
(2009) 04 MP CK 0050
In the Madhya Pradesh High Court

J.S.J. Real Estate Pvt. Ltd. and Another	APPELLANT
Vs	
Collector, Dewas and Others	RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

High Court of Madhya Pradesh Rules, 2008 — Rule 1(11), 2(7), 2(7)(d)

Citation : AIR 2009 MP 138 : (2009) ILR (MP) 915 : (2009) 2 JLJ 5 : (2009) 2 MPHT 426 : (2009) 2 MPJR 218 : (2009) 2 MPLJ 577

Hon'ble Judges : A.K. Patnaik, C.J;A.M. Sapre, J;A.K. Saxena, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.

This is a reference made to the Full Bench on a difference of opinion between two Division Bench judgments of this Court on interpretation of Rule 1(11) and 2(7) of Chapter IV of the High Court of Madhya Pradesh Rules, 2008 (for short "the Rules, 2008").

The background facts leading to the reference are that the High Court of Madhya Pradesh Rules, 2008 came into force with effect from 1.11.2008. Rule 1(11) in Chapter IV of the Rules, 2008 provides that all writ petitions under Articles 226 and/or 227 of the Constitution of India except those specified under Rule 2(7) of the Chapter will be heard by a Single Judge of this Court and Rule 2(7)(d) in Chapter IV of the Rules, 2008 provides that a Division Bench will hear all writ petitions under Articles 226 and/or 227 of the Constitution of India challenging interlocutory or final orders passed by subordinate Courts or Tribunals where no appeal or revision is provided.

After the Rules, 2008 came into force, W.P. No. 13180/2008 (Gram Panchayat Matri Pataura v. State of M.P.) and other connected writ petitions came up for hearing before a Division Bench of Arun Mishra and Sanjay Yadav, JJ. of this Court and a question arose before this Division Bench whether writ petitions challenging the orders passed by the statutory authorities under the M.P.

Panchayat & Gram Swaraj Adhiniyam, 1993 were to be heard by learned Single Judge under Rule 1(11) of Chapter IV of the Rules, 2008 or were to be heard by Division Bench under Rule 2(7) of Chapter IV of the Rules, 2008 and the Division Bench held in its order dated 19.1.2009 that the statutory authorities under the M.P. Panchayat & Gram Swaraj Adhiniyam, 1993 and other similar statutory authorities exercising similar powers under the different Acts are to be treated as "tribunals" and therefore writ petitions challenging orders passed by such statutory authorities are to be heard by a Division Bench under Rule 2(7) of Chapter IV of the Rules, 2008.

After the aforesaid judgment of the Division Bench in Gram Panchayat Matri Pataura v. State of M.P. and Ors. connected matters was delivered, a writ petition challenging an order passed by the Additional Collector, Dewas cancelling a sale-deed and deleting the name of the purchaser of the property from the revenue record and directing taking over of possession of land on the ground that the land belongs to Government came up for hearing before the Division Bench at Indore of Dipak Misra and A.M. Sapre, JJ. in W.P. No. 840/2009 (J.S.J. Real Estate Pvt. Ltd., Indore v. State of M.P. and Ors.) and the learned Additional Advocate General cited the order dated 19.1.2009 of the earlier Division Bench in Gram Panchayat Matri Pataura v. State of M.P. and other connected matters and contended that the writ petition was to be heard by a Division Bench. In its order dated 13.3.2009, the Division Bench were unable to concur with the view taken by the earlier Division Bench in Gram Panchayat Matri Pataura v. State of M.P. and observed that the term "tribunal" used in Rule 2(7) in Chapter IV of the Rules, 2008 has to have a different connotation altogether and it should be restricted to such statutory tribunal where there is a judicial member or akin to a Court as that would be in consonance with the language employed in the Rule and with the object of the Rule and that would also not make Rule 1(11) redundant qua exercise of power under Article 227 of the Constitution of India.

