

Abdul Rahman Vs. Centre for Public Interest Litigation and ors.

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Court : Delhi

Decided On : Apr-05-2002

Reported in : 2002IVAD(Delhi)608; 97(2002)DLT524; 2002(62)DRJ692

Judge : Staya Brata Sinha, C.J. and; D.K. Jain, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1 and 1(1); [Constitution of India](#) - Articled 32, 136 and 141; Limitation Act - Sections 5

Appeal No. : Review Petition No. 1611/01 and CMs 1613 and 1614/01 in CWP 4003/1995

Appellant : Abdul Rahman

Respondent : Centre for Public Interest Litigation and ors.

Advocate for Def. : H.K. Puri, Adv. for IOC

Advocate for Pet/Ap. : Shobha, Adv

Disposition : Review petition dismissed;Review petition dismissed

Judgement :

D.K. Jain, J.

1. By this petition under Order 47 Rule 1 CPC the petitioner seeks a review of the order, dated 3 December 1999, whereby the LPG distributorship allotted to him

under the discretionary quota of the Minister for Petroleum was cancelled on the ground that the discretion exercised in his favor was not proper as no verification was carried out before the order of allotment was made.

2. To appreciate the controversy, it would be necessary to briefly refer to the background facts. A public interest petition was filed in the Supreme Court by Centre for Public Interest Litigation under Article 32 of the [Constitution of India](#), inter alia, praying for laying down guidelines to regulate exercise of discretion in the matter of allotments of petroleum and LPG dealerships under the discretionary quota. The Apex Court laid down the norms/guidelines for making such allotments. The said decision is since reported as Centre for Public Interest Litigation v. Union of India and Ors. . Yet another petition was filed by the Common Cause in the Supreme Court, praying for cancellation of 15 allotments made by the Minister, inter alia, on the ground that the allotments had been made mala fide and the decision of the Minister was arbitrary and motivated by extraneous considerations. During the pendency of the second petition before the Apex Court, writ petitions, being CWP No. 4003 and 4430/95 were filed in this Court by the Centre for Public Interest Litigation, challenging the allotments of petrol pumps/gas agencies etc., to various persons during the periods 1992-93, 1993-94, 1994-95 and 1995-96. However, on a transfer petition being filed in the Supreme Court, further proceedings in the said writ petitions were stayed.

3. Ultimately the Supreme Court cancelled all the allotments made in favor of 15 persons, mentioned in another petition, holding that the allotments were arbitrary, discriminatory, mala fide and wholly illegal. While disposing of the said petition, the Supreme Court not only vacated the order staying the proceedings in this Court, it also directed this Court to go into the validity of each of the allotments of retail outlets for petrol pumps/gas agencies to various persons, after hearing them in accordance with law. (See: Common Cause, A Registered Society v. Union of India and Others : AIR 1996 SC3538 .

4. Pursuant to the directions of the Apex Court, the writ petitions were taken up for consideration. Vide order dated 29 August 1997, in CWP 4003/95, this Court came to the conclusion that the examination of files clearly showed that these were not

cases of aberration here and there but were cases which showed a pattern of favoritism. The Court, on examination of the materials before it and on perusal of the original files, took the view that in some of the cases, the discretion had been exercised on sufficient material and after enquiry and, therefore, held these allotment to be in proper exercise of discretion and accordingly discharged the notices of cancellation. However, in those cases where the Court found either there was no material before the concerned Minister in support of the applications filed to justify the exercise of power for allotment under the discretionary quota or such allotments had been made on account of political patronage or some other extraneous considerations, the allotments made were cancelled with certain directions for take over. Since the cases were large in number, these were taken up in small batches.

5. Petitioner's case was taken up for consideration on 3 December 1999, and as noticed above, on perusal of the original record it was found that no proper verification had been carried out in his case before the order was passed by the Minister allotting an LPG distributorship to him. The allotment was accordingly cancelled.

6. It appears that order dated 3 December 1999, passed by this Court, was challenged by the petitioner before the Supreme Court in SLP (C) No. 12782/00.

