

## LAKHPAT RAM

1938.

December 12

v.

BEHARI LAL MISIR AND OTHERS.

[SIR MAURICE GWYER, C. J., SIR SHAH SULAIMAN AND  
M. R. JAYAKAR, JJ.]

*Section 205 of the Government of India Act, 1935—  
Refusal of Certificate by High Court—Applica-  
tion for special leave to appeal—Jurisdiction of  
Federal Court.*

The Federal Court has no jurisdiction to entertain an appli-  
cation for special leave to appeal against the refusal of a High  
Court to give a certificate under s. 205 of the Constitution Act.

*Pashupati Bharti v. The Secretary of State for India in  
Council and Another, antea, p. 13, applied.*

APPLICATION for special leave to appeal.

This was an *ex parte* application for special leave  
to appeal against the refusal of the High Court at  
Patna to give a certificate under s. 205 of the Consti-  
tution Act. The suit was originally filed in the  
Court of the Subordinate Judge (1st Court), Gaya,  
and a decree was given with costs against the appli-  
cant on 21st January 1935. He then filed an appeal  
in the Court of the District Judge of Gaya, which  
was dismissed with costs. A further appeal to the  
Patna High Court was also dismissed with costs. The  
applicant thereupon, on 19th September 1938, filed  
an application before the High Court for a certificate  
under s. 205 (1) of the Government of India Act, 1935.  
This application on September 22nd was summarily  
rejected by the Court, who assigned no reasons for  
their refusal to give a certificate; and the present  
application was for special leave to appeal against  
that refusal.

*Raghubir Singh* for the applicant.

The arguments sufficiently appear from the Judg-  
ment.

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 Judgment.

The Judgment of the Court was delivered by GWYER C. J.—In this case the applicant, Lakhpat Ram, has applied to the High Court at Patna for a certificate under s. 205 (1) of the Government of India Act, 1935. The High Court have refused to grant the certificate, assigning no reasons for their refusal.

The applicant now comes before us *ex parte* and asks for special leave to appeal, or in the alternative for a special certificate, notwithstanding the refusal of a certificate by the High Court. Mr. Raghbir Singh argues on his behalf that this Court has jurisdiction to entertain such an application, and he puts his case in two ways. He says, first, that if s. 205 is carefully considered it will be found that the Act itself contemplates the possibility of an application for special leave to appeal in a case of this kind to the Federal Court, and he draws our attention to the concluding words of s.s. (2) of the section. It is quite clear that these concluding words only relate to a case where the High Court have already granted a certificate and the appellant is seeking to rely on other grounds for his appeal than the two grounds expressly mentioned in the earlier part of the sub-section. Mr. Raghbir Singh's second point is that this Court has an inherent jurisdiction to grant special leave to appeal in cases where the High Court has refused a certificate, since otherwise, he says, an appellant may suffer grave injustice.

Since this Court is a statutory Court its jurisdiction must be collected from the terms of the statute which created it; and it is impossible to point to anything in the statute which gives the Court power to entertain an application for special leave to appeal. The first case which was heard before the Court a few weeks ago, *Pashupati Bharti v. The Secretary of State for India in Council and Another*<sup>(1)</sup>, in effect so decided. That was an application for the exercise of a supposed revisional jurisdiction, and the Court used these words:—"Counsel for the applicant admitted that no right of *appeal* against the refusal to grant a certificate is given by s. 205; and he could not well do otherwise". And then later on:—"To the second

(1) *Antea*, p. 13.

point, *viz.*, that the inherent powers of the Court must be held to give it a revisional jurisdiction for the purpose of preventing injustice, there appear to us to be several answers. In the first place, though every Court of superior jurisdiction no doubt possesses inherent powers for certain purposes (of which it is unnecessary, and perhaps would be unwise, to attempt an exhaustive definition), we know of no authority for the proposition that a Court by the exercise of any inherent powers can extend its appellate jurisdiction or increase its revisional authority over other Courts".

We asked Mr. Raghbir Singh if he could cite any authority for the proposition submitted by him and he has been unable to do so. We are satisfied that we have no inherent jurisdiction to entertain an application of this kind, and the application must therefore be dismissed.

*Application dismissed.*

Agent for the Applicant: *B. Banerji.*

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 Judgment.