
(1960) 09 MP CK 0024

In the Madhya Pradesh High Court

Case No : Civil Revision No. 160 of 1958

Maghanamal Narumal and Others

APPELLANT

Vs

Moolchand Gianchand

RESPONDENT

Date of Decision : 08-09-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Displaced Persons (Debts Adjustment) Act, 1951 — Section 36, 4, 53

Citation : AIR 1961 MP 193 : (1962) ILR (MP) 476 : (1961) JLJ 290 : (1962) 7 MPLJ 112 : (1962) MPLJ 112

Hon'ble Judges : Shiv Dayal, J

Bench : Single Bench

Advocate : Dulani, for the Appellant; Batham, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.

This revision arises out of proceedings u/s 5 of the Displaced Persons (Debts Adjustment) Act, No. 70 of 1951 (hereinafter called the 1951 Act).

Maghanmal applied on 9-9-1952, to the Tribunal constituted u/s 4 of the 1951 Act for adjustment of his debts. In the list of creditors he mentioned the name of Mulchand with the remark that the owed him nothing still he (Mulchand) demanded repayment of an alleged loan. Other creditors are not concerned with this revision.

Mulchand had made a separate application u/s 10 of the 1951 Act making a claim of Rs. 5,500/- against Maghanmal. On 1-5-1953, that petition was dismissed on the ground that Maghanmal had already filed a petition u/s 5 of the Act. Thereupon, on 16-9-1953, Mulchand made an application to the Tribunal in Maghanmal's case, for the determination of his debt. Maghanmal resisted Mulchand's claim. Shri S.L. Chopta, learned Civil Judge First Class, acting as the tribunal constituted) u/s 4 of the Act, held that a sum of Rs. 3600/- was due by

Maghanmal to Mulchand on account of two transactions and that the claim was within limitation because they were "deposits".

Aggrieved by it, Maghanmal filed this revision u/s 115 of the CPC as the subject matter in dispute is less than Rs. 5000/-, so that he could not prefer an appeal (Section 41 of the Act).

Shri Batham raises a preliminary objection as to the competence of this revision. Learned counsel lays stress on the expression "Court subordinate" to the High Court. Relying on *Sundar Das and Others Vs. Lachman Das*, it is argued that the tribunal u/s 4 of the Act is not a court subordinate to the High Court and this Court, has, therefore, no jurisdiction to interfere in revision with any order of the tribunal.

In Section 4 of the 1951 Act, authority to exercise jurisdiction under it is given to the "Tribunal or Tribunals". In the new set up and with the development of social, economic and political ideas many a right have to be recognized which formerly were not subject matters of "lis". The policy of the State has been to create special tribunals for their enforcement. In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, Mukherjee J. observed that

"owing to the intricate and complicated system of Government that exists in a modern State and the vast extension of social legislation of all sort, the so called administrative and quasi-judicial tribunals have come to be a permanent feature of our social and political system. They function as adjudicating bodies in disputes concerning large number of economic and social affairsThe question is what are the tests or distinguishing features, which disassociate an administrative tribunal from a Court of law".

Originally the term "court" meant, among other meanings, the Sovereign's palace. It has acquired the meaning of the place where justice is administered and, further has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. All tribunals, however, are not courts. (Halsbury's Laws of England (Salmond Edition) at page 342).

Some of the Authorities or Tribunals constituted under special Acts take evidence on oath, act in a judicial manner and pronounce upon valuable rights. They may or may not be civil courts. The line of demarcation between administrative tribunals and Courts of Civil judicature is difficult to be drawn. It was observed by Lord Sankey K.C. in *Shell Co. of Australia v. Federal Commissioners of Taxation* 1931 AC 275 :

"The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power.....In that connection it may be useful to enumerate some negative propositions on the subject: (1) A tribunal is not necessarily a

Court in this strict sense because it gives a final decision; (2) Nor because it hears witnesses on oath; (3) Nor because two or more contending parties appear before it between whom it has to decide; (4) Nor because it gives decisions which affect the rights of subjects; (5) Nor because there is an appeal to a Court; (6) Nor because it is a body to which a matter is referred by another body."

Our CPC does not define the word "Court". Section 3 of the Indian Evidence Act defines a "Court" as including all Judges and Magistrates and all persons except arbitrators legally authorised to take evidence. Section 20 of the

Penal Code defines the expression "Court of Justice" as to denote a Judge who is empowered by law to act judicially alone or a body of judges which is empowered by law to act judicially as a body, when such Judge or body of judges is acting judicially.

