

(1966) 01 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc Writ No. 1076 of 1960

Lakshmi Ratan Cotton Mills Co.

APPELLANT

Vs

Addl. Commr. Allahabad Division and Another

RESPONDENT

Date of Decision : 05-01-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 161, 164(2)

Citation : AIR 1967 All 435

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : S. Sadiq Ali and Kameshwar Pd, for the Appellant; S.N. Varma, for the Respondent

Final Decision : Allowed

Judgement

D.D. Seth, J.—This petition under Article 226 of the Constitution arises out of proceedings under the U. P Municipalities Act (hereinafter called the Act) The facts of the case, as contained in the petition, are that the petitioner is a limited company at Kanpur and carries on the business of manufacture and sale of cloth within the limits of Kanpur Corporation. At the commencement of quinquennial assessment for the years 1953 to 1958 the then Municipal Board Kanpur, assessed the annual value of the petitioner's premises at Rs. 1,23,500. It seems the petitioner Company's premises were, later on, extended and hence the Municipal Board increased the annual value of the premises to Rs. 1,42,583 towards the close of the assessment for the years 1963 to 1968. At the commencement of the quinquennial assessment for the years 1958 to 1963 the Municipal Board revised the assessment of annual value of petitioner's premises and fixed the same at Rupees 2,86,140. Notice regarding the proposal for enhancing the annual value was issued to the petitioner. Objections were filed on behalf of the petitioner and they were heard by the Executive Officer of the Municipal Board in February, 1958. By an order dated 17th March, 1958, the objections of the petitioner were rejected and the annual value of the

petitioner's premises was fixed at Rs. 2,80,750.

2. Aggrieved by the assessment order passed by the Municipal Board the petitioner preferred an appeal before the Commissioner, Allahabad Division, which was heard by the Additional Commissioner. Along with the appeal the petitioner did not file certified copy of the order of assessment passed by the Municipal Board. The appeal was filed on 16th February, 1959, but the copy of the assessment order was filed on 6th October, 1959. The learned Additional Commissioner, by his order dated 29th December, 1959, held that the appeal was time-barred as there was no application for condoning the delay in filing the certified copy of the order of assessment.

3. The petitioner then filed an application u/s 164(2) of the Act before the learned Additional Commissioner and prayed that the order dated 29th December, 1959, be reviewed. This application was also dismissed by the learned Additional Commissioner by his order dated 22nd March, 1960. By that order the learned Commissioner held that a perusal of Section 161 of the Act implies that a certified copy of the order, appealed against, must be filed along with the memorandum of appeal.

4. Feeling dissatisfied by the two orders passed by the Additional Commissioner the petitioner has come to this Court under Article 226 of the Constitution and prays that the two orders be quashed. It is further prayed that the Additional Commissioner be directed to hear and decide the petitioner's appeal on merits in accordance with law.

5. By an order dated 22nd December, 1965, Nagar Mahapalika, Kanpur, was substituted as opposite party No. 2 in the petition in place of Municipal Board. Kanpur.

6. Notices of this petition were served on the learned Standing Counsel and the then Kanpur Municipal Board. No counter-affidavit, however, has been filed by the opposite parties.

7. I have heard Sri Kameshwar Prasad, learned counsel for the petitioner and Sri S. N. Verma, learned counsel appearing for the Kanpur Nagar Mahapalika

8. The learned counsel for the petitioner submitted that the appeal having been filed before the learned Commissioner within the prescribed time the learned additional Commissioner acted without jurisdiction in dismissing the same as time-barred. According to the learned counsel the learned Commissioner's view that Section 161 of the Act impliedly requires the filing of a copy of the order, appealed against, is erroneous because Section 161 of the Act does not require that a copy of the order, appealed against, must accompany the memo of appeal,

9. Sri S. N. Verma, on the other hand, contended that without a copy of the order, appealed against, it would be impossible for the appellate authority to decide the appeal in absence of the relevant record, According to the learned counsel filing of the copy of the order, appealed against, would be necessary

even under the General Law as otherwise the very purpose of filing the appeal would be frustrated. Sri S. N. Verma contended that there is no rule under the Act which requires that the record must be before the appellate authority at the time of the decision of the appeal. The last submission of Sri S. N. Verma is that the view taken by the learned additional Commissioner is not manifestly erroneous and, therefore, no case for the issue of a writ of certiorari has been made out.

10. I find considerable force in the submissions made by the learned counsel for the petitioner.

11. Section 160 of the Act deals with appeals relating to taxation and prescribes that an appeal against an assessment or any alteration of an assessment may be preferred.

