
(1972) 02 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1412 of 1965

Abdul Junaid

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-02-1972

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(1)

Citation : (1972) 42 AWR 292

Hon'ble Judges : S.N. Dwivedi, J;A.K. Kirty, J

Bench : Division Bench

Advocate : K.B. Verma, for the Appellant; Fauzdar Rai and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Dwivedi, J.—The Petitioner has filed the writ petition against the order of the Dy. DC dismissing his revision summarily. The revision was filed u/s 48 of the Consolidation of Holdings Act. It was filed against the order of the SOC dated March 18, 1964. It was filed on May 16, 1964.

2. Rule 111 of the Consolidation of Holdings Rules is framed u/s 54 of the Consolidation of Holdings Act. Before March 25, 1964 it read: "An application u/s 48 of the Act shall be drawn up and presented by the Applicant or his pleader to the Director or to such other officer as he may appoint on his behalf. It shall be accompanied by a copy of the decree or the order in respect of which the application is made and by a copy of judgment, if any, upon which the decree or the order is founded. Copies of decrees or orders or judgments of other subordinate authorities shall not be required to be filed unless, for special reasons, filing of these documents is also considered necessary by the Director." That rule has stood for long. Presumably in the belief that that rule was still operating on May 16, 1964, the Petitioner filed along with the memorandum of revision only a copy of the judgment of the SO. He did not file a copy of the order of the CO. The filing of a copy of the order of the CO was, it appears,

necessary on May 16, 1964 (we express no opinion on this point), for Rule 111 on that date assumed this shape: "An application u/s 48 of the Act shall be presented by the Applicant or his duly authorised agent to the Distt. Dy. DC within 30 days of the order against which the application is directed. It shall be accompanied by a copy of the judgment and order in respect of which the application is preferred. Copies of judgments and orders, if any, of other subordinate authorities in respect of the dispute shall also be filed with the application." Acting under this provision, the Dy. Director dismissed the revision of the Petitioner summarily on the ground that he had failed to file a copy of the order of the CO.

3. The petition came up for hearing before a learned single Judge. It was urged before him that the last part of the amended rule is directory and not mandatory. But the argument ran counter to a decision of an another learned single Judge in Smt. Shanti v. Brij Lal (CMW No. 1506 of 1968 Dt. May 16, 1969). Accordingly he referred the case to a larger Bench. Hence the case before us.

4. For reasons to be stated presently, we are of opinion that it is not necessary to express any opinion on the question whether the last part of the amended Rule 111 is mandatory or directory. It is admitted by counsel for the parties before us that the record of the inferior authorities had been called for by the Dy. Director. It is further admitted that the record was before him and that he dismissed the revision in limine, as stated earlier after hearing the argument of counsel for the parties. In these circumstances we are of opinion that the Dy. Director should not have dismissed the revision in limine. Section 48(1) provides that the Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit. Section 48 does not confer any right on a party to file an application in revision: it confers a power on the specified authority for the sake of keeping the inferior authorities within bounds. For that purpose he may call for the record of an inferior authority and examine it and pass an appropriate order. Having regard to the object underlying Section 48 it appears to us that once the record has been called for by the specified authority, he should not ordinarily refuse to examine the record and to check whether the inferior authority has gone wrong. So long as the record has not been called for, a person who makes an application u/s 48 may be said to be an actor on the scene. But when the record has been called for it appears to us that he ceased to be an actor on the scene. The specified authority who has called for the record becomes the actor on the scene. Accordingly he should examine the record and pass such an order which will advance justice.

5. The view which we are taking finds support from J.P. Ojha Vs. Firm R.R. Tandan and Another, . In that case a revision was dismissed at the stage of

hearing by the Distt. Judge on the ground that it was presented by a counsel without filing a vakalatnama. A learned single Judge said that after the record had been called for, the Distt. Judge should not have dismissed the revision on a technical ground. In *Om Prakash v. Moti Lal* 1958 AWR 239 Chief Justice Mootham said: "The Court has called for the record of these cases for the sole purpose of enabling it to determine whether it shall exercise its revisional powers." This remark would suggest that the revising authority calls for the record of a case when he is prima facie satisfied that it is just and proper to examine the record of the case for the purpose of exercising the revisional powers and for doing justice. So after he has sent for the record, he should not, in our view, dismiss the revision on a mere technical ground. After all, he can and should interfere suo motu to do justice.

6. The revising authority should not ordinarily dismiss the revision for mere procedural defects for procedure "is but the machinery of the law after all -- the channel and means whereby law is administered and justice reached. It strangely departs from its proper office when, in place of facilitating, it is permitted to obstruct and even extinguish, legal rights and is thus made to govern where it ought to subserve." (See *Henry J. B. Kendall v. Peter Hamilton* (1879) 4 AC 504. In AIR 1922 249 (Privy Council) Lord Buckmaster said: "All rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be subordinate to that purpose." *Musammat Hanifunnissa and Another Vs. Chunni Lal and Others*, this Court said:

"The Courts do not sit as disciplinary bodies to punish parties for inept procedure when their right is clear and no misunderstanding, surprise or prejudice can occur to the other side." In the instant case the record had come. The order of the Consolidation Officer, which was not filed by the Petitioner, was before the revising authority. He could have read that order. The other party suffered no prejudice by the omission of the Petitioner to file a certified copy of the order of the Consolidation Officer.

7. We make it clear that our remarks in this case are restricted to the exercise of the revisional powers. They should not be understood to extend to the exercise of appellate powers. We say nothing about the exercise of appellate powers for we are not concerned with that aspect in this case.

8. We allow the writ petition and quash the order of the Deputy Director, Consolidation. We direct him to decide the revision of the Petitioner on merits after hearing parties. Petition allowed.