

(1959) 07 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 76 of 1952

East India Commercial Ltd.

APPELLANT

Vs

Collector of Customs and Another

RESPONDENT

Date of Decision : 21-07-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Sea Customs Act, 1878 — Section 167(8), 188, 189, 37

Citation : AIR 1960 Cal 1 : (1960) 1 CALLT 80 : 64 CWN 256

Hon'ble Judges : K.C. Das Gupta, C.J.; S.C. Lahiri, J.; H.K. Bose, J

Bench : Full Bench

Advocate : E.R. Meyer, for the Appellant; G.P. Kar, for the Respondent

Judgement

Das Gupta, C.J.—On 20-9-1950 the Collector of Customs, who has his office at Customs House Calcutta, made an order directing confiscation of 50 drums of Mineral Oil out of 2000 drums of Mineral Oil which had been imported by the petitioner, the East India Commercial Company Ltd., and also imposed a personal penalty of Rs. 61,000/- on the said company u/s 167 Clause 8 and Section 37 of the Sea Customs Act. Aggrieved by this order the company appealed from it to the Central Board of Revenue under the provisions of Section 189 of the Sea Customs Act. On 8-4-1952 the Central Board of Revenue made the following order in disposing of the appeal:

"At the request of the appellants the Board had arranged for a retest of samples of the oil by the Chief Chemist. Central Revenue. The Chief Chemist on examination of the remnant samples has now confirmed the findings in the test report of the Calcutta Customs House Laboratory. The Board has carefully considered all the pleas put forward on behalf of the appellant but sees no reason to interfere with the order passed by the Collector of Customs, Calcutta."

Thereupon the present application for relief under Article 226 of the Constitution was made to this Court by the Company. The Collector of Customs having his office at Customs House, Calcutta was made the first respondent in this

application; E. Section Krishnamurthy, Member, Central Board of Revenue having his office at Delhi, who had made the order mentioned above on 8-4-1952, was made the second respondent and the Union of India was made the third respondent. In this application the company prayed for an order

"for the issue of writ of certiorari against the first and second respondent calling upon them to produce all records resulting in the decision and order dated the 20th September by the first respondent and the order dated 8-4-1952 of the second respondent; an order for the issue of writ of prohibition prohibiting the respondent from taking steps in connection with the goods and giving effect to the recovery of the penalty and extra duty imposed; a writ in the nature of mandamus requiring the first and second respondents to cancel or forbear from giving effect to the two orders mentioned; a direction that no penalty was realisable from the petitioner and that all the three respondents be directed to refund the penalty of Rs. 61,000/- deposited by the petitioner under the provisions of Section 189 of the Customs Act and the return to the petitioner the 50 drums detained by the Customs authorities."

A rule was issued on the respondents why the writs should not be issued. When the rule came up for hearing a point was raised whether any writ or order under Article 226 of the Constitution could issue against the second respondent, the Central Board of Revenue, which has its permanent office outside the jurisdiction of this Court. The further question appears to have been raised that if no such writ or order could issue against the second respondent, none could issue against the first respondent, the Collector of Customs, Calcutta. On the prayer of the parties the learned Judge has made thereon a report under Chapter V Rule 2 and 3 of the Original Side Rules saying that this matter can be more advantageously heard by a Bench of two or more Judges, This is the matter now for our consideration.

2. At the first sight it appears that the only question which in the opinion of the learned Judge made it necessary that the matters should be heard by a larger Bench was the question

"whether this Court has jurisdiction to make an order under Article 226 of the Constitution upon a Tribunal situated outside the jurisdiction of this Court but which exercises appellate functions in respect of a cause of action arising within the jurisdiction and an order made within the jurisdiction and where the party concerned resides within the jurisdiction."

Obviously, a question arises for a decision whether any writ or order under Article 226 of the Constitution can be issued by this High Court at Calcutta to the second respondent, the Central Board of Revenue, which has its office at Delhi, outside the jurisdiction of this Court A closer study of the Judge's report makes it clear, however, that he was also thinking of the position which will arise if the first question mentioned above was answered in the negative and it was held that this Court had no jurisdiction to issue a writ or order under Article 226 of the

Constitution to the second respondent. That question would be whether in spite of the fact no writ could issue to the Second respondent, a writ could still issue to the first respondent. Reading the Judge's report as a whole it seems clear to us that this was also part of the reason why he referred the matter to this larger Bench.

