were employed by the contractors. They only show that in the months on July to December, 1966, 200 workers had been working in the establishment for not less than 240 days.

13. The testimony of P.W. 1-A. Subbarao, the Assistant Inspector of Factories shows that on December 20, 1965, he found 120 workmen working in the premises. He is corroborated by his inspection report Ext. P-1. In his reply Ext. P-5 the appellant did not dispute the fact that 120 persons were working there. P W-1 found workmen doing the work of stripping stalks from the tobacco leaves. The work of stripping was being done under the supervision of the management's clerk J. Satyanarain Rao. At the end of the day the clerk collected the stripped tobacco and noted the quantity of work done in the work sheet allotted to the worker. P.W. 1 found some workmen doing other work.

14. The onus of proving that the workmen were employed by the management was on the prosecution. We think that the prosecution has discharged this onus. It is not disputed that more than twenty persons worked in the premises regularly every day. There is the positive evidence of PW-1 that the work of stripping stalks from the tobacco leaves was done under the supervision of the management. There is no evidence to show that the other work in the premises was not done under the like supervision. The prosecution adduced prima facie evidence showing that the relationship of master and servant existed between the workmen and the management. The appellant did not produce any rebutting evidence. In the cross-examination of P.W. 1, it was suggested that the workmen were employed by independent contractors, but the suggestion is not borne out by the materials on the record. We hold that the persons employed are workers as defined in Section 2(1). The High Court rightly held that the company's premises at Eluru were a factory.

15. In the courts below the appellant produced (1) an order of the Chief Inspector of Factories, Madras, and (2) a letter of Superintendent of Central Excise, I.D.O., Vijaywada. Mr. Setalvad conceded, and in our opinion rightly, that these documents throw no light on the question whether in 1966 the premises were a factory within the meaning of Section 2(m). We therefore say nothing more with regard to these documents.

16. In the result, the appeal is dismissed. DADH NATHU RAJAH (DEAD) BY LAWYERS APPELLANTS v. ANGHA NATHU JAMAL (DEAD) BY LAWYERS AND OTHERS, RESPONDENTS.

Civil Appeal No. 1456 of 1966, decided on September 16, 1969.

JUDGMENT

The Judgment of the Court was delivered by

SHAH, J. - The facts which give rise to this appeal are few and simple. The appellant commenced an action on May 3, 1951 in the Court of the Assistant Judge, Morvi, in the former Part 'B' State of Saurashtra for a decree for Rs. 9,387/5/- against one L. Angha Nathu Jamal and respondents 2 and 3 in this appeal. Trial Court decreed the suit on October 17, 1955. An appeal was filed against the decree in the High Court of Saurashtra which was abolished and the proceedings pending in that Court stood transferred to the High Court of Bombay. On February 21, 1958, Vyas, J., of the High Court

of Bombay allowed the appeal. Against that order an appeal under Clause 15 of the Letters Patent of the High Court of Bombay was filed by the plaintiff but without an order of Vyas, J., certifying that the case was fit for appeal to a Division Bench of the High Court. On May 1, 1960 under the Bombay Reorganisation Act, 1960, the appeal stood transferred to the High Court of Gujarat. The High Court of Gujarat held that the appeal was incompetent in the absence of an order under Section 22-A of the Saurashtra Ordinance 2 of 1948 certifying that the case was fit for appeal to a Division Bench. With certificate granted by the High Court of Gujarat this appeal has been preferred.

2. The Rulers of India States in Kathiawar agreed "to unite and integrate" their territories in one State to be styled the United State of Saurashtra with a common executive, legislature and judiciary. By Ordinance 1 of 1948 the administration of the covenanting States was taken over by the Rajpramukh. The Rajpramukh issued, in exercise of power reserved to him by Article 9 clause (3) of the Covenant, Ordinance 2 of 1948 setting up with effect from February 29, 1948, a High Court of Judicature for the State of Saurashtra. The expression "High Court" was defined in Section 3(c) as meaning "the High Court established and constituted by this Ordinance and functioning as the High Court of the Saurashtra State". By Section 21 the High Court was to be the highest Court of appeal and revision in the State and to have jurisdiction to maintain and dispose of such appeals, revision and other cases, civil or criminal, as it may be empowered to do under the Ordinance or any enactment in force in the State. By Section 22 the High Court was also to be a Court of reference with power to hear, revise and determine all cases referred to it. By Ordinance 5 of 1950, Section 22-A was added : it was provided thereby :

"(1) Except as otherwise provided by any enactment for the time being in force, an appeal from any original decree, or from any order against which an appeal is permitted by any law for the time being in force, or from any order under Article 226 of the Constitution of India, made by a single Judge of the High Court, shall lie to a Bench consisting of two other Judges of the High Court.