12. Section 161 of the Act deals with limitation and preliminary deposit of tax claimed and reads as follows:

"No such appeal shall be heard and determined unless:

(a) the appeal is, in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of communication of the order (exclusive of the time requisite for obtaining a copy thereof) and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days next after the date of the first demand under the assessment or alteration of assessment; and

(b) the amount claimed from the appellant has been deposited by him in the municipal office."

13. In the instant case there is no dispute that the amount claimed from the petitioner was deposited in the municipal office. The appeal was also filed within the prescribed period. Section 161, quoted above, does not directly require filing of a certified copy of the order, appealed against, before the appellate authority along with the memorandum of appeal. If the legislature wanted certified copy of the order appealed against, to be filed along with the memo of appeal, it could have provided for it in the Act as has been provided for in Order 41 Rule 1 of the CPC which requires every appeal to be accompanied by a copy of the decree, appealed from, and at the judgment on which it is founded.

14. I do not agree with Sri S. N. Verma that the words "exclusive of the time requisite for obtaining a copy therefore in Section 161 of the Act imply that a copy of the order, appealed from, must be filed along with the memorandum of appeal. These words only provide for exclusion of time taken in obtaining certified copy of the order for the purposes of Section 12 of the Indian Limitation Act and to enable the party, which desires to prefer an appeal against file order, to properly frame his memorandum of appeal and also to decide whether an appeal is to be preferred or not. In Jagannath Upadhyay Vs. Amarendra Nath

Banerjee and Others, it was held thus :

"It is true that, under the Rules of this Court (Vide Rule 3, Chapter VIII Appellate Side Rules) the memo of a Letters Patent appeal need not be accompanied by a copy of the Judgment appealed from, but, even then.

the appellant would be entitled to deduction or exclusion of the time, requisite for obtaining the copy of the judgment, where, at least, such a copy is actually filed, u/s 12 of the Indian Limitation Act....."

15. In *Municipal Board, Lucknow Vs. Bhagwan Das*, it was held that even though there are no rules requiring a copy of the order or judgment to be filed along with the appeal still a copy is required for the party to enable him to present the appeal and take proper grounds. Consequently the period taken by an appellant to obtain copy of the judgment and order will be excluded from the period of limitation required for filing appeal even if there are no rules requiring such copies to be filed along with the appeal. In *Jijubhoy N. Surty v. T. S. Chettyar Firm* AIR 1928 PC 103 it was held that the time spent in obtaining copies of judgment and decree must be excluded in computing the period of limitation for an appeal, even though such copies need not, according to the rules of the Court accompany the memorandum of appeal, and the reason for exclusion of time spent in obtaining copy of the judgment or decree is to enable the appellant to have sufficient opportunity to study the terms of the judgment, decree or order and decide as to the advisability of further proceedings in respect of it.

16. It must, therefore, be held that by inserting the words "exclusive of the time requisite for obtaining a copy therefore" in Section 161 of the Act legislature intended to enable the appellant to have sufficient opportunity to study the terms of the judgment, decree or order and decide as to the advisability of further proceedings in respect of it.

17. In the instant case it is not disputed that a certified copy of the order, appealed from, was, in fact, filed before the learned Additional Commissioner before the decision of the appeal. That should have been, by itself, a good Cause for the learned Additional Commissioner to extend the time for filing the copy of the order and to condone the delay in filing the same.

18. There is thus an error apparent on the face of the record in the two orders passed by the learned Additional Commissioner.

19. As regards the contention of Sri S. N. Verma that unless a certified copy of the order, appealed from, is filed before the appellate authority the appeal cannot be properly decided as there is no rule for the production of the record before the appellate authority at the time of the decision of the appeal, it must be held that the appeal was preferred by the petitioner against the then Municipal Board, Kanpur. The Municipal Board was respondent before the learned Additional Commissioner and it was in its interest to produce the record before the appellate authority if it wanted that authority to do justice between the parties

and to decide the appeal in accordance with law. The Municipal Board being a body subordinate to the learned Commissioner was bound to produce the record at the time of the hearing of the appeal.

20. No other contentions were raised by the learned counsel for the parties.

21. The result, therefore, is that the petition is allowed with cases and the orders passed by the learned Additional Commissioner, Allahabad Division, on 29th December, 1959, and 22nd March, 1960, are quashed. The case is remanded to the learned Additional Commissioner with the direction to restore the petitioner's appeal to its original number and to decide the same, on merits, in accordance with law.