

M/s. Noorulla Ghazanfarulla

Vs

Municipal Board of Aligarh and Others

Civil Appeal No. 352 of 1981

(P.N. Bhagwati, Baharul Islam JJ)

15.01.1981

ORDER

1. Special leave granted.

2. It appears from the record that the appellant amended their writ petition before the High Court so as to include a challenge to the constitutional validity of the U.P. Municipalities (Amendment) Act 45 of 1975 and the respondent also filed an affidavit in reply to the amendment. But there is a controversy between the parties as to whether the constitutional validity of the Amendment Act was canvassed before the High Court. The appellants contend that the constitutional validity of the Amendment Act, was challenged by them but the High Court erroneously stated in the judgment under appeal that the validity of the Amendment Act was not challenged before it. The respondents submit that what the High Court has stated is correct and that in fact the constitutional validity of the Amendment Act was not canvassed on behalf of the appellants. We do not propose to enter into this controversy and we will assume for the purpose of our judgment that the question regarding the constitutional validity of the Amendment Act was not argued before the High Court. But, even so, we do not see any reasons why we should not allow the appellants to raise this question at the hearing of the appeal before us. It is true that ordinarily we do not permit a party to raise before us a new question which has not been argued before the High Court. But here the question relates to the constitutional validity of a legislation and even if we do not permit the question as regards its constitutional validity to be raised, it would always be open to the appellant to file another petition challenging the constitutional validity of the Amendment Act. We do not think that any useful purpose will be served by declining to allow the appellant to question the validity of the Amendment Act. On the contrary, it will lead to the filing of another writ petition and unnecessarily prolong and delay the proceeding. We are, therefore, of the view that the appellant should be allowed to raise the question in regard to the constitutional validity of the Amendment Act and since that question has not been discussed before the High Court, we would set aside the judgment of the High Court and send the matter back to the High Court, so that the High Court may decide all such questions arising before it as have not been so far decided, including the question of the constitutional validity of the Amendment Act.

3. We are not pronouncing upon the correctness of the judgment of the High Court on the points considered and decided by it and if the appellant ultimately fails before the High Court, it would be open to the appellant to canvass the correctness of the judgment of the High Court on those points in a petition for special leave which may be filed by them.

4. The appeal is allowed to this extent with no other as to costs. Since this is a very old matter, we would request the High Court to dispose of it without four months from today.

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