

New law College, Bharti Vidyapeeth Deemed University

From the Selected Works of Praveen Paliwal

Winter January 10, 2016

APPELLATE JURISDICTION.pdf

Praveen Paliwal, *New law College, Bharti Vidyapeeth Deemed University*
Praveen Paliwal



Available at: <https://works.bepress.com/praveen-paliwal/5/>

APPELLATE JURISDICTION OF THE SUPREME COURT

INTRODUCTION

Appellate jurisdiction is the power of a higher court to review decisions and change outcomes of decisions of lower courts. Most appellate jurisdiction is legislatively created, and may consist of appeals by leave of the appellate court or by right.

The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends.² In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.³ The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court.⁴ The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself.⁵ Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.⁶ Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies: (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court,

the said question needs to be decided by the Supreme Court. In criminal cases, an appeal lies to

² Article 131 of the Constitution of India.

³ Article 139 of the Constitution of India.

⁴ Article 139A of the Constitution of India.

⁵ Ibid.

⁶ Article 134A of the Constitution of India.

the Supreme Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (c) certified that the case is a fit one for appeal to the Supreme Court.⁷ Parliament is further authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court.⁸

1.1 Research scheme

The research scheme undertaken by the researcher would comprise of doing a doctrinal study of the provisions dealing with the Appellate jurisdiction of the Supreme Court of India. The research undertaken would encompass Articles 132 to 134A of the Constitution of India and other related provisions.

1.2 Research Techniques for Data Collection

Research technique of analysis, critique, and review of the theories would be intended to be employed.

1.3 Research Methodology

The researcher has followed the doctrinal method of research throughout the project and the MLA system of formatting has been adopted by him.

1.4 Research Questions

In the course of this research project, the researcher has put forth three significant research questions. They are:-

- (a) What is the extent of the appellate jurisdiction of the Supreme Court in India.
- (b) Which are the main provisions in the legislature, including the Constitution and other related legislations which govern the applicability of the appellate jurisdiction in India.
- (c) What is the concept of „grant of the certificate of fitness of appeal to the Supreme Court“.

⁷ Article 134 of the Constitution of India.

⁸ Article 140 of the Constitution of India.

1.5 Scheme of Chapterisation

The researcher in the project has undertaken to subdivide the project into six distinct chapters. The first chapter would give a brief introduction to the topic and also lay the broad outline with respect to the research scheme and objective, etc. The second chapter would lay emphasis on the extent of the appellate jurisdiction of the Supreme Court. The third chapter would highlight the legislative history of the legislations concerning the appellate jurisdiction of the Supreme Court. The fourth chapter would specifically concern itself to the special subhead of „Grant of the Certificate of fitness of appeal to the Supreme Court. The fifth chapter would be a case study of the most relevant case law in regard to the special subhead of the certificate of appeal. Lastly, chapter six would sum up the entire discussion and conclude the project.

1.6 Footnoting Style to be adopted

National Law University standard style of footnoting will be followed throughout the project.

EXTENT OF APPELLATE JURISDICTION OF THE SUPREME COURT

The Supreme Court has a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

In a unified hierarchal judicial system which India has accepted under its Constitution, vertical the Supreme Court is placed over the High Court. The very fact that the constitution confers appellate power on the Supreme Court over High courts certain consequences naturally flow and follow. Appeal implies in its naturally and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court of tribunal. The superior forum shall have the jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such direction as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding in the forum below and failure on the part of the latter to carry out such direction or show disrespect to or to question the priority of such directions would be destructive of the hierarchal system in the administration of justice. The seekers of justice and the society would lose faith in both. In spite of the Supreme Court and the High Court being both constitutionally independent of each other and both being courts of record, to the extent of exercise of appellate jurisdiction, certainly the Supreme Court exercises a superior jurisdiction and hence is a superior court than the High Courts which exercise in that context an inferior or subordinate jurisdiction.⁹

What is the meaning of „judgment, decree or final order“ of a High Court as user in the Article. The expression „final order“ has been judicially interpreted and its meaning is now well settled. In **Salman v. Warner**¹⁰, Lord Esher discussed the meaning of the expression in the terms

⁹ **Tirupati Balaji Developers Pvt Ltd. v. State of Bihar**, AIR 2004 SC 2351.