(2) An appeal shall lie from a judgment of one Judge of the High Court in respect of a decree or order made in exercise of Appellate Jurisdiction to a Bench consisting of two other Judges of the High Court if the Judge who made the decree or other certifies that the case is a fit one for appeal."

Under the Constitution of India, the territory of the United State of Saurashtra was formed into a Part 'B' State of Saurashtra. By the States Reorganisation Act, 1956 the territory of the State of Saurashtra merged into the State of Bombay.

3. By Section 49 of the States Reorganization Act, 1956, the High Court exercising immediately before the appointed day, it was enacted that jurisdiction in relation to the existing State of Bombay shall, as from the appointed day, be deemed to be the High Court for the new State of Bombay. By section 50(1) as from the appointed day, the High Courts of all the existing Part B States (with certain exception not material) were to cease to function and were abolished. By Section 52 it was provided :

"The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court of Judicial Commissioner's Court for an existing State."

By Section 54 it was provided :

"Subject to the provisions of this part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, with the necessary modifications, apply in relation to the High Court for the new State shall have all such powers to make rules and orders with respect to practice and procedure as are, immediately, before the appointed day, exercisable by the High Court, for the Corresponding State :

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, until varied or revoked by rules or orders made by the High Court for a new State, apply with the necessary modifications in relation to practice and procedure in the High Court for the new State as if made by that Court."

Section 59(3) provided that all proceedings pending in the High Court of Saurashtra or in the Court of the Judicial Commissioner for Kutch immediately before the appointed day shall stand transferred to the High Court of Bombay.

By Section 119 it was provided :

"The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

Section 127 provided :

"The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

4. In exercise of the power conferred upon the Central Government by Section 120 of the States Reorganisation Act, 1956, the Saurashtra (Adaptation of Laws on Union Subjects) Order, 1957, was promulgated by the Central Government. By Clause 3 of the order it was provided that Saurashtra Ordinance 2 of 1948 shall stand repealed with effect from November 1, 1956. The High Court of Bombay for the new State added Rules 252-A and 252-B to the Rules of the High Court of Judicature at Bombay, Appellate Side, 1950. By Rule 252-A it was provided :

"Rules and orders relating to practice and procedure in the High Court in force immediately-prior to the appointed day in the High Court of Bombay shall, subject to modifications made from time to time thereto, apply to the practice and procedure in the High Court."

Rule 252-B provided :

"Rules and orders relating to practice and procedure in the High Court framed by the High Courts of Nagpur, Hyderabad and Saurashtra and Judicial Commissioner's Court, Kutch, shall stand abrogated as from the 1st November, 1956 in the areas of the new State of Bombay which before the 1st November, 1956 were parts of the

States of Madhya Pradesh, Hyderabad, Saurashtra and Kutch."

5. The High Court of Gujarat held that the appeal filed by the respondents in the High Court of Saurashtra against the judgment of the Assistant Judge, was and continued to remain subject to the provisions of Section 22-A of Saurashtra Ordinance 2 of 1948 and an appeal could lie against the decision of Vyas, J., only if he certified that the case was fit for appeal to a Division Bench. Clause 15 of the Letters Patent of the Bombay High Court provided :

"And we do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgment (no 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 of the 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 of the Government of India Act, and that notwithstanding anything hereinbefore 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 of the Government of India Act made on or after the first day of February 1929 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, where the Judge who passed the judgment declares that the case is a fit one for appeal; but x x x x x right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, our Heirs or Successors x x x."

By Clause 15 of the Letters Patent, a judgment in an appeal from a civil suit by a single Judge of the High Court of Bombay is subject to appeal to a Division Bench except when the order is made in exercise of the revisional jurisdiction of the Court or in second appeal, or in exercise of criminal jurisdiction, or in exercise of power of superintendence under Section 107 of the Government of India Act, 1935 (Article 227 of the Constitution). Vyas, J., decided the appeal sitting as a judge of the High Court of Bombay. Prima facie, his judgment delivered in a first appeal from a judgment of the subordinate court was subject to appeal to a Division Bench of the High Court of Bombay.