3. The first question namely whether this Court can issue a writ to the second respondent does not appear to us to present any difficulty. In *Election Commission, India Vs. Saka Venkata Subba Rao and*, the Supreme Court had to consider the question whether the High Court of Madras had jurisdiction to issue a writ to the Election Commission at New Delhi. Their Lord-ships held disagreeing with the Madras High Court "that a tribunal or authority permanently located and normally carrying on its activities" outside the jurisdiction of the High Court could not be said to be "functioning within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226." Patanjali Sastri, C. J. delivered the judgment of the Court and pointed out that when the Constitution conferred on the High Court powers under Article 226, a twofold limitation was placed upon their exercise, and observed:

"In the first place, the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories," which clearly implies that they must be amenable to its jurisdiction either, by residence or location within those territories." It was further pointed out by the learned Chief justice that the decision of the Privy Council in AIR 1943 164 (Privy Council) was no authority for dispensing with the necessity of the presence Or location within the local limits of the Court's jurisdiction, of the person or authority to whom the writ was to be issued, as the basis of its power to issue it. The Supreme Court decided, therefore, that the High Court was not competent under Article 226 to issue a prerogative writ to the Election Commission, India.

4. In my opinion we are bound by the authority of this decision of the Supreme Court to hold that this High Court has no jurisdiction to issue a writ or order under Article 226 of the Constitution to the second respondent, the Central Board of Revenue.

5. The second question namely whether in spite of the fact that this Court cannot issue a writ to the second respondent, it can still issue a writ to the first respondent has now to be considered. The decision of the question appears to me to turn on the proper answer to a question whether when after the second respondent made the Order in exercise of its appellate authority, there was in substance really one operative order namely the original order made by the first respondent or there were two operative orders -- one the original order of the first respondent and the other the order made by the second respondent -- or really one operative order namely the order of the second respondent. The

second alternative mentioned above namely that there were two operative orders -- one the order of the original authority and the other the order of the appellate authority -- has merely to be said to deserve rejection. The order was one imposing a penalty and directing confiscation. It will be absurd to think that because after the original order had been passed and the appellate officer also made an order, both the orders would be operative. It is nobody's case before us that two orders were operative. On behalf of the petitioner it is urged by Mr. Meyer that in respect of the order made by the appellate authority, there was only one operative order namely the original order made by the Customs authority while on behalf of the respondents Mr. Kar urged that the original order had merged in the appellate order so that the appellate order only was the operative order.

6. There can be no doubt that when the appellate officer makes an order reversing the original order, the original order has no operative force any longer and it is the appellate order only which is operative. There can equally be little doubt that where the appellate authority modifies the original order made by the authority appealed from, it is the appellate order which is operative and the order which has been modified is no longer operative. The matter is not so easy, however, where the appellate authority neither reverses the original order nor modifies it but merely confirms it.

7. It is well to remember that we have to consider this question here only for the limited purpose under Article 226 of the Constitution. The question how far for the purpose of Article 226 of the Constitution the order of the appellate authority confirming the order of the original authority removes from existence the original order and thus makes the appellate authority situated permanently outside the jurisdiction of a High Court not amenable to a writ under Article 226 of the Constitution, arose for consideration before several High Courts in a number of cases; but the views taken by the different High Courts were divergent. In the Rajasthan High Court the question came up for consideration in *Barkatali Vs. Custodian General of Evacuee Property of India*, and also in *Har Prasad Vs. Union of India (UOI) and Another*, . In the first of these cases *Barkatali* applied under Article 226 of the Constitution for an issue of writ in connection with certain proceedings under the Administration of Evacuee Property Act. After a notice had been issued from the Assistant Custodian under the Act, the case was dealt with by a Naib Tahsildar, one Mr. Dhariwal who made an order declaring a share in some property to be evacuee property. On appeal the Custodian, Rajasthan set aside part of the order made by that officer and allowed the appeal in part. The applicant filed a revision before the Custodian General. That was also dismissed. The applicant asked for a writ under Article 226 of the Constitution quashing the orders made by Mr. Dhariwal and the subsequent orders on the ground that Mr. Dhariwal had not been invested with the powers of an Assistant Custodian and also that the notice issued by him was not in the form prescribed by the rules. The Custodian General of Evacuee Property of India as also the Custodian Evacuee Property Rajasthan and the Assistant Custodian Evacuee Property were

