
(1963) 10 MAD CK 0061

In the Madras High Court

Case No : S.C. Petition No. 203 of 1961 (against W.A. No. 95 of 1958) and
S.C.M.P. No. 244 of 1961 and 265 of 1962

Southern Roadways (P.) Ltd.

APPELLANT

Vs

P. Methurai Veeraswami (died) M. Dhanapalan and Others

RESPONDENT

Date of Decision : 04-10-1963

Acts Referred:

Constitution of India, 1950 — Article 133, 133(1), 226, 228

Citation : AIR 1964 Mad 194 : (1964) ILR (Mad) 1 : (1964) 77 LW 71

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Srinivasan, J.; Ramakrishnan, J.; Kailasam, J.; Anantanarayanan, J

Bench : Full Bench

Advocate : Advocate General for N.R. Govindachari, for the Appellant; G. Ramaswami, K. Thirumalai and Addl. Govt. Pleader, for the Respondent

Judgement

S. Ramachandra Iyer C.J.

1. This reference has become necessary on account of certain doubts felt in regard to the correctness of the decision of a Bench of three Judges of this Court—Rajamannar C.J., Ramachandra Iyer (one of us) and Ganapatia Pillai JJ. in S.C.P. No. 117 of 1959(1960?) (Mad). It was held in that case that an order under Article 226 of the Constitution granting a writ of certiorari, the consequence of which was to revive and make available for fresh adjudication, the proceedings before the inferior Tribunal, was in the nature of a remand order which would not constitute a judgment or final order coming within Article 133 of the Constitution. In a still earlier case, namely, Dhanalakshmi Ammal v. Income Tax Officer, AIR 1958 Mad 151 it was even held that an order rejecting a petition for the issue of a writ of certiorari would not amount to a judgment or final order, if the result of the judgment of the High Court in the writ proceedings did not have the effect of finally disposing of the rights of parties pending adjudication before the inferior tribunal. The correctness of these decisions, which, in essence, viewed the dispute between the parties before such a Tribunal as integrally connected with

the proceedings under Article 226 initiated in respect thereof, has now been challenged.

2. The question for consideration could, therefore, be formulated thus:

"Whether an order passed, either granting or refusing to grant a writ applied for under Article 226, which has the effect of either reviving or leaving the controversy before the inferior tribunal for adjudication, can be regarded as a judgment or final order under Article 133 of the Constitution?"

3. Before proceeding to consider the question, we shall state the facts which have occasioned the reference. The matter relates to the grant of one of two stage carriage permits between Tuticorin and Koilpatti. The petitioner, Southern Roadways, failed to secure the permit before the Regional Transport authority; but on appeal to the State Transport Appellate Tribunal, it was able to secure one of the two permits. The propriety of the grant in favour of the petitioner was challenged by the first respondent but without success before Balakrishna Aiyar J. in W. P. 999 of 1957. The judgment was, however, set aside on an appeal by the first respondent in W. A. 95 of 1958. As a result of the appellate judgment, a writ of certiorari was issued quashing the order of the Appellate Tribunal. The effect of the writ-and indeed this was stated in the appellate judgment itself-was to restore the proceedings before the Appellate Tribunal for a proper adjudication. Southern Roadways feeling aggrieved by the appellate judgment, has applied for a certificate under Article 133, which the intention of filing an appeal to the Supreme Court. That application is resisted by the successful party on the ground that as the judgment of this court is left open the question as to which of the parties should get the permit, for future determination by the Tribunal, there was no final order of this court in respect of which leave to appeal to the Supreme Court could be granted.

4. On the question of the appeal ability, the view taken by this court can be said to be in a way uniform. In S. C. P. No. 117 of 1960 (Mad) to which we made reference earlier, the matter in dispute related to a variation of the route of a stage carriage permit, which was sought by the holder of the permit. The order of the Tribunal in that regard was quashed under Article 226 of the Constitution by a single Judge of this court; on appeal that judgment was affirmed. An application for leave to appeal to the Supreme Court, which was filed later, was rejected inter alia for the reason that the judgment of this Court was

"in the nature of an order of remand though technically it might be an order quashing the order of the State Transport Appellate Tribunal."