And Section 19 of that Code defines the word "judge" as denoting not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceeding, civil or criminal, a definitive judgment, etc. To determine whether a tribunal is or is not a judicial body it is stated in 9 Halsbury (Salmond) 342:

"The question is whether the tribunal is a Court, not whether it is a Court of justice, for there are Courts which are not courts of justice. In determining whether a tribunal is a judicial body the facts that it has been appointed by a non-judicial authority, that it has no power to administer an oath, that the chairman has a casting vote, and that third parties have power to intervene are immaterial, specially if the statute setting it up prescribes a penalty for making false statements; elements to be considered are (1) the requirement for a public hearing subject to a power to exclude the public in a proper case, and (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings."

In the *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, ; *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, cited above, Mukherjee J. laid down two tests for distinguishing a Court from a tribunal. (1) To be a Court, the determination by its own force and without the aid or instrumentality of any other authority or power must affect the rights and obligations of the parties.

(2) A judicial body decides the controversies according to law while a quasi-judicial or administrative body is not bound strictly to follow the law for its decision.

It was laid down in *Pitman's Shorthand Academy v. B. Lila Ram and Sons* AIR 1950 EP 181 (FB), (S.R. Das, C.J., Bhandari and Kapur, JJ.):

"A court of law may, therefore, be defined as a tribunal dealing with and adjudicating upon civil disputes by operation of law in a judicial manner untroubled by ulterior considerations or matters of executive policy and observing certain defined rules of procedure which are either defined by statute or recognised by practice."

This brings me to the question : what is a judicial act? While dealing with the proposition that a writ of certiorari does not lie to remove an order merely ministerial, but lies to remove and adjudicate upon the validity of acts judicial, a definition was formulated) by May C. J. in *R. v. Dublin Corporation* (1878) 2 LR Ir 371 :

"In this connection the term "judicial" does not necessarily mean acts of a Judge or Legal tribunal sitting for the determination of matters of law, but for the purpose of this question, a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the right of others."

The definition was approved by Lord Atkinson as one of the best definitions of a judicial act as distinguished from an administrative act (*Frome United Breweries v. Bath Justices*, 1926 AC 586).

Distinction between "judicial" and "Quasi-judicial" was pointed out in *Cooper v. Wilson* (1937) 2 KB 309 thus :

"A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites :

- (1) The presentation of their case by the parties to the dispute;
- (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and even with the assistance of argument by or on behalf of the parties on the evidence;
- (3) If the dispute between them is a question of law, the submission of legal argument by the parties and.
- (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

A quasi-judicial decision involves (1) and (2) but does not necessarily involve (3) and never involves (4)."

Their Lordships reviewed the distinction between a ministerial act and a judicial act in the *Province of Bombay Vs. Kusaldas S. Advani and Others*, . Mukherjee J. pointed out that in the performance of an executive act, the authority has certainly to apply his mind to the materials placed before him, but the opinion he forms is a purely subjective matter which depends entirely on his state of mind.

In a judicial proceeding on the other hand, process or method of application is

different. The judicial process involves the application of a body of rules or principles by the technique of a particular psychological method "It involves a proposal and an opposition and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice." (See *R. v. London County Council* (1931) 2 KB 215 .

Frequently, even though a special jurisdiction is created, the tribunal to be appointed is named in the special Act as one of the ordinary Courts of civil judicature. In the leading English case of *National Telephone Co. v. Post Master General* (1913) AC 546, Lord Atkinson observed;

"It is simply the question of extending the jurisdiction of an existing Court of law, with, all its incidents including a right of appeal, to a new matter closely resembling in character those matters over which it has a ready jurisdiction as a Court of law." And) Lord Parker said :

"Where by a statute matters are referred to the determination of Court of record without any further provision the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged but all the incidents of jurisdiction, including the right of appeal from its decision, remain the same."

The Privy Council expressed an identical view in *Balkrishna Udayar v. Vasudeba Aiyar* 44 Ind App 261 : (AIR 1917 PC 71), a case u/s 10 of the Religious Endowments Act. Their Lordships pointed out that it was to the Civil Court and not to the individual Judge who presided over or constituted the civil Court that jurisdiction was given.

These decisions were followed in *Kiron Chandra Bose Vs. Kalidas Chatterji*, .

