(1959) 03 AHC CK 0022

In the Allahabad High Court

Case No : Supreme Court Appeal No. 8 of 1959

Income Tax Officer APPELLANT

Vs

Joti Prasad Agarwal and Others RESPONDENT

Date of Decision : 20-03-1959

Acts Referred:
Constitution of India, 1950 — Article 132, 133, 134, 226

Citation : AIR 1960 All 84 : (1962) 44 ITR 574

Hon'ble Judges : V. Bhargava, J;Upadhya, J

Bench : Division Bench

Advocate : Gopal Behari, for the Appellant; K.N. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Bhargava, J.—By this petition the petitioner, The Income Tax Officer ''B'' Ward, Mathura has prayed for issue of a certificate under Article 132(1) or Article 132(1)(b), or (c) of the Constitution in respect of a judgment and the order of this Court dated 26-8-1958 in a writ petition under Article 226 of the Constitution, In the petition the prayer was for quashing certain assessment orders and that petition was allowed by the order.

2. When this application came up for hearing we first examined the question whether a certificate under Article 132(1), of the Constitution could be granted. A certificate under that article can only be granted if the case involves a substantial question of law of the interpretation of the Constitution. The order passed by this Court on 26-8-1958, shows that no substantial question of law as to the interpretation of the Constitution arose, nor can any such question arise in an appeal before the Supreme Court. The question of law that came up for decision related to the interpretation of the provision of the Income Tax Act. Consequently Article 132 is inapplicable.

3. So far as Article 133 is concerned, a preliminary objection has been taken on behalf of the opposite party that this article has no application at all and no

certificate can be granted under it, because the order of the Court dated 26-8-1958 is not an order or judgment in a civil proceeding. The expression "civil proceeding" as used in Article 133 of me Constitution has come up for interpretation before various High Courts including this Court. The two decisions of this Court to which our attention has been drawn are State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others, and Brij Lal Suri Vs. The State of Uttar Pradesh and Others,

The view taken by this Court in the latter Case, which is the latest case of this Court which has been reported in the law reports, is that a proceeding by a petition under Article 226 of the Constitution is a civil proceeding if it relates to civil right. In the earlier case cited above, one of the learned Judges constituting the Bench was of the opinion that a proceeding under Article 226 of the Constitution cannot be a civil proceeding; whereas the other learned Judge expressed the same opinion which was later expressed in the ease of Brij Lal Suri Vs. The State of Uttar Pradesh and Others, V

4. A Full Bench of the Patna High Court in Collector of Monghyr and Others Vs. Maharaja Pratap Singh Bahadur and Others, expressed the opinion that a proceeding under Article 226 of the Constitution can never be a civil proceeding. It appears that for the purposes of the application before us, it is not at all necessary to examine the full scope of the expression "civil proceeding" as used in this Article. We need confine ourselves only to the particular facts of this case. If we were to accept the view that no proceeding under Article 226 of the Constitution can be a civil proceeding, the certificate sought under Article 133 would have to be refused.

The more liberal view in favour of the applicant is that a proceeding under Article 226 of the Constitution is a civil proceeding if it relates to civil rights, but it seems to us that, even on this view, the petitioner would not be entitled to the certificate sought, because it cannot be held that this particular order related to any civil right. The order which was passed by this Court related to proceedings for assessment of tax and some assessment orders were quashed by this Court. Proceedings for assessment of Income Tax, in our opinion, are not proceedings relating to a civil right. The liability to Income Tax is not a civil right enforceable as such in courts of law.

Liability to tax is created by the Income Tax Act and is for the purpose of gathering revenues for carrying on the Government of the country. No one can claim it as a civil right that he is not liable to pay the tax. Nor can the State claim that any person is liable to Income Tax under the common law relating to civil rights. A proceeding relating to liability to Income Tax partakes of the nature of a proceeding which has been usually described as a revenue proceeding.

5. It is also clear that the Constitution itself envisages the existence of proceedings which may not be civil or criminal proceedings. This is clear from the language of Article 132 of the Constitution under which a certificate can be

granted by the High Court in respect of any kind of proceeding before it. The article specifically mentions civil, criminal or other proceedings. If a proceeding is not a a civil or criminal proceeding, it would come under the expression "other proceedings" and a certificate under that article can be granted by the High Court provided the other requirements of that article are satisfied.

The Constitution then proceeds to make provision for grant of certificates in respect of proceedings of two of the three kinds mentioned in Article 132. Provision is made in Article 133 for grant of certificates when the High Court passes a judgment or final order in a civil proceeding in the circumstances mentioned in that article. Similarly provision is made in Article 134 of the Constitution for grant of certificates by the High Court in respect of a judgment or order of the High Court in a criminal proceeding in the circumstances mentioned in the article.

There is no provision similar to those in Articles 133 and 134 of the Constitution for grants of certificate by the High Court in respect of its judgments and orders in other proceedings, i.e. proceedings which are not criminal or civil and the existence of which is recognised in Article 132 of the Constitution. The present proceedings under Article 226 of the Constitution could have no relation to the enforcement of a civil right and it cannot be held that the order passed by this Court was an order in a civil proceeding and, therefore, Article 133 of the Constitution cannot apply.

6. This view of ours is fully supported by the decision of a Division Bench of the Patna High Court in Gaya Prasad Khandelwal and Others Vs. Commissioner of Income Tax, There is no decision of any other High Court directly on this point. Our attention was, however, drawn to two decisions of the Madras High Court, viz., C. Dhanalakshmi Ammal Vs. Income Tax Officer, II Additional City Circle II, Kilpauk, Madras and Others, and Dhanalakshmi Animal v. Income Tax Officer AIR 1958 Mad 151, in order to urge that the Madras High Court had taken a different view. On examining these decisions, we do not consider that these cases are on the point we have been called upon to decide.

In neither of these cases were the proceedings for assessment of tax questioned by the petitioner under Article 226 of the Constitution. The proceedings that were questioned were subsequent to the assessment when the tax assessed was being recovered. During the proceedings for recovery, steps were taken for proceeding against certain properties and the petitions before the Madras High Court were based on the rights claimed by the petitioners in those properties. The rights claimed by the petitioners in the properties were clearly their civil rights so that in those cases the petitions were for enforcement of civil rights.

It is true that the question of enforcement of civil rights arose during the proceedings for recovery of taxes, the liability to which had been imposed by the assessment proceedings, but it is also clear that the petitions were confined to the enforcement of civil rights relating to the properties and were not taken for the purpose of questioning the assessment proceedings or orders so mat no occasion arose for deciding whether proceedings for assessment were civil proceedings. The point arose directly only before the Patna High Court in the case cited above and that Court gave a decision, as we have said earlier, which is in line with the view we are taking in the present case.

7. In these circumstances this application for a certificate is not maintainable under Article 133 of the Constitution also. The application is, therefore, dismissed with costs which is fixed at Rs. 200/-.

