
(1979) 02 KAR CK 0012

In the Karnataka High Court

Case No : Civil Revision Petition No. 1603 of 1975

Govindanaik G. Kalaghatigi

APPELLANT

Vs

West Patent Press Co. Ltd. and Another

RESPONDENT

Date of Decision : 26-02-1979

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : AIR 1980 Kar 92 : (1979) ILR (Kar) 1401

Hon'ble Judges : D.M. Chandrashekhar, C.J.;Srinivasa Iyengar, J;N.D. Venkatesh, J;K. Jagannatha Shetty, J;E.S. Venrataramiah, J

Bench : Full Bench

Judgement

Chandrashekhar, C.J.—A Full Bench of three Judges of this Court has referred to a larger Bench of five Judges the following question:

"When there is conflict between two decisions of the Supreme Court, is it the later of the two decisions or the decision of the larger of the Benches which rendered those decisions that should be followed by High Courts and other Courts in the Country?

2. A Full Bench of three Judges of this Court (which consisted one of us) opined in J. Aramha v. Mysore Road Transport Corporation (1974) Kar LJ 344 that where there is a conflict between two decisions of the Supreme Court, it is the later of those two decisions which must be followed by High Courts and other courts. The correctness of this view is doubted by a Division Bench of this Court in Rudrayya v. Gangawwa (1976) Kar LJ 409 in view of the pronouncement of the Supreme Court on this point in Mattulal Vs. Radhe Lal, . The Full Bench of three Judges which has made this reference, felt that the decision of the earlier Full bench in Aramhas case, did not contain any reason for its opinion.

3. In Mattulal's case (supra), the Supreme Court observed at page that if it is not possible to reconcile the observations of the Supreme Court in two decisions, the Supreme Court must prefer to follow the observations of the larger Bench

even if it is earlier.

4. The above enunciation was reiterated by the Supreme Court in *Union of India (UOI) and Another Vs. K.S. Subramanian*, wherein it was observed:

"The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court".

However, before applying the above rule, it is necessary to be satisfied that there is, in fact, conflict between two decisions of the Supreme Court and that it is not possible to reconcile them. As observed by a Division Bench of Allahabad High Court in *Ramzan Ali Vs. State of U.P. and Others*, when a general rule enunciated in an earlier decision is qualified in a later decision by stating certain exceptions to that general rule, it cannot be said that there is any conflict between the two decisions.

5. In the light of the pronouncements of the Supreme Court in *Mattulars* case (supra) and *Subramanyam's* case (supra) we hold that the Full Bench of three judges in *Aramha's* case (supra) did not lay down the law correctly and we overrule that decision. The answer to the question referred to this bench, should in our opinion, be as follows:

"If two decisions of the Supreme Court on a question of law cannot be reconciled and one of them is by a larger

Bench while the other is by a smaller Bench, the decision of the larger Bench whether it is earlier or later in point of time, should be followed "by High Courts and other Courts. However, if both such Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Courts".

Jagannatha Shetty, J.

6. Amid the diversity

of decisions of this court in *A. J. Aramha v. Mysore Road Transport Corporation*, and *Rudrayya v. Gangawwa*, a Full Bench of three Judges of this Court has referred to a larger Bench of five Judges the following question:

"When there is conflict between two decisions of the Supreme Court, is it the later of the two decisions or the decision of the larger of the Benches which rendered those decisions that should be followed by High Courts and other Courts in the country?"

The question envisages two problems and it requires two answers. The first one relates to a conflict between two decisions of the Supreme Court; one by larger Bench and another by a smaller Bench. The second one also relates to a conflict

of decisions, but by Benches consisting of equal number of Judges of the Supreme Court. We agree with the opinion of the learned Chief Justice on the first part of the question, but regret to find ourselves differing upon the 2nd part of the question.

7. Article 141 of the Constitution provides that the law declared by the Supreme court shall be binding on all courts within the territory of India. On the same principle the law declared by the Supreme Court is also binding on all States and its officers. The principle underlined in this Article is salutary in the interest of the administration of justice. The settled practice governing precedents, has been given the force of a rule of law. It promotes consistency which is one of the great Objectives Of law.

8. In this context, it may not be out of place to mention that there should not be a tendency to read the observations of the Supreme Court as statutory enactments. Hidayatullah, J. (as he then was) speaking for the Supreme Court in *Rajeshwar Prasad v. State of West Bengal* AIR 1965 SC 1887 at P. 1891 Para 8 observed:

".....No doubt, the law declared by this Court binds Courts in India but it should always be remembered that this court does not enact"

In *B. Shama Rao Vs. The Union Territory of Pondicherry*, at p. 1486 Para 8, Shelat, J. speaking for the majority view observed :

".....it is trite to say that a decision is binding not because of its conclusion principle laid down therein".

