
(1990) 10 MP CK 0009
In the Madhya Pradesh High Court
Case No : Civil Revision No. 133 of 1989

Kamlendra Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 24-10-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 17, 19, 20, 21, 28
Criminal Procedure Code, 1973 (CrPC) — Section 146(1)

Citation : (1992) ILR (MP) 950 : (1991) JLJ 181 : (1990) MPJR 630

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : R.D. Jain, N.P. Mitral and J. Maheshwari, Ramji Sharma, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R.C. Lahoti, J.

The decree-holder/Petitioner has come up in revision against the order dated 12.7.1989, passed by the District Court, directing his application for execution of decree to be transferred to the State Administrative Tribunal, u/s 29 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act").

The Petitioner, a State employee, filed a suit relating to service matters. On 10.7.1985, he was granted a decree declaring his entitlement to certain pay and fixation accordingly. The decree is under execution. Far from honouring a competent Court's decree and releasing the relief to which the Petitioner has been held legally entitled, the State came out with a plea that the civil Court had lost jurisdiction to execute the decree.

It is not disputed that the Administrative Tribunals Act has come into force on 20.8.85. An Administrative Tribunal in relation to the State of M.P. has been established. The subject-matter of decree and the execution proceedings relate to a cause of action which falls within the jurisdiction of such Tribunal. Section

29(1) of the Act reads as under:

(1) Every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court or the Supreme Court.

The question arising for decision in the revision is whether the civil Courts have lost jurisdiction to execute the decrees relating to service matters passed by them on a date anterior to the coming into force of the Act constitution of the Tribunal thereunder.

The phrase "other proceeding" used in Section 29 has not been defined in the Act. As its Preamble indicates, it is "as Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service and for matters connected therewith or incidental thereto."

Section 29, providing for transfer of pending cases, speaks of "cause of action" for the purpose of deciding whether or not a suit or proceeding would be transferred to the Tribunal. Once a decree has been passed, the cause of action is not required to be looked into because the rights of the parties have stood crystallised.

Sections 35 and 36 of the Act provide for making of the Rules by the Central Government and the State Governments. Admittedly, no rules have been framed providing for execution of the orders of the Tribunal or of civil Court's decrees.

The only mode of execution provided and contemplated by the Act, for the purpose of securing execution of the orders of the Tribunal, is an indirect one, i.e. by giving it power to punish for contempt. Section 17 of the Act provides that a Tribunal shall have and exercise the same jurisdiction, powers and authority, in respect of contempt of itself as a High Court has and may exercise. For this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to certain modifications. It is noteworthy that power to punish for contempt is confined to contempt "of itself". There is no provision in the Act declaring that a decree passed by a civil Court, prior to the date of coming into force of the Act, touching a matter which now an Administrative Tribunal would be competent to take cognizance of, would be deemed to be a decree or order of the Tribunal. If only that fiction would have been created the result would have been different. As the law stands today, the Tribunal cannot exercise its power to punish for contempt if a" decree or order passed by a civil Court has not been complied with by the State or its instrumentalities or agencies. In short, the result of upholding the objection raised on behalf of the State would be that

decrees passed by competent Courts relating to service matters, and prior to the enforcement of the Act, would be rendered waste pieces of papers if not complied with, because by virtue of Section 29, the civil Court would lose jurisdiction to execute the decree and the Administrative Tribunal does not have any power conferred, and any procedure or mechanism provided, for executing decrees and orders of civil Courts. The Parliament which enacted the Act in its anxiety to grant expeditious relief to the State employees could not have intended such a result.

In *Adresh Kumar v. Union of India and Anr.* 1986(4) SLR 689, the High Court of Punjab and Haryana has held that an application under Order 9, Rule 13 of (obviously one touching a decree relating to service matter), is not one which is required to be transferred to Administrative Tribunal u/s 29 of the Act.

Section 19 of the Act, which confers an aggrieved person with the right of moving the Tribunal by making an application speaks of the person being aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal. The explanation defines "order" to mean an order made only by the Government or several authorities or instrumentalities mentioned in Clause (a) and (b) of the explanation. Section 19 does not speak of any decree or order of a civil Court giving right to a person aggrieved to move an application to the Tribunal.

