

(1985) 03 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15120 of 1982

Director of Railway Movement (Coal) Eastern Railways,
Calcutta

APPELLANT

Vs

Akashwani Glass Works, Firozabad and Others

RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2), 47, 9
Constitution of India, 1950 — Article 227
Railways Act, 1890 — Section 26, 27, 27(1), 27A, 28

Citation : AIR 1985 All 314

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; Vinod Sinha, S.S. Agnihotri and Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

B.D. Agarwal, J.—The respondent 1 is a registered partnership firm engaged in manufacture of block glass and glass bangles in Firozabad (district Agra). The respondents 2 to 6 are partners of this firm. To run the unit the respondents need steam coal -- a controlled commodity which they have to transport by rail from collieries situate in the eastern region of the country. Under the existing scheme, sponsoring is done by the Director of Industries, U.P. (respondent 10) within the specified ceiling limits. This is considered by the Director, Movement (Railways) (the petitioner) in the light of priorities allocated under the Preferential Traffic Schedule formulated by the Central Government in exercise of the powers u/s 27-A Railways Act. The Director, Movement accords sanction whereupon allotment of wagons is done from time to time, depending on the availability of coal and coal wagons.

2. In October, 1977, the respondents 1 to 6 instituted Original suit No. 298 of 1977 in the Court of the Civil Judge, Agra, with the allegations, in brief, that for

the year 1977 they had been sanctioned 104 wagons of coal. Out of these they received 60 wagons only between January to March, 1977. The coal thus received had been fully utilized. The production suffered due to cessation of supply of coal thereafter. On July 5, 1977, the Director of Industries, U.P. passed an order whereby the allocation of coal wagons to these respondents was suspended. The respondents assessed their minimum requirement as nine coal wagons per month on the basis of their production programme and capacity and contended that officers of the Directorate had satisfied themselves on inspection made; the supplies were being received accordingly from 1974 onwards but of late the respondents were being unduly harassed. Due to lack of regular supply as per Scheduled Programme there were intermittent suspensions in production of commercial goods. The relief claimed by the respondents-plaintiffs in the suit was : --

"That as the plaintiffs are entitled to a minimum of 9 wagons of steam coal per month to be supplied to them per month, the defendants, their agents and servants be restrained from in any manner suspending, obstructing, interfering or withholding the supply of 9 wagons for transportation of steam coal from collieries in Eastern India, in favour of the plaintiffs at Firozabad."

3. Despite service of process there was no appearance put in for the petitioner or the respondents 7 to 11 arrayed as defendants in the suit. The trial court considered the affidavit of the respondent 2 (a partner in the plaintiff-firm) and other documents and decreed the suit ex parte on 18th May '79. The operative portion of the judgment reads as follows :--

"The suit is decreed. It is hereby declared that the plaintiffs are entitled to a minimum of nine wagons of steam coal per month to be supplied to them per month subject to the plaintiffs' running their factory and satisfying the defendants that they are properly utilising the steam coal supplied to them unless and until their S.S.I. registration and coal quota are cancelled in accordance with law. The defendants are restrained from obstructing or withholding the supply of the aforesaid nine wagons of steam coal per month from collieries in Eastern India in favour of the plaintiffs at Firozabad till the plaintiffs hold a valid S.S.I. registration and utilize the steam coal supplied in their factory according to the terms and conditions of the S.S.I. Registration and coal quota."

4. In order to secure compliance to the terms of the decree the respondents 1 to 6 made various approaches to the petitioner both in writing and personally followed by notice dt. 28-1-81. At long last, the decree-holders put the decree into execution under Order XXI, Rule 32 Civil P.C. registered as Execution Case No. 9 of 1981. At their instance warrant of arrest was issued against the petitioner on Nov. 20, 1981; the property in the office of the Director of Industries, U.P. was attached. Not content with this the decree-holders on May 29, 1982, also applied for the attachment of the "Toofan Express" train at Firozabad -- a fantastic prayer indeed. The petitioner filed objection u/s 47 Civil

P.C. registered as Miscellaneous Case No. 64 of 1981 whereupon the warrant of arrest was withdrawn.

5. On Dec. 23, 1982, the petitioner approached this Court under Article 226/227 of the Constitution against the judgment of the trial court dt. 18th May, 79. The petition was admitted by a learned single Judge; the arrest of the petitioner and attachment of railway property in execution of the decree were stayed. The writ petition is resisted by the respondents-plaintiffs.

