

Indian Oil Corporation Ltd

Vs

The State of Bihar and Others

Civil Appeal No. 1257 (NL) of 1985

(Balakrishna Eradi, J.)

13.08.1986

JUDGMENT

BALAKRISHNA ERADI, J. -

1. The short question that arises for decision in this appeal by special leave is whether the dismissal in limine of a special leave petition filed before this Court by a party challenging the award of a Labour Court would preclude the said party from subsequently approaching the High Court under Article 226 of the Constitution seeking to set aside the said award.
2. Having regard to the nature of the question arising for determination, it is not necessary for us to set out in detail the facts of the case and a brief narration thereof would suffice. Respondent 3 was appointed in 1963 as a Sales Officer in the service of the appellant - the Indian Oil Corporation. He was dismissed from service in 1969 on charges of misconduct but was subsequently reinstated under orders of the Labour Court, Patna before which an industrial dispute had been raised. During the period when respondent 3 was out of employment consequent on his dismissal, some of his juniors had been promoted to higher posts. Subsequent to his reinstatement, respondent 3 claimed that he was entitled to be given promotion with effect from the date on which his juniors were promoted and also to be given the higher pay scale of Rs. 1025-1625 from such date. This claim was not accepted by the appellant and that again gave rise to another industrial dispute. The State Government of Bihar referred the said dispute to the Labour Court, Patna on September 26, 1980. The Labour Court by its award dated March 11, 1983 held that respondent 3 was entitled to be paid salary in the scale of Rs. 1025-1625 with effect from December 30, 1970, that being the date on which his juniors were promoted to that scale. It further directed that the third respondent 3 should be promoted from grade 'B' to grade 'C' and should also be given the benefit of revision in the pay scales of those grades.
3. Aggrieved by the said award, the appellant moved this Court under Article 136 of the Constitution by filing Special Leave Petition No. 9147 of 1983. Respondent 3 had filed a caveat before this Court and he was represented by counsel at the time when the special leave petition was heard. This Court on September 9, 1983 dismissed the special leave petition by a non-speaking order, which was in the following terms :

"The special leave petition is dismissed."
4. Thereafter the appellant approached the High Court of Patna by preferring a writ petition under Article 226 of the Constitution seeking to quash the aforesaid award of the Labour Court dated March 11, 1983. The High Court by its order dated January 31, 1984 admitted the writ petition and

granted interim stay of enforcement of the award. Thereupon respondent 3 came up to this Court challenging the order of the High Court admitting the writ petition and granting interim stay of the award. The principle contention taken in the special leave petition was that in view of the order of this Court dated September 9, 1983 dismissing the special leave petition SLP No. 2770 of 1984 filed by an appellant against the award of the Labour Court, it was not legally open to the appellant, thereafter, to approach the High Court under Article 226 of the Constitution challenging the very same award. This Court after hearing both sides, dismissed the special leave petition filed by respondent 3 by the following order dated August 17, 1984 :

Special leave petition is dismissed. We hope that the High Court will dispose of the writ petition as expeditiously as possible preferably within four months from today. In the meantime the respondents will deposit in the High Court a further sum of Rs. 10,000 (apart from Rs. 5000 which has already been deposited towards the cost of the petitioner) within two weeks from today, which amount the petition will be at liberty to withdraw in case the writ petition will not be disposed of within four months from today.

5. Subsequently, when the writ petition came up for final hearing before a Division Bench of the High Court, respondent 3 again urged the aforesaid contention as a preliminary objection to the maintainability of the writ petition. That contention was upheld by the Division Bench which took the view that the dismissal in limine by this Court of the special leave petition filed by the appellant against the award by the non-speaking order reproduced above precluded the appellant from challenging the said award before the High Court under Article 226 of the Constitution. In the opinion of the High Court the doctrine of election was applicable to the case and the appellant having chosen the remedy of approaching a superior court and failed in that attempt, he could not thereafter resort to the alternative remedy of approaching the High Court for relief under Article 226 of the Constitution. Another reason stated by the High Court is that the writ jurisdiction of the High Court under Article 226 of the Constitution being essentially discretionary in nature, it will be a sound exercise of the court's discretion to refuse relief in such a situation. On the basis of the aforesaid reasoning the High Court dismissed the writ petition filed by the appellant without going into the merits of the case. The appellant challenges the correctness of the decision so rendered by the High Court.

6. We are clearly of opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. As observed by this Court in *Workmen v. Board of Trustees of the Cochin Port Trust* [(1978) 3 SCC 119 : 1978 SCC (L&S) 438], the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the

basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it mere guesswork.