In the order dated 13.3.2009, the Division Bench in J.S.J. Real Estate Pvt. Ltd., Indore v. State of M.P. and Ors. was therefore of the view that the view of the earlier Division Bench expressed in Gram Panchayat Matri Pataura v. State of M.P. and other connected matters requires reconsideration by a Larger Bench and accordingly framed the following question for reference to a Larger Bench:

Whether the term "tribunals" used in Rule 2(7) (d) would include all categories of tribunals inclusive of quasi-judicial tribunals or be restricted to such tribunals which have Judicial Members as their constituents and also such other statutory tribunals which have all the trappings of a Court?

Accordingly, this substantial question of law has been referred to this Full Bench for our opinion.

We have heard learned Counsel for the petitioners Mr. Rajendra Tiwari, learned Advocate, Mr. Ashok Kutumbale, learned Additional Advocate General for the State and Mr. Piyush Mathur as Amicus Curiae. Before we give our opinion on the

question referred to us, we would like to quote Rule 1(11) and 2(7) in Chapter IV of the Rules, 2008:

1. The following matters shall ordinarily be heard and disposed of by a Judge sitting alone: (1). xx xx

(11). Writ Petitions - all writ petitions under articles 226 and/or 227 of the Constitution of India except those specified under Rule 2(7) of this Chapter."

The following matters shall be heard and disposed of by a bench comprising two Judges, i.e. A division bench -

(1) xx xx

(7) Writ Petition-

(a) filed in public interest including those registered on a letter petition or otherwise;

(b) challenging the vires of any Act or statute, or any order or rule or regulation made under any Act or statute;

(c) challenging interlocutory or final orders passed by Administrative Tribunals constituted under Article 323-A of the Constitution of India;

(d) challenging interlocutory or final orders passed by subordinate Courts or tribunals, where no appeal or revision is provided;

(e) relating to admission to and recognition/affiliation of professional educational courses;

(f) in the nature of habeas corpus including all writ petitions pertaining to illegal detention;

(g) relating to Income Tax, Central Excise, Customs Duty, Entry Tax and Value Added Tax;

(h) relating to contract/tender concerning Government/public undertaking/local bodies/statutory bodies; and

A plain reading of Rule 1(11) of Chapter IV of the Rules, 2008 quoted above would show that all writ petitions under Articles 226 and/or 227 of the Constitution of India except those specified under Rule 2(7) of the Chapter are to be heard and disposed of by a Judge sitting alone. Thus leaving aside the categories of writ petitions specified in Rule 2(7) of the Chapter, other writ petitions under Articles 226 and/or 227 of the Constitution of India are ordinarily to be heard and disposed of by a Judge sitting alone. One of the categories of writ petitions under Articles 226 and/or 227 of the Constitution of India specified under Rule 2(7) of the chapter to be heard and disposed by a Division Bench are against interlocutory or final orders passed by the subordinate Courts or tribunals where no appeal or revision is provided. If we were to say that all interlocutory

or final orders passed by tribunals where no appeal or revision is provided are to be heard by a Division Bench under Rule 2(7) of the Chapter then we would in fact be saying that no writ petition under Articles 226 and/or 227 of the Constitution against an interlocutory or final order passed by a tribunal, where no appeal or revision is provided can be heard by a learned Single Judge sitting alone and this would be inconsistent with the express provision in Rule 1(11) of Chapter IV of the Rules, 2008 that except those specified in Rule 2(7) of the Chapter, all writ petitions under Articles 226 and/or 227 of the Constitution of India shall ordinarily be heard and disposed of by a Judge sitting alone and such an interpretation would be contrary to principle of harmonious construction of statute. As observed by Venkatarama Aiyar in *Venkataramana Devaru v. State of Mysore* AIR 1958 SC 255 at 268:

The rule of construction is well settled that when there are in an enactment two provisions, which cannot be reconciled with each other, effect should be given to both. This is what is known as the rule of harmonious construction.

Thus, giving effect to both Rule 1(11) and Rule 2(7) of Chapter IV of the Rules, 2008, and construing the two provisions harmoniously we hold that writ petitions against orders, interlocutory or final, of tribunals can be heard and disposed of by a learned Single Judge sitting alone except those writ petitions against orders of the tribunals, interlocutory or final, which are specified under Rule 2(7)(b) are to be heard and disposed of by a Division Bench.

