

COLLETES LTD
v.
BANK OF CEYLON

SUPREME COURT

SHARVANANDA, J., WIMALARATNE, J., VICTOR PERERA, J., AND SOZA, J.

S.C. REF. 6/82 - C.A. NO. 325/74 (F) - D.C. COLOMBO No. 73754/M.
OCTOBER 26, 1982.

Interpretation - 'Question of law' - When does such a question become a 'substantial question of law?'

Cases referred to:

- (1) *Chunilal Metha v. Century Shipping & Manufacturing Co. Ltd.* (1962) A.I.R. SC 1314.
- (2) *Subbaro v. Veeraju* (1951) AIR Madras 969.

REFERENCE under Article 125 (1) of the Constitution by the Court of Appeal to the Supreme Court.

H.L. de Silva, S.A. with K. Kanag-Iswaran and S. Mahenthiran for plaintiff-petitioner.

H. W. Jayewardene, Q.C., with J. W. Subasinghe, S.A., K.N. Choksy, S.A., L.C. Seneviratne and Lakshaman Perera for defendant-respondent.

November 15, 1982

SHARVANANDA, J. read the following unanimous determination of the Court on the questions referred to it by the Court of Appeal.

The following questions have been referred to us in terms of the provisions of Article 125 (1) of the Constitution by the Court of Appeal for determination:

- (1) What constitutes a "question of law" within the meaning of the provisions of Article 128 (1) of the Constitution?
- (2) When does such a question of law become a "substantial" question of law, within the meaning of the provisions of the said Article?
 - (i) What are the tests adopted on that behalf?
 - (ii) When is a judgment of the Court of Appeal said to involve such a question of law, as is contemplated in the provisions of the said Article to the Constitution?

We accordingly determine the above questions referred to us as follows:—

1. "Questions of Law"

The "Law" in this context means the General Law and not merely Statute Law.

- (a) The proper legal effect of a proved fact is necessarily a question of law. A question of law is to be distinguished from a question of "fact". Questions of law and questions of facts are sometimes difficult to disentangle.
- (b) Inferences from the primary facts found are matters of law.
- (c) The question whether the tribunal has misdirected itself on the law or the facts or misunderstood them or has taken into account irrelevant considerations or has failed to take into account relevant considerations or has reached a conclusion which no reasonable tribunal directing itself properly on law could have reached or that it has gone fundamentally wrong in certain other respects is a question of law. Given the primary facts, the question whether the tribunal rightly exercised its discretion is a question of law.
- (d) Whether the evidence is in the legal sense sufficient to support a determination of fact is a question of law.
- (e) If in order to arrive at a conclusion on facts it is necessary to construe a document of title or correspondence then the construction of the document or correspondence becomes a question of law.
- (f) Every question of legal interpretation which arises after the primary facts have been established is a question of law.
- (g) Whether there is or is not evidence to support a finding, is a question of law.
- (h) Whether the provisions of a statute apply to the facts; what is the proper interpretation of a statutory provision; what is the scope and effect of such provision are all questions of law.
- (i) Whether the evidence had been properly admitted or excluded or there is misdirection as to the burden of proof are all questions of law.

2. "The Substantial Question of Law"

It is not enough if a mere question of law is involved, it must be a substantial one. Whether a particular question of law is substantial or not must depend on the circumstances of each case. No absolute or exhaustive definition or test of "substantial" question of law can be formulated. All that this Court can do is to set down some guidelines for its ascertainment.

Since an appeal on a question of law is intended to be a beneficial remedy, the provisions of Article 128 (1) of the Constitution have to be interpreted broadly and liberally.

