

(1975) 05 AHC CK 0019

Allahabad High Court

Case No: Supreme Court Appeal No. 759 of 1971

Advance Insurance Co. Ltd.

APPELLANT

Vs

Mill Stores Co.

RESPONDENT

Date of Decision: May 9, 1975

Acts Referred:

- Constitution of India, 1950 - Article 133(1)

Citation: AIR 1975 All 411

Hon'ble Judges: Satish Chandra, J; N.D. Ojha, J

Bench: Division Bench

Advocate: Gopal Bihari, for the Appellant; V.B. Khare, for the Respondent

Final Decision: Dismissed

Judgement

N.D. Ojha, J.

The opposite party Messrs. Mill Stores Company, Galghar, Gorakhpur. filed an appeal in this Court against an order dated 24th April, 1971 passed by the Civil Judge Gorakhpur refusing to make an award the rule of the Court. The appeal was allowed by a Bench of this Court on 15th October, 1971. The applicant made an application under Article 133(I)(a) and (b) of the Constitution of India for a certificate that the case was a fit one for appeal to the Supreme Court. The application was presented on 10th December, 1971. and after notices were served on the opposite party it came up for hearing on 30th March, 1973. On that date we granted a certificate in the following terms :-

"The judgment of this Court is of variance. The subject-matter in dispute was and still is above Rs. 20,000/- in value. We accordingly grant a certificate to the applicant under Clause (a) of Article 133(1) of the Constitution. There will be no order as to costs."

Thereafter the present application was made on the allegation that on receipt of the certificate the Assistant Registrar of the Supreme Court raised an objection on 7th

August, 1973, to the effect that the certificate was defective in view of the 30th amendment of the Constitution and that after hearing the counsel for the applicant the Supreme Court directed that the matter may be kept pending to enable the applicant to apply to the High Court for rectification of the certificate. In this application it has been prayed that the certificate may be recalled and after correction resubmitted to the Supreme Court. The correction sought is to the effect that it may now be certified that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court.

2. When the application came up for hearing learned counsel for the applicant, however, urged that the certificate as granted on 30th March, 1973, was correct inasmuch as the gazette notification containing the 30th amendment of the Constitution had not been received by that date. According to learned counsel, the notification appointing the date of commencement of the Constitution (Thirtieth Amendment) Act, 1972, could be effective only from the date on which it was brought to the actual notice of the person concerned. In our opinion this submission has no substance. The Constitution (Thirtieth Amendment) Act, 1972, received the assent of the President of India on 22nd February, 1973, and was published in the Gazette of India of that very date. Sub-section (2) of Section 1 of the Act provides that the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Central Government by notification published in the Gazette of India dated 27th February, 1973 appointed the same date namely 27th February, 1973, as the date on which the Act came into force. Section 5 of the General Clauses Act, 1897, is to the effect that where any Central Act is not expressed to come into operation on a particular day then it shall come into operation on the day on which it receives the assent, in the case of an Act of Parliament, of the President. But for Sub-section (2) of Section 1 the Amendment Act would have come into operation on 22nd February, 1973 on which date it received the assent of the President. However, since Sub-section (2) of Section 1 provided that it shall come into force on such date as the Central Government may by notification in the Official Gazette appoint and the Central Government appointed 27th February, 1973, as the date of commencement of the Act, it is this date on which the Act shall be deemed to have come into force. The question which was canvassed by learned counsel for the applicant was that even though the notification may have been published in the gazette dated 27-2-1973, since this notification was not received till 30th March, 1973 when the order granting the certificate was passed it was a case in which the applicant had no knowledge of the notification till that date and consequently so far as the applicant is concerned it would not be deemed to have come into force on 27th February, 1973 but will be operative only from the date on which it came to the knowledge of the applicant. According to learned counsel, it will be the date of receipt of the gazette and not the date of its publication that will be relevant.