The question presented, therefore has to be examined on these principles.

9. In *Aramha's* case, a Full Bench of three Judges of this Court - held that if several decisions of the Supreme Court are irreconcilable, the latest pronouncement of the Supreme Court should be followed by the High Court. But in *Rudrayya's* case, a Division Bench of this Court held that when there are conflicting judgments, one of a larger Bench and another of a smaller Bench of the Supreme Court, the High Court must prefer to follow the decision of a larger Bench. This conclusion was based on the observation in *Mattulal Vs. Radhe Lal*, wherein, Bhagawati, J., speaking for the Supreme Court observed :

"But whatever be the reason it cannot be gainsaid that it is not possible to reconcile the observation in these two decisions. That being so, we must prefer to follow the decision in *Sarvate T. B.'s* case as against *Kamala Soni's* case as the former is a decision of a larger Bench than the latter. Moreover, - on principle, the view taken in *Sarvate T. B.'s* case commends itself to us and we think that is the right view".

In *The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others*, Krishna Iyer, J. said

"..... Realism dictates that a judgment has to be read, subject to the facts

directly presented for consideration and not affecting those matters which may lurk in the record. Whatever be the position of subordinate court's casual observations, generalisations and subsilentio determinations must be judiciously read by courts of co-ordinate jurisdiction"

In *Union of India (UOI) and Another Vs. K.S. Subramanian*, , Beg, J. (as he then was) advised the High Courts to follow the practice that has been followed by the Supreme Court whenever there is a conflict between the views expressed by a larger Bench and a smaller Bench of the Supreme Court. The learned Judge said:

"... we do not think that the High Court acted correctly in skirting the views expressed by larger Benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger Benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court."

10. It may now be said without contradiction that High Courts should follow the views -expressed by a larger Bench in preference to that expressed by a smaller Bench of the Supreme Court. Before adopting this rule, the High Court, if possible, should try to reconcile the diversity of decisions casting away any general observations. General observations do not decide an individual case. The Judges may not agree on general principles and yet reach the same conclusion on the issues before them. It has been said.

"As against persons not parties to "the suit, the only part of a case which is conclusive (with the exception of cases relating to status) is the general rule of law for which it is authority. This rule or proposition, the, ratio decided may be described roughly as the rule of law applied by and acted on by the court, or the rule which the court regarded as governing the case".

Judged from these principles, *Aramha's* case can no longer "be said to be valid and therefore, stands overruled.

11. But the difficulty may still arise for the High Court when confronted with two inconsistent decisions of the Supreme Court by Benches consisting of equal number of Judges. Both cannot be said to be binding on Courts. But the choice is still more difficult as there is no firm general rule on the principle of precedent. The learned Chief Justice has opined that in such a case the later of the two decisions should be followed by the High Court and other courts. This practice, according to us, is neither a rule of propriety nor a rule to promote justice. It may be a convenient rule to promote consistency and avoid uncertainty. If it is meant to promote consistency in the administration of justice, we may as well ask the question, why not the High Court follow the former of the two rulings when both of them are of equal sanctity. Why alone the later carries the obligation and not the former? The adherence to one practice would be as good or as bad as adherence to the other.

In our view, a conservative approach to any of these, may deny justice in a given case or series of cases and those clients may not be in a position to approach the Supreme Court for the redressed of their grievances. When confronted with two inconsistent co-ordinate authorities, Kay., in *Miles v. Jarvis* (1883) 24 Ch D 633 at p. 636 said :

".....The question is which of these two decisions I should follow, and it seems to me that I ought to follow that of the Master of the Rolls as being the better in point of law".

Jessel M. R. in a like circumstance said in *Baker v. White* (1877) 5 Ch D 183 at p. 190 that he was left with liberty to say which was not should law. It seems to us, therefore, the High Court would be well advised to consider which of the interest of the administration of justice and it ought to follow that which is better in point of law than in point of time.

OPINION OF THE FULL BENCH

12. In view of the majority opinion, the answer to the question referred to this Full Bench, is as follows :-

"If two decisions of the Supreme Court on a question of law cannot be reconciled and one of them is by a larger Bench, the decision of the larger Bench, whether it is earlier or later in point of time, should be followed by High Courts and other Court. However, if both such Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Courts".

13. Answered accordingly.