

(1960) 03 KL CK 0025

In the High Court Of Kerala

Case No : A.S. No"s. 148 and 149 of 1957 and 60 of 1959

Indo-Mercantile Bank Ltd.

APPELLANT

Vs

Commissioner, Quilon Municipality

RESPONDENT

Date of Decision : 28-03-1960

Acts Referred:

Constitution of India, 1950 — Article 225, 226, 246(3)
Kerala High Court Act, 1958 — Section 5

Citation : AIR 1961 Ker 96

Hon'ble Judges : K. Sankaran, C.J;S. Velu Pillai, J;C.A. Vaidialingam, J

Bench : Full Bench

Advocate : P. Govindan Nair, in A.S. Nos. 148 and 149 of 1957 and K.S. Sebastian, in A.S. No. 60 of 1959, for the Appellant; T.K. Narayana Pillai and D. Narayanan Potti, in A.S. Nos. 148 and 149 of 1957, V. Rama Shenoi and K. Neelakanta Menon, in A.S. No. 60 of 1959 and Government Pleader, for the Respondent

Judgement

Sankaran, C.J.—These three appeals are directed against the orders passed by a Single Judge of this Court in three original petitions filed under Article 226 of the Constitution, praying for the issue of appropriate writs or directions. When the appeals came on for hearing before a Division Bench of two Judges, an objection was raised as to the competency of the Division Bench to hear the appeals.

It was also-contended that the State Legislature cannot confer such an appellate jurisdiction on Division Benches. in view of these legal objections raised on behalf of the respondents, the three appeals were referred to a Full Bench mainly for the purpose of answering those legal points. The referring order was passed in A.S. No. 60 of 1959 and it is in the following terms:

"This case raises the important question whether a Division Bench can hear appeals against the decisions of Single Judges in applications under Article 226 of the Constitution of India and whether the State Legislature or the High Court by its rule-making powers can confer such jurisdiction on Division Benches. The

case is therefore referred to a Full Bench for hearing and disposal. Notice of the appeal will be given to the Advocate-General also."

By a separate order, the other two appeals were also directed to be placed before a Full Bench along with A. S. No. 60 of 1959. This is how all the three appeals have come before us.

2. We shall at the outset dispose of the larger question raised on behalf of the respondents- that the State Legislature cannot enact a law conferring the power on Division Benches to hear appeals against orders passed by a Single Judge in original petitions filed under Article 226 of the Constitution. The power conferred on the High Court under Article 226 is very wide. The Article states that:

"Every High Court shall have power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

It is argued that this Article merely refers to the power of the High Court, but it does not confer any right on any litigant. We are not at all impressed with this argument. The power conferred by the Article is to be exercised for the purpose of enforcing any of the rights conferred by Part III of the Constitution. These rights are conferred on the citizens of the Indian Union, and it is obvious that when any of the rights conferred on such citizens are being prejudiced by any unlawful acts by the State or by other authorities, the citizens concerned have the right to invoke the power and the jurisdiction of the High Court and to protect their rights by the issue of writs, orders or directions, as contemplated, by Article 226.

The exercise of that power and jurisdiction by the High Court is part of the administration of justice by the High Court. The manner in which the High Court is to exercise its power and jurisdiction has to be regulated by the rules to be passed for the purpose. So far as the High Court is concerned, the State Legislature has the undoubted power to frame the necessary rules in this behalf. Clause (3) of Article 246 of the Constitution states that:

"The Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List 2 of the Seventh Schedule."

Administration of Justice is included in Entry 3 of List 2 of the Seventh Schedule and as such the State Legislature has the exclusive power to make a law for regulating the practice and procedure of the High Court in relation to the administration of justice. This power includes the power to provide for the exercise of the original and appellate jurisdictions by the High Court and also to provide for the exercise of such powers by Single Judges or by Division Benches

consisting of two or more Judges. That such is the scope of the Legislative power of the State Legislature is clearly indicated by Article 225 of the Constitution. That Article runs as follows:

"Subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by this Constitution, the jurisdiction of, and the law administered in any existing High Court, and the respective powers of the Judges thereof in relation to administration of justice in the Court, including any power to make rules of court and to regulate the sittings of the Court and of members" thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution."