5. This view was accepted and followed by two of the members constituting the present Bench (Ramachandra Iyer C. J. and Srinivasan J.) in S. C. P. No. 147 of 1961 (Mad). Indeed, this view is in accord with what has been laid down in AIR 1958 Mad 151. In S. C. P. 119 of 1959 and S. C. P. 199 of 1959 leave to appeal was granted in respect of an order passed by this court under Article 226 of the Constitution. But those were cases where the consequence of the appellate

judgment was that the application for the issue of the writ of certiorari stood rejected and there was no controversy which had yet to be disposed of by the Tribunal.

6. But it has been argued by the learned Advocate General appearing for the Southern Roadways, that the principle on which the distinction between a case where the judgment of this Court in an application under Article 226 revives the proceedings before the Tribunal, and one which has not that effect, as laid down in the cases mentioned above, is wrong and not warranted by the nature of the jurisdiction which this court possesses under that Article.

7. It has been conceded before us and indeed there can be no doubt on that matter that the order passed by the High Court is in a civil proceeding. The only point for immediate consideration will therefore be, whether that order amounts to a judgment or a final order within the meaning of Article 133. It must however, be stated that the parties are not agreed as to the valuation of the subject matter in dispute, but that question can be left to be decided by the Division Bench, in case it becomes necessary.

8. The word "judgment" occurs in Article 133 as well as in clauses 15 and 39 of the Madras Letters Patent. In the latter provision, that is, clause 39 the word "final" qualifies the word "judgment". But in our opinion that would make little difference, and the word "judgment" in the context in) which it has been used in Article 133 can only mean a final determination of the right or liability, forming; the subject-matter of controversy before the court which renders the judgment. The true import of; the word "judgment" or the tests by which any judicial order can be regarded as a judgment, have been elucidated by a number of leading decisions on the subject. For a proper understanding of the concept of the word "judgment" it will be useful first to refer to the cases decided under clause 15 of the Letters Patent. The expression "judgment" was defined by Sir Richard Couch C. J. in the Justices of the Peace for Calcutta v. Oriental Gas Co., 8 Beng LR 433 thus:

"We think "judgment" in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

One of the essential requisites of a. judgment thus is that it should involve the determination of a right or liability. The word "determination" itself indicates that such right as has been adjudicated upon, must have been so adjudicated finally, so far as the controversy between the parties in the court is concerned. Secondly, the merits of the controversy, which fall for determination, need not be on any substantive facts. A technical point which alone forms the subject-matter of a dispute, but the determination of which concludes the controversy by way of

adjudication of the right or liability in dispute, would be one which should be regarded as given on the merits of the case. This concept forms the basis of the following classic passage in the judgment of Sir Arnold White C. J. in *Tuljaram Raw v. Alagappa Chetty*, ILR 35 Mad 1

"The test seems to me to be not what is the form of the adjudication, but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a "judgment" within the meaning of the clause."

The learned Chief Justice did not share the view expressed by the Calcutta High Court that the decision need necessarily be on the merits of the case; it would be sufficient if the matter were finally disposed of, so far as the court is concerned. This aspect was emphasised by Krishnaswami Aiyar J. who has illustrated the rule by referring to the case of rejection of a plaint on the ground of want of jurisdiction the test thus being the completeness of adjudication of the matter in controversy in the particular proceeding before the court and not whether a part of the dispute was left outstanding for determination before the court below.

9. From the above, it would follow that the proper test to ascertain whether a judicial order is a "judgment" is to see whether in regard to matters in controversy in the court which renders the judgment, there has been a completeness of adjudication. In that view, the order passed by a single Judge remanding an appeal to the trial or lower appellate court would amount to a judgment, as the former could be said to have completely disposed of the matters in controversy before him.

