

PETITIONER:
INDIAN OIL CORPORATION LTD.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT 13/08/1986

BENCH:
ERADI, V. BALAKRISHNA (J)
BENCH:
ERADI, V. BALAKRISHNA (J)
DUTT, M.M. (J)

CITATION:
1986 AIR 1780 1986 SCR (3) 553
1986 SCC (4) 146 JT 1986 132
1986 SCALE (2) 233
CITATOR INFO :
R 1990 SC 334 (22)
RF 1991 SC 1309 (3)

ACT:
Constitution of India, 1950-
Art. 226-Writ Petition-Refusal to consider on merits solely on ground that a special leave petition had been dismissed by a nonspeaking order-Validity of.
Art. 136-Special Leave Petition-Grant of-Dismissal by a nonspeaking order-Effect of.

HEADNOTE:

The appellant's special leave petition against the award of the Labour Court dated March 11, 1983 granting relief to its employee-respondent No. 3, was dismissed by a non-speaking order. In the said proceedings, respondent No. 3 had also been represented by a counsel. Thereafter, the appellant approached the High Court by preferring a writ petition under Art. 226 of the Constitution seeking to quash the aforesaid award of the Labour Court. The High Court admitted the writ petition and granted interim stay of enforcement of the award.

The third respondent unsuccessfully challenged the aforesaid interim order by a special leave petition. Subsequently when the main writ petition came up for final hearing before the Division Bench of the High Court, the third respondent again raised a preliminary objection as to the maintainability of the writ petition. The High Court upheld the preliminary objection and dismissed the writ petition holding (i) that the dismissal in limine by the Supreme Court of the special leave petition filed by the appellant against the award by the non-speaking order precluded the appellant from challenging the said award before the High Court; (ii) that the doctrine of election was applicable to the case and the appellant having chosen the remedy of approaching the superior court and failed in that attempt, he could not thereafter resort to the alternative remedy of approaching the High Court for relief under Article 226 of the Constitution; and (iii) that the writ jurisdiction

of the High Court under Art. 226 of the Constitution being essentially discretionary in nature, it will be a sound exercise of the court's discretion to refuse relief in such a situation.

Allowing the appeal and remanding the case to the High Court for disposal on merits,

^

HELD: 1.(i) The view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. The dismissal by Supreme Court of the special leave petition of the appellant by a non speaking order did not operate as a bar against the appellant in the matter of challenging the impugned award of the Labour Court by resort to proceedings before the High Court under Art. 226 of the constitution. [560D-E]

1.(ii) The effect of the non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave should be granted. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be re-opened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork. [558C-G]

Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and Another, [1978] 3 SCC 119 and Ahmedabad Manufacturing & Calico Printing Company Ltd. v. Workmen and Anr, [1981] 3 SCR 213, relied upon

Wilson v. Colchester Justices, (1985)-Vol. 2-All England Law Reports at page 97, referred to.

2. It is not the policy of the Supreme Court to entertain special

555

leave petitions and grant leave under Art. 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved and there is manifest injustice resulting from the impugned order or judgment. Moreover, having regard to the very heavy backlog of work in the Supreme Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of the Supreme Court not to grant special leave except where the party cannot claim effective relief by approaching the concerned High Court under Art. 226 of the Constitution. In such cases also special leave petitions are quite often dismissed only by passing a non-speaking order and it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Art. 226 of the Constitution on the sole ground of dismissal of special leave petition. [559A-E]

Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and Another, [1978] 3 SCC 119 and Ahmedabad Manufacturing & Calico Printing Company Ltd. v.

Workmen and Anr, [1981] 3 SCR 213, followed.

3. The doctrine of election referred to by the High Court has no application at all to the present situation. [560F]

Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat, [1970] 1 SCR 322, distinguished.

4. The grant of leave under Art. 226 of the Constitution is undoubtedly in the discretion of the High Court but the exercise of that discretionary Jurisdiction is to be guided by established legal principles. It will not be a sound exercise of that discretion to refuse to consider a writ petition on its merits solely on the ground that a special leave petition filed by the petitioner in the Supreme Court had been dismissed by a non-speaking order. [561A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1257 (NL) of 1985.

From the Judgment and order dated 24th January, 1985 of the Patna High Court in Civil Writ Jurisdiction No. 5877 of 1983.