3. In *State of Maharashtra v. M.H. George*. AIR 1965 SC 722) the respondent M.H. George was prosecuted for an offence u/s 23(1-A) read with S. 5 (1) of the Foreign Exchange Regulation Act, 1947. It was in respect of infringement of a notification issued by the Central Government u/s 8(1) of the said Act. The notification was dated 8th November, 1962, and had been published in the Gazette of India of 24th November, 1962. The case of the respondent was that he left Zurich on 27th November, 1962, and his destination was Manilla. His plane arrived in Bombay on the morning of 28th November, 1962, and he was apprehended by the customs authorities and the gold was recovered from him in respect of which he was said to have committed the offence. According to the respondent, he had no knowledge of the notification published in the Gazette of India on 24th November, 1962, even on the 28th of November, 1962, and consequently he could not be said to have committed any offence. The argument submitted on behalf of the respondent was that the notification being merely a subordinate or delegate legislation could be deemed to be in force not from the date of its issue or publication in the gazette but only when it was brought to the notice of the persons who would be affected by it. This argument was repelled and their Lordships of the Supreme Court in paragraph 45 of the report held that publication in the Official Gazette namely the Gazette of India is the ordinary method of bringing a rule of subordinate legislation to the notice of the person concerned and the argument that the notification was not effective because it was not properly published in the sense of having been brought to the actual notice of the respondent must be rejected. In view of the decision in the case of *State of Maharashtra v. M.H. George* (supra) the submission made by learned counsel for the applicant cannot be accepted.

4. It was then urged that since the lis giving rise to the appeal which was decided by this Court on 15th October, 1971, had commenced prior to the coming into force of the Constitution (Thirtieth Amendment) Act, the right to file an appeal being a vested right, the applicant was entitled to a certificate being granted under Article 133(1)(a) of the Constitution as it had stood before the aforesaid Amendment Act. In our opinion, even this submission has no substance. It is true that the right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or the proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal as was held by the Supreme Court in [Garikapatti Veeraya Vs. N. Subbiah Choudhury](#), but this Rule has an exception which too is to be found in the same case, the same being that this vested right of appeal can be taken away by subsequent enactment if it so provides expressly or by necessary intendment. Section 3 of the Constitution (Thirtieth Amendment) Act, 1972, reads:--

"3. Special Provision as to pending proceedings etc. (1) Nothing in this Act shall affect :--

(a) any appeal under Sub-clause (a) or Sub-clause (b) or Sub-clause (c) of Clause (1) of Article 133 of the Constitution which immediately before the commencement of this Act was pending before the Supreme Court; or

(b) any appeal preferred on or after the commencement of this Act against judgment, decree or final order in a Civil proceeding of a High Court by virtue of a certificate given by the High Court before the commencement of this Act under Sub-clause (1) or Sub-clause (b) or Sub-clause (c) of Clause (1) of Article 133; and every such appeal may be heard and disposed of or, as the case may be, entertained. heard and disposed of by the Supreme Court as if this Act had not been passed.

(2) Subject to the provisions of Sub-section (1) no appeal shall lie to the Supreme Court under Clause (1) of Article 133 of the Constitution from any judgment, decree or final order arising out of a suit or other civil proceeding which was instituted or commenced in any Court before the commencement of this Act unless such appeal satisfies the provisions of that clause as amended by this Act."

5. Clauses (a) and (b) of Section 3 (1) are admittedly not applicable to the instant case. Sub-section (2) provides expressly that even though a proceeding may have been instituted or commenced in any Court before the commencement of the Amending Act, no appeal shall lie to the Supreme Court subject to the provisions of Sub-section (1) unless such appeal satisfied the provisions of Clause (1) of Article 133 of the Constitution as amended. The fact that the appeal was decided by this Court before the commencement of the Act will also be of no consequence. In this view of the matter, on 30th March, 1973. no certificate could have been granted under Article 133(1)(a) of the Constitution as it stood prior to its amendment. It could be granted only if it satisfied the requirements of Clause (1) of Article 133 as amended. The Certificate granted on 30th March, 1973, therefore, deserves to be recalled and is hereby recalled.

6. In so far as the prayer made by the applicant that a certificate may be granted under the amended Clause (1) of Article 133 of the Constitution we are not satisfied that the case involves any substantial question of law of general importance which needs to be decided by the Supreme Court.

7. The application for certificate is accordingly dismissed. There will however, be no order as to costs.