

(1998) 01 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 34612 of 1996

Manipur Vasant Kini

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 92
Constitution of India, 1950 — Article 226, 227

Citation : (1998) ILR (Kar) 954 : (1998) 3 KarLJ 121

Hon'ble Judges : Mohammed Anwar, J; Ashok Bhan, J

Bench : Division Bench

Advocate : M/s. Kini and Company, for the Appellant; Smt. Bharathi Nagesh, Government Advocate, Sri Shylendra Kumar, Sri G.K. Shevgoor, Sri Uday Holla and Smt. Shreen Zafarne, for the Respondent

Judgement

1. The point which falls for determination is as to whether the decision rendered in the previous litigation filed as public interest litigation would operate as res judicata and a binding precedent to the subsequent litigation, also filed in public interest challenging the same administrative action which had been challenged in the earlier writ petition.

2. Petitioner who is a practising Advocate has filed this petition under Articles 226 and 227 of the Constitution of India, challenging the grant of deemed University status u/s 3 of the University Grant Commission Act, to Manipal Academy of Higher Education-respondent 4 (hereinafter referred as respondent 4) by respondents 1 and 2. He has also challenged certain actions of respondent 7-the Managing Trustee of respondent 4, which according to him involves very serious points of illegality and fraud played by respondent 7 throwing all the norms and principles of law to wind and formation of deemed University status under suspicious circumstances. It is also alleged that there are irregularities in the formation of deemed University without fulfilling legal requirements, which has set the attention of the public at large as the same is adversely affecting all Konkani speaking minorities including the petitioner.

3. We need not refer to the detailed facts of the present case, because the matter stands concluded by the Division Bench judgment of this Court in case of R. Umesh Wagle and Others v Union of India. The above said writ petition was filed as public interest litigation seeking the same relief as in the present case, challenging the action of the administrative authorities granting deemed University status to respondent 4. A public notice under Order 1, Rule 8 of the Code of Civil Procedure, 1908, was given in the news paper informing the world at large that a writ petition has been filed challenging the grant of deemed University Status to respondent 4. The writ petition was treated as public interest litigation, any person from the public could join the proceedings in the aforesaid writ petition.

4. Counsel for the petitioner vehemently contended that the judgment rendered in Umesh Wagle's case, supra, did not operate as res judicata and a binding precedent, as the said case was not decided on merits. It was also argued that the points raised in this writ petition are different than what had been raised in the earlier petition.

5. In support of his contentions, the learned Counsel for the petitioner relied upon the decisions of the Supreme Court in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, and State of Maharashtra and another Vs. M/s. National Construction Company, Bombay and another, .

6. We find no merit in the submission made by the learned Counsel for the petitioner. Along with the objections filed by respondent 7, a copy of the earlier writ petition and the Judgment rendered in that writ petition have been attached as Annexures-R1 and R2. We find that in the earlier writ petition the points raised are same/similar as have been raised in the present writ petition. The order rendered in the earlier writ petition is on merits and practically all the points raised by the petitioners have been dealt with. It was held that respondent 4 has been granted the deemed University status in accordance with law. The writ petition was dismissed on merits.

7. In Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , it was held that the matter which had been adjudicated upon in the earlier proceedings which were in the nature of public interest litigation could not be reagitated afresh by filing a fresh petition. In that case the petition had been filed challenging the Commercial use of a plot reserved for bus depot which was dismissed. Subsequent writ petition for similar purpose challenging the Commercial user was filed taking an additional ground. Dismissing the subsequent writ petition it was held by their Lordship that the judgment in the earlier writ petition would operate as res judicata irrespective of the fact that the ground taken in the subsequent writ petition was absent in the earlier writ petition. It was observed as under.--

"A plot of land was reserved under the Development Plan for Bombay and the verified Andheri Town Planning Scheme, for a bus depot of the Bombay Electricity

Supply and Transport Undertaking (BEST). BEST proposed to build two buildings which would include the bus depot. The carpet area spared after meeting the needs of the depot was to be given on rent. A writ petition challenging the user of the plot for commercial purposes came to be filed and was dismissed by the High Court. The validity of permission granted under Rule 4(a)(i) of Development Control Rules for change of user of the plot to commercial purpose was not in issue in the writ petition. Subsequently another writ petition was filed for the same purpose but therein, the validity of permission granted under Rule 4(a)(i) of the Development Control Rules was specifically challenged.