made opposite parties in this application. One of the grounds on which the application was opposed was that the office of the Custodian General being permanently located in New Delhi outside the territorial jurisdiction of the Court, the Court could not issue any writ to him. The Court held, as it was bound to hold, under the authority of the Supreme Court decision in *Election Commission, India Vs. Saka Venkata Subba Rao and, ,* that the Court had no jurisdiction to issue a writ to the Custodian General. Wanchoo C. J. pointed out, however, that the Court's previous decisions did not dispose of the matter and the question still remained whether relief could be given to the applicant under Article 226 of the Constitution by issue of writs to the Assistant Custodian and Custodian, Rajasthan, whose offices were permanently located within the jurisdiction of the Court. Dealing with this question Wanchoo, C. J. observed:

"The question is whether the order, which is in dispute in this case, can be said to be the order of the Custodian General of Evacuee Property. The original order was passed by the Naib Tahsildar, Pali, purporting to act as Assistant Custodian of Evacuee Property for that area. That order was taken in appeal to the Custodian of Evacuee Property, Rajasthan, and was modified. This order of the Custodian was taken in revision to the Custodian General. The revision was dismissed, and the order of the Custodian Rajasthan stood as it was. Under these circumstances, it seems to us that the order really in dispute before us is not the order of the Custodian General, but the order of the Custodian Rajasthan."

The learned Chief Justice further observed:

"The matter would have been different if the Custodian General had modified the order of the Custodian Rajasthan in any way. In that case, the order of the Custodian General would have been the order in dispute. All that the Custodian General, however, did in this case was to dismiss the revision, and the order of the Custodian Rajasthan stood as it was. As that order was passed by a person within the territories over which this Court has jurisdiction, and relates to Pali which is also within the jurisdiction of this Court, we are of opinion that we can issue a writ against the Custodian of Evacuee Property, Rajasthan, and the Assistant Custodian of Evacuee Property, Pali."

8. In *Har Prasad Vs. Union of India (UOI) and Another*, the original order posting Har Prasad as Head Ticket Collector was passed by C. T. I. Bandikui. Appeal among others to the General Manager, Bombay, proved fruitless and the order of the Chief Traffic Inspector was upheld by the General Manager, Bombay. The learned Judges held that it was the original order which was in question in the petition and a writ could issue quashing the order of the C. T. I. Bandikui in spite of the fact that none could have issued against the General Manager, whose office was permanently situated outside the Court's jurisdiction.

9. A different view was taken by the Pepsu High Court in *Joginder Singh Waryam Singh v. Director. Rural Rehabilitation*," Pepsu (S) AIR 1955 Pepsu 91, Dealing with three cases where the original orders made by a Tribunal within the

jurisdiction of the Court were mentioned by the Assistant Custodian General, Delhi, the learned Judges held that the orders of the Assistant Custodian General "superseded" those of the local Tribunal and the Assistant Custodian General's orders were really the orders in dispute before the Court in the applications under Article 226 of the Constitution. In coming to this decision the learned Judges relied on the oft-quoted principle that the decree of the lower Court merges into that of the appeal Court. In AIR 1955 148 (Nagpur) the petitioner Burhanpur National Textile Workers Union asked for a writ of certiorari or mandamus under Article 226 of the Constitution against the Labour Appellate Tribunal of Bombay; the Provincial Industrial Court at Nagpur; Shri P. K. Sen, Registrar of Trade Unions, Nagpur; the Burhanpur Tapti Mills, Limited, Burhanpur; Tapti Mill Majdoor Sangh, Burhanpur; and the State of Madhya Pradesh. An application for cancellation of the recognition of the petitioner Union having been rejected by the Registrar of Trade Unions, an appeal was taken against the order before the Provincial Industrial Court. That Court ordered an enquiry into the matter. The petitioner then appealed to the Labour Appellate Tribunal, Bombay. The Labour Appellate Tribunal dismissed the appeal and confirmed the order of the Industrial Court. The petitioner then filed the petition under Article 226 of the Constitution for bringing up the order of the Appellate Tribunal as well as that of the Industrial Court for consideration by the High Court and for getting them quashed. The learned Judges held on the authority of the Supreme Court decision in Election Commission case that no writ could issue against the Appellate Tribunal. Consequentially they held that no writ could be issued at all in the case. Dealing with this question Hidayatullah, J., said --

