
(1991) 06 KL CK 0025

In the High Court Of Kerala

Case No : C.M.P. No's. 4890 of 1990 and 2844 of 1991 in W.A. No. 393 of 1990

K.M. Joseph Binoy (No. 2)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-06-1991

Acts Referred:

Constitution of India, 1950 — Article 132(1), 133(1), 134(1), 134A

Citation : (1991) 3 ILR (Ker) 373 : (1992) 194 ITR 453

Hon'ble Judges : K.S. Paripoornan, J;B.M. Thulasidas, J

Bench : Division Bench

Advocate : Joshy and Mathews, for the Appellant; P.K. Ravindra Natha Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—The appellant in W. A. No. 393 of 1990, is the petitioner in the civil miscellaneous petitions. C. M. P. No. 2844 of 1990 is filed praying for the issue of a certificate to appeal to the Supreme Court of India against the judgment of this court, dated August 14, 1990, rendered in W. A. No. 393 of 1990 (see K.M. Joseph Binoy (No. 1) Vs. Union of India (UOI) and Others,). In the writ appeal, a Bench of this court affirmed the decision rendered by a learned single judge in O. P. No. 3709 of 1990. The attack in the original petition was against section 44AC of the Income Tax Act, 1961. It was assailed as ultra vires the Constitution of India and lacking in legislative competence. There is an earlier decision of this court in P. Kunhammed Kutty Haji and Others Vs. Union of India (UOI) and Others, , wherein an identical challenge was repelled. The said judgment was affirmed by a Bench of this court in T.K. Aboobacker and Others, P. Kunhammedkutty Haji and Others, P. Mohammed Haji and Others and E.K. Abdul Khader and Others Vs. Union of India (UOI) and Others, . In O. P. No. 3709 of 1990, the learned single judge noticed the earlier Bench decision in T.K. Aboobacker and Others, P. Kunhammedkutty Haji and Others, P. Mohammed Haji and Others and E.K. Abdul Khader and Others Vs. Union of India (UOI) and Others, and dismissed the original petition. Review Petition No. 101 of 1990, filed in the said original petition was also dismissed by order dated July 23, 1990. The

writ appeal, W, A. No. 393 of 1990 (see K.M. Joseph Binoy (No. 1) Vs. Union of India (UOI) and Others,), filed against the judgment in O. P. No. 3709 of 1990, dated June 4, 1990, was, in the circumstances, dismissed, following the earlier Bench decisions referred to above, as also noticing the Bench decision of the Andhra Pradesh High Court in A. Sanyasi Rao and Another Vs. Government of Andhra Pradesh and Others, . In the writ appeal, the judgment was delivered on August 14, 1990. At the time when the judgment was delivered, no motion was made praying for the issue of a certificate to appeal to the Supreme Court against the Bench decision of this court. This court also did not, on its own motion, consider the desirability of granting a certificate in the matter. On September 12, 1990, nearly a month after the pronouncement of the judgment, the appellant filed C. M. P. No. 2844 of 1991 (numbered later since there were defects to be cured) praying for the issue of a certificate to appeal to the Supreme Court of India under articles 132 and 134A of the Constitution of India read with rule 22 of the Kerala High Court Rules against the judgment of this court in W. A. No. 393 of 1990 (see K.M. Joseph Binoy (No. 1) Vs. Union of India (UOI) and Others, . Later, the appellant has filed C. M. P. No. 4890 of 1990, on October 28, 1990, to condone the delay of 24 days in rectifying the defects.

2. We heard counsel. The short question that arises for consideration is whether the application filed praying for the issue of a certificate of fitness to appeal to the Supreme Court of India against the judgment of this court in W. A. No. 393 of 1990 (see K.M. Joseph Binoy (No. 1) Vs. Union of India (UOI) and Others,), will lie. Article 134A of the Constitution reads thus :

"134A. Certificate for appeal to the Supreme Court.--Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in Clause (1) of Article 132 or Clause (1) of Article 133, or Clause (1) of article 134,

(a) may, if it deems fit so to do, on its own motion ; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in Clause (1) of article 132, or Clause (1) of article 133 or, as the case may be, Sub-Clause (c) of Clause (1) of article 134, may be given in respect of that case."

3. Article 134A of the Constitution was inserted in the Constitution by "The Constitution (Forty-Fourth) Amendment Act, 1978", which received the assent of the President on April 30, 1979. The objects and reasons for the said amendment are stated thus in the book "Constitution Amendment in India" Lok Sabha Secretariat, New Delhi, 1986 publication, at page 85 :

"New Article 134A provides that the High Court should consider the question of granting of a certificate of fitness for appeal to the Supreme Court under Article 132(1), Article 133(1) or Article 134(1) immediately on the delivery of the judgment, decree, final order or sentence concerned, on the basis of an oral

application by a party or, if the High Court deems it fit so to do, on its own motion."

4. It is conceded that no motion was made for the issue of a certificate to appeal to the Supreme Court immediately after the passing of the judgment. The only question that arises for consideration is whether an application, made long after the judgment was delivered, is maintainable. We are of the view that on a bare perusal of Article 134A of the Constitution of India it does not contemplate the filing of a written application at all. At the time of delivering the judgment, it is open to the court, if it deems so to do, to grant a certificate on its own motion. If any party is aggrieved by the judgment, an oral application should be made by or on behalf of the party aggrieved, immediately after the judgment is delivered. If it is not so done, any application, filed at any later point of time, is not maintainable. The said view of ours is fortified by Bench decisions of various High Courts.--See *Reckitt and Coleman of India v. Fifth Industrial Tribunal* 84 CWN 657 , *Keshava S. Jamkhani v. Ramachandra S. Jamkhani* AIR 1981 Kar 97 [FB] and *State of Orissa v. Sashi Bhutan Kar* [1985] CrL. L.J. 1725 .

5. In the light of the above decision, we hold that C. M. P. No. 2844 of 1991 is not maintainable. We dismiss the said petition. No question of condoning the delay in filing the main petition, praying for the issue of a certificate to appeal arises. We dismiss C. M. P. No. 4890 of 1990 also. Both the C. M. Ps. are dismissed.