

(1990) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Second Appeal No. 807 of 1987

KANMULA SESHAMMA AND OTHERS

APPELLANT

Vs

BHARAT PETROLEUM CORPORATION LTD.

RESPONDENT

Date of Decision : 08-08-1990

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 5, 7
Constitution of India, 1950 — Article 14, 19, 31C, 39

Citation : (1991) 1 APLJ 170 : (1991) 187 ITR 326

Judgement

This second appeal was admitted by the learned single judge (P. A. Choudary J.). At the stage of admission, it was referred to a larger Bench as the learned single judge felt that the decision of the Division Bench in Mustafa Hussain v. Union of India, AIR 1981 AP 283, required reconsideration and he did so without giving any reasons in that behalf.

Before going into the point referred, it is necessary to indicate the procedure which should be followed by learned single judges for reference of any matter to a Full Bench. There is no provision in the appellate side rules enabling a single judge directly to refer any matter to a Full Bench. Rule 2 of the said Rules provides that, if both judges constitution the Bench agree that the determination involves a question of law, they may order that the matter or the question of law should be referred to a Full Bench. Rule 6 enacts that notwithstanding anything in the foregoing rules to the contrary, the Chief Justice may direct that any application, petition suit, appeal or reference shall be heard by a Full Bench as defined in the rules. It has been laid down by the Full Bench judgment of this court, namely, M. Subbarayudu and Others Vs. The State, as reiterated in Satyanarayana v. State of Madras, AIR 1957 AP 1027 that it is not open to a single judge of this court to refer any matter straightaway to a Full Bench. He has first to refer the matter should go before a Full Bench and it will then be for the Division Bench to consider whether it is necessary to refer the matter to a Full Bench.

In Mustafa Hussain Vs. Union of India (UOI) and Another, , the three enactments,

the Esso Acquisition Act the Burmah Shell Acquisition Act and the Caltex Acquisition Act were held as not ultra vires under articles 14 and 19 of the Constitution. The Division Bench, after an elaborate consideration of article 31C and the several provisions of the Acts and their objects, took the view that the provisions of sections 5(2) and 7(3) of the aforesaid three enactments are basically and essentially necessary for giving effect to the objects of the State Policy. They took the view that these provisions form an integral part of the main enactments which receive the protection of article 31C. Then the Bench took into account every provision of the Act for examining the policy. The Bench took the view that the Statement of Objects and Reasons shows that in implementation of the policy of progressively securing that the ownership and control of the production of the nations petroleum resources are vested in the State and are so distributed as best to subserve the common good, the Government entered into negotiation with the oil companies and that the provisions of the Act are protected by article 31C inasmuch as they are enacted to give effect to the State Policy in article 39 (b) and (c) of the Constitution of India.

Before the Division Bench, the provision of section 5(2) was also specifically questioned. The Division Bench, in paragraph 11 of its judgment, at page 291, specifically said :

"Before we proceed further, it must be made clear that these provisions do not give scope for any perpetual lease as apprehended by learned counsel. The corporations can exercise this option only once on the same terms and conditions on which the lease or tenancy was existing on the appointed day."

No arguments were advanced before us by the appellants counsel to persuade us to differ from the view taken by the Division Bench. We are satisfied that the provisions of article 31C protect the Acts and, therefore, articles 14 and 19 cannot come to the aid of the appellant.

For the aforesaid reasons, we find no reason whatsoever to go into the validity of section 5 (1) and (2) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, again. No other point arises in the second appeal. The second appeals is dismissed. No order as to costs.