

LALA RAM

A

v.

SUPREME COURT OF INDIA & ORS.

October 31, 1966

[K. SUBBA RAO, C. J., M. HIDAYATULLAH, S. M. SIKRI AND  
R. S. BACHAWAT, JJ.]

B

*Supreme Court Rules, 1966, Rules 2(2) Order XL—Deposit of cash security of Rs. 2000 a pre-condition for filing a review petition in respect of an earlier dismissal of writ petition under Art. 32—Such rule whether ultra vires as obstructing the enforcement of a fundamental right.*

C

Special leave granted to the petitioner under Art. 136 of the Constitution was revoked for non-prosecution and his special leave petition was dismissed. He filed a petition under Art. 32 claiming that the said revocation of leave and dismissal of special leave petition was in violation of his fundamental right under Art. 14 inasmuch as he had been deprived of his right of appeal. The Court dismissed the writ petition. The petitioner then filed a petition for review of the order. The review petition was found defective as the cash security of Rs. 2,000 as required by O. XL, r. 2(2) of the Supreme Court Rules, 1966 had not been deposited. The petitioner urged, relying on the decision of this Court in *Prem Chand Garg v. Excise Commissioner U.P.* that the said rule was *ultra vires* inasmuch as it obstructed his remedy under Art. 32 in defence of a fundamental right.

D

HELD : The *raison d'être* for the rule in question may be three fold, namely, (i) the petitioner has been given a full hearing and his case had been disposed of on merits; (ii) it is a deterrent against frivolous applications; and (iii) it is to safeguard the interests of the respondent who has the judgment in his favour. [16 B]

E

There is an essential distinction between an application for the enforcement of a fundamental right and an application to review an order made therein. The main purpose of a review petition is not to enforce a fundamental right but to reopen an order vitiated by an error on the face of the record or for such other reasons. [16 H]

F

Therefore while any onerous condition for enforcing a fundamental right may infringe Art. 32 itself as held as held in *Garg's case*, but the same thing cannot be said for an application for review of the order made therein. [17 A]

G

*Prem Chand Garg v. Excise Commissioner, U.P. Allahabad* [1963] Supp. 1 S.C.R. 885, distinguished.

The fact that deposit of security is a pre-condition only in the case of a review petition does not lead to any discrimination because the main difference between a review petition and other proceedings is that in the case of the former this Court is asked to reopen a matter which has been closed after hearing the parties. This is a sufficient reason to sustain the distinction and it affords a reasonable nexus to the objects sought to be achieved by the imposition of the pre-condition. [17 F]

H

The fact that a rule in certain circumstances proves prejudicial to the interests of a petitioner cannot invalidate the rule when admittedly this Court has power to make it under Art. 145 of the Constitution. [17 D]

**A** [Having regard to the circumstances of the case however the Court reduced the amount of cash security from Rs. 2,000 to Rs. 250 only.]

**ORIGINAL JURISDICTION** : Review Petition No. 8 of 1966.

Petition for review of this Court's order dated March 24, 1966 dismissing Writ Petition No. 85 of 1966.

**B** *Hira Lal Jain*, for the petitioner.

*Niren De, Addl. Solicitor-General* and *R. H. Dhebar*, for the Attorney-General for India (on notice by the Court).

The Judgment of the Court was delivered by

**C** **Subba Rao, C.J.** In this petition the question of the constitutional validity of Order XL, r. 2(2) of the Supreme Court Rules, 1966, hereinafter called the Rules, is raised.

The petitioner filed a special leave petition against the judgment and decree of the High Court of Punjab passed in a Letters Patent Appeal. On January 14, 1964, this Court granted special leave.

**D** Thereafter, the petitioner deposited the amount of security and some money as advance towards printing charges. But, as he failed to file the list of documents, on April 2, 1965, special leave granted to him was rescinded and the special leave petition was dismissed for non-prosecution. Then the petitioner filed a writ petition, being Writ Petition No. 85 of 1966, in this Court under Art. 32 of the Constitution on the ground that the said order of revocation of the special leave granted and the dismissal of his special leave petition deprived him of his right to appeal and that the said order offended Art. 14 of the Constitution. On March 24, 1966, this Court dismissed that writ petition. On April 15, 1966, the petitioner filed the present petition for reviewing the order of this Court in Writ Petition No. 85 of 1966 dated March 24, 1966.

**F** The Office Report pointed out that the Review Petition was defective inasmuch as the provisions of Order XL, r. 2(2) of the Rules were not complied with by the reason of the fact that no security for the costs of the respondents had been furnished.

