

Special Leave Petitions in Indian Judicial System

The Constitution of India under Article 136 vests the Supreme Court of India with a special power to grant special leave to appeal against any judgment or order or decree in any matter or cause passed or made by any Court/tribunal in the territory of India.

This is special power bestowed upon the Supreme Court of India which is the Apex Court of the country to grant leave to appeal against any judgment in case any substantial constitutional question of law is involved or gross injustice has been done.

“Special leave petition” or SLP hold a prime place in the Indian judicial system. It provides the aggrieved party a special permission to be heard in Apex court in appeal against any judgment or order of any Court/tribunal in the territory of India.

Special Leave petition or SLP can be presented under following circumstance:

- SLP can be filed against any judgment or decree or order of any High Court /tribunal in the territory of India.
- Or, SLP can be filed in case the High court refuses to grant the certificate of fitness for appeal to Supreme Court of India.

Time frame within which SLP can be filed:

- SLP can be filed against any judgment of High Court within 90 days from the date of judgement.
- Or SLP can be filed within 60 days against the order of the High Court refusing to grant the certificate of fitness for appeal to Supreme Court.

Who can file SLP:

Any aggrieved party can file SLP against the judgment or order of refusal of grant of certificate.

Contents of SLP:

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This petition is required to state all the facts that are necessary to enable the court to determine whether SLP ought to be granted or not. It is required to be signed by Advocate on record. The petition should also contain statement that the petitioner has not filed any other petition in the High court.

It should be accompanied by a certified copy of judgement appealed against and an affidavit by the petitioner verifying the same and should also be accompanied by all the documents that formed part of pleading in Lower court.

The scope of power vested with the Supreme Court of India under Article 136:

The constitution of India vest “discretionary power” in the Supreme Court of India. The Supreme Court of India may in its discretion be able to grant special leave to appeal from any judgment or decree or order in any matter or cause made or passed by any Court/tribunal in the territory of India. The Supreme Court of India may also refuse to grant the leave to appeal by exercising its discretion.

An aggrieved party from the judgment or decree of high court cannot claim special leave to appeal as a right but it is privilege which the Supreme Court of India is vested with and this leave to appeal can be granted by it only.

An aggrieved party can approach the Apex Court under Article 136 in case any constitutional or legal issue exists and which can be clarified by the Supreme Court of India. This can be heard as civil or criminal appeal as the case may be.

This is “residual power” vested with the Supreme Court of India.

Judgments of various Courts of India on SLP:

There is catena of judgments mentioning about the scope of power of Supreme Court under Article 136, the maintainability of special leave petitions. The below mentioned are some of prominent judgments mentioning about SLP.

- **Pritam Singh v. the State [AIR 1950 SC 169]**

The Constitutional Bench observed that the Supreme Court is vested “wide discretionary power” under this article and this power is required “to be exercised sparingly and only in exceptional cases”.

The Court also observed that a more or less uniform standard should be adopted in granting Special Leave in wide range of matters which can come up under this Article.

The court further observed that “this Court” should not grant special leave, unless it is shown that “exceptional and special circumstance exist”, that “substantial and grave injustice” has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.

The power conferred upon the Supreme Court of India is of “residual nature” and is a “discretionary power”.

Article 136 does not confer upon a litigant a right to appeal against any order or judgement but vest the Supreme Court of India with a discretionary power to interfere with the orders of the lower Courts only in case of exceptional character where gross injustice has been carried out.

➤ **Kunhayammed vs. State of Kerala(2000) 245 ITR 360 (SC)**

The Supreme Court observed that Article 136 is of 2 distinct stages. The Court observed that while hearing the petition for special leave to appeal, this court is called to see whether petitioner should be granted such a leave or not. The Court observed that while hearing such a petition, this Court is not exercising its appellate jurisdiction and is merely exercising its discretionary power to grant or not grant leave to appeal.

The court observed that the petitioner is still outside the gate of entry though is aspiring to enter the Appellate arena of Supreme Court and whether he enters or not shall depend upon the fate of the petition for special leave.

The court further observed that if the petition seeking grant of special leave is dismissed then it is expression of the opinion of the Court that a case invoking appellate jurisdiction of the Court was not made out. And in case, the leave is granted then the appellate jurisdiction of the Court stands invoked.

The court also observed that the Judgment, decree or order against which leave to appeal is sought continues to be final and binding even in case the petition for special leave to appeal is filed and it is only in case the leave is granted that the finality of the judgment or order is put in jeopardy though it continues to be binding and effective between the parties unless it is nullity or the court passes specific order suspending the operation or execution of the judgment or order.

