

(1955) 02 MP CK 0017

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Application No. 85 of 1954

Gwalior Sugar Co. Ltd.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-02-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110, 151
Constitution of India, 1950 — Article 132, 133, 133(1), 133(1)(c), 14

Citation : AIR 1955 MP 210

Hon'ble Judges : Khan, J;Dixit, J

Bench : Division Bench

Advocate : Veda Vyas and P.L. Dubey, for the Appellant; K.A. Chitale, Advocate-General for the State, for the Respondent

Judgement

Dixit, J.—This is an application for leave to appeal to the Supreme Court under Arts. 132 and 133 of the Constitution from our decision in Civil Misc. Case No. 9 of 1953 (reported as AIR 1954 Madh-B-196). By that decision we held that an order dated 27-7-1946 of the Ruler of the former Gwalior State levying on the Gwalior Sugar Company Ltd., a cane cess of one anna per maund on all sugar cane purchased by the company, was an executive order and not a law under Art. 265 of the Constitution and that the order could not justify the imposition of the cess on the petitioner company after 26-1-1950.

We issued an order restraining the State of Madhya Bharat from realizing from the company any cess due from it after 26-1-1950 under the said order of the Gwalior Durbar. The order passed by us was thus in favour of the petitioners. The petitioners now seek leave to appeal on the ground that we did not consider the point whether in view of our finding that the Durbar order was an executive order, any amount of cess for a period before 26-1-1950 could at all be collected after that date, and that we did not issue an order prohibiting the State from recovering such amounts from the petitioner company.

It is contended that the total amount of the cess demanded from the company

for the seasons 1948-49 and 1949-50 amounts to Rs. 95,045-9-0 and that as no relief has been given by us about this amount, the applicants are entitled to leave automatically under cl. (l)(b) of Art 133 inasmuch as our order involves directly or indirectly some claim or question respecting property of the amount of value not less than Rs. 20,000.

2. It is no doubt true that we did not express any opinion on the question whether the State of Madhya Bharat could validly collect after 26-1-1950 any amount from the petitioners in respect of a period prior to 26-1-1950 and we made no direction giving any relief to the petitioners, in this matter. The reason was that at the time of the hearing of the petition, No. 9 of 1953 (reported as AIR 1954 MP 196). Mr. Veda Vyas learned counsel for the petitioners made it clear that "he was not contesting the validity of the cess and its recovery from the applicant company before 26-1-1950".

After making that statement Mr. Veda Vyas confined his arguments on the question of the validity of the cess after coming into force of the Constitution. Mr. Veda Vyas now says that it was only with reference to Arts. 14 and 19 of the Constitution that he made the statement that he was not challenging the validity of the cess and its recovery from the company before 26-1-1950, and that he did not give up the point that if the Durbar Order was an executive order no cess amount could be collected after 26-1-1950 even in respect of the period before 26-1-1950.

Learned counsel pointed out that in the separate judgment of my learned brother it has been observed that "the petition is partly allowed" and that this meant that a part of the relief claimed by the petitioners had been refused. I think, I am right and being fair to the learned counsel when I say no such qualification was made and no arguments were addressed by the learned counsel on the question of the validity of the collection after 26-1-1950 of any amount of cess for a period before that date.

Be that as it may, as the petitioners urge that in spite of this concession we should have considered the question of granting them relief in the matter of the collection of cess in respect of a period before 26-1-1950 and as the amount of this cess exceeds Rs. 20,000, I think the petitioners are entitled to leave to appeal to the Supreme Court.

3. There is also another reason which persuades me to grant leave to the petitioners. It is this. The State of Madhya Bharat has already been granted by us leave to appeal from our decision and the position of the petitioners is likely to be imperilled if no leave is granted to them and they are not allowed to urge that the order of the Gwalior Durbar being an executive order under Art. 265 of the Constitution, no amount of cess for a period before 26-1-1950 could at all be collected after that date.

A similar course was adopted in -- Chitrapur Subbayamma Vs. Chitrapur Buchi Venkayya and Others, . In that case, leave had been granted to the plaintiffs who

were entitled to it as of right. The question arose whether a defendant, whose case did not fulfil the requirements of Art. 133(1)(a) or (b) could be granted leave under Art. 133(1)(c) by the reason of one party to the appeal having been granted leave. The learned Judges of the Madras High Court granted leave to the defendant on the ground that the plaintiffs had been permitted to appeal. Mack J., said:

It seems to me unreasonable and impracticable to confine a party defending an appeal to the particular finding in his favour, which if he succeeds in upholding may also have the effect of giving him some further relief denied to him in the appeal.

As I see it, when leave is granted to one party to appeal to the Supreme Court against any decree, leave cannot be withheld from other parties seeking to appeal from the same decree although it may be that had they individually applied for leave their applications would have been rightly dismissed for failure to comply with the requirements of Art. 133(1)(a) or (b).

I would bring this category of cases within the scope of Art. 133(1)(c) as being made fit cases for appeal to the Supreme Court by reason of one party to the appeal having been granted leave. In such a case, it is not necessary that the High Court should certify that each appeal sought to be filed against the appellate decree involves a separate substantial question of law.

4. The reasoning of Krishnaswami Nayudu J., who agreed with the conclusion arrived at by Mack J., was:

In the present case, there is scope for the contention that there is a common question in controversy, which would be applicable to the entire case, it will be inequitable to grant leave in respect of a portion of the subject-matter and refuse it in respect of the remaining part, and in such cases nothing would prevent the Court from treating the case as a fit one for appeal to the Supreme Court under cl. 1(c) of Art. 133.

But it cannot be laid down as a general proposition of law that in all cases, when leave is granted to one of the parties to appeal to the Supreme Court, the other parties also are entitled to leave as a matter of course, even though their application could not be entertained under Art. 133, cl. (1), sub-cl. (a) and (b).

Otherwise a party, who has no right to a certificate under Art. 133 would become entitled to file cross-objections to the appellate decree in the form of an appeal to the Supreme Court, though there is no specific provision to that effect either under Art. 133 of the Constitution or under S. 109, or S. 110, Civil P. C.

5. Here also in the appeals proposed to be filed by the State and the petitioners, common questions applicable to the entire case would arise for consideration. In fact the learned Advocate-General himself said that as the State of Madhya Bharat had been granted leave to appeal, the petitioners may also be granted leave. The petitioners are, therefore, granted leave to appeal to the Supreme

Court from our judgment in Civil Misc. Case No. 9 of 1953 (reported as AIR 1954 MP 196).

6. The petitioners have applied for stay of proceedings for the recovery of the amount of cess for a period before 26-1-1950. I do not see how it can be granted. The petitioners are not asking for the stay of execution of the order passed by us which is in their favour. O. 45, R. 13(2)(d) has clearly no application to this case. It only enables the High Court to place a party seeking assistance of the Court under any conditions which the Court may think fit to impose or to give a direction other than a direction placing under any condition, respecting the subject-matter of the appeal to it by an order directing the appointment of a receiver.

It does not, in my opinion enable a Court to give temporary relief to a party in respect of a matter which was not pressed and adjudicated upon. Assuming that this Court has jurisdiction under S. 151, Civil P. C. to stay the recovery proceedings, I do not think we ought to exercise the power, when the question of the recovery of these amounts was not urged before us and when no irreparable injury is likely to be caused to the petitioners if they pay the amount when demanded, I would, therefore, reject the stay application.

7. The result is that the petitioners are granted leave to appeal from our decision in Civil Misc. Case No. 9 of 1953 (reported as AIR 1954 MP 196) and the stay prayed for is refused. There will be no order as to costs of this petition.

Khan J.:

8. I agree.