It is clear from this Article that the law to be passed by the State Legislature to regulate the practice and procedure of the High Court can provide for the exercise of original and appellate jurisdictions by the High Court, by the Judges sitting alone or in Division Courts. In exercise of such a power conferred on the State Legislature by the Constitution, the Kerala High Court Act (Act V of 1959) was passed by the State Legislature.

That Act provides for the hearing by a Single Judge of the High Court of all original applications filed under Article 226 of the Constitution and also for the hearing of appeals by a Division Court of two Judges, against orders passed by a Single Judge. The validity and the constitutionality of the different provisions contained in this Act had been challenged in S. A. No. 156 of 1959, (*Kochikka v. Kunjipennu*).

In the Judgment delivered by us in that case, all these questions have been fully considered and we have held that the State Legislature was fully competent to pass the Kerala High Court Act (Act V of 1959) and that the Act is valid. We do not think it necessary to consider those points once again in the present judgment. It is sufficient to point out that we are definitely of the view that the State Legislature is competent to pass a law providing for the hearing by a Single Judge of the High Court of all applications under Article 226 of the Constitution and also to provide for the hearing by a Division Bench of two Judges of appeals against the orders of a Single Judge in such original petitions.

3. The next question for consideration is whether the statutory rules which were in force at the time of filing of the three appeals now under consideration, have provided for such appeals. The Travancore-Cochin High Court Act (Act V of 1125) as amended by Act I of 1052, was in force at the time when these appeals were filed. Act V of 1125 had expressly provided for the hearing of original applications for the issue of writs and orders similar to those provided under Article 226 of the Constitution.

The provision to that effect was contained in Sub-section (2) of Section 18 of that Act, Sub-section (3) stated that an appeal shall lie from every order passed under Sub-section (2), Sub-section (4) stated that the High Court shall, frame

rules to regulate the procedure in respect ...of applications and appeals under Sub-sections (2) and (3). By the Amending Act I of 1952 Sub-sections (2) (3) and (4) of Section 18 of Act V of 1125 were deleted. It is because, of such deletion of Sub-clauses (2), (3) and (4) of Section 18 of Act V of 1125 that an argument is advanced on behalf of the respondents that after the passing of the amended Act, the right of appeal against orders of a Single Judge had ceased to exist.

Even though Sub-sections (2), (3) and (4) of Section 18 of Act V of 1125 have been deleted, there are other provisions in the amended Act to indicate clearly that the right, of appeal against the -orders of a Single Judge has - been retained. Subsection (2) of Section 18 of Act V of 1125 was found unnecessary in view of the existence of Article 228 in the Constitution. However, item 10 in Sub-clause (4) (A) of Section 20 of Act V of 1125 was amended by Clause (3) of Section 15 of Act I of 1952 by substituting a new provision.

By the amendment thus made, provision was made for the exercise by a Single Judge of the High Court, of the powers conferred by Clause (") of Article 220 of the Constitution. Similarly, Clause (1) of Section 21 was amended by Clause (1) of Section 10 of the amending Act. I of 1952 by inserting a new provision which runs as follows:

"A Division Bench consisting of two Judges of the High Court is empowered to decide appeals against orders passed by a Single Judge under Sub- clause (A) (x) of Clause (4) of Section 20:"

Thus the above-mentioned provisions Contained in the amending Act, I of 1952, clearly provided for the hearing of an application under Article 226 of the Constitution by a Single Judge of the High Court and also for hearing by a Division Benmch of two Judges, of appeals against orders passed by a Single Judge on such applications. Even though the new provision tor the hearing of appeals by a Division bench of two Judges does not in so many words state that there shall be an appeal against the order of a Single Judge, it is unmistakably indicated that the right of such an appeal is recognised because it is only after such appeals are entertained that the same could be heard and decided by a Division Bench.

Normally a right of appeal has to be conferred. by express words in the statute. But such a right will still he available even in the absence of such) express words if the necessary intendment of the Legislature to confer such a right, is clear from the words used in the statute. Such is the nature of the new provisions introduced in Act I of 1952. The new provisions are those contained in Clause (3) of Section 15 and in Clause (1) of Section 16 of that Act.

