

A KHODAY DISTILLERIES LIMITED AND ANR.
v.
THE REGISTRAR GENERAL SUPREME COURT OF INDIA

DECEMBER 5, 1995

B [J.S. VERMA, K. RAMASWAMY, SUJATA V. MANOHAR JJ.]

Constitution of India, 1950 :

C *Articles 32, 136, 137—Appeals decided by Supreme Court—Review Petitions rejected—Subsequently Writ Petition filed to reconsider the judgment—Held, decision of this Court after attaining finality cannot be reopened under Article 32.*

D After the dismissal of the appeals and also the review petition by this court the petitioners filed the present Writ Petition for reconsideration of the earlier decision of this Court. It was submitted by the petitioners that the appeals were decided on merits without being heard on merits as such violating the principle of natural justice.

Dismissing the Writ Petition, this Court

E HELD: The correctness of a decision on merits after it has become final cannot be challenged under Article 32 of the Constitution to claim reconsideration of the decision. The judgment in *Antulay* case does not hold that a decision of this court after attaining finality can be reopened under Article 32. Moreover in that case the writ petition under Article 32 challenging the decision of this Court was dismissed and it was only in an appeal filed subsequently the relief was granted. The decision in *Antulay* must be confined to its own peculiar facts and the reliance placed on the decision in *Antulay* on the fact of this case is misplaced. [193-A, F, 192-H]

G *A.R. Antulay v. Union of India and Ors. etc.*, [1984] 3 SCR 482 explained and distinguished; *Krishnaswamy etc. v. Union of India and Ors.*, [1992] 4 SCC 605 and *M/S. Khody Distilleries Limited and Anr. v. State of Karnataka and Ors.*, [1995] 1 SCC 574, referred to.

ORIGINAL JURISDICTION : Writ Petition (C) No. 803 of 1995.

H (Under Article 32 of the Constitution of India.)

G. Ramaswamy, Nagender Naidu, Nanjun Raddy, J.B. Dadachanji and S. Sukumaran for the Petitioners. A

Ashok Desai, P.P. Rao, P. Mahale and B.G. Sridharan for the Respondent No. 2.

S.B. Sanyal, Rangabatalachar and M. Veerappa for the Respondent No 1. B

The Judgment of the Court was delivered by

J.S. VERMA J. This writ petition is a sequel of Civil Appeal Nos. 4708-4712 of 1989, *M/s. Khoday Distilleries Limited & Anr. v. State of Karnataka & Ors.*, and the connected matters which were decided on 19.10.1994. That judgment is reported in [1995] 1 SCC 574. After that decision, Review Petition Nos. 507-511 of 1995 were filed. The order dated 25.4.1995 made in those review petitions is as under : C

"One of the grounds taken for the prayer made to hear oral arguments before deciding the review petitions is that there was no opportunity to supplement the written submissions filed before the Bench of three Judges and that same could not be supplemented before the Constitution Bench. Accordingly, we permit the filling of supplementary written submissions, if any, by the parties mentioning therein and emphasising the additional submissions, if any on which reliance is sought to be placed. The supplementary written submissions, if any, be filed by the parties within four weeks. The prayer made for hearing oral arguments on the review petitions would then be considered. The matters be listed in Chambers thereafter." D E F

After the supplementary written submissions had been filed by the parties, the review petitions were rejected by order dated 8.8.1995 as under:

"We have perused the grounds on which a review of the order is sought. We had by our order dated 25th April, 1995 permitted the filing of supplementary written submission by the parties and had stated that should clearly emphasise the additional submissions, if any, on which reliance is sought to be placed. We had also stated that the prayer for hearing oral arguments would then be considered. Pursuant to the said order the written submissions H

A have been filed and we have perused the same. Having perused the same we find that the submissions made therein have all been answered in the judgment sought to be reviewed. We have not noticed any submission on which we would like to hear oral arguments by counsel. Since we do not find any merit in the additional supplementary submissions filed in these proceedings we do not entertain the Review Petitions and reject them."

The present writ petition under Article 32 has been filed by the petitioners after the rejection of their review petitions as above.

