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Court : Karnataka

Decided On : Feb-22-1977

Reported in : AIR1977Kant168; ILR1977KAR360; 1977(2)KarLJ505

Judge : B. Venkataswami, J.

Acts : [Constitution of India](#) - Articles 131 and 141

Appellant : The State of Karnataka

Respondent : The Indian Union Owning South Central Railway and ors.

Advocate for Def. : H.G. Balakrishna, Adv.

Advocate for Pet/Ap. : N. Venkatachala, Addl. Government Adv.

Judgement :

ORDER

1. These 24 petitions can be disposed of by a common order as a common question of law has arisen in all of them. They are preferred by the State of Karnataka against the judgment of the Civil Judge, Bagalkot, in Miscellaneous Appeals Nos. 14, 19, 20, 21, 32, 33, 34 and 35 of 1973 and 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 22, 30 and 31 of 1974, whereby the judgment of the Additional Munsiff at Bagalkot in Original Suits Nos. 78, 63, 65, 67, 11, 12, 13, 66, 71, 75, 79,

77, 81, 62, 68, 70, 76, 80, 74, 64, 9, 69, 8 and 10 of 1972 respectively stood affirmed.

2. The suits in point were filed by the State of Karnataka for recovery of damages for short delivery of wheat by the Southern Railway Administration which was a Property of the Union of India. Among the defences raised on behalf of the defendants, there was one appertaining to the jurisdiction of the Court to entertain suits of the present nature. The specific plea in that regard was that the suits, being between the State and the Union of India, were only cognizable by the Supreme Court under Art. 131 of the [Constitution of India](#). The trial court upheld this plea of the defendants and directed the return of the plaints for pre- to the proper Court. The appeals filed by the State were dismissed by the learned Civil Judge, Principally following the observations in the decision of the Full Bench of the High Court of Kerala in the case of Kerala State v. General Manager, Southern Railway, Madras, : AIR1965 Ker277 . Hence these petitions.

3. On behalf of the State, the learned Second Additional Government Advocate, placing reliance on certain decisions of the Supreme Court, which I shall refer to later, contended that the enforceable 'legal right' envisaged under Art. 131 of the Constitution must be one which flows directly from the Constitution and not any other, and, that the present suits were not concerned with any such rights. Sri H. G. Balakrishna, the learned counsel appearing for the defendant-Railway Administration, contended that the decision relied on on behalf of the petitioner was clearly distinguishable in that the specific issue relative to Art. 131 of the Constitution, which had been noticed therein, had not been decided. He also invited attention to the judgment of the Supreme Court whereby the appeal against the judgment of the Kerala High Court referred to and relied on by the Courts below, had been dismissed.

4. I shall now proceed to examine the cases cited. In the case of Kerala State v. General Manager, Southern Railway, : AIR1965 Ker277 , a Full Bench of the Kerala High Court had occasion to consider a question whether a suit by a State against the Union of India could be in only in the Supreme Court of India under Art. 131(a) of the Constitution. That was also a suit filed by the State of Kerala for

recovery of damages for short delivery of goods consigned through Railways. The only portion of the judgment relevant to this question reads:

'The plaintiff has put in an application in this Court for impleading the Union of India as a party to the suit. We do not think that any useful purpose will be served by allowing this application. If the application is allowed and the Union of India made a party, the suit must be dismissed as under Art. 131(a) of the [Constitution of India](#) a suit by one State against the Union of India can only lie in the Supreme Court of India. We therefore dismiss the petition.'

It will be seen from the above observations that no reasons have been furnished for the conclusion arrived at. I have also not been able to see, any discussion bear- on this question in any other portion of the judgment.

5. The above judgment had been taken up in appeal to the Supreme Court and the judgment thereon has been rendered in the case of State of Kerala v. General Manager, Southern Railway, : [1977]1SCR419 . The Supreme Court while noticing the question posed before the Kerala High Court bearing on Art. 131 of the Constitution, has not adverted to the scope and ambit of Art. 131 of the Constitution in the body of the judgment. The decision in the case turned actually on whether or not the Union of India was a necessary party to such a suit and whether an attempt to amend the plaint by impleading the Union of India at the stage of the appeal before High Court ought to be acceded to. It is therefore clear that these two judgments to which my attention has been invited by the learned counsel for the Railways, are of little help in the interpretation of Art. 131 of the [Constitution of India](#).

6. I will now turn to the cases relied on by the learned Government Advocate. A Constitution Bench of the Supreme Court in the case of State of Bihar v. Union of India, (: [1970]2SCR522 had occasion to examine and interpret 'the nature, of the legal right, contemplated under Art. 131 of the [Constitution of India](#). The relevant enunciation reads:

'Although Art. 131' does not define the scope, of the disputes which this Court may be called upon to determine in the same way as S. 204 of the Government of India

Act, and we do not find it necessary to do so, this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India.'

From the above enunciation it seems to me clear enough that the legal right contemplated under Art. 131 of the Constitution is one which is clearly relatable to a right flowing from the provisions of the Constitution, and not to any other. In the instant case,' the right sought to be enforced arises from a contract between a

carrier and a consignee. But Sri Bala krishna relied on an enunciation in the judgment and contended that that was a case which was distinguishable on facts in that the issue relating to the question 'whether the alleged cause or causes of action in this suit are within Art. 131 of the Constitution' had not been decided and issue No. 2, namely, 'whether this suit is within the scope of Art. 131 of the Constitution in view of a non-State, viz., defendant No. 2, having been made a party to the suit ?' had been answered in the negative. It is apposite to refer to the observations of the Supreme Court in the context of the decision on issue No. 2. The enunciation reads:

'Apart from these special provisions a dispute which falls within the ambit of Art. 131 can only be determined in the forum mentioned therein, namely, the Supreme Court of India, provided there has not been impleaded in any said dispute any Private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative. A dispute in which such a private party is involved must be brought before a court, other than this court, having jurisdiction over the matter.'

7. It is no doubt true that the 1st issue in the case of State of Bihar which had a direct bearing on the scope and ambit of Art. 131 of the [Constitution of India](#) had been left undecided by the Supreme Court. But the enunciation concerning the legal right envisaged under Article 131 of the [Constitution of India](#) and produced earlier, cannot on that account be considered as obiter. It is clear from that case

even in the context of the decision on the second issue concerned therewith, the definition and the ambit of Article 131 was to some extent involved. This apart, even if it is considered as obiter, which seems to be the case in so far as I could gather from the contention urged, by Sri Balakrishna, it would be binding on all the Courts in the country. In this context, attention was invited to an enunciation of the Supreme Court in the case of *Municipal Committee, Amritsar v. Hazara Singh*, : [1975]3SCR914 . The relevant enunciation, reproduced from an earlier judgment of the Supreme Court in *Malwa Co-operative Milk Union Ltd., Indore v. Biharilal*, decided on 14-8-1967, reads: (Reported in 1968 Jab LJ 213(SC))

'Judicial -propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Art. 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in *Gurcharan Singh v. State of Punjab*, (1972 FAC 549) (Punj & Har) and *Prakash Chandra Pathak v. State of Uttar Pradesh*, : AIR 1960 SC195 that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases.' For these reasons, I am unable to uphold the contention urged by Sri Balakrishna in the context of *State of Bihar's* case.

8. In the light of the foregoing discussion, the revision petitions are accepted and are accordingly allowed. The orders of both the Courts below are set aside. The matters will now go back to the trial Court with a direction that the complaints concerned be entertained and suits be disposed of in accordance with law. There will be no order as to costs.

9. Revisions allowed.