
(1966) 03 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 30 of 1965

Manalal Mandoli

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 04-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 71

Madhya Pradesh Court Fees Act, 1870 — Section 11(A)

Citation : AIR 1967 MP 173

Hon'ble Judges : M.A. Razzaque, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : M.S. Choudhary, for the Appellant; Balwant Singh, Government Advocate for Nos. 1 and 2 and D.M. Shah, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition by an appellant before the Board of Revenue whose appeal has been rejected as lime barred even after giving him all concessions in regard to certain delays. The position taken here is altogether different from that taken before the Board and we have to decide, firstly, whether in a petition under Article 227 or as for that matter under Article 226 itself, a ground can be canvassed that has not been even hinted at before the subordinate tribunal or authority. Secondly, whether for filing the appeal to the Bench of Revenue under the Co-operative Societies Act from an award by an Assistant Registrar there is no court-fee payable. Thirdly, whether the Board in disposing of the earlier appeal by the petitioner should have given him time and kept that appeal alive and not returned it as it actually did. And finally, whether on the delayed payment of court fee the filing of the appeal will relate back to the date on which the earlier appeal had been filed without court-fee.

2. The arguments have been lengthy and elaborate but one need only give a short account of the course of events to show that the problem is extremely

simple. The petitioner used to be the secretary in a co-operative society whose affairs were found on inspection by the Assistant Registrar to be in a bad state. In particular, the Assistant Registrar found that this petitioner was answerable for a sum of about 3000/- in round figures and made an award calling upon him to deposit that amount within a particular period. This being made on 10-1-64 the petitioner filed an appeal before the Registrar Co-operative Societies on 29-2-1964. However this class of appeals, it has been provided, lie to the Government which in its own turn has delegated those powers to the Board of Revenue. The Registrar, therefore, returned the appeal pointing out these facts. This was on 4-4-1964.

3. On 8-4-1964 the petitioner sent by post an appeal without court fee to the Board of Revenue. There is nothing wrong in sending it by post which is permitted. However, when the Board found that there was no court-fee the actual fee prescribed being Rs. 5/- it immediately returned the memorandum by post pointing out the defect. The petitioner says that it reached him on 14-4-1964 but further asserts that he could not deal with it till the 20th April. Actually he went to the Board office eight days later on the 28th and presented an appeal, this time with the proper court-fee. The Board examined the matter, heard the party and found that the appeal was in any view of the matter time barred. It excluded the period during which the petitioner was prosecuting his appeal before the Registrar Co-operative Societies: it also excluded the period taken in postal transit for the first memorandum to reach the petitioner.

In fact it was even prepared to exclude the period upto the 20th though properly speaking on this ground time only upto the 14th might have been excluded. Having given all these concessions the Board still found that the appeal was late by eight days, the arithmetic of which is of course admitted by the petitioner. Before the Board the petitioner tried to get condonation of the delay by alleging that on the 20th he spoke of some lawyer about his intention to file the appeal and was told that the office of the Board was closed till the 28th. As can be expected the Board was not prepared to consider this as sufficient cause and accordingly dismissed the appeal as time barred.

4. From this the petitioner has come to the High court now with an altogether new argument. He has discussed in his memorandum a good deal about the merits of the case, but we are of course not dealing with them. As for limitation he has brought out a new theory. Since the Co-operative Societies Act does not provide for any court-fee payable on appeal under it, he argues that no court-fee was payable at all. No doubt the Court-Fees Act (Schedule II heading 11 (A)) has prescribed a court-fee of Rs. 5/- for appeals to the "Chief Revenue Authority", that is the Board; but the argument is that the Board hearing such appeals by delegation is not the "Chief Revenue Authority" but a persona designata. The argument is further developed to the effect that when a tribunal is a persona designata, the normal incidents to proceedings before it do not take effect, and since court-fee is a normal incident the rule about court-fee should be in

abeyance. From this according to the petitioner it follows that the Board was wrong in returning the first memorandum of appeal on the ground that there was no court-fee. If the return of the first memorandum of appeal was wrong, the second memorandum should be deemed to have been filed on the date on which the first had been, that is, the 8th April, and therefore there is no limitation.