In some decisions authorities constituted under special acts have been held to be civil courts and subordinate to the High Court for the purposes of section 115 of the CPC (See for instance *AIR 1946 Mys 316 (FB)* (Sic); *Dr. Shayamakant Verma Vs. Dr. Harishanker Prasad*, ; *Sadu Yesu Vs. Ganpat Laxman and Another*, and *Shamsul Islam Vs. Government of Tripura*, . In some other cases revenue officers constituted under certain special Acts were held to be not civil Courts subordinate to the High Court and, therefore, not amenable to the jurisdiction u/s 115 C. P. G. (For instance, *Srinivasa Rajamani Rajah Deo v. Senapathi Jagannayakulu* AIR 1932 Mad 612 (FB); *Jagabandhu Das and Others Vs. Babaji Jena and Others*, ; may be referred to). In *Phul Kumari Vs. State and Another*, , it is held that the word "Court" within the C. P. C. necessarily means the Court of civil judicature; that is to say, only courts which are created by the Civil Courts Act of the State, and other courts are not civil Courts.

In *Nilmoni Singh v. Taranath Mukherji* 9 Ind App 174 (PC), the Privy Council had to decide whether a Rent Court constituted under the Bengal Rent Act was a Civil Court. Their Lordships observed:

"In that there is a distinction between the terms; but it is another question

whether the rent Court does not remain a civil Court in the sense that it is deciding on purely civil questions between the persons safeguarding their civil rights and whether being a civil court in that sense it does not fall within the provisions of Act VIII of 1859."

Following the observations of the Privy Council in Nilmoni Singh's case 9 Ind App 174 (PC), Venkatarama Ayyar J. held in Kalavagunta Sriramarao Vs. Kalavagunta Suryanarayanamurthi and Others, that the courts constituted for deciding on purely civil questions between persons seeking their civil rights must be considered to be civil courts notwithstanding that they are created by a special statute.

In Rajah of Venkatagiri Vs. Shaik Mahaboob Saheb and Others, , Patanjali Shastri J. observed :

"There can be little doubt that in the present case the Sub-Collector and the District Collector exercising powers u/s 15(4) of the Madras-Act (IV of 1938) were hearing and determining disputes of a civil nature and we see no sufficient reason why the proceedings before them should not be regarded as civil proceedings and their courts as "civil Courts" for purposes of Section 3 of the Code of Civil Procedure."

In that case it was held that the Collector and District Collector were subordinate to the High Court and subject to its revisional jurisdiction u/s 115 of the Code of Civil Procedure.

On a review of the case law, generally speaking, the legal position may be summed up thus :

(1) The question whether an authority constituted under a special statute is an administrative body or a tribunal discharging the functions of judicial character or a Court, has to be answered by reference to the nature of the powers conferred on the authority by the statute. The distinction does not lie either in the label or in the trappings.

(2) When a tribunal deals with and adjudicates upon civil disputes by operation of law in a judicial manner untroubled by ulterior considerations or matters of executive policy and observes certain defined rules of procedure laid down in the statute or recognised by practice, it is a "Court".

(3) Where a statute provides that a particular matter shall be determined by a "Court" within the hierarchy of courts mentioned in Section 3 of the C.P.C., and not by an individual Judge, the officer presiding over that court exercises his jurisdiction as "Court" and not as "persona designata".

(4) When, the expression used is not "Court" but "Judge" : one has to look to the entire provision and the scheme of the statute for the purpose of determining whether the matter is to be heard by the judicial officer as a court or in his own personal capacity.

(5) Where it is only a civil Court which can be appointed as a tribunal under a certain Special Act, tribunal adjudicates upon rights and liabilities of a civil nature, proceedings before it are regulated by the Code of Civil Procedure, it passes decrees and orders and also executes them, appeals lie from such decrees and orders there can be no doubt that such a tribunal although so called, is essentially a civil Court.

Adverting to the provisions contained in the 1951 Act what I find is this : (1) Section 2 (12) defines a "tribunal" to mean any civil Court specified u/s 4 of the Act as having authority to exercise jurisdiction under the Act; (2) Section 4 of the Act provides that the State Government may by notification in the official gazette specify any civil Court or class of civil Courts as the tribunal or tribunals having authority to exercise jurisdiction under the Act and may define the areas in which and the extent to which such jurisdiction may be exercised; (3) Sections 9, 11 and 14 of the Act provide that the tribunal shall, after considering such evidence as may be produced before it, pass such decree in relation to the claim as it thinks fit; (4) Section 25 then runs thus :

"Save as otherwise expressly provided in this Act or in any rules made thereunder all proceedings under this Act shall be regulated by the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908)."

(5) Section 28 confers on the tribunal powers of execution of decrees and orders passed by it, as a civil Court and (6) Section 40 provides for appeals from final decrees and orders and also from orders passed in the course of execution as if appealable under the C.P.C. although a minimum pecuniary limit is fixed at Rs. 5000/-.