10. There are a number of decisions given by the other High Courts which have, in the main, adopted one or the other of the above definitions. The most important among such decisions have been noticed by the Supreme Court in its recent decision in *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, and in the still earlier decision *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, . In both the cases the learned Judges of the Supreme Court refrained from formulating any exact definition of the term. In the earlier case *Mukherjee J.* was inclined to adopt " two tests for ascertaining whether a particular judicial pronouncement would amount to a judgment or not. This will be clear from the following observation made by the learned Judge:

".....but a decision on any and every point in dispute between the parties to a suit is not necessarily a judgment. The order in the present case neither affects the merits of the controversy between the parties in the suit itself nor does it terminate or dispose of the suit on any ground."

The case before the Supreme Court related to the appeal ability, under clause 15 of the Letters Patent, of an order of a single Judge of the High Court transferring

under clause 13 there of, a suit pending in a subordinate court to the original side of the High Court. It was held that the order for transfer had no effect on the merits of the claim in the suit, quite unlike an order rejecting a plaint or dismissing a suit on a preliminary point, and therefore it could not be regarded as a judgment.

11. It can no doubt be said that an application" for transfer under Clause 13 is an original proceeding and an order granting the transfer therefore determines all matters in controversy in that proceeding; but the Supreme Court was not prepared to regard that application as one independent of the suit sought to be transferred.

12. Implicit in the passage cited above, are two tests which must both be satisfied before a judicial order can be regarded as a "judgment" for purposes of clause 15 of the Letters Patent: (1) the decision; in question should terminate the suit or proceeding, and (2) that such decision should affect the merits of the controversy between the parties in that very suit or proceeding. These tests have been adopted by the majority decision of a Full Bench of this court in *Central Brokers Vs. Ramnarayana Poddar and Co.,* . But it will be seen that the finality contemplated, is of the proceedings to which the order relates and the merits to be decided relates to the controversy forming the subject-matter of the proceedings. Obviously, therefore, an outstanding dispute between the parties in an unrelated or independent proceedings, though it might be connected with the proceedings, on which the judicial order is made, cannot be taken into account for purposes of deciding whether the latter order is a final order or not. The decision in *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others,* substantially proceeds on the basis that an order by the court which relates to a suit, but which has the effect of keeping that suit alive, cannot be regarded as a final judgment.

13. That principle cannot apply to proceedings, tinder Article 226 of the Constitution, which are original in nature and founded on rights of parties, aggrieved, with a view to keep the orders of statutory tribunals within the bounds of law. To put it differently, the subject, matter of the petition under Article 226 will be entirely different from the matters in controversy agitated before the inferior Tribunal, the former relating to the vindication of a constitutional right. The merits of the controversy in proceedings under Article 226 cannot, therefore, be equated to the controversy regarding the rights or privileges asserted or claimed before the inferior Tribunal, whose order is sought to be quashed in those proceedings; the only question in the writ proceedings will be whether a fundamental right of the party has been infringed or whether the order of the Tribunal is outside the authority conferred on it by the statute.

14. This jurisdiction being original in nature, must be distinguished from an appellate jurisdiction. In the latter case, the appeal, under the law, is a continuation of the original proceedings. Where there is a judgment in appeal, which has the effect of reopening the proceedings in a suit, the adjudication in

the appeal cannot be regarded as finally determining the rights of parties in controversy in the litigation. That is why such a judgment in appeal has not been regarded as "a judgment within the meaning of Article 133 of the Constitution. In the words of Sir George Lowndes in AIR 1933 58 (Privy Council) :

"The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it"