"IE we cannot make our writ run to the Appellate Tribunal at Bombay so as to compel it to certify its record to us or to bind it with our consequent order we have no jurisdiction to interfere with its decision at all. To interfere with the order of the Industrial Court in such circumstances would be improper. I regret I have to refer to my decision given when sitting with Choudhuri J. in -- Ramakrishna v. Daoosing AIR 1953 Nag 357, that the Court does not do indirectly what it cannot do directly and this Court should be loath to quash an intermediate order so as to get rid of a subsequent order by implication. Further, our action in quashing the order of the Industrial Court would place that Court and the Registrar on the horns of a dilemma. Under the Act they would be bound by the order of the Appellate Tribunal, and equally bound to give effect to our order. If we do not quash the order of the Appellate Tribunal and leave it operative, we indirectly compel the Industrial Court to disobey that order. The Industrial Court and the Registrar are thus exposed to a commitment for contempt at the instance of the Appellate Tribunal and equally at our instance, if they disobey our writ. Such a situation cannot be allowed to arise and is against the practice of Courts."

The other learned Judge, Kaushalendra Rao, J., took the same view.

10. Referring to these cases and also to Azmat Ullah and Others Vs. The

Custodian, Evacuee Property, U.P., Lucknow, , the Supreme Court observed in *Thangal Kunju Musaliar v. Venkatachalam*, (S) AIR 1956 SC 248 :

"These decisions, however, are clearly not in point for, in each of them, the order passed by the authority within the territories and accordingly within the jurisdiction of the High Court concerned had merged in the order of the superior authority which was located outside the territories and was, therefore, beyond the jurisdiction of that High Court. In that situation, a writ against the inferior authority within the territories could be of no avail to the petitioner concerned and could give him no relief for the order of the superior authority outside the territories would remain outstanding and operative against him.

As, therefore, no writ could be issued against that outside authority and as the orders against the authority within the territories would, in view of the orders of the superior authority, have been in-fructuous, the High Court concerned had, of necessity, to dismiss the petition."

It has to be noticed that the Supreme Court went on to observe :

"Such, however, was not the position in the present petition before the High Court of Travancore-Cochin.

There was here no question of merger of any judicial order of respondent 1 into the judicial order of respondent 2. In this case respondent 1 was actually claiming to exercise powers conferred upon him by certain sections of the Travancore Act 14 of 1124 which, it was submitted, were contrary to law or discriminatory and consequently ultra vires the Constitution. The fact that respondent 1 was the agent of respondent 2, which being beyond its jurisdiction could not be reached by the High Court, could not make his acts any the less objectionable or discriminatory and "ultra vires" ."

11. But the Supreme Court observed as regards the order passed by an inferior authority having merged in the order of the superior authority was really unnecessary for the decision of the case before them. There can be no doubt, however, that we in this Court would still be bound to follow the proposition even though obiter that a decision of the inferior authority merges in the order of a superior authority in appeal or revision.

12. It has to be noticed that in the Allahabad case to which also the Supreme Court referred, the order of the inferior authority had been reversed by the appellate authority. There can be no question, therefore, that in that case the original order of the inferior authority did not continue to exist and had merged in the order of the superior authority. In the other two cases, however, as I have already mentioned, the superior authority maintained the order of the inferior authority and the observation of the Supreme Court in *Musaliar's* case (S) AIR 1956 SC 248 must be taken to say that even in such cases the original order of the inferior authority ceases to have an independent existence once the appeal or revision is disposed of and that it merges in the order of the superior authority.