We have derived valuable assistance in this connection from the judgment of the Supreme Court of India in *Chunilal Mehta vs. Century Shipping & Manufacturing Co. Ltd.* (1). That Court after reviewing earlier authorities framed a test for identifying a substantial question of law. We respectfully adopt the test. It is stated at page 1318: "The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly or substantially affects the rights of the parties and, if so, whether it is either an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or is not free from difficulty or calls for discussions of alternative views. If the question is settled by the Highest Court or the general principles to be applied in determining the questions are well settled and there is a mere question of applying those principles or the plea raised is palpably absurd, then the question would not be a 'substantial question of law.'" That Court quoted with approval the view of the Madras High Court expressed in *Subbarao vs. Veeraju* (2). "When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Courts below thought it necessary to deal with the question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decisions of the Highest Court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case, it would not be a substantial question of law."

The following tests, may, in our view, be applied in determining whether a question of law is substantial or not. (It is to be noted that these tests are not exhaustive).

- (i) A question of law which has been definitely settled by the Supreme Court or in respect of which there is no difference of opinion is not a substantial question of law. It should be such as to impress the Court that it is debatable in view of the authorities or that the authorities themselves may require reconsideration. It must be such that there may be some doubt or difference of opinion or there is room for difference of opinion.....
- (ii) A question of law will not be substantial merely because much is at stake on the answer to it.
- (iii) The word "substantial" does not imply that the question of law must be of general interest or importance. It is sufficient if a substantial question of law, as between the parties to the litigation is involved. This however does not mean that every question of law as between the parties is a substantial question. A question of law is substantial between the parties if the decision turns one way or another on the particular view taken of the law. If it does not affect the decision, then it cannot be substantial as between the parties. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable difference of opinion on the question then it would be a substantial question of law.
- (iv) If there is a conflict of judicial opinion and there is no direct decision of the Highest Court on the question of law raised then there would be a substantial question of law.
- (v) If the question of law raised is a question of law directly and substantially affecting the rights of the parties and if it is an open question in the sense that it is not finally settled by the Supreme Court or is not free from difficulties or calls for discussion of alternative views then, it is a mere question of applying well settled principles. If the plea raised is palpably absurd, the question would not be a substantial question of law.
- (vi) Orders passed in the exercise of the discretion of the Court do not ordinarily involve a substantial question of law but a question whether a Court could in law,

exercise any discretion at all in a given case, is a substantial question of law.

- (vii) Objections on the ground of defects in the form or procedure are not substantial questions of law, unless such defects appear to have greatly prejudiced any party.
- (viii) A question as to prescription or jurisdiction may be a substantial question of law.
- (ix) Whether the construction of documents is or is not a substantial question of law depends upon the facts of each case. If the document in question is a document of title or the very foundation of the action, its meaning may involve a substantial question of law.
- (x) Questions as to the status of parties or the applicability of any point of law or provision of a statute may raise substantial questions of law.
- (xi) When a particular set of facts can lead to alternative findings of law, then a substantial question of law would be involved.
- (xii) Where the case has occupied the court for a very long time and on which there is a very elaborate judgment, it cannot be argued that no substantial question of law is involved by endeavouring to demonstrate that on the merits of the case the decision sought to be appealed from is "obviously right".
- (xiii) Whether the judgment contains anything *ex facie* bad in law which bears on the determination is a substantial question of law. If the facts found are such that no person acting judicially and properly instructed as to relevant law could have come to the determination under appeal, then a substantial question of law arises on the ground that there has been some misconception of the law and this has been responsible for the determination.
- (xiv) Where there is no evidence to support the determination or where the evidence is inconsistent with or contradictory of the determination or where the true and only reasonable conclusion contradicts the determination, a substantial question of law is involved.

3. "Involve"

The word 'involve' implies a considerable degree of necessity. The mere circumstance that a question of law is raised in a case would not justify the inference that the proposed appeal involves a substantial question of law, unless it is necessary to decide the question of law for a proper decision of the case. The test is not merely the importance of the question but its importance to the case itself. If the decision of the case depended upon a consideration of that point it would be deemed to be "involved." If on the other hand there is only a remote contingency of it being taken into consideration, it will not answer the test.

Determination sent to Court of Appeal.