In *Penugonda Venkataratnam and Another Vs. The Secretary of State for India in Council and Others*, *Venkatasubba Rao and Madhavan Nair JJ.* held that the jurisdiction to issue a writ of certiorari was not an appellate jurisdiction but an original one. This view has been accepted by the Supreme Court in *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, where Subba Rao J. pointed out that proceedings under Article 226 would be independent and not a continuation of the original proceedings before the statutory authority. Where, therefore, a superior court issues a writ of certiorari quashing the order of an inferior Tribunal thereby enabling it to hear the case before it afresh and come to a correct conclusion thereon, it cannot be said that the judgment of the superior court is interlocutory or a preliminary one, depending for its finality on the ultimate decision on the controversy by the tribunal. So far as the superior court is concerned, both the tests, namely, a finality of adjudication of the actual controversy before the court and such an adjudication being on the merits, can be said to be fully satisfied. It may be relevant to point out that a court issuing a writ under Article 226 will, unlike an appellate court, have no jurisdiction to decide those matters which the statute had entrusted to the Tribunal with an exclusive jurisdiction to decide. It must follow that the finality of an order under Article 226 cannot be made to depend on the revival or pendency or otherwise of the controversy before the tribunal. Let us illustrate the position. Suppose, the court in a particular case issues a writ thereby quashing the order of a Tribunal on the ground that it contravened the principles of natural justice. The consequence will be that the offending order alone will be quashed under the writ, leaving the proceedings before the Tribunal as one not legally disposed of. The result of the quashing will, therefore, be to restore the proceedings before the tribunal. But at the same time, such a restoration is not by virtue of any order of remand passed by the High Court, but is merely the consequence of the order of the Tribunal alone having been quashed.

15. A power to remand is an incident - though such power can exist only by virtue of a statute of an appellate jurisdiction; obviously, a writ issued in the exercise of an original jurisdiction possessed by the court, cannot either amount to or be likened with an order of remand. That this is the true position has been held by this court in *W. A. Nos. 138 to 142 of 1957*, where Rajamannar C. J. delivering the judgment of the court observed:

"This court in the exercise of its jurisdiction under Article 226 of the Constitution does not act as a court of appeal with reference to a subordinate court; nor does

it exercise revisional jurisdiction in respect of such a court. All that this court does is to examine the order of the inferior tribunal to see if there is any defect of jurisdiction or any manifest error of law or any contravention of the rules of natural justice or such other vitiating circumstance. If it finds any, then this court will quash the order. As we have pointed out, a quashing of the order of an appellate tribunal may lead to a re-hearing of the appeal. But that is not because this court directs the Tribunal to do so."

From this it would therefore follow, that when a writ of certiorari is issued quashing the order of an inferior authority, the superior court can be regarded as having completely disposed of the matter. A fortiori, in a case where it dismisses an application for the issue of a writ. In the former case where the Tribunal is improperly seized of the matter and its order alone is improper, the result of the writ will be to render the matter before the tribunal as still available for disposal. This view conforms to what has been laid down by Denning L. J. in *R. v. Northumberland Compensation Appeal Tribunal*, 1952 1 KB 338 where that eminent Judge observed:

"The decision must be quashed and the Tribunal will then be able to hear the case again and give the correct decision."

In a later case, namely *R. v. Medical Appeal Tribunal*. 1957 1 QB 574 that learned Judge expressed the same idea when he said:

"The order must issue to quash the declaration of the medical appeal tribunal of 13th June 1956. There is no need for a mandamus because the tribunal will no doubt consider the claim afresh and come to a right decision on it."

It is not, however, a mere option in the Tribunal to do so. It will be its statutory duty to take up the application before it and re-hear the same: *Vide Janab N.S. Sattar Sahib Vs. State of Madras and Another*, .

16. Under the English law, the issue of a writ of certiorari has, generally speaking, only the effect of quashing the impugned order. A party, therefore, not unoften applies in that country for the issue of a writ of certiorari to quash the order and along with it for a mandamus directing the rehearing, the rehearing being consequent on the quashing. But, as pointed out in *T.C. Basappa Vs. T. Nagappa and Another*, and *Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore State Transport Authority, Bangalore and Others*, , the High Courts in this country are not trammelled by the technicalities of the English procedure. It will be competent for such courts, in appropriate cases, to give directions to the Tribunal, even after quashing the order. But the existence of such a power in those courts does not alter the essential character of the proceedings, which will be the same as in England. In the earlier case cited above, *Mukherjea J.* describing the effect of the issue of a writ of certiorari observed:

"The offending order or proceeding, so to say, is put out of the way as one which

should not be used to the detriment of any person."

