**SUPREME COURT OF INDIA**

Ajit Kumar Barat

Vs.

Secretary, Indian Tea Association

Writ Petition (civil) 13754 of 2000

(D.P. Mohapatra and Shivaraj V. Patil JJ.)

02.05.2001

**JUDGMENT**

**Shivaraj V. Patil, J.**

1. In this writ petition filed under Article 32 of the Constitution of India, the Petitioner has sought for setting aside the judgment and order dated 14.2.2000 passed by this Court in C.A. No. 1041 of 2000 (Secretary, Indian Tea Association vs. Ajit Kumar Barat & Ors.)

2. The facts to the extent relevant to dispose of this petition briefly stated are the following:-

3. The petitioner was appointed as Assistant Secretary by the respondent No. 1 on 16.9.1986; was promoted to the post of Joint Secretary on 1.4.1991; was transferred on 22.5.1995 to Dibrugarh, which order of transfer was also the subject-matter of another litigation with which we are not concerned in this petition. His services were terminated with effect from 27.11.1995. An industrial dispute was raised by the petitioner. Labour Commissioner submitted the failure report in conciliation proceedings on 2.7.1997 recommending a reference, as according to him the question whether the petitioner was a workman required adjudication. Since the Government did not act, the petitioner filed writ petition in the High Court of Calcutta. The High Court directed the State Government to take decision under Section 12(5) of the Industrial Disputes Act, 1947 within the time fixed. The Government communicated its decision regretting its inability to make a reference saying that the petitioner was not a workman. Again, the petitioner moved the High Court against the said order of the State Government. Learned single Judge of the High Court made an order directing the State Government to make a reference as to whether the petitioner was a workman. The appeal filed by the respondents herein was dismissed by the Division Bench of the High Court. The respondent No. 1 herein brought the matter to this Court. This Court, by an elaborate order dated 14.2.2000, noticing the facts, contentions of the parties and the decisions allowed the Civil Appeal No. 1041 of 2000 and set aside the judgment of the High Court directing the State Government to make an appropriate reference.

4. The petitioner filed Review Petition No. 550 of 2000 in the said civil appeal No. 1041 of 2000, which was dismissed by this Court on 26.7.2000. Now the petitioner has filed the present writ petition seeking the relief as stated above.

5. We heard the petitioner (party in person) at length. In response to our query as to how the writ petition is maintainable so as to question the validity and correctness of the order of this Court passed on 14.2.2000 and to set aside the same in a petition filed under Article 32 of the Constitution, he submitted that his Fundamental Rights under Article 21 of the Constitution are affected because of the decision of this Court passed in the aforesaid appeal, ignoring the binding precedents of larger benches of this Court; this Court has not considered the submissions and decisions cited by him before passing the order in the said appeal. He invited our attention to the judgment of this Court in *A.R. Antulay vs. R.S. Nayak and another*[1]. He read to us paras 38, 61 and 62 of the said judgment. Para 38 deals with a decree passed without jurisdiction and states that such a decree is a nullity, the validity of which could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. What is stated in para 38 has no relevance on the question as to the maintainability of writ petition under Article 32 of the Constitution so as to challenge the order passed by this Court on merits. In para 61 it is noticed that directions were given without hearing the appellant and in the circumstances that order was bad. Further in para 62 reference is made to *Nawabkhans case*[2] wherein it was held that an order passed without hearing a party, which affects its Fundamental Rights, is void. The petitioners case is not such where an order was passed without hearing him. The other side requested us to read paras 102 and 109 of the same judgment. Para 102, to the extent relevant, reads: -

> "What remains to be decided is the procedure by which the direction of the 16th of February, 1984, could be recalled or altered. There can be no doubt that certiorari shall not lie to quash a judicial order of this Court. That is so on account of the fact that the Benches of this Court are not subordinate to larger Benches thereof and certiorari is, therefore, not admissible for quashing of the orders made on the judicial side of the Court.
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> Shah, J. who wrote a separate judgment upheld the vires of the rule and directed dismissal of the petition. The fact that a judicial order was being made the subject matter of a petition under Article 32 of the Constitution was not noticed and whether such a proceeding was tenable was not considered. A nine-Judge bench of this Court in *Naresh shridhar Mirajkar v. State of Maharashtra*[3], referred to the judgment in *Prem Chand Gargs case*[4] Gajendragadkar, C.J., who delivered the leading and majority judgment stated at page 765 (of 1966) 3 SCR) : (at pp. 14-15 of AIR 1967 SC) of the Reports:-
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> It is difficult to see how this decision can be pressed into service by Mr. Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself... In view of this decision in *Mirajkars case*[5] it must be taken as concluded that judicial proceedings in this Court are not subject to the writ jurisdiction thereof."
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> (Emphasis supplied)

6. From this judgment it is clear that the validity of an order passed by this Court itself cannot be subject to writ jurisdiction of this Court. Reading of para 109 of the same judgment shows that the directions given in the said case were on peculiar facts and circumstances. In the said para, it is stated thus: -

> "There is still another aspect which should be taken note of. Finality of the orders is the rule. By our directing recall of an order the well-settled propositions of law would not be set at naught. Such a situation may not be recur in the ordinary course of judicial functioning and if there be one, certainly the bench before which it comes would appropriately deal with it. No strait jacket formula can be laid down for judicial functioning particularly for the apex Court. The apprehension that the present decision may be used as a precedent to challenge judicial orders of this Court is perhaps misplaced because those who are familiar with the judicial functioning are aware of the limits and they would not seek support from this case as a precedent. We are sure that if precedent value is sought to be derived out of this decision, the Court which is asked to use this as an instrument would be alive to the peculiar facts and circumstances of the case in which this order is being made."
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> (Emphasis supplied)

7. That was a case where an order had been made against the appellant in his absence transferring the criminal case to the High Court when there was specific provision for trial of the case by a special court. In view of what is stated in the above para itself, the said decision cannot be used as a precedent to challenge the judicial order of this Court which is otherwise binding on the parties.

8. The petitioner cited another decision of this Court in Kavalappara Kottarathil Kochunni alias Moopil Nayar vs. State of Madras and others [AIR 1959 SC 725]. That was not a case where a writ petition was filed under Article 32 of the Constitution for quashing the very order passed by this Court. That was a petition filed for enforcing Fundamental Rights of the petitioner making grievance against the action of the State.

9. He also cited decision of this Court in *M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi*[6] made in Review Petition Nos. 111-112 of 1976, to contend that where there is an apparent error on the face of the record, this Court can correct the error. This judgment also does not help the petitioner as it is not a case for review. We may notice here itself that the review application No. 550 of 2000 filed by the petitioner including a ground

that larger bench decisions of this Court were not considered, is already dismissed by this court on 26.7.2000. This being the position, it cannot be said that the said judgment passed by this court in C.A. No. 1041 of 2000 on merits offended Fundamental Right of the petitioner under Article 21 of the Constitution. In our view, having regard to the facts and circumstances of the case, this is not a fit case to be entertained to exercise jurisdiction under Article 32 of the Constitution. Accordingly, we decline to do so.

In the light of what is stated above, the writ petition is dismissed. No costs.

[1]*AIR 1988 SC 1531*
[2]*(1974) 3 SCR 427*
[3]*(1966) 3 SCR 744*
[4]*(AIR 1963 SC 996)*
[5]*(AIR 1967 SC 1)*
[6]*AIR 1980 SC 674*