5. This argument calls for consideration from two different view-points. The first is, whether it can be raised at all in a petition under Articles 226 and 227 of the Constitution and second, whether there is any force in this elaborate ingenuity.

Question No. 1.

6. Whenever a tribunal other than the High Court decides on certain questions it is open to the latter to consider under Article 227 the propriety and legality of the decision. The powers are wide and as usual for the same reason the High Court will primarily examine whether the tribunal has been keeping within the four corners of its statutory jurisdiction. If the tribunal was passing an order in exercise of its discretion the High Court will not interfere even though it might be inclined to take a somewhat different view; but where the tribunal has erred in jurisdiction or has taken a wrong view of the law then it is the duty of the High Court to interfere.

7. Often enough petitions are filed under Article 227 and also 226 and among the non-petitioners are ranged together tribunals as well as some department of Government or some authority which broadly comes under the definition of "State". In such cases it is conceivable that the High court's order can be under 227 in so far as it touches the judgment of the tribunal and under 226 in so far as it turns out to be a direction. All this is somewhat rudimentary; but has to be set out here because of the peculiar position taken by the petitioner. If a particular ground had been taken by the petitioner before the authority or the tribunal as the case may be, it will be possible for the High Court to see whether it has been legally dealt with; but when it has not been taken and the petitioner prosecutes his case on altogether different grounds and goes to the High Court with a completely new story, different considerations arise. In such a situation it will not be possible for the High Court to pass any order under either of the articles. Certainly we cannot say whether the tribunal has acted within limits of its jurisdiction unless it has been expressly invited to act in a particular manner as would raise the question of the limits of the jurisdiction.

Similarly, when a particular proposition is not at all before the authority it will be impossible for the High Court to hold that it should have dealt with the problem in that manner and therefore should not take this or that course of action which it has decided upon. This is of course pure commonsense and fairplay; it has further been laid down in some decisions also. For example, in *Gandhinagar Motor Transport Society Vs. State of Bombay*, .

"Before a question of jurisdiction of a tribunal is raised on a petition under Arts. 226 and 227, objection to jurisdiction must be taken before the tribunal whose

order is being challenged."

this principle has been explained with reference to an English decision. The Madhya Pradesh High Court has followed this in the decision reported in *Ambaram Kaluram Kulmi Vs. Guman Singh Ramji and Another*, .

"When the petitioner failed to raise any objection to the jurisdiction of the Nyaya Panchayat to try the complaint preferred by him under M. B. Panchayat Vidhan and of the Sessions Judge to hear and decide the revision petition filed by the accused persons, the petitioner cannot be allowed to raise a question of jurisdiction on a petition under Arts. 226 and 227."

Case law having been discussed at length in this ruling it is unnecessary for us to do it over again.

8. This does not mean that a litigant who, after losing his case before the tribunal or faced with an adverse order by an authority, has what we may call new ideas, is helpless in exploiting them. Quite often, say in 9 out of 10 cases such brain-waves are of little account. But it is conceivable that there is tenth case in which the new idea is substantial.

In such a situation it is open to the defeated litigant to approach the same tribunal or authority in review and invite it, subject to satisfying it on certain requirements, to reconsider the problem in the light of the new ideas. In what circumstances a court or tribunal will review its own judgment or order is all clearly laid down in the law. But simply because the same tribunal may not be competent or willing to review its earlier decision the party cannot go to the High Court under Article 227. He should at least try if the tribunal is prepared to re-examine the matter in the light of his new notions. This of course has not been done in the instant case.

9. In the instant case the petitioner accepted the Board's first ruling as to the deficiency in the Court-fee and the necessity for the same. He also filed a new appeal with the proper court-fee, having delayed he tried to show cause by an affidavit. When that did not succeed and the Board threw out his appeal he has come to this court with an elaborate theory of which there was not even a hint before the Board. This cannot be allowed. Question No. 2.

