
(2008) 07 AHC CK 0242
In the Allahabad High Court

Hasib Ahamad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : (2008) 4 AWC 4175

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—This is an appeal against the judgment and order dated 28.2.2008, passed by the learned single Judge by which the writ petition filed by the petitioner challenging the order dated 13.7.2007 cancelling the fair price agreement as also the appellate order dated 28.2.2008 was dismissed.

The Stamp Reporter has submitted a report that the appeal is not maintainable under Chapter VIII, Rule 5 of the Rules of the Court.

2. Learned Counsel for the appellant contends that this appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court. He has placed reliance upon the Division Bench judgment of this Court in Ram Dhyani Singh Vs. State of U.P. and Others,

3. The writ petition giving rise to this appeal filed by the appellant was against the cancellation order as also against an appellate order passed under Rule 28 of the U.P. Scheduled Commodities Distribution Order, 2004. The U.P. Scheduled Commodities Distribution Order, 2004 has been framed u/s 3 of the Essential Commodities Act, 1955. The said 2004 Order is thus a statutory order. Rule 28 providing for appeal is quoted hereinbelow:

28. Appeal- (1) All appeals shall lie before the Concerned Divisional

Commissioner who shall hear and dispose of the same may by order delegate his/her powers to the Assistant Commissioner Food for hearing and disposing of the appeal.

4. The appeal filed before the Divisional Commissioner under the said provision is, therefore, a statutory appeal. The writ petition having been filed against an appellate order, special appeal is barred under Chapter VIII, Rule 5. The Division Bench judgment in the case of Ram Dhyan Stngh (supra) relied upon by the learned Counsel for the appellant was a case where the appeal was not under the above mentioned 2004 statutory Order. The appeal in the said case was filed under the Government order dated 3.7.1990 and, therefore, the Division Bench took the view that the special appeal was maintainable as the appeal was held to be non-statutory.

5. The Division Bench in paragraph 4 of the judgment has given reasons for holding the special appeal maintainable in that case. Following was observed by the Division Bench in paragraph 4 which is quoted below:

There is an office report that the special appeal is not maintainable in view of the decisions of this Court in Vajara Yojna Seed Farm Kalyanpur and Ors. v. Presiding Officer, Labour Court-II U.P. Kanpur and Anr. 2003 UPLBEC 496 and Sita Ram Lal v. District Inspector of Schools, Azamgarh and Ors. 1994 ACJ 180. These decisions have referred to Chapter VIII, Rule 5 of the Allahabad High Court Rules which states that an appeal lies against the judgment of a learned single Judge under Article 226 of the Constitution except when the writ petition was filed against such judgment or order or award (a) of a Tribunal, Court of statutory arbitrator, (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act mentioned in Chapter VIII, Rule 5. In this case, the writ petition filed before the learned single Judge was against the order of the Commissioner who decided the appeal provided for under the Government order dated 3.7.1990. Thus, the impugned judgment before the learned single Judge, was not against an order of a Tribunal or Court or statutory arbitrator. It was also not against an order passed in exercise of appellate or revisional jurisdiction conferred by some Act". In fact, the appellate jurisdiction was conferred by a Government order and not by an Act. Hence, in our opinion this special appeal is maintainable.

6. The Division Bench held as quoted above that the order of the learned single Judge was not against an order passed in exercise of appellate or revisional jurisdiction conferred by some Act and in fact the appellate jurisdiction was conferred by a Government order and not by an Act.

7. Thus the reason for holding the special appeal maintainable in the case before the Division Bench was that the appellate power was exercised by the Commissioner under the Government order dated 3.7.1990 and not under an Act. In the present case, the appellate power had been exercised by the

Commissioner under Rule 28 of U.P. Scheduled Commodities Distribution Order, 2004 which had been framed u/s 3 of the Essential Commodities Act, 1955. Thus, the appellate power exercised by the Commissioner in the present case is referable to an appellate power conferred under an Act.

8. Thus according to the ratio of the Division Bench in the case of Ram Dhyan Singh (*supra*), the present appeal is not maintainable under Chapter VIII, Rule 5 of the Rules of the Court. The special appeal having been filed against a judgment of learned single Judge arising out of a writ petition in which appellate order passed by the Commissioner was challenged which appellate order was passed in exercise of appellate Jurisdiction under an Act is not maintainable under Chapter VIII, Rule 5 of the Rules of the Court.

9. Special appeal is dismissed as not-maintainable.