M.K. Banerjee, Sol. Genl, D.N. Misra, B.D. Barucha and A.M. Dittia for the Appellant.
556

M.K. Ramamurthy and Mrs. Gyan Sudha Mishra for the Respondents.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. The short question that arises for decision in this appeal by special leave is whether the dismissal in limine of a Special Leave Petition filed before this Court by a party challenging the award of a Labour Court would preclude the said party from subsequently approaching the High Court under Article 226 of the Constitution seeking to set aside the said award.

Having regard to the nature of the question arising for determination, it is not necessary for us to set out in detail the facts of the case and a brief narration thereof would suffice. Respondent No. 3 was appointed in 1963 as a Sales officer in the service of the appellant-The Indian oil Corporation. He was dismissed from service in 1969 on charges of misconduct but was subsequently reinstated under orders of the Labour Court, Patna before which an industrial dispute had been raised. During the period when Respondent No. 4 was out of employment consequent on his dismissal, some of his juniors had been promoted to higher posts. Subsequent to his reinstatement, Respondent No. 3 claimed that he was entitled to be given promotion with effect from the date on which his juniors were promoted and also to be given the higher pay scale of Rs. 1025-1625 from such date. This claim was not accepted by the appellant and that again gave rise to another industrial dispute. The State Government of Bihar referred the said dispute to the Labour Court, Patna on September 26, 1980. The Labour Court by its award dated March 11, 1983 held that Respondent No.3 was entitled to be paid salary in the scale of Rs. 1025-1625 with effect from December 30, 1970, that being the date on which his juniors were promoted to that scale. It further directed that the 3rd Respondent should be promoted from grade 'B' to grade 'C' and should also be given the benefit of revision in the pay scales of those grades.

Aggrieved by the said award, the appellant moved this Court under Article 136 of the Constitution by filing

Special Leave Petition No. 9147 of 1983. Respondent No. 3 had filed a caveat before this Court and he was represented by Counsel at the time when the special leave petition was heard. This Court on September 9, 1983 dismissed the special leave petition by a non-speaking order, which was in the following terms:

557

"The special leave petition is dismissed.",

Thereafter the appellant approached the High Court of Patna by preferring a writ petition under Article 226 of the Constitution seeking to quash the aforesaid award of the Labour Court dated March 11, 1983. The High Court by its order dated January 31, 1984 admitted the writ petition and granted interim stay of enforcement of the award. Thereupon the 3rd Respondent came up to this Court challenging the order of the High Court admitting the writ petition and granting interim stay of the award. The principal contention taken in the special leave petition was that in view of the order of this Court dated September 9, 1983 dismissing the special leave petition (S.L.P. No. 2770 of 1984) filed by the appellant against the award of the Labour Court, it was not legally open to the appellant, thereafter, to approach to the High Court under Article 226 of the Constitution challenging the very same award. This Court after hearing both sides, dismissed the special leave petition filed by the 3rd Respondent by the following order dated August 17, 1984:-

"Special Leave Petition is dismissed. We hope that the High Court will dispose of the writ petition as expeditiously as possible preferably within four months from today. In the meantime the respondents will deposit in the High Court a further sum of Rs. 10,000 (apart from Rs. 5,000 which has already been deposited towards the cost of the petitioner) within two weeks from today, which amount the petitioner will be at liberty to withdraw in case the Writ Petition will not be disposed of within four months from today. "

Subsequently, when the writ petition came up for final hearing before a Division Bench of the High Court, the 3rd Respondent again urged the aforesaid contention as a preliminary objection to the maintainability of the writ petition. That contention was upheld by the Division Bench which took the view that the dismissal in limine by this Court of the special leave petition filed by the appellant against the award by the non-speaking order reproduced above precluded the appellant from challenging the said award before the High Court under Article 226 of the Constitution. In the opinion of the High Court the doctrine of election was applicable to the case and the appellant having chosen the remedy of approaching a superior Court and failed in that attempt, he could not thereafter resort to the alternative re-

558

medy of approaching the High Court for relief under Article 226 of the Constitution. Another reason stated by the High Court is that the writ jurisdiction of the High Court under Article 226 of the Constitution being essentially discretionary in nature, it will be a sound exercise of the Court's discretion to refuse relief in such a situation. On the basis of the aforesaid reasoning the High Court dismissed the writ petition filed by the appellant without going into the merits of the case. The appellant challenges the correctness of the decision so rendered by the High Court.

