

Sree Narayana Dharmasanghom Trust

Vs

Swami Prakasananda and Others

Civil Appeal No. 3013 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

09.04.1997

ORDER

1. Leave granted. This appeal, by special leave, arises from the judgment of the Kerala High Court, made on 16-1-1996 in RP No. 204 of 1995 in CRP No. 2724 of 1994.

2. The dispute has arisen with regard to the election to the Committee of Sree Narayana Dharmasanghom Trust. The Trust is governed by the scheme framed by the High Court in AS No. 14 of 1956, dated 26-3-1959. Since the term of the elected body was to expire on 10-8-1994, the Trust Board on 4-7-1994 decided to conduct election on 26-7-1994. Disputes had arisen as to the validity of the elections held on 26-7-1994 and the suit came to be filed. Ad interim injunction was granted by the learned Subordinate Judge, Attingal in OS No. 247 of 1994 on 22-11-1994. Against the interlocutory order passed by the appellate authority in CMA No. 167 of 1994, dated 2-12-1994, CRP No. 2727 of 1994 came to be filed. The High Court by judgment dated 19-6-1995 allowed the revision, set aside the order of the appellate authority and gave certain directions. Calling that matter in question SLP (C) No. 13667 of 1995 came to be filed in this Court. This Court on 29-6-1995 passed the following order :

"We do not find any ground warranting interference since it is an individual case and that too by an interim order. The SLP is dismissed. However, the trial court is directed to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of receipt of this order."

3. Thereafter, an application came to be filed to review the order passed by the High Court in the revision, which had been dismissed by the High Court holding that the order passed by the High Court stood merged with the order of this Court. As a consequence, the High Court cannot review the order. Thus this appeal, by special leave.

4. Shri P.S. Poti, learned Senior Counsel for the appellant, contends that this Court did not decide the matter on merits. When the patent error is apparent on the face of the record, it is always reviewable by the High Court and, therefore, the order dismissing the SLP does not operate as a final order. Therefore, the High Court has the power to review its order. We find no merit in the contention. In State of Maharashtra v. Prabhakar Bhikaji Ingle [(1996) 3 SCC 463 : 1996 SCC (L&S) 749] this Court has considered the similar controversy. The facts therein were that the Maharashtra Administrative Tribunal passed an order in OA No. 1169 of 1993 against which SLP was filed in this Court. It was dismissed by this Court on 28-8-1993. Pending the SLP, a review petition was filed in the Tribunal. The Tribunal reviewed its order. When that order came to be challenged, this Court held thus : (SCC pp. 464-65, paras 4-5)

"But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1 CPC or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court.

It is next contended by the learned counsel for the respondent that though the Tribunal was communicated with the order of this Court dated 25-8-1995, it has thereafter passed the order. It would mean that though it had the knowledge of dismissal of the order passed by this Court, the Tribunal has exercised the power of review and that, therefore, it cannot be said to be illegal. We are wholly unable to appreciate the contention of the learned counsel. We could appreciate that if the Tribunal had no knowledge of dismissal of the SLP it might, in certain circumstances, review its earlier order, e.g., if it was found that the order was vitiated by any manifest error of law apparent on the face of the record. But having received the communication that this Court has already upheld its order, the Tribunal's exercise of power can be said to be audacious and without any judicial discipline. Under those circumstances, we do not think that the Tribunal is justified in reviewing its own order when this Court had confirmed the order passed earlier."

5. Therefore, once this Court has passed an order, the order passed by the High Court stands merged with the order passed by this Court. Thereafter, the High Court/Tribunal is devoid of the jurisdiction to review the order. This question also was reiterated in *Yogendra Narayan Chowdhury v. Union of India* [(1996) 7 SCC 1 : 1996 SCC (L&S) 362] thus : (SCC p. 3, para 5)

"It is settled law that even the dismissal of special leave petition in limine without assigning reasons does not operate as *res judicata*. Under these circumstances, we are of the view that the view of the latter Bench of the CAT, Calcutta and of the Cuttack Bench are clearly consistent with the above reasoning. Therefore, we do not find that these are fit cases warranting interference."

6. Thus, it is settled law that even the dismissal of special leave petition in limine operates as a final order between the parties and any order passed by the High Court or Tribunal subsequently operates as a *res judicata* as far as the parties thereto are concerned. It is true that in *Indian Oil Corpn. Ltd. v. State of Bihar* [(1986) 4 SCC 146 : 1986 SCC (L&S) 740 : (1986) 3 SCR 553] (SCR at p. 558) this Court had pointed out that when the writ petition was dismissed by this Court in limine, the jurisdiction of the High Court under Article 226 is not precluded. The dismissal of the writ petition under Article 32 does not operate as *res judicata*. That principle is entirely different from the review of an order under Order 47, Rule 1. Under these circumstances, we are of the view that the High Court is well justified in refusing to review the order passed in the revision. However, since the records have been called by the High Court and the matter is pending, the trial court could not dispose of the matter within the time-limit, specified earlier, by this Court. Therefore, we cannot find fault with the trial court for non-disposal of the matter. However, the civil court is directed to dispose of the suit as indicated earlier within six months from now.

7. The appeal is accordingly dismissed. No costs.