Actually the word "tribunals" in Rule 2(7)(d) of Chapter IV of the Rules, 2008 is a general word and appears to cover all categories of tribunals. But as stated at page 458 of Justice G.P. Singh's *Principles of Statutory Interpretation* 11th Edition 2008:

The normal rule is that general words in a statute must receive a general construction unless there is something in the Act itself such as the subject matter with which the Act is dealing or the context in which the said words are used to show the intention of the Legislature that they must be given a restrictive meaning.

Hence, a general word in a statute may have a restricted meaning because of the context in which it is placed. The general word "tribunals" in Rule 2(7)(d) in the context of Rule 1(11) of Chapter IV of the Rules, 2008, will have a restricted meaning and will not cover all categories of tribunals.

Yet another principle of statutory interpretation styled in Justice G.P. Singh's *Principles of Statutory Interpretation* 11th Edition 2008 as "Principle of Legality" is stated thus:

As statutes are not enacted in a vacuum, it is assumed that long standing principles of constitutional law and administrative law are not displaced by use of merely general words. This is styled as the principle of legality.

The principle of legality requires that in the absence of express language or

necessary implication to the contrary, the courts will presume that even the most general words were intended to be subject to the basic rights of the individual....

If we apply this principle of legality to interpretation of Rule 2(7) of Chapter IV of the Rules, 2008, the general word "tribunals" has to be interpreted in a manner consistent with the fundamental right guaranteed under Article 14 of the Constitution. In *Re: The Special Courts Bill, 1978*, , the Supreme Court has held that rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination. The Supreme Court has further held in the aforesaid case that litigants similarly situated can be classified into classes and can be subjected to same treatment to avoid discrimination and this is permissible under Article 14 of the Constitution but there must be an intelligible differentia for classification and this differentia must have rational nexus with the object of the statutory provision.

In *W.P. No. 14557/2008 (Priyank Chansoria v. High Court of Madhya Pradesh)*, the petitioner challenged inter alia the provision in Rule 2(7)(d) of Chapter IV of the Rules, 2008 as discriminatory and violative of Article 14 of the Constitution contending that whereas orders passed by administrative authorities can be challenged under Article 226 of the Constitution first before a learned Single Judge under Rule 1(11) of Chapter IV of the Rules, 2008 and thereafter again before a Division Bench in writ appeal u/s 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, orders passed by Courts and Tribunals can be challenged only once under Article 226 and/or Article 227 of the Constitution before a Division bench of this Court, and a Division Bench of this Court in its order dated 13.2.2009 has held that the provision in Rule 2(7)(d) of Chapter IV of the Rules, 2008 is not violative of Article 14 of the Constitution because the tribunals referred to in Rule 2(7) of Chapter IV of the Rules, 2008 have Judicial Members and one challenge against the orders passed by such tribunals with judicial members before a Division Bench of this Court has been considered by the rule making authority to be enough from the point of view of administration of justice. The precise reasons given by the Division Bench in its order dated 13.2.2009 for upholding the vires of Rule 2(7) of Chapter IV of the Rules, 2008, are quoted herein below:

In such matters where orders passed by subordinate Courts presided by Judicial Officers or Tribunals invariably having judicial members, only one review in exercise of original or supervisory jurisdiction under Article 226 or Article 227 of the Constitution by the Division of the High Court has been held to be proper. *L. Chandra Kumar Vs. Union of India and others*, the Supreme Court has held that petitions under Articles 226/227 of the Constitution challenging orders passed by Tribunals under the Administrative Tribunals Act, 1985, will be heard only by a Division Bench of the High Court. But orders passed by purely administrative authorities and not by subordinate Courts or Tribunals are entirely a different

class and challenge to such orders of administrative authorities under Article 226 of the Constitution could be heard by a learned Single Judge of the High Court. Rule 2(7)(d) of the Rules of 2008 providing that writ petitions challenging interlocutory or final orders of subordinate Courts or Tribunals where no appeal or revision is provided for, will be heard by a Division Bench, is thus a departure made in the Rules of 2008 because of the peculiar experience of the High Court while dealing with appeals under the Adhiniyam of 2005.

