

(1956) 06 CAL CK 0023
In the Calcutta High Court

Case No : Supreme Court Appeal No. 10 of 1956 (A.F.O.O. No. 270 of 1953)

Naresh Chandra Bose

APPELLANT

Vs

Sachindra Nath Deb and Others

RESPONDENT

Date of Decision : 01-06-1956

Acts Referred:

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

Citation : AIR 1961 Cal 527

Hon'ble Judges : P.B. Chakravartti, C.J.; A.K. Sarkar, J

Bench : Division Bench

Advocate : Hari Gopal Roy, for the Appellant; Manindra Nath Ghose and Anil Kumar Sen, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—This application for leave to appeal to the Supreme Court is on the face of it, not maintain-able. It purports to be an application under Article 132(1) of the Constitution of India and the learned Advocate, who appears in support of the application, states that it is in fact an application under that Article. The scheme under Article 132 and Articles 133 and 134 as regards appeals to the Supreme Court is different. Under Article 132(1), it is the Judges who deal with the case in the High Court who have to certify whether the case involves a substantial question of law as to the interpretation of the Constitution. That however is not the final certificate for leave to appeal. With the expression of opinion contemplated by Article 132(1), if the Judges do express such an opinion, the intending appellant has to make an application under Article 133 and then the Bench, dealing with applications for leave to appeal to the Supreme Court, examines the application and sees whether the other requirements as to limitation and the like are satisfied. Where an application is made to this Court for leave to appeal to the Supreme Court under Article 132(1) of the Constitution of India, but no certificate, as contemplated by that Article granted by the Judges who dealt with the case in this Court, is produced, the application is plainly not

maintainable.

2. It is stated in paragraph 11 of the present petition that a certificate under Article 132(1) was asked for from the learned Judges, but was refused on the ground that the learned Judges thought that they had no jurisdiction. There is no record of any such order and whether or not the ground alleged to have been given by the learned Judges was in fact given by them, we are not aware. The fact, however, remains that there is no certificate by the Judges who heard the appeal under Article 132(1) and, indeed, the applicant himself says that a certificate was refused and, therefore, the present petition, as made to us in this Bench, is not maintainable." I may add that whatever the ground given by the learned Judges for their refusal of the certificate under Article 132(1), that refusal has become final so far as this Court is concerned and, consequently, there could be no question of our entertaining any application for leave to appeal to the Supreme Court. The procedure applicable to applications under Article 132 is the same as explained by the Privy Council in relation to Section 205 of the Government of India Act, 1935.

3. For the reasons given above, this application is dismissed with costs -- hearing-fee being assessed at three gold mohurs.

Sarkar, J.

4. I agree.