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V. T. S. Chandarasekhara Mudaliar v. Kulandaivelu Mudaliar

Subba Rao J.

The fact that he does not believe in such thing does not make him any the less a Hindu. The non-belief in rituals or even in some dogmas does not *ipso facto* remove him from the fold of Hinduism. He was born a Hindu and continues to be one till he takes to another religion. But what is necessary is, being a Hindu, whether he was in a position to appreciate the question referred to him and give suitable answer to it. After going through his evidence, we have no doubt that this defendant had applied his mind to the question before him. Whatever may be his personal predilections or views on Hindu religion and its rituals, he is a Hindu and he discharged his duty as a guardian of the widow in the matter of giving his consent. In the circumstances of the case, his consent was sufficient to validate the adoption.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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April 26.

S. S. GAREWAL

v.

MESSRS. BHOWRA KANKANEE COLLERIES

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Mines—Accident—Court of Inquiry—Order to pay expenses—Amount not quantified—Court, if becomes functus officio on submitting report—Subsequent order quantifying amount—If such quantification valid—Assessors, if must join in all orders of the Court of Inquiry—Mines Act, 1952 (35 of 1952), s. 24—Mines Rules, 1955, r. 22.

The Government of India under s. 24 of the Mines Act, 1952, ordered an enquiry into the disaster in the respondent's colliery. The Court of Inquiry submitted its report on

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September 26, 1955, and found *inter-alia* that the accident was due to the negligence on the part of the management and therefore ordered the owners to pay the expenses of the enquiry as provided by r. 22 of the Mines Rules, 1955 The amount of the expenses to be paid were, however, not quantified in the report. At the request of Chief Inspector, Mines, the Judge of the Court of Inquiry after due notice to the parties concerned quantified the expenses by his order dated September 7, 1956. The respondents petitioned under Art. 226 of the Constitution challenging the order quantifying the expenses on three grounds—(1) the Court of Inquiry became *functus officio* after it had submitted its report, and therefore the Judge had no power left to pass the order quantifying the expenses. If the said order was to be treated as review of the order awarding expenses it would still be void as there was no power of review in the Court of Inquiry: (3) When the order quantifying the expense was passed the two assessor were not present and were not associated with the enquiry therefore, the Judge could not pass the order alone. The High Court allowed the writ petition adding that it was not interfering with the order relating to expenses made by the Judge in his report dated September 26, 1955.

Held, that when an order to pay expenses is passed without quantifying the amount in a report by a Court of Inquiry, it necessarily carries with it the implication that the person appointed to hold the enquiry would quantify the expenses later in materials being placed before him as otherwise such an order would be rendered completely nugatory. Where no time was fixed within which the report had to be made by the Court of enquiry it cannot be said that the period for which the Court of enquiry was appointed necessarily came to an end with the submitting of the report and this Court of Inquiry became *functus officio*.

Held, further, that when the report itself contained the order for payment for expenses, the later order is merely a quantification of the earlier order and would be on a par with what happens everyday in courts which pass decrees with costs. When giving judgment, courts do not quantify cost in the judgment. Therefore the order dated September 7, 1956, cannot be treated as a review or any variation of the order passed in the report of September 26, 1955, which the judge had no powers to pass.

Held, also, that it was open to the Judge of the Court of inquiry to quantify the expenses and that it was not necessary that at that stage the assessors should be associated with him. Under s. 24(1) of the Act, the enquiry is held by a competent

person for the purpose, and assessors are appointed to assist the person to hold the enquiry and the assessors need not be associated with him in all orders which are in the nature of ministerial order and quantification of expenses must be treated as an order of a ministerial nature.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 526/59.

Appeal by special leave from the judgement and order dated March 3, 1958, of the Patna High Court in Misc. Judl. case No. 940 of 1956.