The provisions of this Act clearly show that the matters which are set out by the Act for decision of the tribunal are of a civil nature for which civil suits would ordinarily lie. Those matters have to be decided judicially and the entire procedure is to be regulated by the Code of Civil Procedure. Further, the "tribunal" to be appointed u/s 4 must necessarily be one of the civil Courts. In my judgment, therefore, the tribunal is a civil Court so as to be amenable to the jurisdiction u/s 115 of the C. P. C.

The view that I am taking is supported by the decision in *Ram Labhaya v. Kripa Ram* ILR 1955 P&h 490, and *Union of India v. Gopichand* ILR 1954 P&H 527. With great respect I find myself unable to follow the view taken by the Allahabad High Court in *Sundar Das and Others Vs. Lachman Das*, , since all what I have said above has not been considered in that decision. There is nothing in the language of Section 115 C.P.C. to restrict its scope only to orders passed by Courts constituted under the Civil Courts Act. Section 115 C. P.C. equally applies to proceedings before a tribunal which is in much such Court as any other so called.

Shri Bathian also relies on the case of *Sawatram Ram Prasad Mills Co., Ltd. v. Vishnu Pandurang* AIR 1950 Nag 14. In that case the Authority appointed u/s 15

of the payment of Wages Act was held to be not a "Civil Court". That case is clearly distinguishable since the tribunal named there is not one of the established civil Courts and may be presided over by person other than a Judge of civil Court.

The decision of my Lord the Chief Justice and my learned brother A. H. Khan J. in C. M.P. 108 of 1959, (Lakhmi Chand v. Hazarilal) relied on by Shri Dulani is not helpful either. That was a case arising out of a matter under the Gwalior Agricultural Debtor's Relief Act and an order passed by the Debt Relief Court was held revisable u/s 115. It is expressly provided in Section 18 of that Act that the Debt Relief Court shall have the same power and! shall follow the same procedure as a court of original civil jurisdiction.

For all these reasons the preliminary objection is overruled.

On the merits of the case, I find that Mulchand's claim was clearly barred by time. It seems to me that the learned Tribunal has not correctly stated the facts in its judgment. The truth of the matter is that this was not a case of "deposit". Mulchand himself stated in his petition that Maghanmal owed him two "loans". A sum of Rs. 5000/- was borrowed on 4-8-1947 and another sum of Rs. 2000/- was borrowed on 19-8-1947. I do not find anything on record to hold that the transactions were in the nature of deposits and not loans.

Now it is Article 57 of the Limitation Act which applied and the period of limitation ran out of the 4th and the 19th August of the year 1950, respectively. Maghanmal and Mool Chand are both displaced persons. The displaced creditor could have got the benefit of extension of limitation u/s 36 of the Act provided his claim had been within limitation on 8-12-1950. This position is transparent from the following provisions :

(1) In Section 8 of the Displaced Persons (Institution of Suits) Act, No. 47 of 1948, as amended by Act No. 68 of 1950, it was provided that a suit or other legal proceeding by a displaced person against a displaced person could be instituted at any time before 31-3-1952, provided the period of limitation expired after 8-12-1950, (on which date the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950, commenced). In other words, a suit or application against a displaced person must have been within time on 8-12-1950 otherwise the benefit of Section 3 of the 1950 Act was not available.

(2) Section 36 of the 1951 Act reproduced the same provisions, except that the date "31st March 1952" was extended to "one year after the commencement of the 1951 Act" which came into force in the Madhya Bharat on 20-12-1951. That is to say, a suit could be instituted and an application could be made in respect of a claim upto 20-12-1952 subject to the condition that it had not become barred on 8-12-1950.

In the present case, as the period of limitation for both the claims of Mulchand had become barred by time on the 4th and the 19th August, 1950, the benefit of

the extension of limitation under the 1948 Act or the 1951 Act is not available to him.

Shri Batham's contention that Mulchand's application was not a suit but was one made by a "defendant" so that no question of limitation arose, is without force. In Section 53 there is a special provision with respect to limitation for an application making a claim under the provisions of the 1951 Act and accordingly it must be treated as a suit for the purposes of the Act and: the relevant Article of Limitation Act applies, the only benefit which is available to the creditor being the one given, by Section 36 of the Act. (See Brij Lal v. Sunder Das ILR 1955 P&h 187).

In) the result, this revision is allowed. The judgment and order passed by the tribunal holding Maghanmal liable to pay to Mulchand a sum of Rs. 3600/- are set aside. In the circumstances of the case I leave the parties to bear their own costs throughout.