The court relying on catena of judgments concluded that in case there is dismissal at the stage of special leave without a speaking order or reasons then there shall be no res-judicata and no merger. And it can only be said that it was not a fit case where special leave could be granted. The court further said that it is not correct to assume that the court has decided implicitly all the questions in relation to merits of case and it is open for the litigant to approach the High court under Article 226 for review of decision and there could be a possibility whereby the Supreme Court has dismissed the petition only because the litigant can approach the High Court under Article 226.

The court said that just because the special leave is not granted does not mean that the aggrieved party is precluded from approaching High Court and it would not be just to deprive the aggrieved person from seeking relief in review jurisdiction of the High Court in case the case is made out merely on the ground that special leave petition under Article 136 is stood rejected by Supreme Court by a non-speaking order.

The court observed that the jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

The court observed that under Article 136 of the Constitution, the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

➤ **Smt. Tej Kumari vs. CIT (2001) 247 ITR 210**

The Full Bench of the Patna High Court held that in case a SLP is summarily rejected or dismissed under Art 136 of the Constitution then such a dismissal does not lay down any law.

The decision of the High Court against which the SLP is dismissed in limine would not operate as res-judicata. However, when Supreme Court dismisses an SLP with reason, it might be taken as the affirmation of the High Court views on merits of the case, thus there is no reason to dilute the binding nature of precedents in such cases.

➤ **N. Suriyakala Vs. A. Mohan doss and Others (2007) 9 SCC 196**

The Supreme Court observed with regard to scope of Article 136 that Article 136 of the Constitution is not a regular forum of appeal at all. It is a “residual” provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.

➤ **Tirupati Balaji Developers Pvt. Ltd. Vs. State of Bihar AIR 2004 SC 2351,**

This Court observed that Article 136 is an “extraordinary jurisdiction” vested by the Constitution in the Supreme Court with implicit trust and faith, and extraordinary care and caution has to be observed in the exercise of this jurisdiction. The court further observed that Article 136 does not confer a right of appeal on a party but vests a vast discretion in the Supreme Court meant to be exercised on the considerations of justice, call of duty and eradicating injustice.

➤ **Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai AIR 2004 SC 1815**

This Court observed that the discretionary power of the Supreme Court is plenary in nature in the sense that there are no words in Article 136 itself qualifying that power.

The court further said the very conferment of the discretionary power defies any attempt at exhaustive definition of such power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as when a question of law of general public importance arises or a decision sought to be impugned before the Supreme Court shocks the conscience. This overriding and exceptional power has been vested in the Supreme Court to be exercised sparingly and only in furtherance of the cause of justice in the Supreme Court in exceptional cases only when special circumstances are shown to exist.

➤ **Mathai @ Joby v. George ((2010) 4SCC 358)**

The court observed that Article 136 like Article 226 is a discretionary remedy and the Court is not bound to interfere even if there is error of law or fact in the impugned order.

The use of the words in Article 136 clearly indicates that Article 136 does not confer a right of appeal upon any party but merely vests discretion in the Supreme Court to interfere in exceptional cases.

The court further observed that a constitutional bench should be formed laying down some broad guidelines as to what kind of cases should be presented under Article 136.

➤ **Columbia Sportswear Company v. Directorate of Income Tax (judgment of Supreme Court of India in SLP no 31543 of 2011)**

The issue in the present case before the Supreme Court was whether an SLP can be maintained in case of decision or order passed by Authority for Advance Ruling (AAR).

AAR was a body introduced under Section 245 S of the Income Tax Act and Finance Act 1993 for giving decisions on tax liability of certain specified category of tax payers involved in certain transactions. The decisions of AAR had “binding effect” on tax payers.

In the present case, the Petitioner approached the Supreme Court of India against the ruling of AAR under SLP.

The Court observed that AAR is a tribunal.

The court observed further that the power of the Supreme Court of India to grant special leave to appeal is discretionary in nature.

The Supreme Court said that even if good grounds are shown in the SLP for challenging the advance ruling of AAR, the supreme court can still “in its discretion” refuse to grant special leave to appeal on the ground that decision of AAR can be challenged through writ petition under Article 226/227 in the High Court.

The Supreme Court observed that in event any substantial question of general importance is not involved or similar questions are not pending before the Supreme Court, the Supreme Court may not entertain SLP directly against the ruling of AAR thereby laying down the precedent that Supreme court shall entertain SLP only in case of substantial question of law involved or similar question is pending in court and the aggrieved party may approach the High court under Article 226/227.

Conclusion:

Special leave petition or SLP holds a prime place in the Indian judicial system and has been provided as a “residual power” in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is involved or gross injustice has been done.

It is discretionary power vested in the Supreme Court of India and the court may in its discretion refuse to grant leave to appeal. The aggrieved party cannot claim special leave to appeal under

Article 136 as a right but it is privilege vested in the Supreme Court of India to grant leave to appeal or not.

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