Held, that in view of Section 11, Explanation IV it could not be said that the earlier judgment would not operate as *res judicata* as one of the grounds taken in the subsequent petition was conspicuous by its absence in the earlier petition. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the legitimate purview of the original action both in respect of the matters of claim of defence -- A. No. 644 of 1982 and Original Suit Writ Petition No. 2412 of 1982, DD: 14-11-1983, Bom., reversed".

The plea raised that *res judicata* would not apply to public interest litigation was also negated. It was held as under:--

"Section 11 in view of Explanation VI applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation not by way of a private grievance. It has to be a *bona fide* litigation in respect of".

8. In *R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others*, , it was held that a suit u/s 92 of CPC is a suit of a special nature for the protection of public rights in the Public Trusts and Charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. It was also held that the suit filed in representative capacity under Order 1, Rule 8, CPC representing a common interest would bind all those who have common interest in the suit as parties.

9. In *P.K. Vijayan Vs. Kamalakshi Amma and Others*, , explaining the rule "might and ought" regarding raising of pleas to operate as constructive *res judicata* it was held by their Lordships that omission by the party to raise all available and relevant pleas which he might and ought to have raised in that proceedings would constitute constructive *res judicata*. The plea not raised in the earlier proceedings would be deemed to have been waived in subsequent proceedings.

10. Now we proceed to deal with the Judgment on which reliance was placed by the learned Counsel for the petitioner. In the *Mathura Prasad's* case, *supra*, their Lordships while discussing the scope and extent of principles of *res judicata* concluded that an erroneous decision of the Court assuming the jurisdiction which was not vested in it under the statute would not operate as *res judicata* between the same parties where the cause of action in the subsequent litigation

as the same or otherwise. The law laid down in the said case would not be applicable to the facts of the present case, because admittedly this Court had the jurisdiction to render the decision in the earlier case. In other words, the decision has been rendered between the parties on merits by a Court of competent jurisdiction. Such a decision would operate as *res judicata* between the parties in any subsequent proceedings.

11. In case of M/s. National Construction Company, *supra*, their Lordships have only held that the dismissal of the suit and subsequent appeal on technical grounds without adjudicating on merits of the case would not operate as bar to the subsequent suit. As discussed above the earlier writ petition had been decided and dismissed on merits by this Court. The same had not been dismissed on technical grounds and therefore the decision in the aforesaid case would not have any applicability to the facts of the present case.

12. The underlying idea in the principle of *res judicata* and constructive *res judicata* is that the parties are not made to defend the same cause of action twice over, which had been concluded on merits between the parties by a Court of competent jurisdiction. Repeated suits or writ petitions on the same cause of action filed in a Court of law on the same pleas with little variation of arguments cannot be entertained as it would lead to wasting of the time of the Court as well as unnecessary expense and time of the litigant public. It would be a sheer abuse of the process of Court to raise at each successive stage different pleas to protract the proceedings or to drive the party to multiplicity of the proceedings. Parties have to raise all available pleas in the proceedings when the action is initiated and the action thereto would constitute constructive *res judicata* to prevent raising of the same at a later point of time. The plea which were not raised in the earlier proceedings would be deemed to have been waived.

13. Earlier litigation which had been filed for same relief challenging the administrative action of the authorities to grant deemed University Status to respondent 4 by public spirited persons has already been concluded against the petitioners. The same would be a binding precedent and operate as *res judicata* in subsequent proceedings challenging the same administrative action of the authorities. The arguments of the learned Counsel for the petitioner that certain pleas which have been raised in this petition had not been raised in the earlier writ petition and therefore the petitioner be permitted to challenge the action of the respondent on the new pleas raised cannot be accepted, entertained. It was the duty of the petitioners to raise all available pleas which might and ought to have been raised by them. The pleas which might and ought to have been raised but not raised would be deemed to have been waived. The earlier decision would operate as constructive *res judicata* between the parties.

14. Counsel for the parties addressed us only regarding the maintainability of the writ petition, in view of the earlier decision of this Court on the same point. The orders were reserved on the point regarding maintainability only and the arguments were not heard on merits. Since we are dismissing the petition on the

ground of maintainability we are not opining on the merits of the dispute as the merits of the dispute already stand concluded against the petitioner in the earlier writ petition.

15. For the reasons stated above, it can safely held that subsequent proceedings filed by another set of litigants in the public interest arising out of the same administrative action, which had been raised in the earlier litigation would be barred by principles of res judicata/constructive res judicata. Dismissed. No costs.