6. Before advertng to rival contentions of the parties in this petition a reference may be made in some further details to the statutory scheme concerning the transport of coal. Section 27(1) of the Railways Act enjoins on the railway administration to arrange for receiving and forwarding traffic without unreasonable delay and without difficulty. Section 27-A. confers power on the Central Government to give directions in regard to transport of goods by railway administration. In so far as material it provides : --

"27A. Power of Central Government to give directions in regard to transport of goods by Railway Administration :--

(1) The Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, direct any railway administration : --

(a) to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods, as may be specified in the order;

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(3) Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any direction given under Sub-section (1), and any action taken by a railway administration in pursuance of any such direction shall not be deemed to be a contravention of Section 28."

7. Section 28 which reads as under prohibits giving undue preference by railway administration :--

"28. Prohibition of undue preference : --

A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

8. In exercise of the power conferred by Section 27 A the Central Government issued Preferential Traffic Schedule which directs the railway administration to give special facilities for or preference to the transport of goods or class of goods

specified therein. Different kinds of coal fall under priority C(iii) which reads as follows :--

(iii) Coal from collieries in accordance with commodity quotas laid down from time to time for certain types of coal and/or in accordance with programmes and movements sponsored or recommended by the Coal Controller and/or any committee appointed by him and/or the State Governments and/or other recommending authorities and accepted by the Railway Administrations and/or, Director, Movement (Railways), Calcutta, and in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time, A list of sponsoring authorities authorised to sponsor coal movements in this item is given in Annexure "B".

Note : -- (a) Coal in the above item C(iii) means "Coal as defined in Colliery Control Order".

(b) Besides the sponsoring authorities mentioned in Annexure "B" movement of Coal may be sponsored by "any other authority who may be appointed by the Government from time to time".

(c) Recommendation for allotment of wagons by a sponsoring authority or acceptance of recommendations or issue of sanction by the Railway Administration/ Director, Movement (Railways) does not guarantee allotment/ supply of wagons. Allotment/supply of wagons would be regulated according to the exigencies from time to time. Allotment/supplies of wagons may be cancelled or reduced by Director, Movement (Railways).

(d) The period of validity of programmes/sanctions for rakes/piecemeal movement may be laid down from time to time by Railway Administration/ Director, Movement (Railways). The validity of programme/sanction does not guarantee allotment/supply of wagons.

(e) Inter se seniority of the class of consumers would be laid down from time to time by Railway Administration/Director, Movement (Railways) and may be altered, modified from time to time within the same class or category of consumers, seniority may be fixed from time to time depending upon the operational and other considerations. Railway Administration/Director, Movement (Railways) may permit distress allotments/supply of wagons when considered necessary. Nothing laid down herein shall be considered as contrary to notes (a) to (b) appearing under Priority "E".

9. Amongst Priorities "A" to "E" there is inter se priority and when under one priority various goods or class of goods are clubbed together, they have inter se priority amongst themselves. Annexure "B" to the Preferential Traffic Schedule specifies the Director of Industries, U.P. as the sponsoring authority for this State. The Director, Movement (Railways) controls and coordinates all movements of coal by rail. He assesses the likely availability of wagons in a coming year for the movement of coal Governments are advised by him

thereupon to sponsor coal traffic as per the requirement and policies. These are ceiling limits fixed in advance on the likely availability of coal and transport capacity as also demands of consumers. The sponsoring authority makes his recommendations on the consumer's programme keeping the ceiling limits in view. The Director, Movement (Railways) accords sanction for entitlement of allotment under higher priority item "C" of the Schedule. The sanction issued is an anticipated availability of coal and rail transport capacity well in advance which, however, does not convey any assurance or guarantee of allotment or supply or movement thus sanctioned. Allotment of wagons is made by him thereafter from time to time keeping in view : --

- a) availability of Coal;
- b) availability of wagons;
- c) railways operational position such as restriction and limitations:
- d) directional movement pattern of wagons to sustain balanced wagon turn round;
- e) the need to feed the core coal consuming sectors such as Steel Plants, Defence, Ordnance Factories, Power Houses, Railway Loco Sheds, Export Coal, Coastal Shipment Coal, Public Utility Services, Fertilizer Plants etc.
- f) acute distress conditions of any consuming unit.