¹⁰ (1891) 1 QB 734.

as, „If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in the other, will allow the action to go on, then I think it is not a final, but interlocutory.

In **Ramachand Manjimal v. Goverdhandas Vishindas Ratanchand**¹¹, the question was in respect of a stay granted under Section 19 of the Indian Arbitration Act, IX of 1899. The trial judge granted a stay, but on appeal the court of the judicial commissioner of Sind reversed the order. The judicial commissioner granted a certificate under Section 109 of the Civil Procedure Code, 1908, on the footing that the order passed by him was a final order. On appeal the judicial committee of the Privy Council pointed out that the order in question was not a final order and the preliminary objection against the sustenance of the appeal was upheld.

It was observed that the questions as to what was a final order was considered by the Court of appeals in the case of **Salman v. Warner**¹², **Bozson v. Altincham Urban District Council**¹³ and **Isaacs v. Salbstein**¹⁴. The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The order now under appeal does not finally dispose of those rights, but leave them to be determined by the courts in the ordinary way, the order was not a final order.¹⁵

While it is true that constitutional question could be raised in appeals filed without a certificate under Article 132, the term of that article makes it clear that an appeal is allowed from „any judgment, decree or final order of a High Court“ provided, of course, the requisite certificate is given and no restriction is placed on the right of appeal having reference to the number of judges by whom such judgment, decree or final order was passed. Had it been intended to exclude the right of appeal in the case of judgment, etc by one judge, it would have been easy to include a reference to Article 132 also in the opening words of Article 132(3), as in the immediately preceding clause.¹⁶

¹¹ AIR 1920 PC 86.

¹² (1891) 1 QB 734.

¹³ (1903) 1 KB 547.

¹⁴ (1916) 2 KB 139.

¹⁵ **S. Kuppaswami Rao v. Governor General in Council**, AIR 1949 FC 1.

¹⁶ **Election Commission v. Ventaka Rao**, AIR 1953 SC 210.

The object of Article 132 was designed to supersede the decision of the federal court in **S. Kuppuswami Rao v. Governor General in Council**¹⁷ and issues thus to secure a speedy determination of constitutional issues going to the root of a case, would be defeated, as the same expression „final order“ used in Article 132(1), the Supreme Court clearly indicated that questions relating to interpretation of the Constitution are placed in a special category irrespective of the nature of the proceedings in which they may arise, and a right of appeal of the widest amplitude is allowed in cases involving such questions.

Constitutional Matters

Under Article 132(1) of the Constitution an appeal lies to the Supreme Court from any judgment, decree or final order whether in a civil, criminal or other proceeding of a High Court if it certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

According to Article 132(3), where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question has been wrongly decided.

A very broad power is thus conferred on the Supreme Court to hear appeals in constitutional matters. No difficulty will be felt in bringing a constitutional controversy before the Court which has been made the final authority in the matters of interpretation of the Constitution.

However, when the appeal is not competent under Article 132 the Supreme Court will not hear it even if the High Court has granted the necessary certificate.¹⁸

The implication of Article 132(3) is that the appellant who comes before the Supreme Court under this article is not entitled to challenge the propriety of the decision appealed against on a ground other than that on which the High Court granted the certificate. If, however on appeal, a question is sought to be raised before the Supreme Court other than the one on

¹⁷AIR 1949 FC 1.

¹⁸**Syedna Taher v. State of Bombay**, AIR 1958 SC 253, 255.

which the High Court has granted the certificate, it is necessary to seek the permission of the Supreme Court.¹⁹

This means that appellant should ordinarily confine himself to the constitutional law point involved.²⁰ Such a restriction is necessary so that the facility with which appeals in constitutional matters can reach the Supreme Court may not be misused by the appellant raising all sorts of extraneous pleas once his appeal has come before the Court on the ground that it involves a substantial question of constitutional law.²¹

Questions of constitutional interpretation are thus placed in a special category irrespective of the nature of proceedings in which they arise. Such question can always be taken in appeal to the Supreme Court so that this Court may have the last say. As divergent interpretation of a constitutional provision by various High Courts would create difficulties for the people, it is desirable that such questions are decided authoritatively as soon as possible. Hence, Article 132 provides machinery for this purpose.

