

Shersingh Vs. Ghansiram

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Court : Rajasthan

Decided On : Dec-09-1953

Reported in : AIR1954Raj233

Judge : Wanchoo, C.J. and; Dave, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 113 and 133 - Order 46, Rule 1; [Constitution of India](#) - Articles 13 and 14

Appeal No. : Civil Reference No. 24 of 1952

Appellant : Shersingh

Respondent : Ghansiram

Advocate for Def. : L.N. Chhangani, Govt. Adv. and; Utsavalal, Adv.

Advocate for Pet/Ap. : Pyarelal, Adv.

Judgement :

Wanchoo, C.J.

1. This is a reference by the Munsif of Jaitaran, and has arisen in the following circumstances.

2. A suit was filed by Shri Shersingh, Jagirdar of Balunda, against Ghansiram for a sum of Rs. 600/-. In that suit the defendant wanted to examine the plaintiff as his

witness. Thereupon, an application was made by the plaintiff on 17-11-1951, to the effect that he was exempt from attendance in Court by virtue of a notification issued by the former State of Jodhpur, No. 5587, dated 6-2-1934, published in the Jodhpur Gazette of 20-3-1934. Thereupon, there was an objection by the defendant whose case was (i) that that notification had lost all force in view of certain changes in the law, and (ii) that, in any case, in view of Article 14 of the Constitution, the privilege conferred by the notification could no longer be enjoyed as it infringed equality before the law provided by that article.

3. The matter was argued before the Munsif, and he has referred two questions to us under the proviso to Section 113, Civil P. C. These questions are:

1. Is the notification, dated 20-3-1934, alive or not 'on a consideration of Section 20(2) of the Code of Civil Procedure (Amendment) Act (No. 2) of 1951?

2. Has the notification, dated 20-3-1934, become void in view of the provisions in Part III of the Constitution relating to fundamental rights, particularly in view of the provision of equality before the law and non-discrimination?

4. A preliminary objection has been raised that this reference is incompetent. It is pointed out that Order 46, Rule 1, which supplements the provisions of Section 113, Civil P. C., provides that reference is only competent in a suit in which the decree is not subject to appeal. It is urged that as the decree in this suit is subject to appeal, no reference is possible except where the case is covered strictly by the proviso to Section 113. This statement of the law is correct, and we have, therefore, to see whether this reference is covered strictly by the proviso to Section 113.

5. The proviso to Section 113 lays down 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 in an Act, 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.

6. In order that this proviso should apply, it is necessary that a question as to the validity of any Act, Ordinance or Regulation should arise. Further the Court making the reference should be of the opinion that the Act, Ordinance or Regulation, or any provision thereof is invalid or inoperative. Thirdly, the provision should not till then have been declared invalid by the High Court to which the Court is subordinate, or by the Supreme Court. Fourthly, the determination of the validity of the Act, Ordinance or Regulation, or any provision thereof should be necessary for the disposal of the suit. When all these conditions are satisfied, the subordinate Court is in fact bound to make the reference to this Court setting out its opinion and the reasons for it.

7. So far as the first question put to us is concerned, it is obvious that it does not fulfil the conditions mentioned above, inasmuch as we are required to give our opinion as to the continued existence of a notification, and not about the validity of any Act, Ordinance or Regulation. A notification is obviously very different from an Act, Ordinance or Regulation and a reference under the proviso to Section 113 can only be made as to the validity of an Act, Ordinance or Regulation. We are, therefore, not prepared to answer the first question.

8. So far as the second question is concerned, the argument is that the Munsif has asked us to answer the question whether the notification of 20-3-1934, has become void on account of Article 14 of the Constitution, and has not asked us to express any opinion as to the validity of Section 133, Civil P. C. under which the notification was made. Literally therefore this question also does not put to us for decision the validity of any provision of any Act, Ordinance or Regulation. At the same time, it is obvious from the discussion in the referring order and the words in which the question has been framed that the Munsif wants a decision from us as to the validity of Section 133, Civil P. C. in view of Article 14 of the Constitution.