From the foregoing, it will be seen that whenever there is an order under Article 226 quashing the proceedings before a Tribunal, which has the effect of reopening the proceedings before it, such reopening of the controversy is not because the order issuing the writ is in the nature of a remand-a remand being the peculiar feature of the appellate jurisdiction; but for the reason there is no valid order of the tribunal concluding the controversy between the parties. Secondly, as we have indicated earlier, the subject matter in controversy in the proceedings taken out for the issue of a writ and that which had been adjudicated upon by the Tribunal are distinct. The writ is, and can be, issued under Article 226 of the Constitution for purposes of enforcing any one or more of the Fundamental rights guaranteed under the Constitution; or, for other purposes, like quashing the order of a statutory Tribunal when it had exceeded its jurisdiction or where its order is palpably wrong or one reached contrary to the rules of natural justice. It has, therefore, been held that the existence of a right will be the foundation to the exercise of the jurisdiction of the High Court under Art 226; See *The State of Orissa Vs. Madan Gopal Rungta*, .

To put it in a different way Article 226 confers power of judicial control on the superior courts to enforce the guaranteed rights under the Constitution, to ensure that the statutory authorities are kept within the bounds of their authority and thus to maintain the rule of law enshrined in our Constitution. A right to obtain a writ is a valuable constitutional right given to an aggrieved party, the issue thereof being regulated by certain well accepted principles. That right is, as we said, distinct from the one which can form the subject-matter of controversy before the Tribunal. The superior court cannot adjudicate on the matter entrusted for adjudication by the Tribunal under the statute, except for the limited purpose of seeing whether a writ should or should not issue. It goes without saying that the Tribunal will have no jurisdiction like the one conferred on the High Court under Article 226 of the Constitution.

17. From the foregoing discussion, it will be apparent that an order on an application under Article 226, whichever way it goes will be a judgment within the meaning of clause 15 of the Letters Patent, as it will be a final adjudication of all matters in controversy in the writ proceedings and which will have the effect of affecting the constitutional remedy of an "aggrieved party. This court has consistently held that an order passed by a single judge on applications under Article 226 of the Constitution, whichever way it went and whatever its effect on the proceedings before the inferior tribunal might be, will amount to a judgment capable of being appealed against under Cl. 15 of the Letters Patent.

18. It has however, been argued that the meaning of the word "judgment" in Cl. 15 Letters Patent being wider than what is imported by the use of the same term in Article 133 of the Constitution the same rule cannot apply to the present case. This contention might be regarded in a way correct to some extent. But, in our opinion, the essential tests which have been applied for the interpretation of the

word "judgment" in clause 15 of the Letters Patent, will equally apply to Article 133 of the Constitution. That article provides a right of appeal against a judgment as well as a final order. We shall now refer to a few decisions relevant to that article.

19. In *Firm Ramchand Manjimal v. Firm Goverdhandas Vishindas Ratanchand*, 39 MLJ 27 : AIR 1920 PC 86 Viscount Cave, construing the term "final order" occurring in Section 109 C. P. C. said that an order would be final if it finally disposed of the rights of parties. An order, therefore, which albeit decided a vital issue in the case, could not have the effect of finally disposing of the rights of the parties, for it would still leave the suit alive for disposal in the ordinary way. See AIR 1933 58 (Privy Council) .

20. The term "judgment" or "final order" occurred in Section 205 of the Government of India Act, 1935, a provision which corresponded to Article 133 of the Constitution. In AIR 1949 1 (Federal Court) a question arose as to the appealability of a judgment of a High Court directing the rehearing in a criminal appeal. The learned judges held that the term "judgment" in Section 205 of the Government of India Act, 1935, would indicate a judicial decision given on the merits of the dispute brought before the court whether the case be a civil or criminal one and it would not comprehend within it a preliminary or interlocutory judgment or order. Defining the words "final order" they observed that it must be an order which finally determined the points in dispute, thus bringing the case to its end. Such an order would be inconsistent with the dispute, put forward for adjudication, being kept alive in any form. *Mohammed Amin Bros. Ltd. v. Dominion of India* AIR 1950 FC 77 was a case where an award was set aside and the matter remitted for fresh disposal. Mukherjea J. pointed out that the term "final order" in Section 205 of the Government of India Act, 1935 was used in a contradistinction with an interlocutory order, and the test to determine whether a particular order was of the former kind, would be to see whether the judgment or order finally disposed of rights of parties. These characteristics of a judgment or final order, it will be seen, are almost identical with the tests laid down in the interpretation of the word "judgment" occurring in clause 15 of the Letters Patent in *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, .