10. The sanction remains subject to pro rata cuts at the time of allotment depending on the demand for wagons being in excess of their availability. The petitioner has appended Annexure "3" to the writ petition which explains the purpose and procedure for preferential clearance of coal from colliery sidings under higher priority "C" of the Preferential Traffic Schedule. In *Viklad Coal Merchant, Patiala and Others Vs. Union of India (UOI) and Others*, the challenge to the vires of these provisions based upon Articles 14 and 19(1)(g) of the Constitution was repelled by the Supreme Court which elaborates this scheme and it was observed, "In short undue preference by railway administration is statutorily prohibited but preferential treatment in respect of goods or class of goods can be accorded if the Central Government by a special or general order in public interest so directs."

11. Sri B. D. Mandhyan learned counsel for the petitioner contends in the first place that in view of Section 26 of the Railways Act the jurisdiction of the Civil Court was completely barred and, therefore, the decree passed by it is nullity. It is not possible to agree with this submission. Section 26 reads as follows : --

"26. Bar of jurisdiction of ordinary Courts in certain matters :--

Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter."

12. Chapter V wherein this section falls comprises of Sections 26 to 46-C. In substance the grievance of the respondents-plaintiff in the suit would appear to have been that there was arbitrary denial of reasonable facilities to them for receiving coal from the Eastern Railway, that is to say, this was in contravention of Section 27(1). But then the material question is whether the Railways Act provides remedy against a contravention such as averred in the instant case. In the absence of any remedy contained in this Act for redress of this alleged wrong, as Sri S. P. Gupta learned counsel for the respondents, rightly urged, the case would be covered under the opening words, "Except as provided in this Act". There is no doubt Railway Tribunal is constituted u/s 34 of the Act. It is, however for discharge of functions specified in Chap. V. Section 41 narrates the complaints against a railway administration which the Tribunal may entertain and adjudicate upon. These are complaints that a railway administration (a) is contravening the provisions of Section 28, or (b) is charging for the carriage of any commodity between two stations at a rate which is unreasonable, or (c) is levying any other charge which is unreasonable. None of these covers the grievance such as agitated by the concerned respondents herein. A close perusal of the plaint in original suit (which is Annexure I to the petition) shows that these respondents nowhere challenged the Preferential Traffic Schedule framed u/s 27A, They, on the contrary, made an attempt to bring their case within the purview of the Schedule. And it would be only repetitive to say that, as laid in Section 27A(3) any action taken by a railway administration in pursuance of the Preferential Traffic Schedule shall not be deemed to be a contravention. of Section 28. The respondents cannot, therefore, be said to have in this case complained of contravention of Section 28 meaning thereby that Tribunal is not the forum which could redress their grievance.

13. The law is settled that Section 26 Railways Act does not preclude a suit in the Civil Court unless the cause of action be such as can be adjudicated upon by the machinery provided in this Act. In *Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Railway Company Ltd.*, the argument for the appellant that Section 26 stands in the way of bringing any suit in the Civil Court as a claim for refund of charges made in excess of reasonable charges was repelled with the observation that:

"If under the law, apart from the Railways Act, a consignor is entitled to obtain relief against unreasonable charges which he has paid in the past, Section 26 will not stand in his way."

14. In *Union of India (UOI) Vs. Modi Industries Ltd.*, , the suit was for injunction to restrain the railway administration against retrospective claim at enhanced freight charges for supply of wagons. It was held that the Tribunal has no jurisdiction to decide whether the rules empowering the railway administration to levy ,a particular charge are ultra vires or whether the railway administration collected amounts in excess of the charges which it can legally levy under a rule. It was hardly open to the plaintiff to complain to the Tribunal in regard to the

reasonableness or otherwise of the rates and charges which had already become payable. The suit was, therefore, maintainable despite Section 26 and the court can give proper relief. The position is made explicit by the Supreme Court in *Raichand Amulakh Shah Vs. Union of India (UOI)*, which arose from a suit for the recovery of the amounts collected from the appellant firm by way of demurrage and wharfage charges. It was held :