If he was merely asking us about the validity of the notification in the sense that it could not be issued in the form in which it has been actually issued under Section 133, that would not be a question relating to the validity of any Act, Ordinance or Regulation and we would not be prepared to answer it. Learned counsel for the

defendant did try to raise the question that the notification was invalid as it did not comply with the provisions of Section 133, Civil P. C.; but we refused him permission to argue that point before us in this reference.

But even if we were to say that the form of the question put by the Munsif does not comply with the proviso to Section 113, Civil P. C., all that the Munsif would have to do is to make a verbal change in the question, and resubmit the matter to us for decision, of the validity of Section 133. In reality, therefore, the second question raises the validity of Section 133, Civil P. C., though the Munsif has framed it as if he raised the validity of the notification of 20-3-1934. In this view of the matter, we are of opinion that the reference is competent, so far as the second question is concerned, and we now propose to dispose it of.

9. Section 133 (1), Civil P. C., which is material for our purposes, reads as follows:

'The State Government may by notification in the official gazette exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.'

Sub-section (2) of Section 133 is only a consequential provision, and if Sub-section (1) falls, Sub-section (2) will fall as well. The attack on Section 133 is in this way. Article 14 provides that the State shall not deny to any person equality before the law, or the equal protection of the laws within the territory of India.

It is urged that Section 133 clearly infringes the provisions relating to equality before the law, inasmuch as it arms the State Government with power to exempt from personal appearance in Court any person, and there is no basis for a reasonable classification provided in Section 133 to justify the exemption. Thus Section 133 is said to confer on the State Government arbitrary power which could be utilized to exempt any person it likes to exempt from appearance in Court, and there is no indication in that section of any principle on the basis of which such exemption can be granted. Further, the word 'rank', which appears in that section, is said to be a term so vague, elusive and uncertain that it cannot form the basis of any reasonable classification.

10. The reply to this argument is that the power given to the State Government under Section 133 is not a naked or arbitrary power which can be used by the State Government without any check or control being provided under the law as to the manner in which it should be used. It is said that the words 'whose rank, in the opinion of such Government, entitles him to the privilege of exemption' clearly indicate the basis on which the State Government should grant an exemption, and therefore there is provision for a reasonable classification in Section 133.

11. Before we examine the arguments put forward in this way by the parties, we may briefly refer to some cases defining the scope of Article 14 of the Constitution.

12. In -- 'Charanjit Lal v. Union of India', AIR 1951 SC 41 (A), Article 14 was considered at length, and the conclusions arrived at in that case were summarised in -- 'The State of Bombay v. F. N. Balsara', AIR 1951 SC 318 (B), by Fazl Ali J. at, p. 326 in these words:

'1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any other individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

3. The principle of equality does not mean that every law must have universal application for all persons' who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

4. The principle does not take away from the State the power of classifying persons for the legitimate purposes.

5. Every classification is in some degree likely to produce some inequality and mere production of inequality is not enough.

6. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.'

13. The matter came to be considered again in -- 'State of West Bengal v. Anwar Ali Sarkar', AIR 1952 SC 75 (C), with reference to the West Bengal Special Courts Ordinance, 1949, and it was decided by the Supreme Court that the Ordinance was invalid as it infringed Article 14 of the Constitution. At p. 91, Mukherjea J. observed as follows:

'The question in each case would be: whether the characteristics of the class are such as to provide a rational justification for the differences introduced.'

Further dealing with the argument that the provision of a speedier trial was a sufficient basis for the rational justification of the difference introduced in that Act, the learned Judge observed as follows at p. 91:

'I am definitely of opinion that the necessity of a speedier trial is too vague, uncertain and elusive a criterion to form a rational basis for the discriminations made.'

14. The last case, to which reference may be made, is -- 'Kathi Raning Rawat v. State of Saurashtra', AIR 1952 SC 123 (D), dealing with the Saurashtra State Public Safety Measures Ordinance of 1948. This case was decided by the same Judges who decided the West Bengal case cited above. But in this case the majority of the Judges came to the conclusion that the Saurashtra Ordinance was valid and did not offend against Article 14 as there was a reasonable basis for classification in that Act, which therefore was sufficient to permit the differentiation

introduced therein.