C The submissions of Shri G. Ramaswamy, learned counsel for the petitioners are two : (1) The above civil appeals were listed before the Constitution Bench only for directions and were not heard on merits before they were decided on merits; and (2) The judgment rendered in the civil appeals reported in *Khoday Distilleries Ltd. and Others v. State of Karnataka and Others*, [1995] 1 SCC 574, is invalid on the ground of violation of principles of natural justice. Reliance is placed on the decision in *A.R. Antulay v. R.S. Nayak & Anr.*, [1988] Supp. 1 SCR 1, in support of these submissions. In substance, the argument of learned counsel for the petitioners is that the civil appeals having been decided on merits without being heard on merits, the judgment rendered is invalid for violation of principles of natural justice. In our opinion, there is no merit in this submission.

F The foundation for the argument advanced in support of the writ petition does not exist. The above-quoted orders dated 25.4.1995 and 8.8.1995 clearly show that even after the decision of the Civil appeals, the petitioners were permitted to file supplementary written submission, if any, emphasising the additional submissions, if any, which reliance was sought to be placed on the merits; and the supplementary written submissions filed by the parties were also considered while deciding the review petitions. In the order rejecting the review petitions, it was clearly mentioned that all the submissions made by the parties had been answered in the judgment sought to be reviewed. The decision in *Antulay (supra)* has no application. The attempt made by this writ petition for reconsideration of the decision by the Constitution Bench in *Khoday Distilleries (supra)* has no merit and reliance placed on the decision in *Antulay (supra)* on the facts of this case is misplaced.

In view of the strong reliance placed by learned counsel for the petitioners on the decision in *Antulay* (supra) to invoke Article 32 of the Constitution for reconsideration of the aforesaid judgment deciding the civil appeals, we consider it appropriate to indicate that *Antulay* does not hold that a decision of this Court after attaining finality can be reopened under Article 32. The decision in *Antulay* must be confined to the peculiar circumstances of that case as indicated in that judgment itself. The decision in *Antulay* was distinguished and confined to the facts of that case by a Constitution Bench in *Krishnaswami etc. v. Union of India and Others*, [1992] 4 SCC 605, as under :

"..... *Antulay* case is also distinguishable for the reason that therein the result of the earlier decision against him challenged by Antulay in the petition under Article 32 had the effect of conferring jurisdiction on a court contrary to the specific statutory provision Moreover, judgment of Mishra, J. as well as that of Mukharji, J. as their Lordships were then, give a clear indication that the decision therein was not intended to be a precedent and was confined to the peculiar facts and circumstances of that case. This distinction is sufficient to hold that *Antulay* does not permit these petitioners to claim reconsideration of the earlier decision in these circumstances."

It is clear that the decision in *Antulay* is based on the peculiar facts of that case wherein the question involved was of the conferment of jurisdiction on a court contrary to the specific statutory provision. In a case like the present, where in substance the challenge is to the correctness of a decision on merits after it has become final, there can be no question of invoking Article 32 of the Constitution to claim reconsideration of the decision on the basis of its effect in accordance with law. Frequent resort to the decision in *Antulay* in such situations is wholly misconceived and impels us to emphasise this fact.

Moreover, it may also be observed that even in *Antulay*, the writ petition under Article 32 filed by him to challenge the decision of this Court was dismissed and it was only in an appeal filed subsequently by Antulay against an order of the Bombay High Court made during the trial that the relief was granted to Antulay. While dismissing the writ petition under Article 32 of the Constitution filed by Antulay, in the judgment

A reported in [1984] 3 SCR 482 - *Abdul Rehman Antulay v. Union of India and Ors. Etc.* - this Court observed as under :

B "In my view, the writ petition challenging the validity of the order and judgment passed by this Court as nullity or otherwise incorrect cannot be entertained. I wish to make it clear that the dismissal of this writ petition will not prejudice the right of the petitioner, to approach the Court with an appropriate review petition or to file any other application which he may be entitled in law to file."

C These undisputed facts appear from the decision in *Antulay* itself on which reliance has been placed by learned counsel for the petitioners.

Consequently, the writ petition has no merit and it is dismissed, accordingly.

P.C.

Petition dismissed.