13. We would have, therefore, been bound by the observation of the Supreme Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, to hold that even where the original order has been confirmed in appeal and the appeal has been dismissed, the original order has ceased to exist and the operative order is the order by the appellate authority. There is, however, a later pronouncement of the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Nooh*, which compels us to leave out of account the observations of the Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, as regards merger of an original order in the order made by the superior authority. In *The State of Uttar Pradesh Vs. Mohammad Nooh*, the facts were that on 20-4-1948 the District Superintendent of Police, Fatehpur, passed an order dismissing Mohammad Nooh who was at that time officiating as Head Constable, Fatehpur. He went and appealed to the Deputy Inspector General of Police but that appeal was dismissed on 7-6-1949. He then filed a revision application to the Inspector General of Police. That application was also dismissed. The order of dismissal was made on 22-4-1950. Then he filed an application under Article 228 of the Constitution to the High Court praying that the file may be called for and his dismissal set aside. A preliminary objection was taken on behalf of the State of Uttar Pradesh that the High Court had no power under Article 226 of the Constitution to deal with the order of dismissal which had been passed at a time when the Constitution of India had not come into force. This plea was rejected by the High Court, that Court being of opinion that the order of dismissal passed by the District Superintendent of Police on 20-12-1948 and the order of dismissal of the appeal passed by the Deputy Inspector General of Police on 7-6-1949 had not become final until the Inspector General of Police on 22-4-1950 made his order dismissing the revision application filed by the respondent and that as the last mentioned order had been passed after the Constitution had come into force, the High Court had jurisdiction to exercise its powers under that Article. On the merits the High Court held that the petitioner was entitled to the relief asked for and quashed the proceedings and set aside the three orders, namely, the order of the District Superintendent of the 20th December, 1948, the order of the Inspector General of Police of 7-1-1949 and the order of the Inspector General of Police of 22-4-1950. The State of Uttar Pradesh appealed. The Supreme Court was also unanimously of opinion that on the merits the applicant, Mohammad Nooh, was entitled to relief under Article 226 of the Constitution. The majority -- S. R. Das, C. J., Venkatarama Ayyar, Jafar Imam, and Sarkar, JJ.--was however of the view that the original Order of dismissal passed on 22-4-1948 was operative even after the order of the Inspector General of Police was made on 22-4-1950 and as the original order of 20-4-1948 had been passed before the Constitution and the subsequent conferment of jurisdiction and powers on the High Court could have no retrospective operation on the rights which had accrued to the appellant State and the liability which is attached to Mohammad Nooh, the High Court had erred in issuing the writ. Dealing with this question, Das, C. J., observed :

"..... .an order of dismissal passed on a departmental enquiry by an officer in the department and an order passed by another officer next higher in rank dismissing an appeal therefrom and an order rejecting an application for revision by the head of the department can hardly be equated with any propriety with decrees made in a civil suit under the CPC by the court of first instance and the decree dismissing the appeal therefrom by an appeal court and the order dismissing the revision petition by a yet higher court as has been sought to be done by the High Court in this case, because the departmental tribunals of the first instance or on appeal or revision are not regular courts manned by persons trained in law although they may have the trappings of the courts of law. The danger of so doing is evident from what has happened in the very case now before us. In the next place, while it is true that a decree of a Court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision, it does so only for certain purposes, namely, for the purposes of computing the period of limitation for execution of the decree as in AIR 1914 65 (Privy Council) , or for computing the period of limitation for an application for final decree in a mortgage suit as in AIR 1926 93 (Privy Council) . But, as pointed out by Sir Lawrence Jenkins in delivering the judgment of the Privy Council in *Juscurn Boid v. Prithichand Lal* 46 I A 52 : (AIR 1918 PC 151), whatever be the theory under other systems of law, under the Indian law and procedure an original decree is not suspended by the presentation of an appeal nor is its operation interrupted where the decree on appeal is merely one of dismissal. There is nothing in the Indian Law to warrant the suggestion that the decree or order of the court or tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective. In that view of the matter the original order of dismissal passed on 20-4-1948, was not suspended by the presentation of appeal by the respondent nor was its operation interrupted when the Deputy Inspector General of Police simply dismissed the appeal from that order or the Inspector General simply dismissed the application for revision. The original order of dismissal, if there were no inherent infirmities in it, was operative on its own strength and it did not gain any greater efficacy from the subsequent orders of dismissal of the appeal or the revision except for the specific purposes hereinbefore mentioned."

