

(1964) 10 KAR CK 0003
In the Karnataka High Court
Case No : S.C.L.A. Petition No. 245 of 1964

Syed Rashiamad Syed Zainuddin

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 19-10-1964

Acts Referred:

Constitution of India, 1950 — Article 133, 133 (1) (b)

Citation : AIR 1965 Kar 266 : (1964) 2 MysLJ 402

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

A.R. Somnath Iyer, J.

(1) This is an application for the grant of a certificate under sub-clauses (b) and (c) of Article 133(1) of the Constitution.

(2) In Writ Petitions Nos. 1411 and 1412 of 1961 presented by Mr. Chandavarkar and Mr. Moulvi, we issued a direction that the determination of their seniority in the cadre of mamlatdars should be made on the basis of the elucidation contained in paragraph 2 of a resolution of the Government of Bombay of November 21, 1941. On July 11, 1963 the State Government prepared the seniority list in accordance with that direction in consequence of which Mr. Chandavarkar was assigned the twelfth rank, Mr. Moulvi the thirteenth rank and a certain Mr. Upadhye who was not a party to the two writ petitions the twenty-third rank. According to the antecedent seniority list Mr. Upadhye had been assigned the twelfth rank who, in consequence of our direction which was made in his absence, was assigned the twenty-third rank.

(3) So it was that Mr. Upadhye presented Writ Petition No. 1492 of 1963 in which he challenged the validity of the list prepared by the State Government pursuant to the direction which we issued in the earlier writ petitions.

(4) On the basis of the decision in Shivdeo Singh and Others Vs. State of Punjab and Others, , Mr. Upadhye was advised as it has been explained to us to make an

application for a review of the orders which we made in the earlier writ petitions instead of seeking a writ in his own writ petition which he subsequently presented. These two review petitions presented by Mr. Upadhye were numbered Civil Petitions Nos. 150 and 151 of 1964. By an order made by us on July 24, 1964 we granted that review and directed the rehearing of writ petitions Nos. 1411 and 1412 of 1961 since, in our opinion, Mr. Upadhye who had not been made a party to those writ petitions had been adversely affected by the order which we made therein.

(5) Mr. Malimath now asks us for a certificate under Article 133 of the Constitution to enable him to prefer an appeal to the Supreme Court.

(6) The preliminary objection raised on behalf of Mr. Upadhye by Mr. Narasimha Murthy is that our order by which we granted the review is not a final order falling within Article 133 of the Constitution and we should therefore refuse the certificate sought.

(7) In my opinion, this objection should succeed. When we granted the review sought by Mr. Upadhye we did not decide or make any adjudication upon any of the claims to seniority made by Messrs. Chandavarkar and Moulvi on the one hand and Mr. Upadhye on the other. All that we decided was that Mr. Upadhye who was not made a party to the earlier two writ petitions had been injuriously affected by the order which we made in the two writ petitions presented by Mr. Chandavarkar and Mr. Moulvi and that he was, therefore, entitled to seek a review as authoritatively declared by the Supreme Court in *Shivdeo Singh and Others Vs. State of Punjab and Others*, .

(8) As explained by the Supreme Court on at least two occasions in *Seth Premchand Satramdas Vs. The State of Bihar*, and *Jethanand and Sons Vs. The State of Uttar Pradesh*, , no order can be a final order unless by its own force it affects the rights of the parties finally. Since the rights of the parties were by no means affected in that way by its own force, by the order by which we granted the review, it should follow that our order was not a final order within the meaning of Article 133 of the Constitution.

(9) Mr. Malimath, however, advanced an argument that in the proceedings which were commenced by Mr. Upadhye for a review of the order made by us in the two earlier writ petitions, our order was a final order in the sense that nothing more remained to be done in those proceedings whose only aim was to obtain a re-hearing of the two earlier writ petitions.

(10) In my opinion, that is not how we should understand the expression "final order" occurring in Article 133 of the Constitution. A final order is one which after it is made not only leaves nothing more to be done in the proceedings in which that final order is made but also by its own force affects the right of the parties to those proceedings. So, (sic) in an application for a review, which is really an application in the proceedings, in which the order, a review of which is sought was made, does not, it is plain, so affect the rights of the parties to any extent.

(11) Any other view would give an order even on an interlocutory application the status of a final order which it cannot claim.

(12) In the view that we take, it is not necessary for us to address, ourselves to the question whether as contended by Mr. Narasimha Murthy some new grounds or contentions have been raised for the first time in the memorandum of appeal annexed to the application to the grant of a certificate or whether the grounds stated therein amount to no more than mere reiteration of the grounds which were urged at the time of hearing of the review application. In that view of the matter, it would not be necessary for us to consider the effect and scope of the various documents and annexures produced on behalf of Mr. Upadhye along with his counter-affidavit.

(13) This application, therefore, is unsustainable and is accordingly dismissed.

Ahmed Ali Khan, J.

(14) I agree.

(15) Appeal dismissed.