21. In *Jethanand and Sons Vs. The State of Uttar Pradesh*, an order remanding a case for retrial was held not to amount to a final order; the Supreme Court observed:

"If after the order, the civil proceeding still remains to be tried, and the rights and disputes between the parties have to be determined, the order is not a final order within the meaning of Article 133."

Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, was a case similar to AIR 1933 58 (Privy Council) where there was only a determination of one of several issues. It was held that such a decision being in the nature of an interlocutory judgment, not having the effect of disposing of all matters in

controversy, in suit, would not be a judgment. In both the decisions just now referred to, the order was not regarded as amounting to a final order for the reason that the suit in which that order was made, whether at the stage of the suit itself or at the stage of its continuation in appeal, did not finally dispose of the matter in controversy between the parties. The order was merely in the nature of an interlocutory judgment. Those decisions, as we have pointed out earlier¹, cannot apply to proceedings under Article 226 of the Constitution, which are original in their nature, when the matters in controversy in the writ petition have been finally disposed of.

22. But Mr. G. Ramaswami appearing for the respondent has contended that although the quashing of the order of the inferior Tribunal cannot amount to an order of remand, it should still be regarded as one in the nature of a remand, and that would mean that there had been no adjudication of the rights of parties.

23. It is very doubtful whether the scope of Article 133 which confers a valuable right of appeal to the highest court in the land, can be whittled down by resorting to analogies and fictions. In our view if any judicial pronouncement concludes the controversy between the parties in regard to the rights in the particular proceedings, it must ordinarily be regarded as a judgment or final order. Support for the contention has however been sought to be derived from judgment of this court in S. C. P. 117 of 1960 (Mad). Reference has been made to the decision of this court in Lakkaju Satyanarayana Vs. Majati Venkatarattamma and Another, where it was held that on the issue of a rule nisi under Article 226 the proceedings before the inferior* tribunal could be deemed to be automatically revived and kept pending. It has been argued that any order issuing a writ of certiorari, which has the effect of reviving the proceedings before the inferior Tribunal must be regarded as setting at large the controversy in regard to the rights of parties before the Tribunal and that, therefore, the order in the writ proceedings, should be regarded as not finally disposing of the rights of parties.

24. There is however, a fallacy in the argument, in that it mixes up two distinct controversies between the parties which respectively form the subject matter of dispute before the Tribunal and before the High Court. Indeed the latter controversy can arise only after the former has been adjudicated on. In the latter case, the only question at issue will be, whether the order of the Tribunal should be quashed as either being outside its jurisdiction or vitiated by palpable errors. In the former, the question will relate to a claim which will be within the exclusive jurisdiction of the Tribunal to decide.

25. In *Ryots of Garabanda and Others Vs. Zamindar of Parlakimedi*, a Bench of this court held that an order refusing to issue a writ of certiorari would amount to a final judgment. We are of opinion that an order granting a writ will be of the same character, although in certain cases the effect of such a grant might be to reopen the proceedings before the tribunal. A different principle has however been laid down in *Sardar Kapur Singh Vs. Union of India (UOI)*, where a Full Bench of the Punjab High Court had occasion to consider whether an order

rejecting an application for the issue of a writ of certiorari would amount to a judgment or final order within the meaning of Article 133 of the Constitution. The learned Judges, after referring to the tests to which we have made reference, held that it could not be said that in every case where a writ was being issued, that it would amount to a judgment; but that the decision of the question would have to depend on the facts and circumstances and the nature of the decision in each case. For example, where, in a particular case, the court found that the refusal of the right would amount to a final determination of the rights of the parties, there would be a judgment. Otherwise, there would be none within the meaning of Article 133. In that case, there were two applications before the Punjab High Court for grant of leave to appeal to the Supreme Court. One of them related to an order dismissing an application for the issue of a writ in regard to a claim made before the Additional Custodian of Evacuee property who referred the claimant to a suit. The other related to the rejection of a writ petition, challenging the propriety of an order declining to reopen a disciplinary action taken by the authorities against the officer.

