

Khoday Distilleries Ltd. and Another

Vs

Registrar General Supreme Court of India

Writ Petition (C) No. 803 of 1995

(K. Ramaswamy, S. B. Majmudar, J. S. Verma JJ)

05.12.1995

JUDGMENT

J. S. VERMA, J : -

1. This writ petition is a sequel of Civil Appeals Nos. 4708-4712 of 1989, Khoday Distilleries Ltd. v. State of Karnataka (1995) 1 SCC 574 and the connected matters which were decided on 19-10-1994. That judgment is reported in (1995) 1 SCC 574. After that decision, Review Petitions Nos. 507-511 of 1995 were filed. The order dated 25-4-1995 made in those review petitions is as under :

"One of the grounds taken for the prayer made to hear oral arguments before deciding the review petitions is that there was no opportunity to supplement the written submission filed before the Bench of three Judges and that the same could not be supplemented before the Constitution Bench. Accordingly, we permit the filing of supplementary written submissions, if any, by the parties mentioning therein and emphasising the additional submissions, if any on which reliance is sought to be placed. The supplementary written submissions, if any, be filed by the parties within four weeks. The prayer made for hearing oral arguments on the review petitions would then be considered. The matters be listed in Chambers thereafter"

2. After the supplementary written submissions had been filed by the parties, the review petitions were rejected by order dated 8-8-1995 as under :

"We have perused the grounds on which a review of the order is sought. We had by our order dated 25-4-1995 permitted the filing of supplementary written submissions by the parties and had stated that they should clearly emphasise the additional submissions, if any, on which reliance is sought to be placed. We had also stated that the prayer for hearing oral arguments would then be considered. Pursuant to the said order the written submissions have been filed and we have perused the same. Having perused the same we find that the submissions made therein have all been answered in the judgment sought to be reviewed. We have not noticed any submission on which we would like to hear oral arguments by counsel. Since we do not find any merit in the additional supplementary submissions filed in these proceedings we do not entertain the review petitions and reject them."

3. The present writ petition under Article 32 has been filed by the petitioners after the rejection of their review petitions as above.

4. The submissions of Shri G. Ramaswamy, learned counsel for the petitioners are two :

(1) The above civil appeals were listed before the Constitution Bench only for directions and were not heard on merits before they were decided on merits; and

(2) The judgment rendered in the civil appeals reported in *Khoday Distilleries Ltd. v. State of Karnataka* (1995) 1 SCC 574, is invalid on the ground of violation of principles of natural justice.

Reliance is placed on the decision in *A. R. Antulay v. R. S. Nayak* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 in support of these submissions. In substance, the argument of the learned counsel for the petitioners is that the civil appeals having been decided on merits without being heard on merits, the judgment rendered therein is invalid for violation of principles of natural justice. In our opinion, there is no merit in this submission.

5. The foundation for the argument advanced in support of the writ petition does not exist. The above-quoted orders dated 25-4-1995 and 8-8-1995 clearly show that even after the decision of the civil appeals, the petitioners were permitted to file supplementary written submissions, if any, emphasising the additional submissions, if any, on which reliance was sought to be placed on the merits : and the supplementary written submissions filed by the parties were also considered while deciding the review petitions. In the order rejecting the review petitions, it was clearly mentioned that all the submissions made by the parties had been answered in the judgment sought to be reviewed. The decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 has no application. The attempt made by this writ petition for reconsideration of the decision by the Constitution Bench in *Khoday Distilleries* (1995) 1 SCC 574 has no merit and reliance placed on the decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 on the facts of this case is misplaced.

6. In view of the strong reliance placed by the learned counsel for the petitioners on the decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 to invoke Article 32 of the Constitution for reconsideration of the aforesaid judgment deciding the civil appeals, we consider it appropriate to indicate that *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 does not hold that a decision of this Court after attaining finality can be reopened under Article 32. The decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 must be confined to the peculiar circumstances of that case as indicated in that judgment itself. The decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 was distinguished and confined to the facts of that case by a Constitution Bench in *Krishna Swami v. Union of India* (1992) 4 SCC 605, as under : (SCC p. 620, para 16)

'... *Antulay* case (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 is also distinguishable for the reason that therein the result of the earlier decision against him challenged by *Antulay* in the petition under Article 32 had the effect of conferring jurisdiction on a Court contrary to the specific statutory provision.... Moreover, judgment of *Mishra, J.* as well as that of *Mukharji, J.* as their Lordships were then, give a clear indication that the decision therein was not intended to be a precedent and was confined to the peculiar facts and circumstances of that case. This distinction is sufficient to hold that *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 does not permit these petitioners to claim reconsideration of the earlier decision in these circumstances."

7. It is clear that the decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 is based on the peculiar facts of that case wherein the question involved was of the conferment of jurisdiction on a court contrary to the specific statutory provision. In a case like the present, where in substance the challenge is to the correctness of a decision on merits after it has become final, there can be no question of invoking Article 32 of the Constitution to claim reconsideration of the decision on the basis of its effect in accordance with law. Frequent resort to the decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 in such situations is wholly misconceived and impels us to emphasise this fact.

8. Moreover, it may also be observed that even in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1, the writ petition under Article 32 filed by him to challenge the decision of this Court was dismissed and it was only in an appeal filed subsequently by *Antulay* against an order of the Bombay High Court made during the trial that the relief was granted to *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1. While dismissing the writ petition under Article 32 of the Constitution filed by *Antulay*, in *Abdul Rehman Antulay v. Union of India* (1988) 2 SCC 602 at 764 : (1984) 3 SCR 482 this Court observed as under : (SCC p. 764, para 5)

"In my view, the writ petition challenging the validity of the order and judgment passed by this Court as nullity or otherwise incorrect cannot be entertained. I wish to make it clear that the dismissal of this writ petition will not prejudice the right of the petitioner, to approach the Court with an appropriate review petition or to file any other application which he may be entitled to law to file."

9. These undisputed facts appear from the decision in *Antulay* (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1 itself on which reliance has been placed by the learned counsel for the petitioners.

10. Consequently, the writ petition has no merit and it is dismissed, accordingly.