MEGH RAJ AND ANOTHER
v.
ALLAH RAKHIA AND OTHERS.

PUNJAB PROVINCE
v.
DAULAT SINGH AND OTHERS

HULAS NARAIN SINGH AND OTHERS
v.
THE PROVINCE OF BIHAR.

MESSRS. BODDU PAIDANNA AND SONS
v.
THE PROVINCE OF MADRAS.

1942

Oct. 20, 21. 1942

Megh Raj v. *Allah Rakhia*

Punjab Province v. *Daulat Singh.*

Hulas Narain v. *The Province of Bihar*

Boddu Paidanna and Sons v. *The Province of Madras.*

[SIR MAURICE GWYER, C. J., SIR SRINIVASA VARADACHARIAR AND SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Federal Court—Appeal to Privy Council—Grant of leave—Practice—Government of India Act, 1935, s. 208(b).

The Court will not lay down rules by which the discretion of the Court in granting or withholding of leave to appeal to His Majesty in Council is to be governed ; but it will not be disposed to encourage Indian litigants to seek for the determination of constitutional questions elsewhere than in their own Supreme Court.

Observations of Lord Haldane in *Hull* v. *M' Kenna* [1926] I. R. 402, applied.

APPLICATIONS for leave to appeal to His Majesty in Council.

These were applications for leave to appeal under s. 208(*b*) of the Constitution Act from the Judgments of the Court in the following cases, respectively :—*Megh Raj* v. *Allah Rakhia* reported *antea* p. 53 ; *Punjab Province* v. *Daulat Singh*, reported *antea* p. 67 ; *Hulas Narain Singh* v. *The Province of Bihar*, reported *antea* p. 1, and the *Province of Madras* v. *Messrs. Boddu Paidanna and Sons*, reported *antea* p. 90.

The following were the counsel who appeared in the above-named cases :—

1. *Rai Bahadur Harish Chandra* (*Radhe Mohanlal* with him) for the applicants.

M. Sleem, A.-G. of the Punjab (*Khan Sahib Mohammad Ameen* with him) for the opposite party.

2. *Kripa Narain* (*Radhe Mohanlal* with him) for the applicants.

Jafer Imam, A.-G. of Bihar (*C. P. Sinha* with him) for the opposite party.

3. *M. Sleem, A.-G. of the Punjab* (*Khan Sahib Mohammad Ameen* with him) for the applicants.

Rai Bahadur Harish Chandra (*Radhe Mohanlal* with him) for the opposite party.

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Megh Raj v. *Allah Rakhia.*

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4. *C. Krishnaswami* for the applicants.

Sir Alladi Krishnaswami Ayyar, A.-G. of Madras (*N. Rajagopala Iyengar* with him) for the opposite party.

The Judgment of the Court was delivered by

GWYER C. J.—These are four applications for leave to appeal to His Majesty in Council from decisions of this Court. The cases concerned all dealt with important issues. In the first, the validity of the Punjab Restitution of Mortgaged Lands Act (No. IV of 1938) was challenged. In the second, it was contended that the Punjab land alienation legislation offended against those provisions of the Constitution Act which prohibit certain kinds of discriminatory legislation. In the third case, from Patna, the Bihar Agricultural Income-tax Act (No. VII of 1938) was said to conflict with the principles underlying the Permanent Settlement. And in the fourth, which came from Madras, the question whether the Provincial Legislature and Government had the right to levy a sales tax on the first sale by a manufacturer of goods manufactured by him (which had been left open in a previous decision of this Court) was finally determined in favour of the Province. It may be conceded that the decision in all four cases will affect a large number of persons and substantial interests, and that important questions of law were involved in them.

We were invited to lay down rules by which our discretion in granting or refusing leave to appeal would be governed. We must decline thus to fetter the exercise of it. We shall continue to treat each case on its own merits, but we repeat what we have said before, that we will not entertain an application for leave to appeal on the ground only that the applicant is of opinion that our decision was wrong, and still less for the purpose of enabling him, in the phrase used by counsel in one of the cases, to "try his luck" before yet one more tribunal. On general grounds of public policy litigation in the form of appeals to several Courts should be restricted rather than extended; but other considerations also have weighed with us.