It will be clear from the face of the aforesaid provision in Rule 2 (7) of Chapter IV of the Rules of 2008 that only those classes of writ petitions which should be heard by a Division Bench and not by a learned single Judge of this Court for better administration of justice have been listed in Rule 2 (7), namely writ petitions filed in public interest, writ petitions challenging any vires of any Act or statute or any regulation, writ petitions challenging the orders passed by Administrative Tribunals constituted under Article 323-A of the Constitution, writ petitions challenging interlocutory or final orders passed by subordinate courts or tribunal, writ petitions relating to admission to and recognition/affiliation of professional educational courses, writ petitions in the nature of habeas corpus including all writ petitions pertaining to illegal detention, writ petitions relating to Income Tax, Central Excise, Customs Duty, Entry Tax and Value Added Tax, writ petitions relating to contract/tender concerning Government/Public undertakings/ local bodies/statutory bodies and writ petitions relating to environmental pollution. The classification of writ petitions which are to be heard by a Division Bench has been made in Rule 2(7) on the basis of the experience of the High Court in dealing with writ petitions during the last several years and a bare look of the matters listed in clauses (a) to (i) would show that these are all matters which require to be heard by a Division Bench for better administration of justice. Though the Preamble of the Rules of 2008 does not disclose the object of the Rules, the obvious purpose of the Rules of 2008 is to ensure better administration of justice. Rules 1 (11) and 2 (7) of Chapter IV of the Rules of 2008 provide that those matters which ought to be heard by the Division Bench for better administration of justice should be heard by the Division Bench and those matters which could be heard by a learned single Judge should be heard by a learned single Judge. In our considered opinion, therefore, the classification of writ petitions to be heard by a Division Bench and a single Judge is based on intelligible differentia and such intelligible differentia has a rational nexus with the object sought to be achieved. Moreover, all litigants, either petitioners or respondents in any particular class of writ petitions listed in Rule 2 (7) of Chapter IV of the Rules of 2008, and who are similarly situated have been subjected to the same procedure of hearing by a Division Bench and are not discriminated in their defence or relief. The impugned provisions of Rules 1 (11) and 2 (7) of Chapter IV of the Rules of 2008, therefore, are not violative of Article 14 of the Constitution.

It is thus clear from the aforesaid view taken by the Division Bench of this Court in *Priyank Chansoria v. High Court of Madhya Pradesh* that the basis for providing

that only one challenge under Article 226 and/or 227 of the Constitution of India to an order passed by a Court or tribunal before a Division Bench of this Court has been thought by the rule making authority as sufficient from the point of view of administration of justice is that a tribunal or a Court having a judicial member would normally act judicially while adjudicating matters and their orders can be reviewed by the High Court in exercise of powers under Article 226 and/or 227 of the Constitution of India only once by Division Bench if a challenge is made whereas orders of other statutory authorities and tribunals with no judicial members may be challenged under Article 226 and/or Article 227 of the Constitution first before a learned Single Judge of this Court in terms of Rule 1(11) of Chapter IV of the Rules, 2008 and thereafter before a Division Bench u/s 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 if the order of the learned Single Judge is one under Article 226 of the Constitution and not under Article 227 of the Constitution.

We are thus of the considered opinion that the term "tribunals" used in Rule 2(7) (d) of Chapter IV of the Rules, 2008 is restricted to tribunals which have judicial members and writ petitions under Article 226 and/or Article 227 of the Constitution against the orders, interlocutory or final, passed by tribunals with the judicial members are to be heard and disposed of by a Division Bench and writ petitions against orders, interlocutory or final, passed by all other tribunals are to be heard and disposed of by a Judge sitting alone in accordance with Rule 1(11) of Chapter IV of the Rules, 2008. The reference is answered accordingly.

In view of the answer given by us in this reference, this writ petition against the order passed by the Additional Collector who is not a judicial officer will have to be placed before a learned Single Judge for hearing and disposal.