"As Section 26 bars the jurisdiction of civil courts, its provisions must be strictly construed. The bar is in respect of anything done or an omission made by the railway administration in violation or contravention of any provisions of Chapter V of the Act. If the opening words "Except as provided in this Act" in Section 26 of the Act are ignored, the bar appears to be comprehensive, for it may take in its sweep any dereliction of duty by the railway administration in respect of matters covered by the provisions of the said chapter. But such an intention to give a blanket licence to the railway administration to contravene the provisions of Chap. V of the Act shall not be attributed to the Legislature unless the section is very clear to that effect/ The opening words ""Except as provided in this Act" limit the operation of the bar. It can reasonably be interpreted to mean that the bar of a suit is limited to matters in respect whereof the Act has provided a remedy. So construed before we apply the provisions of Section 26 of the Act, two conditions shall be complied with, namely, (i) the railway administration shall have done an act or omitted to do an act in contravention of the provisions of Ch. V and (ii) the Act has provided a remedy in respect of that act or omission."

15. In a different context dealing with the Delhi Rent Control Act, 1958, the view taken by the Supreme Court was that since "the jurisdiction to make an order for recovery of possession of premises as one or more of the specified grounds was given to the Controller u/s 14, Sub-section (1)" Section 50 ousted the jurisdiction of the civil court by declaring that, save as otherwise expressly provided in the Act, no civil court shall entertain any suit or proceeding i n so far as it relates inter alia to eviction of any tenant from any premises to which the Act applies or to any other matter which the Controller is empowered by or under the Act to decide vide *Sunder Dass Vs. Ram Prakash*, See also *Union of India Vs. Mansukhlal Jethalal*,

16. Learned counsel next argued the assuming the civil court had jurisdiction to take cognizance and decide the suit, it committed illegality in arriving at the impugned decision and, according to him, this renders the decree a nullity. The illegality referred to is that the case set up in the plaint was in respect of the year 1977 alone but the court granted declaration/injunction in perpetuity though subject to certain conditions but without the suspension directed on July 5, 1977 being sought to be revoked. A scrutiny into the averments contained in the plaint which is Annexure 1 to the writ petition reveals that this argument is not factually correct. Paras 17, 22, 25 thereof in particular leave no room to doubt that relief claimed was for the maintenance of status quo, that is the allotment of nine coal wagons for so long as this was not further raised. The suspension

directed against the allotted quota of 1977 is highlighted in the plaint; this furnished the immediate cause of action but the claim is not confined to that particular year. The object behind the suit, as Sri S. P. Gupta rightly submitted, would appear to have been to avert unauthorised cuts in the future also and the necessity of the plaintiff to run about from time to time to the authorities to maintain a stable supply of Coal. The relief for revocation of suspensions of allotment of coal wagons for 1977 is implicit in the declaration and the permanent injunction claimed by the plaintiffs. I am, therefore, unable to agree that the relief granted in the decree by the trial court is in excess of or beyond that claimed in the suit.

17. This can moreover be viewed from another angle also. There is under the law the distinction well recognised between pleas that tend to show that the decree in question is a nullity and the pleas that merely challenge the validity or the propriety of the decree on the ground that it is contrary to the provisions of law. If the plea is that the decree is contrary to the law, in the sense that in passing the same certain provisions of the law have been ignored or contravened that would not necessarily make the decree a nullity. To render the decree a nullity it must be shown that the court which passed the decree was lacking in inherent jurisdiction, in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit was instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it, vide *Seth Hiralal Patni Vs. Sri Kali Nath*, . The ground should be such as renders the court incompetent to try the case. The contention that a decree or order is contrary to law does not go necessarily to its jurisdiction. If a suit is decreed though barred by time, the decree remains executable notwithstanding the illegality. It was held in *Itavira Mathai Vs. Varkey Varkey and Another*, that :

"If the suit was barred by time and yet, the Court decreed it, the court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities."

18. Although the objection that a decree or order was made without jurisdiction can be taken at any stage and in any proceeding as laid in *Kiran Singh and Others Vs. Chaman Paswan and Others*, , the plea must pertain to an inherent

lack of jurisdiction rendering the court incompetent to try the case. *Mebroose Ice Cream & Frozen Food Co. v. Jaswant Rai* (1979) 2 Ren CJ 83 (Delhi); *Rana Harkishandas Lallubhai and Others Vs. Rana Gulabdas Kalyandas and Another, ; Harish Vardhan v. Onkar Pd. Sharma* (1983 ALJ 1206).