Fazl Ali J. in this connection made the following observations at p. 127:

'I think that a distinction should be drawn between' 'discrimination without reason' and 'discrimination with reason.' The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances.'

15. Then dealing with the West Bengal case in which the Act was declared invalid, the learned Judge observed as follows:

'Having laid down a procedure which was materially different from and less advantageous to the accused than the ordinary procedure, that Act gave uncontrolled and unguided authority to the State Government to put that procedure into operation in the trial of any case or class of cases or any offence or class of offences. There was no principle to be found in that Act to control the application of the discriminatory provisions or to correlate those provisions to some tangible and rational objective, in such a way as to enable anyone reading the Act to say: If that is the objective, the provisions as to special treatment of the offences seem to be quite suitable and there can be no objection to dealing with a particular type of offences on a special footing.

The mere mention of speedier trial as the object of the Act did not cure the defect, because the expression 'speedier trial' standing by itself provided no rational basis of classification.'

16. We have, therefore, to see whether Section 133, Civil P. C., is invalid by reason of Article 14 of the Constitution read with Article 13 because there is no reasonable basis for classification in that section. In the first place, it is well to remark that the section provides for exemption of individuals and not of classes and that in itself suggests want of any reasonable basis for classification.

We are not unmindful of the fact that it is open for the Legislature to make a law applying to one person only if there is sufficient basis or reason for it. It was on that ground that the law relating to the Sholapur Mill, though it was with respect to that Mill only, was upheld in -- 'Charanjit Lal's case (A)'. But Section 133 is not of that kind. But Section 133 is not a law relating to a particular individual who forms a class by itself. It is a law which gives the State Government power to exempt any person from appearance before a Court of law, and in order that that power may be upheld, it is necessary to see Whether that power is based on any classification which alone is the rational justification for discrimination of this kind.

17. What then is the basis of the classification in this case? That basis is said to be in the words 'whose rank, in the opinion of such Government, entitles him to the privilege of exemption.' Here again it is the subjective opinion of the Government, which controls the grant of exemption. We have then to see what is the check or basis on which that subjective opinion is to be arrived at. That basis is only that the rank of the person concerned should be such as to entitle him to the privilege of exemption. To our mind this is a very vague, uncertain and elusive basis to form the basis of a sound classification which can be rationally justified.

The meaning of the word 'rank' is varied, and we find so many different meanings given to it in Webster's Dictionary, Vol. 2, p. 2061:

1. Relative position or order, relative standing,
2. Grade of official standing as in the army, navy or nobility, etc.,
3. Degree of dignity, eminence or excellence; also relative position in civil or social life or in any scale of comparison, status, grade,
4. Elevated grade or standing, high degree, high social position, distinction, eminence.

In view of these varied meanings of the word 'rank', and in the absence of any indication as to what should guide the State Government in holding that a particular person has such rank as would entitle him to exemption, the section can only be held to give unregulated power to the State Government to exempt any

person from appearance in Court. There is thus, in our opinion, no basis for a classification in the section by the use of the word 'rank', and it really makes little difference whether that word is there or not. The section would, in our opinion, mean almost the same even if that word was not there, and if it said that the State Government may exempt any one from personal appearance who, in the opinion of such Government, was entitled to such exemption.

This is in reality all that the section says and the use of the word 'rank' does not introduce any rational basis for making a classification. We are, therefore, of opinion that Section 133, Civil P. C., as it stands, is invalid by virtue of Article 13 of the Constitution, as it infringes the provision of equality before law enshrined in Article 14 of the Constitution. As Section 133 itself is invalid, the notification of 20-3-1934, which is based on that section, falls.

18. We refuse to answer the first question put to us. Our answer to the second question is that as Section 133, of Civil P. C. is invalidated by Article 13 of the Constitution read with Article 14. the notification, dated 20-3-1934, falls automatically. Let this answer be returned to the Munsif concerned. We order parties to bear their own costs of this Court.

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