We are clearly of opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. As observed by this Court in *Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and Another*, [1978] 3 S.C.C. 119 the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be re-opened in a subsequent writ proceeding before the High Court. But neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issue must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of *res judicata* or constructive *res judicata* to such an extent so as to found it on mere guesswork.

This enunciation of the legal position has been reiterated by this Court in *Ahmedabad Manufacturing & Calico Printing Company Ltd. v. Workmen and Anr*, [1981] 3 S.C.R. 213. The principles laid down in the two decisions cited above fully govern the present case.

559

It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court not to grant special leave except where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions afore-cited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the

special leave petition.

In *Wilson v. Colchester Justices*, [1985]-Vol. 2-All England Law Reports at page 97 the House of Lords had to consider the question whether the refusal of leave to appeal by the Appeal Committee of the House of Lords would constitute an implied approval of the decision which had been unsuccessfully sought to be impugned. The following observations of Lord Roskill are apposite in our present context:

"Seemingly the Divisional Court felt that this refusal indicated at least implied approval of the decision which it had been unsuccessfully sought to impugn. Counsel surprised your Lordships by saying that this impression was widespread in the profession. My Lords, if that were so, as my noble and learned friend Lord Diplock remarked during the argument, the sooner this erroneous impression is emphatically corrected by your Lordships the better. There are a multitude of reasons why, in a particular case, leave to appeal may be refused by an Appeal Committee. I shall not attempt to embark on an exhaustive list

560

for it would be impossible to do so. One reason may be that the particular case raises no question of general principle but turns on its own facts. Another may be that the facts of the particular case are not suitable as a foundation for determining some question of general principle. Your Lordships House is only able, in any given year, to hear and determine a limited number of cases and it is important for the evolution of the law as a whole that those cases should be carefully chosen. Conversely the fact that leave to appeal is given is not of itself an indication that the judgments below are thought to be wrong. It may well be that leave is given in order that the relevant law may be authoritatively restated in clearer terms. It is not difficult to find in the books examples of cases where, after leave to appeal has been refused in one case, another case will later arise in which leave to appeal has been given as a result of which the decision against which leave to appeal was originally refused is shown to have been wrong. But that of itself does not mean that the initial refusal of leave was wrong."

Thus the correct legal position is that the dismissal by this Court of the Special Leave Petition No. 9147 of 1983 by the non-speaking order of this Court dated September 9, 1983 did not operate as a bar against the appellant in the matter of challenging the impugned award of the Labour Court by resort to proceedings before the High Court under Article 226 of the Constitution.

The doctrine of election referred to by the High Court has no application at all to the present situation and the decision in *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat*, [1970] 1 S.C.R. 322 is clearly distinguishable. The question that arose in that case was whether a party who had a choice of resorting to one of two remedies before the same Court namely, the High Court, could successively move the High Court under Section 115 of the Civil Procedure Code and again under Articles 226 and 227 of the Constitution. The question was answered in the negative for the simple reason that the order passed by the High

Court under the first proceeding would conclude the matter inter-parties. In such a situation the party had to exercise his choice and elect which remedy he would resort to in the High Court.

The grant of leave under Article 226 of the Constitution is un-

561

doubtedly in the discretion of the High Court but the exercise of that discretionary jurisdiction is to be guided by established legal principles. It will not be a sound exercise of that discretion to refuse to consider a writ petition on its merits solely on the ground that a special leave petition filed by the petitioner in the Supreme Court had been dismissed by a non-speaking order.

Apart from the above, in the present case there is the additional fact that after the writ petition was admitted by the High Court the 3rd Respondent challenged the High Court's order admitting the writ petition and granting interim stay of the award by filing a special leave petition in this Court. In that special leave petition the 3rd Respondent had raised the very same objection concerning the maintainability of the writ petition in the light of the dismissal of the prior special leave petition filed by the appellant. This Court dismissed the special leave petition and requested the High Court to dispose of the writ petition within four months from the date of the order (17.8.1984). Obviously, the intention of this Court in passing that order was that the writ petition should be considered and disposed of by the High Court on the merits within the said period. It is unfortunate that this order has not been adverted to in the judgment of the High Court now under appeal.

In the light of the aforesaid discussion, we allow this appeal, set aside the order of High Court and remand the writ petition to the High Court for disposal on the merits. Having regard to the fact that the case concerns the service benefits claimed by the 3rd Respondent, the High Court is requested to dispose of the writ petition as early as possible. The parties will bear their respective costs.

M.L.A.

Appeal allowed.

562