26. We are, with great respect to the learned Judges, who decided that case, unable to share their view. The order dismissing the writ petitions in those cases denied the aggrieved party his right to resort to the superior Court to challenge the order of the inferior tribunal. That was a final order depriving, as it did a valuable right of the aggrieved party. It cannot, in our opinion, be stated that the order was any the less final, because the inferior authority did not adjudicate on the merits of the controversy. This conclusion is supported by the decision of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, where an order granting an interim relief without finally deciding the rights of parties was held to be a judgment or final order under Article 133, as by that order the petitions under Article 226 were finally disposed of.

27. We have now to consider the decision in AIR 1958 Mad 151. In that case the wife of an assessee to Income Tax sought a writ of mandamus to restrain the department from attaching and selling certain properties claimed by her to be her own, for realisation of the Income Tax arrears due by her husband. The application was dismissed. The aggrieved party thereupon sought leave of this court under Article 133. Rajamannar C. J. and Panchapakesa Aiyar J. held that as the real controversy in the case related to the title of the applicant to the property attached by the Collector, it was a matter to be finally decided by that officer and as such matter was still pending adjudication, the order in the writ proceedings which had not the effect of finally determining that right, could not be regarded as either a judgment or a final order within the meaning of Article 133. We have already indicated that such a view cannot be justified on principle. In our opinion, an order finally disposing of an application under Article 226 of the Constitution cannot be regarded as any the less a final order, because certain disputes still remain outstanding between the parties before the statutory authority against whom the writ is sought.

28. From what we have said above, it will follow that the decision in S. C. P. 117 of 1960 should also be regarded as not correct. Likewise, the decision in S. C. P. No. 147 of 1961 which must be overruled. We therefore answer the question propounded by us at the beginning of this judgment in the affirmative.

(S. C. P. 203 of 1961 along with S. C. M. P. 244 of 1961 and 265 of 1962 coming on for further hearing before Ramachandra Iyer C. J. and Ramakrishnan J. on 7-10-1963, the court made the following order delivered by the Chief Justice):-

S. Ramachandra Iyer, C.J.

29. S. C. M. P. 265 of 1962: The petitioner gives up all the proposed legal representatives of the deceased Madurai Veerasami except one and presses his claim only in regard to Dhanapal, who subsequent to the death of his father, Madurai Veerasami had also obtained a transfer of the permit from the Regional Transport Authority. He will be impleaded as the sole legal representative of the deceased Madurai Veeraswami.

30. S. C. P. 203 of 1961: There has been delay in the disposal of this application for leave to appeal to the Supreme Court by reason of the death of the respondent, Madurai Veeraswami, which took place on 31-7-1962. Subsequent to his death, one of his legal representatives appears to have applied to the Regional Transport authority for the transfer of the permit in his name. Such transfer was ordered in favour of Dhanapal who has now been added as the legal representative of the deceased.

31. The judgment of this court of appeal set aside that of the learned judge. It has already been held by this court that "permit for the running of stage carriages is property. The only question for consideration is whether the subject-matter of the proposed appeal satisfies the requirements of Article 133(1)(a) of the Constitution. On behalf of the petitioner, it is stated that although the permit in respect of which an application for the issue of a writ was filed, expired on 15-11-1961, the petitioner, namely, the Southern Roadways, had obtained renewal of that permit for another period of three years. It is not disputed that the earnings from buses by virtue of that permit will far exceed the limit of Rs. 20,000 prescribed under Article 133(I)(a) It can, therefore, be said that the value of the subject-matter of the dispute both at the time of the filing of the writ petition as well as at the present moment would be not less than Rs. 20,000. A certificate will issue accordingly under Article 133(I)(a) of the Constitution.

32. S. C. M. P. 244 of 1961: The status quo will continue for a period of two months in regard to the running of the buses over the route in question so as to enable this operator to obtain appropriate directions from the Supreme Court in that behalf.