

State Bank of India and Another

Vs

S. B. I. Employees' Union and Another

Civil Miscellaneous Petition No. 19065 of 1987 in Civil Appeal No. 1713 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

15.09.1987

ORDER

1. The certificate on the basis of which this appeal is filed is issued by a learned Single Judge of the High Court of Bombay under Article 134-A of the Constitution in respect of an order passed by him a writ petition in which the employees of the State Bank of India had questioned the right of the management to fix the hours of work and the hours of recess and its right to stagger the period of recess and had prayed for other consequential reliefs. The learned Single Judge allowed the petition following certain earlier decisions of the High Court rendered by the Division Benches. He however proceeded to grant a certificate of fitness to file an appeal against his decision before this Court following an earlier order of a Division Bench granting such a certificate in respect of one of those earlier decisions. He issued the certificate under Article 134-A of the Constitution without referring to the article under which the appeal could be filed. Article 134-A of the Constitution reads thus :

134-A Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134, -

(a) may, if it deems fit so to do, on its own motion; and (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case. 2. The certificate contemplated under Article 134-A of the Constitution can only be a certificate which is referred to in clause (1) of Article 132 or in clause (1) of Article 133 or in sub-clause (c) of clause (1) of Article 134 of the Constitution. This is quite obvious from the luggage of Article 134-A of the Constitution. This case does not fall either under Article 132(1) or under sub-clause (c) Article 134(1) as it neither involves a substantial question of law as to the interpretation of the Constitution nor it is a criminal proceeding. It can only fall, if at all, under Article 133(1) of the Constitution. Article 133 of the Constitution reads thus :

133(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134-A -

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question need to be decided by the Supreme Court.

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.

3. Clause (3) of Article 133 says that notwithstanding anything in that article no appeal shall, unless Parliament by law otherwise provides, led to the Supreme Court from the judgment, decree or final order of one judge of the High Court. Before the introduction of Article 134-A of the Constitution by the Forty-fourth Amendment of the Constitution here was no express provision in Articles 132, 133 and 134 of the Constitution regarding the time and manner in which an application for a certificate under any of those articles could be made before the High Court. There was also a doubt as to the power of the High Court to issue a certificate suo motu under any of those articles. Article 134-A was enacted to make good the said deficiencies. Article 134-A does not constitute an independent provision under which a certificate can be issued. It is ancillary to Article 132(1), Article 133(1) and Article 134(1)(c) of the Constitution. That is the reason for the use of word "if the High Court certifies under Article 134-A" in Article 132(1) and Article 133(1) and for the use of the of the words "Certifies under Article 134-A in Article 134(1)(c). The High Court can issue a certificate only when it is satisfied that the conditions in Article 132 or Article 133 or Article 134 of the constitution as the case may be are satisfied. In the instant case such a certificate could not have been issued by reason of clause (3) of Article 133 of the constitution by the learned single Judge.

4. The fact that in a similar case a certificate had been issued by a Division Bench of the High Court consisting of two Judges in a case decided by the Division Bench did not empowers the single Judge to issue the certificate under Article 133(1) of the constitution in a case decided by him. The restriction placed by clause (3) of Article 133 of the constitution could not be got over by relying upon the order of the Division Bench.

5. We, therefore revoke the certificate. The petition of appeal may however, be treated as a special leave petition under Article 136 of the constitution and posted for preliminary hearing.

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