Section 21 of the Act also prescribes periods of limitation respectively as one year and six months from the date of final order or deemed order for admitting an application by Tribunal. If applied to a decree or order of civil Court, it would mean that the same would cease to be executable on expiry of the period of one year or six months which certainly could not have been the intendment of law.

A Division Bench of this Court in its landmark decision in the case of *Vijay Singh Jadon v. State of M.P. and Ors.* 1989 MPJR (HC) 442, had an occasion to make the following observation which can usefully be utilised for the purpose of resolving the controversy arising in the case:

But it is also to be seen if the Petitioner could have, even otherwise made "application" u/s 19 of the Act to the Tribunal for he is not to be left remediless. We reiterate in this context that High Court's residuary jurisdiction stands unaffected and refusal to exercise the same to render a citizen remediless would be breach of constitutional trust. The Tribunal has no jurisdiction u/s 19 when no "order" is passed though the applicant may be still "aggrieved" or when the application made is time-barred according to Section 20 and is not entertained by the Tribunal on that account. High Court's jurisdiction to act is not ousted u/s 28 in such cases.

A Single Bench decision of this Court in *C.R. No. 459/89, M.L. Beohar v. Union of India and Ors.* decided on 2.4.1990 1990 JLR 701 : 1990 MPJR SN 75 has held that execution proceedings arising out of decree passed by the High Court shall not be transferred to the Tribunal but the execution proceedings relating to

decrees passed by subordinate civil Courts shall stand transferred. In that case, the decree under execution was passed by the High Court. The Court was not directly or indirectly posed with the question of applicability of Section 29 to execution proceedings arising out subordinate civil Court's decrees and hence the decision must be deemed to be obiter to that extent.

It is submitted on behalf of the State that the phrase "other proceeding" as occurring in Section 29 must be widely construed so as to include all types of proceedings pending before any civil Court, which would include the execution proceedings also. It is further submitted that the underlying object behind the enactment of the Act has been to exclude the jurisdiction of civil Courts and provide Administrative Tribunals as substitute thereof touching service matters.

The purpose and object behind the enactment of the Act has no doubt been to provide an alternative and exclusive forum touching service matters but the object and purpose has been to provide an adjudicatory forum and not an executory forum as the Preamble to the Act indicates. The term "proceedings". In *Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another*, the expression "proceeding" came up for consideration before the Apex Court in the context of its use in Section 146(1) of Code of Criminal Procedure. Their Lordships observed:

The expression "proceeding" used in this section is not a term of art which has acquired a definite meaning. What its meaning is when it occurs in a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute.

(Emphasis added)

In *Dokku Bhushayya Vs. Katragadda Ramakrishnayya*, their Lordships quoted a passage from *Thakur Prasad v. Sheikh Fakir Ullah* ILR 17 All. 106-PC wherein it was observed:

Their Lordships think that the proceedings spoken of in Section 647 include, original matters in the nature of suits such as proceedings in probates, guardianships, and so forth, and do not include executions.

In the opinion of this Court, in the background of the purpose and object behind enacting the Act and the context in which the phrase "other proceeding" has been used, looked at along with several other's provisions of the Act in their entirety, the phrase "other proceedings" would include only such pending proceedings wherein the cause of action forming basis thereof was still required to be adjudicated upon and not such proceeding where all that had remained to be done was an execution of the Court's mandate, the cause of action having been already adjudicated upon, before the commencement of the Act.

For the foregoing reasons I am definitely of the opinion that Section 29 of the Act does not apply to proceedings in execution arising out of judgment and decrees/orders passed by civil Courts prior to the coming into force of the Act and the

civil Court's jurisdiction to execute its decrees is not ousted by Section 29 of the Act.

The revision is allowed. The impugned order is set aside. The Court below shall resume the execution proceedings and see that they are disposed of at the earliest. No order as to costs.

Before parting, appreciation of assistance rendered by Sarvashri N.P. Mittal, R.D. Jain and J. Maheshwari, Advocates of this Court is placed on record, who appeared amicus curiae on request.