B. K. Khanna and *P. D. Menon* for the appellant.

P. K. Chatterjee, for the respondents.

1962. April 26. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave against the judgment of the Patna High Court. The brief facts necessary for present purposes are these. There is a colliery in the district of Dhanbad known as Arlabad colliery of which the respondents are the owners. On February 5, 1955, there was an accident in the colliery as a result of which 52 persons lost their lives. In consequence, the Government of India ordered an inquiry into the disaster under s. 24 of the Mines Act, No. 35 of 1962, (hereinafter referred to as the Act). The court of inquiry contained of Mr. Justice B. P. Jamuar and two persons were appointed to assist him as assessors. The court of inquiry submitted its report on September 26, 1955, which was published on December 17, 1955. A question was raised before the court of inquiry whether the management should be ordered to pay the expenses of the inquiry as provided by r. 22 of the Mines Rules, 1955, (hereinafter referred to as the Rules), which lays down that "if a court of

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inquiry finds that the accident was due to any carelessness or negligence on the part of the management the court may direct the owners of the mine to pay all or any part of the expenses of the inquiry in such manner and within such time as the court may specify. The court of inquiry found in its report that the accident was due to negligence on the part of the management and therefore ordered the owners to pay the expenses of the inquiry. The amount of the expenses to be paid were however not quantified in the report of September 26, 1955.

On July 27,1956, the Chief Inspector of Mines requested Mr. Justice Jamuar that the amount of expenses should be specified and the manner in which it should be paid and the time within which the payment might be made, might be fixed. Notices were issued to the parties concerned thereafter and on September 7, 1956, Mr. Justice Jamuar ordered the owners to pay Rs. 17,778/2/- as expenses of the inquiry within two months of the date of the order. Thereupon a petition was filed under Art. 226 of the Constitution by the respondents challenging the order of September 7, 1956. It was conceded therein that r. 22 of the Rules conferred power on the court of inquiry to direct the owner to pay all or any part of the expenses of inquiry within such time as the court may specify. But the order passed in this case was challenged on three grounds, firstly that the court of inquiry became *functus officio* after it had submitted its report on September 26, 1955 and therefore Mr. Justice Jamuar had no power left to pass the order of September 7, 1959. It was also contended that if the order of September 7, 1956, be treated as a review of the order of September 26, 1956 it would still be void, as there was no power of review in the court of inquiry. Lastly, it was urged that when the order of September

7, 1956, was passed, the assessors were not present and were not associated with the inquiry and therefore Mr. Justice Jamuar could not pass the order alone. All these three contentions were accepted by the High Court and it allowed the writ petition adding that it was not interfering with the order relating to expenses made by Mr. Justice Jamuar in his report of September 26, 1955. It is this order of the High Court, which is being challenged before us.

The main contention on behalf of the respondents is that as the court of inquiry became *functus officio* after the report of September 26, 1955, it was not open to Mr. Justice Jamuar to quantify the expenses by the order of September 7, 1956. Before we deal with this main argument we should like to dispose of briefly the other two submissions made before the High Court which were also accepted by it. The first of these contentions is that the order of September 7, 1957 is an order of review and as there is no power of review granted to the court of inquiry. Mr. Justice Jamuar had no power to pass that order. It is enough to say that the order of September 7, 1956, cannot be called an order of review. We have already pointed out that the order that the owners should pay the expenses of the inquiry was already incorporated in the report of September 26, 1955, though it was not quantified. All that the order of September 7, 1956, has done is to quantify the amount of expenses. Therefore, this order cannot be treated as a review or any variation of the order passed in the report of September 26, 1955. It would have been a different matter if no order as to the payment of expenses had been made in the report of September 26, 1955. In that case it may have been possible for the respondents to argue that the later order was an order reviewing the failure to pass an order as to expenses in the report. But

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when the report itself contained the order for payment of expenses, the later order is merely a quantification of that order and would be on a par with what happens every day in courts which pass decrees with costs. When giving judgment, courts do not quantify costs in the judgment. This quantification is done later in the office of the court and if there is any dispute about it the court settles that dispute and then includes the cost in the decree or final order. What has happened in the present case is something similar and the order of Mr. Justice Jamuar dated September 7, 1956, cannot in the circumstances be called an order of review which he had no power to pass. The contention therefore under this head must fail.