6. There was clearly an inconsistency between Section 22-A of the Saurashtra Ordinance 2 of 1948, and Clause 15 of the Letters Patent of the High Court of Bombay. By virtue of Section 22-A(2) an appeal lay to a Division Bench of the Saurashtra High Court from a judgment of one judge "in respect of a decree or order made in exercise of Appellate Jurisdiction when the judge who made the decree or order certified that the case is a fit one for appeal". The Legislature made no distinction between a first appeal, a second appeal, an appeal from order and an application in exercise of revisional jurisdiction. But an appeal under Clause 15 of the Letters Patent of the High Court of Bombay in an appeal from the judgment of the Court of First Instance could be filed without a certificate of the judge hearing the appeal.

7. The right to appeal from a decree or order is a substantive right. As a corollary thereto, the right to maintain a decree of a Court without interference by a superior Court and subject only to the limitation therein is also a vested right and may be taken away by express enactment or clear implication of the amending statute. In *Colonial Sugar Refining Company v. Irving*, the

Judicial Committee held that a provision which deprives a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right does not regulate procedure. The Australian Commonwealth Judiciary Act, 1903, came into force on August 25, 1903. Against the judgment of the appeal by the Judicial Committee the respondents applied that the appeal from the judgment of the Supreme Court of Queensland be dismissed on the ground that the power of the Court below to give leave to appeal stood abrogated by Section 39 of the Australian Commonwealth Judiciary Act, 1903. The application was rejected by the Judicial Committee.

Lord Macnaghten observed :

"As regards the general principles applicable to the case there was no controversy. On the one hand it was not disputed that if the matter in question be a matter of procedure only, the petition (to dismiss) is well-founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Judiciary Act, it was conceded that in accordance with a long line of authorities from the time of Lord Coke to the present day the appellants (the Sugar Company) would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore, the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure ? It seems to Their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure."

In *Garikapatti Veeraya v. N. Subbiah Choudhury*, this Court accepted the principle in *Colonial Sugar Refining Company's case* (supra). In the absence of any provision to the contrary, therefore, a right attached to the action when it was commenced in 1951, that the decision of a single Judge of the High Court of Saurashtra shall be exercised only if the Judge deciding the case certified the case to be a fit one for appeal. But the Saurashtra High Court was abolished from November 1, 1956 and the jurisdiction of the Saurashtra High Court was conferred upon the Bombay High Court. The case was tried by Vyas, J., not as a judge of the Saurashtra High Court but as a Judge of the High Court of Bombay. In terms the restriction placed by Section 22-A applies to a judgment of one of the Judges of a Judge of the High Court of Saurashtra : it does not apply to a judgment of a Judge of the High Court of Bombay. Once the Saurashtra Ordinance 2 of 1948 was repealed and the jurisdiction to try the appeal exercisable by the parties to the litigation decided by the High Court of Bombay was governed by the Letters Patent of that court and not by Section 22-A of the Saurashtra Ordinance 2 of 1948. Granting that the incident prescribed by Section 22-A of the Saurashtra Ordinance could not operate to restrict a right of appeal exercisable by Clause 15 of the Letters Patent governing the judgments of the Judges of the High Court of Bombay. The expression "Judge of the High Court" in Section 22-A of the Ordinance for the purpose of giving effect to the rule in *Colonial Sugar Refining Company's case* (supra) cannot be read as meaning a Judge of the High Court of Bombay. By the clearest implication of the repeal by the Saurashtra (Adaptation of Laws on Union subjects) Order, 1957, promulgated by the Central Government and by the application of Clause 15 of the Letters Patent of the Bombay High Court, the judgment of Vyas, J., was subject to appeal to a Division Bench without an order of the learned Judge certifying the case to be fit for appeal.

8. In support of his submission counsel for the respondents relied upon the terms of Section 52 of the States Reorganisation Act, 1956. But that section only confers upon the High Court of Bombay

after November 1, 1956, the original, appellate and other jurisdiction, which was exercisable by the High Court of Saurashtra immediately prior to November 1, 1956, in respect of the territories within the State of Saurashtra. The section does not incorporate either expressly or by implication the limitations prescribed by Section 22-A (2) of Saurashtra Ordinance 2 of 1948 into the Letters Patent of the High Court of Bombay. The jurisdiction - original, appellate and other - which the High Court of Saurashtra could exercise prior to November 1, 1956, survived to the High Court of Bombay, after the case stood transferred to that Court by virtue of sub-section (3) of Section 59 of the High Court of Bombay and his judgments in first appeals were, in the absence of an express provision to the contrary, subject to appeal under Clause 15 of the Letters Patent to a Division Bench without a certificate.