The Supreme Court, in the case of **State of Jammu and Kashmir v. Ganga Singh**²² had commented on Article 132 as, “The principle underlying the Article is that the final authority of interpreting the Constitution must rely with the Supreme Court. With that object the article is freed from other limitations imposed under Articles 133 and 134 and the right of the widest amplitude is allowed irrespective of the nature of the proceedings in a case involving only a substantial question of law as to the interpretation of the Constitution.”

Civil Matters

In **Amarjeet Kaur v. Pritam Singh**²³, the Supreme Court held that when appeal against a decree was pending, the Court of appeal had seisin of the whole case and the whole matter became sub judice again, though for certain purposes, i.e. execution, the decree was regarded as final. The decree of the trial court gets merged with the decree of the appellate court. Therefore the court of appeal shall have all the powers and shall perform as nearly as may be, the same

¹⁹ **Darshan Singh v. State of Punjab**, AIR 1953 SC 83; **State of Mysore v. Chablani**, AIR 1969 SC 325, 327.

²⁰ **State of Bombay v. Jagmohandas**, AIR 1966 SC 1418.

²¹ **Hamdard Dawakhana v. UOI**, AIR 1965 SC 1167; **Ayodhya Bhagat v. State of Bihar**, AIR 1974 SC 1886.

²² AIR 1960 SC 356,359.

²³ AIR 1974 SC 206.

duties as are conferred and imposed on the court of original jurisdiction. When the appeal, therefore was pending in the Supreme Court, it was continuation of the original proceedings and the entire issue was at large it is well settled law that the court could take judicial notice of the change in law and mould the relief on the basis of the right altered under the amended law.

Criminal Matters

Under Article 134 an appeal to the Supreme Court against the judgment, final order or sentence of the High Court in criminal case is maintainable even without certificate of the High Court in the two cases. Firstly, when the High Court on appeal has reversed an order of acquittal of an accused person and sentenced him to death, and secondly, when the High Court has withdrawn, for trial before itself from any court subordinate to its authority and in such trial has convicted the accused person and sentenced him to death. Further, with the certificate of the High court when it certifies that the case is „fit one for appeal to the Supreme Court“.

Under the case where appeal is without the certificate of the High Court, an appeal lies to the Supreme Court as a matter of right if the requirements laid down therein are fulfilled.²⁴ But it is not so under the other condition, where it is done with a certificate of appeal. In this regard not merely the High Court has the discretion to grant the certificate, the Supreme Court has also the power to see whether the High Court“s discretion has been judicially exercised. In **Mohinder Singh v. State of Punjab**²⁵, the Supreme Court observed that the certificate of fitness is to be granted only when exceptional and special circumstances exist and the High Court must apply its mind judicially. Thus, **Baladin v. State of Utter Pradesh**²⁶, the High Court merely recorded the order, „leave to appeal to the Supreme Court is granted, without giving any reasons. The Supreme Court refused to accept the appeal as it felt that the High Court had exercised its jurisdiction mechanically and not judicially. Article 134(1)(c) has been enacted to meet only extra-ordinary cases. Under this clause the Supreme Court does not go into pure questions of fact unless there are circumstances which go to show that lack of proper appreciation of evidence had resulted in miscarriage of justice²⁷

²⁴ **Pritam Singh v. State**, AIR 1950 SC 169.

²⁵ AIR 1953 SC 415.

²⁶ AIR 1958 SC 181.

²⁷ **Engineering Masdoor Sabha v. Hind Cycle Ltd.**, AIR 1963 SC 874.

Under clause (2) of Article, Parliament has the power to enlarge the jurisdiction of the Court, and Parliament has done so by passing the Supreme Court (Enlargement of Jurisdiction) Act, 1970 under which appeal lies to the Supreme Court in two cases. Firstly, if the High Court has no appeal reversed an order of acquittal of an accused and sentences him to life imprisonment or for a period of not less than ten years, and secondly if the High Court has withdrawn for trial before itself any case from a court subordinate to it and has convicted the accused and sentenced him to life imprisonment or for a period of not less than ten years.