19. The contention for the petitioner then is that in directing perpetual allotment of nine coal wagons to the respondents-plaintiff the trial court has manifestly sidetracked the entire scheme behind Sections 27, 27-A, 28 of the Railways Act and the Preferential Traffic Schedule and this Court would be justified to interfere in exercise of supervisory powers conferred by Article 227 of the Constitution. This in my opinion deserves consideration. The broad features of the Scheme underlying the Act in this connection have already been outlined above. Traffic in regard to sponsored coal is assigned higher priority "C" in the Preferential Traffic Schedule, but mere sponsoring at the State level by the Director of Industries does not guarantee sanction or allotment of a particular number of coal wagons for any particular year much less for the subsequent years or in perpetuity. The sponsoring by the Directorate is mere recommendation within ceiling limits. The Director, Movement (Railway) proceeds to sanction keeping in view the likely availability of coal and coal wagons and in anticipation of things likely to take shape. This is inherently variable and open to fluctuation. Allotment/supply of wagons is regulated according to the availability of coal/transport and according to operational exigencies from time to time and inter se seniority of class of consumers who remain alterable from time to time. The Director, Movement (Railways) is expressly given the power under the Schedule to cancel or reduce the allotment/supplies of wagons. He can lay down the period . of validity of programmes/sanction from time to time. The validity of programme/sanction carries no guarantee of allotment/supply of wagons. In the words of Hon"ble Desai J, speaking for the Division Bench in *Viklad Coal Merchant, Patiala and Others Vs. Union of India (UOI) and Others*, in order to be eligible for obtaining allotment of wagon under priority "C", it is necessary for the person indenting the wagon to satisfy the various conditions specified therein. They are : (i) that the eoaf is to be loaded from the collieries; (ii) that the coal to be loaded is in conformity with the commodity quotas laid down from time to time for certain types of coal and/or in accordance with the programmes and movements sponsored or recommended by the Coal Controller and/or any committee appointed by him; (iii) or it is sponsored or recommended by the State Government and/or other recommending authorities and accepted by the railway administrations; (iv) or it is sponsored or recommended by Director, Movement (Railways), Calcutta; (v) and it must be in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time.

20. The trial court did not have the requisite material before it to assess the requirement of the respondents-plaintiff for coal or coal wagons and that too for all times to come. It was impossible to have visualised the numerous imponderables or to have even a remote idea of availability in the scale of

various priorities. The court could not supplant itself for the Director, Movement (Railways) in this behalf and grant a decree for fixed number of coal wagons to continue to be allotted to the respondents-plaintiffs in the infinite future irrespective of all other varying conditions. The direction of the civil court, therefore, runs clearly in derogation of the provisions contained in Sections 27, 27-A, 28 of the Railways Act read with the Preferential Traffic Schedule. The illegality is writ large on the face of the record and the facts do not have to be proved in order to demonstrate it

21. There can be little doubt that against the ex parte decree dt. 18th May, 1979, the petitioner could go in appeal within the statutory period of limitation. In the event of requisite conditions being satisfied an application could be made under Order IX Rule 13 Civil P.C. That was not done. Upon the decree being put to execution objection was filed u/s 47 Civil P.C. which, as will presently appear, was pending when the writ petition was filed. Despite appeal not being preferred against the decree, do the peculiar features of this case attract the jurisdiction of this Court under Article 227 of the Constitution is the question. It is well recognised that the power conferred by this Article is "to be exercised most sparingly and only in appropriate cases in order to keep subordinate courts within the bounds of their authority and not for correcting mere errors" Waryam Singh and Another Vs. Amarnath and Another, . Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, . The power does not justify interference with findings of fact but it is of superintendence to be used to keep subordinate courts or tribunals within the bounds of their authority. Seervai in Constitutional Law, Vol. II (3rd Edition) at p. 2510 cites Lord Summber's observations in Rex v. Nat Bell Liquors Ltd. (1922) 2 AC 128 to the effect that supervision "goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise." And further that the jurisdiction to quash an order for error of law apparent on the face of the record falls under the head "the observance of the law in the course of its exercise." (p. 1482).

22. In the recent decision reported in Mohd. Yunus Vs. Mohd. Mustaqim and Others, the property of a surety was sold in execution of a decree. The surety did not plead adjustment of the decree. On his death the petitioner, a total stranger, sought substitution on the basis of an alleged will from the surety and the decree-holder applied that the claim had been satisfied outside the Court. The respondent resisted the claim on ground that the alleged adjustment could not affect his right or title in the property in dispute as an auction purchaser. The application was rejected by the Subordinate Judge. Against this rejection the petitioner moved the High Court under Article 227 which dismissed the same on merit.