**G** Mr. Hiralal Jain, learned counsel for the petitioner, contends that Order XL, r. 2(2) of the Rules is void as it infringes Art. 14 of the Constitution. The said rule reads:—

**H** “No application for review in a civil proceeding shall be entertained unless the party seeking review furnished to the Registrar of this Court at the time of filing the petition for review cash security to the extent of two thousand rupees for the costs of the opposite party”.

Under this rule a review application cannot be entertained at all unless the cash security of Rs. 2,000 for the costs of the opposite

party is furnished. While in the case of special leave petition cash security will have to be furnished within the time prescribed after leave is granted, in the case of a review petition the deposit of the security amount is a pre-condition for filing the petition. This provision is more onerous than the other. The *raison d'etre* for the rule may be three-fold, namely, (i) the petitioner has been given a full hearing and his case had been disposed of on merits; (ii) it is a deterrent against frivolous applications; and (iii) it is to safeguard the interests of the respondent who has the judgment in his favour.

But, it is contended that this Court had held in *Prem Chand Garg v. Excise Commissioner, U.P., Allahabad*<sup>(1)</sup> that Order XXXV, r. 12 of the Supreme Court Rules then in force empowering the Supreme Court in writ petitions under Art. 32 of the Constitution to require the petitioners to furnish security for the costs of the respondents was invalid as it placed obstructions on the fundamental right guaranteed under Art. 32 to move this Court for the enforcement of the said right, and that, on the parity of reasoning, this Court should hold that a petition for reviewing an order dismissing the application to enforce the fundamental right would equally be void as contravening Art. 32 of the Constitution. It is also pointed out that the condition imposed in the case of review petitions is more onerous than that imposed in the case of applications to enforce fundamental rights, for, while in the case of the latter the security would have to be furnished after the leave is granted, in the case of the former it should be furnished at the time of filing the petition itself. Under Order XXXV, r. 12, of the Supreme Court Rules this Court may in the proceedings to which the said order applied impose such terms as to costs and as to giving of security as it thought fit. At that time under the impugned rule the petitioner should deposit a security of Rs. 2,500 in cash within six weeks. While holding that the said rule offended Art. 32 of the Constitution, this Court observed:

“But if a rule or an order imposes a financial liability on the petitioner at the thresh-hold of his petition and that too for the benefit of the respondent, and non-compliance with the said rule or order brings to an end the career of the said petition, that must be held to constitute an infringement of the fundamental right guaranteed to the citizens to move this Court under Art. 32”.

At the same time this Court pointed out that other conditions might be imposed which would not have the effect of bringing to an end the career of the said petition. But there is an essential distinction between an application for the enforcement of a fundamental right and an application to review an order made therein.

(1) [1963] Supp. 1 S.C.R. 885, 902.

- A** While any onerous condition for enforcing a fundamental right may infringe Art. 32 itself, but the same thing cannot be said for an application for review of the order made therein, for that is not an application to enforce a fundamental right. The main purpose of a review petition is not to enforce a fundamental right, but to reopen an order vitiated by an error on the face of the record or for such other reasons. But it is said that the effect of reopening of the earlier order would be to restore his application to enforce the fundamental right and, therefore, in effect and substance, an application to review such an order is also an application to enforce the fundamental right. It may be that this is a consequence of reopening an order, but the application itself, as we have said, is not to enforce the fundamental right.
- C**

It is true that in some cases and under certain circumstances the pre-condition to furnish security may be highly prejudicial to the interests of a petitioner who has a real grievance. Such a result is inevitable in the application of any rule. But that in itself cannot invalidate a rule which admittedly this Court has power to make under Art. 145 of the Constitution.

- D** In appropriate cases this Court has the residuary power under Order XLVII, r. 1 of the Rules, for sufficient reasons shown to excuse the parties from compliance with any of the requirements of the Rules and it may also give such directions in matters of practice and procedure as it may consider just and expedient.

- E** It is then contended that the enforcement of Order XL, r. 2(2) of the Rules will lead to unjustified discrimination between parties and, therefore, it offends Art. 14 of the Constitution. The discrimination alleged lies in the fact that while security need not be given as a pre-condition for the filing of any proceeding in this Court, it has to be given only in the case of a review petition. There is certainly a reasonable nexus between such a condition and the differences between parties taking different proceedings in this Court. The main distinction which makes all the difference is that in the case of a review petition this Court is asked to reopen a matter which has been closed after hearing the parties. This is a sufficient reason to sustain the distinction and it affords a reasonable nexus to the objects sought to be achieved by the imposition of the pre-condition.
- F**
- G**

But, having regard to the circumstances of the case, in exercise of our discretionary power, we reduce the amount of cash security from Rs. 2,000 to Rs. 250 only. The said amount will be paid within two weeks from today.

G.C.

*Security amount reduced.*