LEGISLATIVE HISTORY

The appellate jurisdiction of the Supreme Court in civil matters is in substance a legacy from the Privy Council which first devolved on the Federal Court and, a little later on the Supreme Court. The only change of any consequence made was the substitution of „twenty thousand rupees“ for „ten thousand rupees“ in connection with clauses (a) and (b) of Article 133. The Privy Council or more appropriately, the King’s council, had jurisdiction over the courts in the King’s dominion, and as soon as the British established a system of Courts in India, a provision for appeals to the Privy Council was naturally made.

As early as 1726, when Mayor’s Court were functioning in three towns of Calcutta, Madras and Bombay, an appeal was provided to the King-in-Council in cases where the subject matter of litigation was worth more than 1000 pagodas. After the establishment of the Supreme Court of Calcutta by the regulating Act of 1773, the charter of that Court provided for an appeal to the King-in-Council where the subject matter of the dispute exceeded the sum of 1000 pagodas. In Bombay, however the pecuniary limit for appeal to the King-in-Council was fixed at 3000 pagodas Bombay Rupees. In the mofussil also, where the corresponding High Court for Civil Litigation were the Sadar Diwani Adalats, a pecuniary limit was fixed for the purpose of appeal to the King-in-Council, but it varied from place to place.

By an order in Council in 1838 uniformity was introduced and an appeal to the King-in-Council was permitted only where the value of the matter in dispute in appeal was at least 10,000 company rupees. The minimum value continued the same after the Constitution in 1861 of the High Courts (which replaced the old Supreme Courts and Sadar Diwani Adalat), and it was incorporated in the Civil Procedure Code of 1908 notwithstanding the considerable fall in the purchasing power of the rupee since 1838.

The establishment of the Federal Court (1937) under the Government of India Act, 1935, and the advent of independence did not make any change in this point. Civil appellate jurisdiction of the Federal Court was enlarged in 1948 by a Central Act²⁸ passed in pursuance of

²⁸ The Federal Court (Enlargement of Jurisdiction) Act, 1948.

section 206 of the Government of India Act, 1935. This Act vested the Federal Court with civil appellate jurisdiction heretofore exercised by the Privy Council, but preserved the jurisdiction of the Privy Council to hear appeals from the Federal Court. In 1949, the appellate jurisdiction of the Privy Council was totally abolished.²⁹ But the legislative measures while changing the forum of appeal did not disturb either the principle of valuation or the pecuniary limit which remained at Rs. 10,000. The makers of the Constitution, while maintaining the principle of valuation, raised the amount to rupees 20,000 and indicated that Parliament might raise it further to any extent by an ordinary law.

The question of Civil appellate jurisdiction of the Supreme Court was briefly discussed by the Law Commission when it considered the reform of judicial administration. In the 14th Report of the Law Commission, it was stated that, „The two rights to appeal, viz., the right to first appeal to the High Court and the further right of appeal to the Supreme Court in certain case are, to quote the Civil Justice Committee, „both proper and necessary..and guarded and conditioned as at present, they are justifiable in principle, in practice „necessary as a control over the different High Court and a source of strength of our judicial system with the instructed and uninstructed public. With the abolition of the jurisdiction of the Privy Council and the creation of a Supreme Court in India, the great hardship of heavy cost which has to incur in England in appeals of this type has disappeared. On the whole, therefore, there is no scope for the curtailment of the first appeals to the High Court or of appeals to the Supreme Court under article 133.

²⁹ The abolition of Privy Council Jurisdiction Act, 1949.

CASE ANALYSIS

State Bank of India and Anr.

v.

S.B.I. Employees' Union and Anr.

(AIR 1987 SC 2203)

Procedural Facts

The certificate on the basis of which this appeal was filed was issued by a learned Single Judge of the High Court of Bombay under Article 134A of the Constitution in respect of an order passed by him in a Writ Petition in which the employees of the State Bank of India had questioned the right of the management to fix the hours of work and the hours of recess and its right to stagger the period of recess and had prayed for other consequential reliefs.