7. The said special leave petition came up for consideration of the Apex Court on 28 November 2001 along with a large number of other civil appeals and special leave petitions. While dismissing these appeals and special leave petitions on the basis of its judgment in the matter of V. Purushotham Rao v. Union of India and Ors. : (2002)10SCC15, the Court dismissed petitioner's special leave petition with the following order:

'SLP (C) 12782/00: Heard. We see no infirmity with the impugned order. The special leave petition is dismissed.'

8. The present review petition has now been filed along with an application (CM 1613/01) under Section 5 of the Limitation Act for condensation of delay in filing this petition, on the ground that the impugned order has been passed ignoring

certain facts which are on the record of the petitioner, more specifically, the questionnaire, which had been issued to the petitioner.

9. We have heard learned counsel for the petitioner. Faced with the query from the Court as to how the impugned order could be reviewed by this Court after the special leave petition against the said order had been dismissed by the Supreme Court in terms of the afore-extracted order, it was vehemently contended by learned counsel for the petitioner that the whole batch of matters, which consisted of some matters where leave to appeal had been granted and in some it was yet to be granted, listed on 28 November 2001, were disposed of by separate orders and the special leave petition filed by the petitioner was dismissed by a non-speaking order without grant of leave and, therefore, the present review petition is maintainable in view of the judgment of the Apex Court in the case of Kunhayammed and Ors. v. State of Kerala and Anr. : [2000]245ITR360(SC) .

10. Thus, the first and the foremost question which arises for our consideration is whether, in view of the aforementioned order passed by the Apex Court on 28 November 2001, this Court would be justified in reviewing the impugned order.

11. The question involving the legal implications and the impact of an order rejecting a petition, seeking grant of special leave to appeal under Article 136 of the [Constitution of India](#), in the backdrop of High Court's power to entertain a review against the same order which was appealed against, came up for consideration before the Apex Court recently in Kunhayammed's case (supra). While lucidly explaining the doctrine of merger, the Court culled out the following broad principles which could be applied in a given situation:

'(i) Where an appeal or revision is provided against an order passed by a Court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decisions put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 36 of the Constitution is divisible into to stages. First stage is up to the disposal of prayer for special leave to file an

appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal of unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability or merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

((vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of

merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court, the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-rule (1) of Rule (1) of Order 47 of the CPC.'

12. Since in the present case, as noted above, petitioner's petition seeking leave to appeal has been dismissed by the Supreme Court, in the light of the aforementioned principles there cannot be serious quarrel with the proposition urged by the learned counsel for the petitioner that strictly speaking the doctrine of merger may not apply and, therefore, there may not be any impediment in this Court's reviewing the order against which leave to appeal has not been granted. But if we read the order dated 28 November 2001 in totality, the answer to the question posed above is not as simple as the learned counsel thinks it to be, particularly in view of the observations of the Apex Court in paragraph 40 of its decision in the case of Kunhayammed (supra). The Court has observed thus:

'Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of the Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other Court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.'

(Emphasis supplied by us)

13. As noted above, petitioner's special leave petition was taken up for consideration by the Supreme Court along with other civil appeals arising from the same order of this Court dated 3 december 1999. These appeals along with the SLP were considered by the Court together in terms of their judgment in the case of V. Purushotham Rao (supra). The Court examined each case of allotment and then came to the conclusion that there was no infirmity with the impugned order. In this view of the matte the afore-extracted observations of the Supreme Court assume importance as petitioner's SLP was dismissed by the Apex Court by assigning the reasons. It was not a dismissal simplicities or in liming. The Court examined the case of the petitioner, in the light of the broad principles laid down by it while dealing with similar discretionary allotments. Obviously the Court did not find any distinguishing feature in the present case as compared to other similarly situated persons, whose allotments had also been cancelled. Any order by this Court now at this stage, which may be in conflict with the earlier order which stands approved by the Apex Court, would neither be permissible nor desirable.

14. We are of the considered view that the present application for review is misconceived and, therefore, the same deserves to be dismissed. We order accordingly.

15. Since we have come to the conclusion that order dated 3 December 1999 cannot be reviewed, we do not consider it necessary to deal with the petitioner's application seeking condensation of delay in filing the review application.

Both the application stand disposed of in the above terms.

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