

(1957) 09 KL CK 0034
High Court Of Kerala
Case No: C.M.P. 112 of 1956 (K)

Sales-Tax Commissioner, Kerala
State

APPELLANT

Vs

M. Peres and Co. Ltd.,
Mattanchery

RESPONDENT

Date of Decision: Sept. 23, 1957

Acts Referred:

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

Citation: (1957) KLJ 945

Hon'ble Judges: K.T. Koshi, C.J; M.S. Menon, J

Bench: Division Bench

Advocate: K. Rama Iyer and A.V. Ramanatha Iyer, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.S. Menon, J.

This is a petition by the Sales Tax Commissioner (First Member, Board of Revenue), Trivandrum, for a certificate under Article 133 of the Constitution. The decision in respect of which the certificate is sought is our judgment in Sales-Tax Reference No. 2 of 1954. Under Article 133 an appeal lies to the Supreme Court only "from any judgment, decree or final order in a civil proceeding" and the questions that have to be determined at the very outset are:

(1) Does our judgment in Sales-Tax Reference No. 2 of 1954 constitute "a judgment, decree or final order ? and

(2) Even if it does, can it be considered a judgment, decree or final order "in a civil proceeding

2. The Sales Tax Reference was under sub-section (1) of section 24 of the Cochin Sales Tax Act, XV of 1121. Sub-sections (1) (omitting the two provisos thereto), (2) and (5) of section 24 read as follows:

(1) Within sixty days of the date on which he is served with notice of an order u/s 16, or of an order u/s 17 or of an order u/s 18, enhancing an assessment or penalty or otherwise prejudicial to him, the assesses in respect of whom order was passed may, by application accompanied by a fee of one hundred rupees require the Commissioner of Sales Tax to refer to the High Court any question of law arising out of such order, and the Commissioner of Sales Tax shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion on the question of law to the High Court.

(2) If, on any application being made under sub-section (1), the Commissioner of Sales Tax refuses to state the case on the ground that no question of law arises, the assesses may within six months from the date on which he is served with notice of the refusal apply to the High Court, and the High Court, if it is not satisfied of the correctness of the decision of Commissioner of Sales Tax may require the Commissioner of Sales tax to state the case and to refer it, and on receipt of any such requisition, the Commissioner of Sales Tax shall state and refer the case accordingly.

(5) The High Court upon hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall sent to the Commissioner of Sales Tax by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar and the Commissioner of Sales Tax shall dispose of the case accordingly.

3. In [Seth Premchand Satramdas Vs. The State of Bihar](#), the question as to whether a judgment u/s 21 of the Bihar Sales Tax Act, VI of 1944, can be considered as "a final judgment, decree or order" coming under Clause 31 of the Letters Patent of the Patna High Court came up for decision. The judgment summed up the provisions of section 21 of the Bihar Sales Tax Act, VI of 1944 as follows:-

Section 21 of the Act provides that if the Board of Revenue refuses to make a reference to the High Court, the applicant may apply to the High Court against such refusal, and the High Court, if it is not satisfied that such refusal was justified, may require the Board of Revenue to state a case and refer it to the High Court. The section also provides that

"the High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Board of Revenue a copy of such judgment under the seal of the Court... and the Board shall dispose of the case accordingly

and said:

It seems to us that the order appealed against in this case, cannot be regarded as a final order, because it does not of its own force bind or affect the rights of the parties. All that the High Court is required to do under S. 21, Bihar Sales Tax Act, is to decide the question of law raised and send a copy of its judgment to the Board of Revenue. The Board of Revenue then has to dispose of the case in the light of the judgment of the High Court. It is true that the Board's order is based on what is stated by the High Court to be the correct legal position, but the fact remains that the order of the High Court standing by itself does not affect the rights of the parties, and the final order in the matter is the order which is passed ultimately by the Board of Revenue. This question has been fully dealt within AIR 1923 P.C. 148, where Lord Atkinson pointed out that the order made by the High Court was merely advisory and quoted the following observations of Lord Esher in 62 L.J.Q. B. 33 :

In the case of *Ex parte County Council of Kent*, (1891) 1 Q. B. 725 where a statute provided that a case might be stated for the decision of the Court it was held that though that the language might prima facie import that there has to be the equivalent of a judgment or order, yet when the context was looked at it appeared that the jurisdiction of the Court appealed to was only consultative, and that there was nothing which amounted to a judgment or order

4. Section 24 (5) of the Cochin Sales-Tax Act, xv of 1121, corresponds to section 66 (5) of the Indian income tax Act, 1922:

The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

In [Jamnadas Prabhudas Vs. Commissioner of Income Tax, Bombay City](#), the question as to whether a certificate under Article 133 can be given in respect of a "judgment" u/s 66 (5) came up for consideration. It was held that the expression "judgment, decree or final order" used in Article 133 of the Constitution will not cover such a "judgment" and that the certificate to be obtained is one u/s 66A (2) of the Indian income tax Act, 1922.

5. In delivering the judgment of the Court Chagla, C.J., said :

Now, the first question that has got to be considered is whether a judgment of this Court under S. 66 is a judgment contemplated by the expression "judgment, decree or final order". Sir Jamshedji's contention is that S. 66 (5) provides that the High Court upon hearing of the reference shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such

decision is founded, and a copy of the judgment has to be forwarded to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment, and therefore according to Sir Jamshedji there is an obligation upon the revenue authorities to conform to the judgment; the High Court in delivering a judgment decides the case and therefore the decision of the High Court is a judgment within the meaning of Art. 133 (1). If "judgment was used in the sense in which that expression is used in the CPC and in the sense in which it is used in S. 66 (5), viz. the grounds on which the decision of a Court is based, then undoubtedly Sir Jamshedji would be right. But, in our opinion, - and our opinion is supported by authorities as I shall presently point out-, the expression "judgment, decree or final order" used in, Art. 133 (1) is used in its technical English sense, which means a final declaration or determination of the rights of parties and it also means a decision given on merits. "Judgment, decree or final order" is a compendious expression and each one of the parts of this expression bear the same connotation, viz. that there is an adjudication by the Court upon the rights of the parties who appear before it. "Judgment" must not be read in this context in contradistinction to "decree or final order". Emphasis is also placed by Sir Jamshedji on the fact that whereas "order" is qualified by "final", "judgment" is not so qualified. We do come across the expression "final judgment, decree or order" for instance in Cl. 39, Letters Patent. But if the expression "judgment" itself connotes a final adjudication by the Court upon the rights of parties, the adjective "final" which acted as a prefix to the word "judgment" was really autologous and "judgment" by itself without the qualifying expression "final" still retains the same connotation of finality. This expression has also been used in the Government of India Act in S. 205, and that section provided for appeals to the Federal Court from any judgment, decree or final order of a High Court in British India where the High Court certified that the case involved a substantial question of law as to the interpretation of the Government of India Act or any Order in Council made under the Act, and that expression has also come in for interpretation and the interpretation put upon S. 205 has been that the judgment there means a final declaration or determination of rights of parties, and it is difficult to hold that our constitution makers with S. 205 before them when they used the same language that was used in S. 205 used it with a different meaning in Art. 133 (1).

6. We entertain no doubt that a "judgment" delivered u/s 24 (5) of the Cochin Sales-Tax Act, XV of 1121, is not a "judgment, decree or final order" as contemplated by Article 133 of the Constitution, and that this petition should fail.

7. In the view we have taken it is unnecessary to decide the second of the two questions mentioned in paragraph 2 above and it is not considered in this judgment. The petition is hereby dismissed though in the circumstances of the case without any order as to costs.