

(1939) 11 FED CK 0001
In the Federal Court

Kishori Lal

APPELLANT

Vs

Governor in Council

RESPONDENT

Date of Decision : 06-11-1939

Acts Referred:

Citation : AIR 1940 FC 4

Hon'ble Judges : Justice Maurice Gwyer, Justice Shah Sulaiman, Justice Srinivasa Varadhachariar

Bench : Full Bench

Judgement

1. The appellant in this case appears to have begun proceedings against the Governor-General in Council in 1937 claiming damages for breach of contract. His application for permission to sue in forma pauperis was rejected by the learned Subordinate Judge who held that the plaint disclosed no cause of action. There Were three applications for revision of that decision and all three were rejected by the High Court. The appellant then began new proceedings against a different party, namely the Governor of the Punjab in Council, claiming damages for the alleged failure of the defendant to see that the law had been enforced, that being the way in which he put his case. In these second proceedings also, there was an application for permission to sue in forma pauperis, which came up before the learned Subordinate Judge in June of last year, and was dismissed, firstly, because the allegations in the plaint did not disclose any cause of action, and secondly, because the provisions of Section 80, Civil P.C., had not been complied with. The appellant applied to the High Court for the revision of this decision, but his application was dismissed. It appears from his formal claim for revision and from what he told us that he had sought to go into the facts and merits of his original action against the Governor-

General in Council, but was not allowed to do so by the learned Judge of the High Court, who rightly observed that it was not competent for him

(the Judge) to revise the decision of the High Court in the previous case. The appellant seems to have misunderstood these observations of the

learned Judge and to have thought, without justification, that he was being prevented from putting before the Court what he conceived to be his

case.

2. The appellant then appealed to the Federal Court, and it was pointed out to him by the officials of the Court that the Court could not entertain

any appeal from a High Court unless the High Court had first given a certificate under Section 205, Constitution Act. On receiving that information,

he returned to the High Court and asked for a certificate, which the High Court refused to grant, holding, we must assume, that the case did not

involve any question as to the interpretation of the Constitution Act. These being the facts of the case, this Court has no jurisdiction to entertain the

appeal.

3. A certificate under Section 205 is a necessary condition precedent to all appeals to this Court, and if the High Court refuses to grant a certificate

it is not for us to enquire into the reasons for the refusal, against which no appeal lies to this Court. This was decided some months ago in (1939)

FCR 121. *Lakhat Ram v. Behari Lal Misir* (1939) 26 AIRFC 42 The application must therefore be dismissed, but we desire to add this. We

have heard this application at some length not only because the appellant was appearing before us in person, but also because litigants, and

possibly lawyers also, may not yet be aware of the previous decision of this Court, to which we have just referred. There will be no excuse in

future for any such ignorance of the law; and if the refusal of a High Court to grant a certificate is made hereafter the ground of any further

applications or appeals, we shall regard them as frivolous and vexatious and an abuse of the process of the Court, and deal with them accordingly.