7. This enunciation of the legal position has been reiterated by his Court in Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. Workmen [(1981) 3 SCR 213 : (1981) 2 SCC 663 : 1982 SCC (L&S) 36 : (1981) 1 LLJ 489]. The principles laid down in the two decisions cited above fully govern the present case.

8. It is not the policy of this Court to entertain special leave petitions and grant leave under the Article 136 of the Constitution save in the those cases where some substantial question of the law of the general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard the very heavy backlog of work in this Court and the necessity to restrict the intake of the fresh cases by the strictly following the criteria aforementioned, it has very often been the practice of this Court to the grant special leave in cases where the partly cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforecited that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In the cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioners and refuse him relief under the Article 226 of the Constitution on the sole ground of dismissal of the special leave petition.

9. In Wilson v. Colchester Justices [(1985) 2 All ER 97], the House of Lords had to consider the question whether the refusal of leave to appeal by the Appeal Committee of the House of Lords would constitute an implied approval of the decision which had been unsuccessfully sought to be impugned. The following observations of Lord Roskill are opposite in our present context :

Seemingly the Divisional Court felt that this refusal indicated at least implied approval of the decision which it had beed unsuccessfully sought to impugn. Counsel surprised your Lordships by saying that this impression was widespread in the profession. My Lords, if that were so, as my noble and learned friend Lord Diplock remarked during the argument, the sooner this erroneous impression is emphatically corrected by your Lordships the better. There are a multitude of the reasons why, in a particular case, leave to appeal may be refused by an Appeal Committee. I shall not attempt to embark on an exhaustive list for it would be impossible to do so. One reason may be that the particular case raises no question of general principle but turns on its own facts. Another may be that the facts of the particular case are not suitable as a foundation for determining some question of general principal. Your Lordships' House is only able, in any given year, to hear and determine a limited number of cases and it is important for the evolution of the law as a whole that those cases should be a carefully chosen. Conversely the fact that the leave to appeal is given is not of itself an indication that the judgments below are thought to be wrong. It may well be that leave is given in order that the relevant law may be authoritatively restated in clearer terms. It is not difficult to find in the books

examples of the cases where, after leave to appeal has been refused in one case, another case will later arise on which leave to appeal has been given as a result of which the decision against which leave to appeal was originally refused is shown to have been wrong. But that of itself does not mean that the initial refusal of leave was wrong.

10. Thus the correct legal position is that the dismissal by this Court of the Special Leave Petition No. 9147 of 1983 by the non-speaking order of this Court dated September 9, 1983 did not operate as a bar against the appellant in the matter of challenging the impugned award of the Labour Court by resort to proceedings before the High Court under the Article 226 of the Constitution.

11. The doctrine of election referred to by the High Court has no application at all to the present situation and the decision in Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat [(1970) 1 SCR 322 : (1969) 2 SCC 74 : AIR 1970 SC 1] is clearly distinguishable. The question that arose in that case was whether a party who had a choice of resorting to one of two remedies before the same court namely, the High Court, could successively move the High Court under the Section 115 of the Civil Procedure Code and again under the Article 226 and 227 of the Constitution. The question was answered in the negative for the simple reason that the order passed by the High Court under the first proceeding would conclude the matter inter partes. In such a situation the party had to exercise his choice and elect which remedy he would to in the High Court.

12. The grant of the leave under the Article 226 of the Constitution is undoubtedly in the discretion of the High Court but the exercise of that discretionary jurisdiction is to be guided by established legal principles. It will not be a sound exercise of that discretion to refuse to consider a writ petition on its merits solely on the ground that a special leave petition filed by the petitioner in the Supreme Court had been dismissed by a non-speaking order.

13. Apart from the above, in the present case there is the additional fact that after that writ petition was admitted by the High Court respondent 3 challenged the High Court's order admitting the writ petition and granting interim stay of the award by filing a special leave petition in this Court. In that special leave petition respondent 3 had raised the very same objection concerning the maintainability of the writ petition in the light of the dismissal of the prior special leave petition filed by the appellant. This Court dismissed the special leave petition and requested the High Court to dispose of the writ petition within four months from the date of the order (August 17, 1984). Obviously, the intention of this Court in passing that order was that the writ petition should be considered and disposed of by the High Court on the merits within the said period. It is unfortunate that this order has not been adverted to in the judgment of the High Court now under appeal.

14. In the light of the aforesaid discussion, we allow this appeal, set aside the order of the High Court and remand the writ petition to the High Court for the disposal on the merits. Having regard to the fact that the case concerns the service benefits claimed by respondent 3, the High Court is requested to dispose of the writ petition as early as possible. The parties will bear their respective costs.

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