Turning now to the other contention, namely, that the order of September 7, 1956, was bad because the two assessors were not associated with Mr. Justice Jamuar when the order was passed, it is enough to say that under s. 24 (1) the inquiry is held by a competent person appointed for the purpose and assessor are appointed to assist the person appointed to hold the inquiry. Even so, the person who holds the inquiry is the person appointed to do so and the assessors need not in our opinion be associated with him in all orders which are in the nature of ministerial orders and quantification of expenses must be treated as an order of a ministerial nature. It is not disputed that the assessors were associated with Mr. Justice Jamuar when the report of September 26, 1955, was made and it was ordered that the owners should pay the expenses of the inquiry. That was in our opinion the order of the court of inquiry as to payment of expenses and in that the assessors were associated. The later order was mere quantification of that and it was in our opinion not necessary that the assessors should be associated at that stage also, for the

order of quantification is more or less of a ministerial nature and was made by the person who was appointed to hold the inquiry. In the circumstances we are of opinion that the fact that the order of September 7, 1956, was passed only by Mr. Justice Jamuar and the assessors were not associated with him would not make it invalid for this was merely carrying out the order in the report of September 26, 1956 by which the owners were ordered to pay the expenses of the inquiry and in that order the assessors were associated. The contention on this head also must therefore fail.

This brings us to the main contention raised on behalf of the respondents, namely, that the court of inquiry became *functus officio* when the report was made on September 26, 1955, and thereafter it was not open to Mr. Justice Jamuar to pass any order quantifying the expenses. Now it is not in dispute that there was no time fixed within which the report had to be made by the court of inquiry. Therefore, it cannot be said that the period for which the court of inquiry was appointed came necessarily to an end on September 26, 1955, and so the court of inquiry became *functus officio* on that date. If the court of inquiry when it submitted its report in this case on September 26, 1955 had ordered the owners to pay the expenses of the inquiry and had added further that expenses would be quantified later by the person holding the inquiry it could not possibly be argued that it was not open to the person appointed to hold the inquiry to quantify the expenses later. But it is said that in this case though the court of inquiry ordered that the expenses should be paid by the owners it did not say in the report that the expenses to be paid would be quantified later by the person appointed to hold the inquiry. That is undoubtedly so. But we have to see what the order in the report of September 26, 1955 by which the owners were

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ordered to pay the expenses of the inquiry, necessarily implies. It is obvious that the intention of the court of inquiry was that the owners should pay the expenses. Generally it may not be possible to quantify the expenses incurred in the inquiry at that stage and a quantification of expenses would ordinarily take place after the report is submitted. It seems to us therefore clear that when a court of inquiry orders that the owners shall pay the expenses such an order necessarily carries with it the implication that the person appointed to hold the inquiry would later quantify the expenses after necessary materials are put before him. This is exactly what happened in this case. After the order of the court of inquiry that the owners should pay the expenses was known to the Chief Inspector of Mines, he applied that the expenses should be quantified and Mr. Justice Jamuar passed the order doing so. The order therefore that was passed on September 7, 1956, was merely a consequential order to what the court of inquiry had decided on September 26, 1955 and in our view the earlier order of September 26, 1955, had necessarily implicit in it that the person appointed to hold the inquiry would quantify the expenses as soon as the materials for that purpose are placed before him. It was not necessary therefore to say in so many words in the report of September 26, 1955, that the expenses would be quantified by the person appointed to hold the inquiry later on materials being placed before him. If this were not to be implicit in the order that was passed on September 26, 1955, that order would be completely useless for it does not specify the amount which could be recovered as expenses. We are therefore of opinion that when such an order is passed in a report of a court of inquiry it necessarily carries with it the implication that the person appointed to hold the inquiry would quantify the expenses later on materials being

placed before him, as otherwise such an order would be rendered completely nugatory. Therefore, unless we find anything in s. 24 which prevents such an order of quantification being passed later by the person appointed to hold the inquiry, we see no reason why such a quantification should not be made later. We have also pointed out that the order appointing the court of inquiry in this case did not fix a date by which the report was to be made. Therefore, in these circumstances we are of opinion that it was open to Mr. Justice Jamuar to quantify the expenses and that it was not necessary that at that stage the assessors should be associated with him. We are therefore of opinion that it cannot be said that the person appointed to hold the inquiry was *functus officio* in this case and could not quantify the expenses in accordance with the direction contained in the report of September 26, 1955. The appeal is hereby allowed and the order of the High Court is set aside. The High Court has allowed no costs in its order; in the circumstances we think that the parties should bear their own costs of this Court.

Appeal allowed.