Contentions

The learned Single Judge allowed the petition following certain earlier decisions of the High Court rendered by the Division Benches. He however proceeded to grant a certificate of fitness to file an appeal against his decision before this Court following an earlier order of a Division Bench granting such a certificate in respect of one of those earlier decisions. He issued the certificate under Article 134A of the Constitution without referring to the Article under which the appeal could be filed.

Judgment

In a similar case a certificate had been issued by a Division Bench of the High Court consisting of two Judges in a case decided by the Division Bench did not empower the Single Judge to issue the certificate under Article 133(1) of the Constitution in a case decided by him. The restriction placed by Clause (3) of Article 133 of the Constitution could not be gotten over by relying upon the order of the Division Bench.

Thus the Certificate was rightly revoked.

Analysis

The judgment rightly laid down that the certificate contemplated under Article 134A of the Constitution can only be a certificate which is referred to in Clause (1) of Article 132 or in Clause (1) of Article 133 or in Sub-clause (c) of Clause (1) of Article 134 of the Constitution.

It was laid down that the language of Article 134A of the Constitution that case did not fall either under Article 132(1) or under Sub-clause (c) of Article 134(1) as it neither involved a substantial question of law as to the interpretation of the Constitution nor was it a criminal proceeding. Thus it could only fall, if at all, under Article 133(1) of the Constitution.

It was also contemplated that Clause (3) of Article 133 laid down that notwithstanding anything in that Article no appeal shall unless Parliament by law otherwise provides lie to the Supreme Court from the judgment, decree or final order of one Judge of the High Court. Before the introduction of Article 134A of the Constitution by the Forty-fourth Amendment of the Constitution there was no express provision in Articles 132, 133 and 134 of the Constitution regarding the time and manner in which an application for a certificate under any of those articles could be made before the High Court. There was also a doubt as to the power of the High Court to issue a certificate suo motu under any of those articles. Article 134A was enacted to make good the said deficiencies. Article 134A did not constitute an independent provision under which a certificate can be issued. It was ancillary to Article 132(1), Article 133(1) and Article 134(1)(c) of the Constitution. That was the reason for the use of words "if the High Court certifies under article 134A" in Article 132(1) and Article 133(1) and for the use of words "certifies under article 134A" in Article 134(1)(c). The High Court could issue a certificate only when it was satisfied that the conditions in Article 132 or Article 133 or Article 134 of the Constitution as the case may be are satisfied.

CONCLUSION

The appellate jurisdiction of the jurisdiction is mainly enjoys appellate jurisdiction under the heads of Constitutional matters, Civil matters and Criminal matters.

Under the Constitutional head, an appeal lies to the Supreme Court from any judgment, decree or final order, whether civil, criminal or other proceeding, of a high court if it certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

With respect to Civil head, an appeal lies to the Supreme Court from any judgment, decree of final order in a „civil proceeding“ of a High Court if it certifies-

- (a) That the case involves a substantial question of law of general importance; and
- (b) That in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

The term civil proceeding includes all proceedings affecting civil rights which are not criminal. Proceedings under Article 226 are regarded as civil proceedings for the purpose of Article 133. Also a proceeding for relief against the infringement of civil right of a person is a civil proceeding.

With respect to the Criminal head, only a limited criminal appellate jurisdiction lies with the Supreme Court. The Supreme Court hears appeals only in exceptional criminal cases where justice demands interference of the Apex court. It was necessary to restrict the flow of criminal appeals to the Supreme Court otherwise a large number of such appeals would have made it physically impossible for the court to cope with them.

Lastly, all these appeals to the Supreme Court lie on a certificate being granted by the concerned High Court. To facilitate the grant of such a certificate, and to reduce any delay in completing this formality, certain provisions have been made by Article 134A which facilitate the entire process of the appellate jurisdiction of the Supreme Court.

BIBLIOGRAPHY

- Durga Das Basu, COMMENTARY ON THE CONSTITUTION OF INDIA, 8th ed 2008. Lexisnexis Butterworths, India.
- M P Jain, INDIAN CONSTITUTIONAL LAW, 6th ed 2010. Lexisnexis Butterworths, India.
- Law Commission of India, 44th and 45th Report
- www.manupatra.com