9. The High Court of Gujarat was right in holding that in respect of the areas of the former Saurashtra State, the High Court of Bombay acquired the same jurisdiction which the High Court of Saurashtra possessed. That however, does not mean that the jurisdiction was to be regulated "with reference to the law which was in force on the appointed day, i. e. November 1, 1956". Section 52 of the States Reorganisation Act preserved the original, appellate and other jurisdiction which was under the law in force immediately before the appointed day exercisable in respect of the territories within the State of Saurashtra. Unless in the exercise of that jurisdiction any restriction under the law then in force was by express provision or by clear implication preserved, the provisions of Clause 15 of the Letters Patent must apply.

10. It is necessary to recall the provisions of Section 57 of the States Reorganisation Act, 1956, which provide that the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and division courts of the High Court for the corresponding State and with respect to matters ancillary to the exercise of the powers shall, with the necessary modifications, apply in relation to the High Court for a new State. Immediately before November 1, 1956, against the judgment of a single judge of the High Court of Bombay exercising power in a first appeal, an appeal lay to a Division Bench without a certificate. The power of a Division Bench to entertain an appeal continued to remain exercisable by the Judges of the Bombay High Court when dealing with cases transferred under Section 59(3) to the Bombay High Court from the Saurashtra High Court. It terms Section 57 provides that powers of the Division Bench of the High Court for the corresponding State, i. e. the new State of Bombay shall be the same as the powers of the Division Bench under the law in force immediately before the appointed day in the State of Bombay. A Division bench of the High Court of Bombay was competent to entertain an appeal against the judgment of a Single Judge deciding a first appeal from the decision of a subordinate court without a certificate of the Judge, deciding the appeal.

11. The learned Judges of the High Court of Gujarat have made a distinction between "power" and "jurisdiction", and they have held that when Section 52 of the States Reorganisation Act, 1956, enacts that the appellate jurisdiction of the High Court of Bombay for the new State of Bombay shall in relation to the Saurashtra area be the same as the jurisdiction which the Saurashtra High Court possessed, it is meant that the High Court of Bombay has the same jurisdiction which the High Court of Saurashtra originally had, and in exercise of that jurisdiction is subject to the same limitations which the High Court of Saurashtra was subject. We are unable to agree with that view. Section 52 of the States Reorganization Act, 1956, does not say so, and Section 57 of that Act provides to the contrary.

12. The High Court of Gujarat was also of the view that Section 52 of the States Reorganisation Act, 1956 "crystallizes the law" only with respect to the territorial jurisdiction of each of the areas

comprised in the High Court of Bombay, and also retained the jurisdiction which the abolished High Court of Bombay and also retained the jurisdiction which the abolished High Court possessed, the result would be "odd and conflicting" - there being conflict of jurisdiction. But that, in our judgment, is a ground for holding that the Jurisdiction of the Bombay High Court superseded in case of conflict the restrictions on the exercise of jurisdiction only the original High Court qua the Saurashtra territory, and not that the jurisdiction of the High Court of Bombay was because of some unexpressed limitation restricted.

13. The High Court of Gujarat recognised that the conclusion to which they had reached "revealed a defect in the administration of justice." They observed :

"The Legislature may have had a good reason for preserving in tact the old jurisdiction of the Saurashtra High Court in regard to pending cases. However, our conclusion affects cases instituted after the Reorganisation Act came into force. In our judgment, there is no reason why the litigants from the Saurashtra and Kutch areas should now be treated on a different footing from the litigants in the old Bombay area. In our judgment, the rights of appeal of litigants in all the areas should now be placed on the same footing. We would recommend to the authorities concerned to examine this question and, if so advised, to undertake the necessary legislation so as to confer the same rights of appeal to the litigants from the Saurashtra and Kutch areas as are given to the litigants from the rest of the State of Gujarat."

In our view the conclusion that the restriction on the "old jurisdiction of the Saurashtra High Court" in regard to pending cases was preserved by Section arises from the use of the expression "original, appellate and other jurisdiction as under the law in force immediately before the appointed day", that the limitations upon the exercise of the jurisdiction which were existing prior to November 1, 1956, notwithstanding the provisions of Section 57 of the States Reorganisation Act were Preserved.

14. The order passed by the High Court of Gujarat is set aside, and the case remanded to the High Court to be re-entered under the original number and to be heard and disposed of according to law. Costs will be costs in the High Court.

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