10. On merits also this new theory does not commend itself to us. There are special Acts on different subjects and the Co-operative Societies Act is one of them. In regard to court-fee there is the general Court-fees Act; but it does happen from time to time that exemptions or new court-fee tables are provided in the special Acts. But where there is no special provision the Court-Fees Act prevails. As far as the instant case is concerned, the Chief Revenue Authority, that is, the Board is competent to hear the appeal and has to be approached by a petition of appeal stamped with a court-fee of Rs. 5. A number of rulings are cited about persona designate and the like; but not one of them has anything to say about the court-fee prescribed. Certainly, there are cases where the normal

incidents of the hearing are in abeyance if the tribunal is dealing with a matter as persona designate But when the tribunal is rendered competent to hear a class of appeals the provision in the Court Fees Act is automatically attracted unless elsewhere, for example in the special Act there is an exemption Thus the ruling given by the Board on the first memorandum was correct In fact it was accepted by the appellant himself who filed another memorandum with court-fee Question No. 3.

11. What a tribunal should do when it is faced with a memorandum of appeal without court-fee is its concern except that it should act fairly and reasonably. Appeal memoranda may be defective in different particulars. There are certain defects which call for some argument and weighing of all pros and cons and there are certain others in which the defects are patent being, as it were, mechanical. All defects should be enquired into in an appropriate manner; but the inquiry into whether the court-fee of Rs. 5 has been paid or not is an extremely rudimentary one. An officer of the tribunal is just to have a look and if he does not find court-fee stamp, make an endorsement that the appeal is not properly taxed. But whether the controversy is about valuation or some such complicated matter, the inquiry will be more elaborate and it might be necessary to notice the parties and fix a date. What kind of inquiry should be made in regard to a particular defect is within the discretion of the tribunal. In the instant case when there was no court-fee the memorandum was promptly returned to the petitioner by post as indeed it had been sent in that manner. Now it was for the petitioner to file the proper appeal subject to limitation or let the matter drop. It was not the concern of the tribunal whether or not the petitioner still had time to file a fresh appeal. But as it was, he had time; but he delayed it as he says on some false rumour that the Board's office was closed.

12. There are reported cases in which where there was some genuine doubt as to the valuation courts held an inquiry into the matter and on the deficit court-fee being paid related the presentation to the date on which the memorandum was originally presented though it was defective. Such exercise of discretion in favour of litigants who commit some excusable mistake is quite understandable. But where the position is that a court-fee of Rs. 5 is made expressly payable on a memorandum and the party fails to do it, the tribunal cannot be expected to wait and call upon him to make good the deficiency and then relate it to the date of original presentation.

13. Even as it was, the Board returned the first memorandum immediately and it was delivered or tendered to the petitioner on the 14th itself. He says that he collected it on the 20th; but it was his concern. The point of the story is that even after the 20th he waited for eight days and presented it on the 28th.

14. Even if the Board had taken a strict view in the matter of limitation it would have been acting within its jurisdiction and we would not interfere even if we on our side had thought that some leniency was called for. But as already noted, the Board has in applying the law of Limitation given the petitioner every concession

possible. Still he had been so unbusinesslike that his appeal was time barred by eight days. Question No. 4.

15. There is no automatic relating back of an appeal in which the defects are removed to the date on which it was originally presented. That again would depend upon the discretion of the tribunal. There are cases in which a defective appeal being presented, the tribunal gives time for the remedying of the defects, and the defect being remedied condones the delay between the presentation and the remedying and treats the appeal as if it had been filed in the proper form at the original presentation. Even in the matter of court-fee there may be circumstances in which this discretion could be fairly exercised. But where it is a case of just mechanical omission and there can be no doubt, a tribunal is not expected to apply its discretion in favour of the appellant and deprive the other party of the interest it has acquired by the operation of the, Law of Limitation. For one thing, in this case the Board has not even invited to do so. It is not possible for this court in these circumstances to pass such a direction.

16. The result is that the petition is dismissed and the petitioner is ordered to pay costs of Rs. 100A (one hundred) to each of the two contesting non-petitioners, that is, the State acting for the Assistant Registrar, Opposite Party No. 2, and the Ex-Chairman of the Co-operative Society--Opposite Party No. 3.