23. The Supreme Court re-affirmed the well established rule that there can be no certification of an adjustment between the decree-holder and the judgment-debtor under Order XXI Rule 2 Civil P.C. after an auction sale is held in a case where a third party's interest intervenes. In these circumstances the petition under Article 227 of the Constitution in that case was found to be wholly misconceived and lacking in propriety. In this connection a note was also made of the fact that although the decision arrived at by the Subordinate Judge was perfectly just and in conformity with law, the petitioner could, if he still felt aggrieved, agitate the matter in appeal or revision. The High Court had no jurisdiction to interfere with the impugned order under Article 227. "A mere wrong decision," it was added, "without anything more is not enough to attract the jurisdiction of the High Court under Article 227". The Supreme Court further observed : --

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate Court or tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

24. Viewed in the light of the limitations with which the supervisory jurisdiction under Article 227 is thus hedged in, it will be observed so far as the present case is concerned : --

"(1) there exists no controversy as to facts. The finding on fact recorded in deciding the suit are neither open to challenge in this proceeding nor are they disputed;

(2) there is no room to doubt in face of the analysis already made above that the subordinate court acted in ignorance or utter disregard of relevant provisions contained in Sections 27, 27A, 28 of the Railways Act read with the statutory Preferential Traffic Schedule as then in force it being not disputed before me that this was substantially on these same terms when the suit was decided;

(3) the subordinate court assumed to itself the jurisdiction which vests in the Director, Movement (Railways) and that too not for any definite span of time, but for all time to come unmindful of the numerous contingencies, variations or imponderables to which the exercise of the statutory discretion by the competent authority remains subject;

(4) the subordinate court overlooked that in the absence of contest there could

at the best be an assumption as to proof of facts averred in the plaint. Assuming on this basis that the minimum requirement of the plaintiffs extended to nine wagon loads per month, this in itself could not entitle them to this number of coal wagons every month during the entire tenure of their factory irrespective of the priorities under the Schedule for the time being in operation or the allocations to various other consumers. Learned Civil Judge overlooked that even while deciding the matter *ex parte*, he was not above the law. The flagrant violation of law in this case is apparent on the face of the record; in the exercise of jurisdiction to try the suit, the subordinate court usurped the role assigned to the sponsoring authority/Director, Movement (Railways) and thus acted illegally, *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, in not functioning within the limits of its authority. Unlike *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, the illegality in the order of the subordinate court is gross and patent. The illegality is recurring in its effect. In *Joginder Singh v. Deputy Custodian, E. P.* (AIR 1967 SC 145) decided by the Supreme Court on 26-3-62 (cited by the Full Bench in *Mange Nanak and Another Vs. Additional Director, Consolidation of Holdings, Punjab Rohtak and Others*, , it was held that where the High Court finds that the subordinate court has acted beyond its jurisdiction, its action necessarily results in injustice to the party against whom action has been taken, for justice has to be done according to law. Where this Court declined to interfere with the order of the District Judge even though it was satisfied that the appellant had established that it was prevented by a sufficient cause from preferring the appeal in time, the Supreme Court disapproved being of opinion that this represents rigid and inflexible view of jurisdiction under Article 227 ultimately leading to justice. Article 227 or Article 226 were devised to advance justice and not to thwart it *State of U.P. Vs. District Judge, Unnao and Others*, .

25. Sri Gupta contended that the writ petition does not disclose prejudice or difficulty caused to the petitioner in adjusting the quota in terms of the decree and that there has been on his part acquiescence to the decree. No case of acquiescence is made out on the respondents own averments in the counter-affidavit. In paras 18 and 19 thereof the respondents complain that despite series of reminders and meeting etc. the petitioner every time showed unwillingness to obey the decree willfully and there was no heed paid to repeated requests. Para 19 then also goes on to narrate that the petitioner complied with the decree "for a short period in part." This reflects no conscious act of the petitioner to abide by the terms of the decree in perpetuity. In fact alleged non-compliance to the decree constitutes the foundation of the decree-holders" move under Order 21 Rule 32 for arrest and attachment. It is incongruous to plead in the same breath that the decree was complied with. The writ petition narrates the problem created by the decree which is in conflict with the Preferential Traffic Schedule. The directions of the Central Government contained in this Schedule drawn u/s 27A of the Railways Act may themselves keep on changing from time to time and, therefore, it is manifestly impracticable to guarantee allotment of a fixed number of coal wagons per month in anticipation. In the very nature of

things this is flexible. The practical impossibility of anticipating in advance and providing further specifications of incongruities which may arise in literal enforcement of the decree is apparent.

