

State of Mysore Vs. B. Basavalingappa

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Court : Karnataka

Decided On : Aug-09-1971

Reported in : AIR1971Kant355; AIR1971Mys355; (1971)2MysLJ237

Judge : D.M. Chandrashekhar and ;S.R. Range Gowda, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 113

Appeal No. : C.R. No. 7 of 1969

Appellant : State of Mysore

Respondent : B. Basavalingappa

Advocate for Def. : B.S. Raikote and ;M.M. Jagirdar, Advs.

Advocate for Pet/Ap. : N. Venkatachala, High Court Govt. Pleader

Disposition : Reference rejected

Judgement :

Chandrashekhar, J.

This reference is purported to have been made under Section 113. C. P. C. by the Second Additional First Munsiff. Bangalore, before whom the Suit, O. S. No. 357 of 1968, was pending.

2. The learned Munsiff has stated a case, formulated the question referred for the opinion of this Court, and has also set out his opinion on that question. That question reads:

'Whether rules 5 (1) and 5 (2) of the Mysore Residences of the Deputy Ministers (Furnishing) Rules, 1956, are invalid and inoperative.' The Mysore Residences of Deputy Ministers (Furnishing) Rules, 1956, (hereinafter referred to as the Rules) were made by the Government of Mysore in exercise of the rule-making power under Section 15 of the Mysore Ministers Salaries and Allowances Act, 1956 (hereinafter referred to as the Act.)

3. In the course of his reference, the learned Munsiff has observed that the suit involves a question as to the validity of Sub-rule (1) of Clause (b) of Sub-rule (2) of Rule 5 which in his opinion, are ultravires of the Act and invalid. The learned Munsiff has also stated that it was not competent for him to declare any rule as invalid and that therefore, it became necessary for him to make this reference.

4. Both the learned Government Pleaders who appeared for the State of Mysore and Mr. Manohar Rao Jagirdar, learned counsel appearing in this Court for the defendant, submitted that this reference is incompetent because it does not relate to the validity of any Act, Ordinance, or Regulation or any provision contained therein. The proviso to Section 113 C. P. C. reads:

'Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained therein, that Ordinance or Regulation the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and -the reasons therefor, and refer the same for the opinion of the High Court.'

5. It is seen from the above proviso that it empowers the Court to make a reference where a case pending before it, involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained therein. The

proviso does not empower the Court to make such a reference where a case involves a question as to the validity of any rule, bye-law or notification or order issued under any Act,- Ordinance or Regulation. The view we have taken receives support from the decision in Shersingh v. Ghansiram, . There, the Munsiff referred to the High Court under Section 113, C. P. C. two questions as to the validity of a notification issued under an enactment. In rejecting the reference, Wanchoo, C. J., who spoke for the Bench said that a notification is obviously very different from an Act, Ordinance or Regulation and that a reference under Section 113 C. P. C., can only be made as to the validity of an Act, Ordinance or Regulation.

6. However, the learned Munsiff took the view that a rule made under an Act. becomes a part of the Act, and that therefore even a question as to the validity of a rule, can be referred under the proviso to Section 113, C. P. C.

7. Both in Section 3(51) of the General Clauses Act, 1897 (Central Act No. 10 of 1897) and Section 3 (34) of the Mysore General Clauses Act, 1899, the word 'Rule' has been defined as a rule made in exercise of power conferred by any enactment and shall include a regulation made as a rule under any enactment. There is a clear distinction between a rule made in exercise of the power conferred by an enactment and a provision in an enactment. Hence we are unable to agree with the view taken by the learned Munsiff that a rule can be regarded as a provision in an enactment.

8. We may point out here that it is not incompetent for subordinate courts to pronounce upon the validity of any rule, bye-law, notification, or order made under any enactment.

9. Hence we reject this reference and decline to express any opinion on the question formulated therein. In this reference there will be no order as to costs.

10. The learned Munsiff is directed to dispose of the suit expeditiously. Let a copy of this order be communicated to the learned Munsiff within 5 days from this date.

11. Reference rejected.

