
(1971) 03 AP CK 0009

In the Andhra Pradesh High Court

Case No : Tr. Civil Miscellaneous Petition No. 11236 of 1970

Penguin Textiles Ltd. and Others

APPELLANT

Vs

Andhra Pradesh State Financial Corporation

RESPONDENT

Date of Decision : 24-03-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 228

Citation : AIR 1971 AP 339

Hon'ble Judges : A.D.V. Reddy, J

Bench : Single Bench

Advocate : A. Krishniah, for the Appellant; Y. Sivarama Satri and P. Bala Krishna Murthy, for the Respondent

Judgement

1. This petition raises a question relating to the scope of Article 228 of the Constitution.

2. The Andhra Pradesh State Financial Corporation had lent a sum of Rs. 20 lakhs to the Penguin Textiles Ltd., on the hypothecation of their machinery another security under an agreement under which it was stipulated that the amount borrowed should be repaid in ten equal installments with interest with a further condition that in default of payment of any of the instalments the entire amount will become recoverable. Alleging such a default the Financial Corporation filed a petition O.P. No. 43/70 before the Chief Judge; City Civil Court, Hyderabad, for the recovery of the entire amount as per the provisions of sections 31 and 32 of the State Financial Corporation Act. The respondent company while setting out the reasons for its inability to repay the loan in terms of the agreement also further contended that Sections 31 and 32 of the State Financial Corporation Act (hereinafter referred to as the Act) offended Articles , 14, 19 and 31 of the Constitution of India. The Court framed the following points for determination:

1. Whether Sections 31 and 32 of the State Financial Corporation Act offend Articles 14, 19 and 31 of the Constitution?

2. Whether the petitioner is not entitled to recover the amounts mentioned in the petition?

3. the respondent company filed a petition before the Court to decide the issues relating to the validity of Sections 31 and 32 of the Act. but that was dismissed. It was then come forward with this petition u/s 24 of the CPC for withdrawing that case and deciding it in the High Court as provided under Article 228 of the Constitution. This is resisted on the ground that there are no bona fides in this petition and that the company was interested only in delaying the matter and thereby causing loss and damage to the Corporation.

4. In cases where the validity of any enactment is being challenged. there are two provisions available viz., one u/s 113 of the Code of Civil Procedure, which reads as follows:

"Subject to such conditions, and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which the Court is subordinate or by the Supreme Court, the Courts shall state a case setting out its opinion and the reasons therefore and refer the same for the opinion of the High Court.

Explanation: In this section "regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State."

and the other under Article 228 of the Constitution of India, which reads as follows:

"If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may:

(a) either dispose of the case itself: or

(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment."

5. It is now contended by the learned counsel for the Corporation that the City Civil Court before whom the Corporation had filed the petition whom the Corporation had filed the petition for regarding the validity of the of the

provisions of Sections 31 and 32 of the Act. that it is competent to decide it or refer it u/s 113 C. P. C. for the opinion of the High Court and sit is for this purpose that the Respondent Company in that petition had filed a petition asking the Court to decided that issue first and on its dismissal it had rushed to this Court. A reading of the provisions extracted above shows that they are not the same. S. 113 C. P. C. was enacted long before the Constitution and it was mainly concerned with the vires of the provisions of any enactment, ordinance or regulations and it is only after enquiry or regulation and it is only after enquiry and finding it to be invalid or inoperative, the Court is expected to state a case setting out its opinion giving reasons and refer the same to the High Court. But the provisions of Article 228 of the Constitution do not contemplate the Court subordinate to the High Court going into the question of vires and then stating a case and referring it to the High Court. What it states is that if the High Court is satisfied that the case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of Constitution, it shall withdraw the case and decide that question itself, and after decision on the question, the other points in dispute may be decided by itself or referred to the Lower Court. Therefore, while u/s 113 C. P. C. the Court trying the case can go into the question as to the vires and only refer it operative, under Art. 228 of the Constitutions even investigate into the question as to the vires, sit is not open to it even to find that the impugned provisions are valid and then proceed with the case without making a reference to the High Court as it can do u/s 113 of the Code of Civil Procedure.

6. It is next contended that Article 228 of the Constitution would apply only when a substantial question of law arises as to the interpretation of the provisions of the Constitution alone and not when the vires of the provisions of any other Statute or Regulations is being questioned and for this contention, the learned counsel for the Corporation relied on *State of Bihar and Others Vs. Shree Krishna Gyanoday Sugar Ltd. and Others*, and *M.S. Oberoi Vs. Union of India (UOI)*, In the first of the cases it was pointed out that a reading of the plaint showed that the plaintiff based his claim on an earlier judgment passed by the Court where the Bihar Sugar Factories Control Act and the Rules framed thereunder were declared ultra vires and it was further pointed out that it is a matter that could be dealt with u/s 113 of the C. P. C. The decision in the case therefore does not apply to the facts of this case. In the latter case the question that arose related to the vires of Sections 4 and 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 and it was held that the challenge to the constitutionality of some sections of an Act does not mean that a question of law relating to the interpretation of a provisions of the Constitution is involved and a petition under Article 228 of the Constitution is not competent. This is also a decision of the single judge. On the other hand, the learned counsel for the respondent Company has relied on a number of Bench decisions which have held otherwise. In *Gappu Lal v. The State of Rajasthan* ILR (1953) Raj 1025 a bench of the Rajasthan High Court held when it is contended that Rajasthan Premises (Control

of Rent and Eviction) Act 1950, is ultra vires as offending Articles 14, 15 and 19(1)(f) of the Constitution, it is a substantial question of law as to the interpretation of then Constitution and the proper course for the applicant was to apply under Article 228 of the Constitution of India. In *Dr. Bishambar Nath Vs. The State of Punjab and Another*, also, a Bench of the Punjab High Court, when certain provisions of Punjab Excise Act were challenged as offending the provisions of Article 13 of the Constitution held that it is a case involving substantial question of law as to the interpretation of the Constitution and can be dealt with under Article 228 of the Constitution. It was similarly held in *Dr. Samarendra Kumar Das and Others Vs. Khalilur Rahaman and Others*, where the contentions was that Section 13 of the West Bengal Premises Tenancy (Second Amendment) Act, is discriminatory and it is ultra vires of Articles 14 and 19(1) (g) of the Constitution . In *Raja Ganga Pratap Singh Vs. The Allahabad Bank Ltd., Lucknow*, where certain provisions of the U. P. Zamindar's Debt Reduction Act were questioned as unconstitutional as offending Article 14 of the Constitution. It was held that it is a substantial question of law regarding the interpretation of the Constitution and can be dealt with under Article 228 of the Constitution. Therefore there is no force in the contention that only cases related to the interpretation of the provisions of the Constitution fall within the purview of Article 228 and not where the vires of other statutes and Regulations are being questioned. Where the validity of an enactment or regulation is contended to be invalid as being ultra vires of the powers of the legislature passing it or questioned on other grounds and not on the ground of its offending any of the provisions of the Constitution it will be a case falling u/s 113 of the C. P. C. but if its validity is attacked on the ground of its offending the provisions of the Constitution, as in this case, it must necessarily fall under Article 228 of the Constitution and has to be withdrawn and decided by the High Court.

7. The petitions wills therefore, be withdrawn to the High Court for decision on the question relating to the vires of provisions of Ss. 31 and 32 of the State Financial Corporation Act and either referring to the lower Court for the decision on the lower Court for the decision on the question whether the petitioner is not entitled to recover the amounts mentioned in the petition or for deciding the question also here itself.

8. Order accordingly.