In my judgment this pronouncement of the Supreme Court furnishes a conclusive answer to the question we have now to decide. It is true that in that case the Supreme Court had to consider the orders of dismissal made in a departmental enquiry and order passed by higher officers in appeals therefrom. Their Lordships however dealt definitely with the theory of merger of decrees made by a Court of first instance in the decree passed on appeal or in the order passed on revision and pronounced the law to be that such merger takes place only for some specific purposes, namely, the question of limitation for execution of the decree or for computing the period of limitation for an application for a final decree in a

mortgage suit. They further laid down the law to be that the original decree is not suspended by the presentation of appeal and its operation is not interrupted where the decree on appeal is merely one of dismissal. I read this decision, therefore, as a clear authority for the proposition that whether it be decrees of Courts or orders of other judicial or quasi-judicial tribunals, the original order passed by the court of first instance or the inferior tribunal is not, for the purpose of Article 227 of the Constitution, merged in the order of the superior tribunal when that tribunal merely confirms the original order and dismiss the appeal or revision; and that secondly in the present case the order made by the Collector of Customs, Calcutta, is the operative order even after the appellate authority made its order.

14. On behalf of the respondent Mr. Kar contended that the Supreme Court's decision in *The State of Uttar Pradesh Vs. Mohammad Nooh*, , can have no effect in the present case in view of the provisions of Section 189 of the Sea Customs Act under which he claims the original order appealed from ceases to have any operation whatsoever as soon as the appeal is filed. In my opinion there is no force in this contention. The provision for appeal is made in Section 188 in these words:

"Any person deeming himself aggrieved by any decision or order passed by an officer of customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs authority, or, in such cases as (the Central Government) directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by (the Central Government)."

The section proceeds to lay down that;

"Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against."

Section 189 provides for a deposit pending appeal of the duty demanded by the original order in these words:

"Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods the owner of such goods if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods

on demand by such owner."

Mr. Kar argues that as soon as the deposit is made and the deposit has necessarily to be made by the appellant, the order of the Customs Officer is satisfied and is no longer operative. I am unable to see, however, how it can be said that the making of the deposit satisfies the order appealed from. The section makes it clear that the deposit is only "pending the appeal". So long, therefore, the appeal is not disposed of, there is no question of the original order being satisfied. When the appellate authority alters or annuls the order appealed against, the original order is certainly no longer operative. When he confirms the order appealed against, the question which we have so long been considering arises, namely, whether the original order is operative on its own force and the amount becomes payable by the force of that order or the appellate authority's order confirming the appeal is really the order under which the duty becomes payable. It is on this question that the pronouncement of the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Nooh*, is a direct authority Binding, us to hold that the original order made by the Customs Officer is the order continuing to be operative of its Own force after the appeal has been dismissed and it is on the strength of this order that the duty is payable; and that the appellate authority's order adds nothing to the force of the original order.

15. I have, therefore, come to the conclusion that after the appeal is dismissed and the original order is confirmed, the formal existence of an order by the appellate authority is no reason why the Court should not exercise its jurisdiction under Article 226 of the Constitution in respect of the original order. There is no question here of a writ issued to the authority within the territories being infructuous because of the continued existence of the order made by the appellate authority situated out-side the jurisdiction, for the order of the appellate authority has merely a formal existence and the real order is that by the original authority -- the Collector of Customs, Calcutta, in the present case.

16. My conclusion, therefore, is that;

(1) This Court has no jurisdiction to issue any writ or order under Article 226 of the Constitution to the second respondent.

(2) But in spite of that fact it has jurisdiction to issue a writ to the first respondent in respect of the order made by him and should give appropriate relief under Article 226 of the Constitution in respect of this original order if the merits of the case justify.""

17. I think it will be more convenient for the learned Judge who made this reference to consider the application on its merits. I would, therefore, order that this application under Article 226 of the Constitution be remitted back to Sinha, J. For disposal, in the light of our decision on the questions mentioned above. Costs will abide the result of the application. Certified for two Counsel.

Lahiri, J.

18. I agree and I have nothing more to add.

Rose, J.

19. I agree.