

Union Of India And Ors. vs Rai Bahadur Seth Shree Ram Durga Pershad on 28 February, 1967

JUDGMENT

H.R. Khanna, J.

(1) This order relates to S. C. A. Nos. 28-D to 54-D of 1962. The petitioners in these petitions ' under Articles 132 and 133 of the Constitution of India and sections 109 and 110 and Order 45, rules 2 and 3 of the Code of Civil Procedure, have prayed for a certificate of fitness to appeal to Supreme Court against the judgment and order of the Punjab High Court dated 5th December, 1961. By that judgment a Division Bench of the Court accepted 27 writ petitions and quashed the orders of assessment made under the Sea Customs Act on the ground that they had not been made in accordance with the law.

(2) These petitions have been referred to the Full Bench because the learned judges of the Division Bench found that three important questions of law arose in the case and they merited decision by a larger Bench. Those questions were-

(1) Whether in computing the period of limitation for a petition under Articles 132 and 133, the time spent in obtaining a certified copy of the judgment can be excluded ; (2) ' Whether the order sought to be appealed against is not a final order; and (3) Whether Article 133 has no applicability, because the proceedings in these cases are not civil proceedings.

(3) Since the time of reference, the matter has been decided by their Lordships of the Supreme Court in respect of the three questions. On the first question of limitation, their Lordships held in the case of Additional Collector of Customs v. Best and Co. that the provisions of section 12(2) and (3) of the Limitation Act, 1908, are a positive direction for excluding the time taken in obtaining a copy of the judgment and decree or order, as the case may be, and those provisions are irrespective of the Code of Civil Procedure or the rules made by a Court under section 122 of the Code. Such rules, if they permit a memorandum of appeal to be filed without annexing thereto a copy of the judgment or decree or order confer a privilege on a would-be- appellant but do not govern the positive direction contained in section 12. It was, accordingly, held that the time spent in obtaining the copy of the judgment or order could be excluded in computing the period of limitation. In arriving at this conclusion, their Lordships took note of the fact that the copy of the judgment or order can be required not only for annexing it with the memorandum of appeal but also for reparing and drafting the grounds of appeal.

(4) So far as the other two questions are concerned, the matter is concluded by the decision of the Supreme Court in the case of Ramesh and another v. Gendalal Motilal Patni and others. It was held in that case that Article 133 covers all civil proceedings, because no exception is indicated. The term 'civil proceeding', according to their Lordships, included all proceedings affecting civil rights, which were not criminal. The High Court in that case was invited to interfere by issuance of writs of

certiorari and prohibition against the reopening of the case in which the Claims Officer under Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act had discharged a debt due to the respondent. The Claims Officer purported to exercise a jurisdiction under which he could order the discharge of a debt. It was held that the proceedings before the revenue authorities were concerned with the civil rights of two contending parties and were civil proceedings. The proceedings in the High Court in the petition under Article 226 for the issuance of a writ were also held to be civil proceedings, because the original proceedings, giving rise to the petition under Article 226, concerned civil rights. It was also held in the above mentioned case that the order made by the High Court in a petition under Article 226 is a final decision in a civil proceeding if the controversy raised before the High Court is finally over. Keeping in view the dictum laid down above, we would hold that the order, sought to be appealed against in the present case, is a final order in civil proceedings within the meaning of the expression in Article 133.

(5) The questions referred to us, having been answered as above the matter shall go back to the Division Bench for being disposed of in accordance with law.

(6) As the matter is very old, we direct that these petitions may be listed for hearing within a month.