Sir Alladi Krishnaswami Ayyar, who opposed the application in the Madras case and to whose argument as well as to that of Mr. Krishnaswami, counsel for the applicants, we are much indebted, based his contention upon the analogy of s. 74 of the Australian Constitution, which forbids an appeal to His Majesty in Council from a decision of the High Court of Australia on certain constitutional issues, unless the High Court certifies that the question is one which ought to be determined by His Majesty in Council, and empowers the High Court so to certify, "if satisfied that for any special reason the certificate shoud be granted". So far as we are aware, in

by the High Court. *Att.-Gen. for the Commonwealth* v. *Colonial Sugar Refinery Co. Ltd.*(1), a case in which the Judges were equally divided in opinion, so that the Court in effect gave no decision and an authoritative pronouncement by some other tribunal became necessary. We have in an earlier case uttered a word of warning on the danger of applying decisions on one constitutional enactment to the interpretation of another ; but an examination of the Australian decisions shows how strongly the High Court of Australia holds the view that since the primary responsibility for determining the constitutional cases which fall under s. 74 lies upon itself it ought not without grave reason to attempt to shift that responsibility on to others. In view of the similarity between s. 74 and s. 208 (*b*) of the Indian Constitution Act, we think it right to take note of the principle of the Australian decisions, even though we may be less rigid in applying it.

The Federal Court has not as yet the wide jurisdiction of the High Court of Australia, nor does India, whatever her hopes may be, yet possess the same political status as the Australian Commonwealth. But this Court is the first court sitting on Indian soil whose jurisdiction, limited though it may be at present, extends to the whole of British India. Its establishment marked a new stage in India's constitutional evolution ; and the evolution of Indian political thought, of which we cannot pretend to be unaware, even since we last heard an application for leave to appeal, has served only to increase and emphasize the significance of its authority. It is not subordinate to any other court ; and it is plain that this conception of its status was present in the minds of those who framed the present constitution when they gave to the Court itself the right to say whether it would permit any cases which came before it on appeal to be reviewed elsewhere. The ancient prerogative right of His Majesty to grant special leave to appeal, though it has now been made statutory by s. 208(*b*), does not affect this aspect of the matter.

Mr. Krishnaswami in the course of his argument referred to certain observations which fell from Lord Haldane in *Hull* v. *M'Kenna*(2), an application for special leave to appeal from the High Court of the Irish Free State to His Majesty in Council. Lord Haldane pointed out that though the Judicial Committee act in a strictly judicial capacity in advising the Crown whether or not special leave to appeal should be granted, nevertheless in the case of appeals from the Dominions the general sense of the Dominion is taken into account and the Judicial Committee, in Lord Haldane's phrase, " go upon the principles of autonomy on this question of exercising the discretion as to granting leave to appeal ". No doubt a distinction

(1) [1913] 17 Com. L. R. 644. (2) [1926] I. R. 402.

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Boddu Paidanna and Sons v. *The Province of Madras.*

Judgment.

is to be drawn between the functions of the Judicial Committee in advising His Majesty and the functions of this Court in granting leave to appeal; but Lord Haldane's observations have a more general application, and for the reasons given above we are not disposed to encourage Indian litigants to seek for the determination of constitutional questions elsewhere than in their own Supreme Court. We do not and indeed we cannot lay down a rule that we will never grant leave to appeal, for that would be to alter the provisions of the Act and to usurp legislative functions, but we shall grant it sparingly and only in exceptional cases.

Applying the above considerations to the cases which are now before us, there can be no reason for the grant of leave to appeal in the cases from Patna and Madras, where the questions at issue were clear-cut and straight forward and we entertained no doubts on any one of them. The two cases from the Punjab were of greater complexity. The defects in the Act under consideration in the first of them, to some of which we drew attention in our Judgment, certainly do not diminish the difficulties of interpretation with which we were faced; and the lack of unanimity among the members of the Court may itself be taken to indicate the existence of similar difficulties in the second. Nevertheless it does not seem to us that these circumstances by themselves justify the grant of leave to appeal. The Court had, in the words of the High Court of Australia, to accept the responsibility of deciding the two appeals, however difficult it may have found its task; and there is no reason why it should suggest that it feels any lack of confidence in the correctness of the decisions at which it has arrived.

The four applications are dismissed. The applicant must in each case pay the costs of the application.

Applications dismissed.

Agents :—

1. For applicants : *Ganpat Rai.*
   For the opposite party : *Tarachand Brijmohanlal.*

2. For applicants : *Tarachand Brijmohanlal.*
   For the opposite party : *Ganpat Rai.*

3. For applicants : *Tarachand Brijmohanlal.*
   For the opposite party : *T. K. Prasad.*

4. For applicants : *Ganpat Rai.*
   For the opposite party : *B. Banerji.*