As already stated, the right of appeal against the orders of a Single Judge had been expressly conferred by Clause (3) of Section 18 of Act V of 1125. Even though, that provision was deleted the addition of the new provisions in Clause (3) of Section 15 and Clause (1) of Section 16 clearly indicated that the right of

appeal was intended to be retained. " No doubt, some confusion and ambiguity was introduced by the clumsy manner in which the amending Act was drafted. But that cannot be allowed to prejudice the right of the litigant. The confusion thus created by the amending Act I of 1952, was rectified when the Kerala High Court Act (Act V of 1959) was passed.

In Section 5 of that Act a clear provision has been made that an appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge in the exercise of original jurisdiction. It is obvious that the High Court hears an application under Article 226 of the Constitution in the exercise of its original jurisdiction. Thus the earlier Act, Act V of 1125, and the later Act; Act V of 1959, clearly conferred the right of appeal against orders passed by a Single Judge on applications under Article 220 of the Constitution. There is nothing in the intermediate Act. I of 1952 to indicate that this right was taken away. No such inference can be drawn in the absence of express provisions in that Act to show that the Legislature wanted to take away that right.

4. The principle that the right of appeal is a substantive right created by a statute, and not a matter of procedure is well recognised. in *S. Kasi Chettiar Vs. The Rt. Hon"ble the Secretary of State for India in Council and Others*, , this principle was reiterated and emphasised. At the same time it was held that the existence of Such right can be gathered by necessary implication from the words used in the concerned statute even in the absence of express words conferring such a right.

In *Salimuddin Ahammd v. Rahim Sheikh* AIR 1920 Cal 1113 it was pointed out that in a matter which relates to the curtailment of the right of appeal, if there is the slightest doubt in one's mind, the benefit of that doubt should go to the party who seeks to appeal. The extent to which the right of appeal can be inferred and. safeguarded, was considered in *Gordhan Das Baldev Das v. G.G. in Council* AIR 1952 P&H 103 at p. 106. The following passage occurring in paragraph 10 of that judgment contains a full discussion of that matter :

"The right of appeal is not a natural or an inherent right which is available to every litigant as a matter of course; it is merely a legislative privilege which the law-making authority may confer or withhold as it may think fit. Subject to the provisions of the Constitution, the Legislature possesses full powers to grant or take away the right of appeal and to prescribe in what cases, under what circumstances, in what manner and to and from what court appeals may be taken. It is for this reason that appeals are commonly regarded as creatures of statute. The right of appeal has always been regarded as a valuable and substantial right and it has been held repeatedly that a provision of law which confers, extends or regulates the right of appeal should be liberally construed with the object, if possible, of maintaining the right. If therefore, a statute is fairly capable of (two interpretations --- one which preserves the right of appeal and the other which withdraws the said right -- the doubt should be resolved in favour of the right of appeal. ("4 C.J. Section Appeal and Error Section 18"). a

statute or a statutory rule ought not to be construed as impliedly taking away the right of appeal previously existing unless the language used clearly shows that to have been the intention of the law-making body."

Applying these tests to the relevant provisions of Act I of 1952, we are unable to find anything in that Act to indicate that the Legislature intended to take away the right which was already in existence to prefer an appeal against the decision of a Single Judge on an application under Article 226 to a Division Bench of two Judges of a High Court. On the other hand, the provisions contained in Clause (3) of Section 15 and in Clause (1) of Section 18 of Act I of 1952 clearly indicate that the intention of the Legislature was to preserve this right of appeal and that was obviously the reason why provision was made that appeals against orders passed by a Single Judge are to be heard and decided by a Bench of two Judges. It follows, therefore, that the appellants in the three appeals under consideration had the undoubted right to prefer these appeals and that a Division Bench of two Judges is competent to hear and dispose of these appeals on their merits.

5. The points raised in the order of reference are answered in the manner indicated above. The learned counsel on both sides agree that the appeals may go before a Division Bench for disposal on their merits. Accordingly it is directed that the 3 appeals will be posted before a Division Bench for final hearing and disposal.