26. Learned "counsel laid stress on contending that objection of the petitioner u/s 47 Civil P.C. in execution had been filed but it is not disclosed in the writ petition. This, it is argued, constitutes deliberate concealment on his part and for this reason itself the discretionary relief be declined. On giving careful thought I find it difficult to subscribe to this proposition on the facts of this case. The execution launched by the respondents and the coercive process set afoot therein are referred to in the petition which was admitted at the preliminary hearing by a learned single Judge on Dec. 23, 1982. It is true that the filing of the objection u/s 47 is not expressly recited in the petition but the omission to do so loses its significance when viewed in the light of the obvious fact that even if that were so mentioned it is unlikely to have adversely affected the admission of the writ petition at the preliminary stage. The reason is this. The principle is well established that the execution court cannot go behind the decree. I have discussed above the invalidity concerning the decree; despite that the decree is not a nullity. The error consists in non-observance of the law by the trial court in the course of exercise of its jurisdiction. To put this in other words, the execution court may not decline to enforce the decree on ground that it runs counter to Sections 27, 27A, 28 of the Railways Act or the Preferential Traffic Schedule. All that pertains to the realm of substantive law on the subject and even though in violation thereof the decree may not be ignored. Since a mention of objection u/s 47 could not have materially altered the position at the admission stage the petition does not deserve to be thrown out on this ground. The decision in Charanji Lal and Others Vs. Financial Commissioner Haryana, Chandigarh and Others, relied by the learned counsel clearly stands distinguished. It was found in that case that even at the stage the writ petition was filed the petitioners therein were well aware that the identical issues of law and fact regarding which they claimed relief, in the High Court had already been "conclusively" decided against them in a civil court to which they had themselves resorted. Nevertheless they deliberately and calculatedly suppressed that fact entirely from the writ court. The Court observed also that all these facts were candidly disclosed at that stage then the Court would have stayed its hand altogether or in any case would have been reluctant to grant any interim relief. This cannot apply to the present. Taking into account the scope of interference in objection u/s 47 Civil P.C. in a case as this it is pending or that it is not spelled out in the writ petition. (See : L. Hirday Narain Vs. Income Tax Officer, Bareilly, , Prem Chand Ram Lal Vs. The State of Punjab and Another, ; Faruq Ali Shah Vs. Ghansham Dass and Others, ; Ram Kishan v. District Judge 1976 (U. P.) RCC 257 : (AIR 1977 NOC 38). I am alive to the proposition that the petitioner could agitate against the validity of the decree in an appeal which was not filed and the limitation has expired but the omission to do so is not fatal. The bar created by availability of alternative remedy is not absolute. This subordinates itself to the ends of justice in a case

especially in which the facts do not have to be probed into nor the evidence re-assessed but the error in applying the law is writ large on the face of it. This Court would be disinclined to perpetuate an unjust gain and accord relief which serves the interest of justice. It is preferable after all to be ultimately right rather than be perpetually wrong.

27. in the extraordinary situation which has arise in this case the appropriate relief, in my opinion, would be to bring the impugned decree in conformity with law to the extent possible eliminating in the process the invalid part thereof.

28. For the reasons set out in the above the decree passed in original suit No. 298 of 1977 should appropriately be deemed to be before declaration that the plaintiffs are entitled to have their requirement for allotment of wagons of steam coal considered according to law from time to time subject to the plaintiffs" running their factory and satisfying the defendants that they are properly utilising the steam coal supplied to them and until their S. S. I. registration and coal quota are duly cancelled, and also to permanent injunction restraining the defendants from obstructing or withholding the supply of steam coal wagons aforementioned otherwise than in accordance with law. The respondent 12 (Ist Additional Civil Judge, Agra) is directed to dispose of Execution Case No. 9 of 1981 and the objection u/s 47 Civil P.C. arising therein expeditiously according to law and in the light of the observations made above. The writ petition succeeds in part and is allowed accordingly. In the circumstances the parties are left to bear their own costs.