

(1957) 08 MP CK 0004

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 116 of 1954

Premchand Lalchand

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-08-1957

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 27, 28
Constitution of India, 1950 — Article 226

Citation : AIR 1958 MP 68

Hon'ble Judges : Hidayatullah, C.J; Choudhuri, J

Bench : Division Bench

Advocate : R.K. Pande, for the Appellant; M. Adhikari, General, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is against an order made by V.R. Sen, J., on the 26th November 1954 dismissing Miscellaneous Petition No. 317 of 1954. By that petition the petitioner Premchand asked the High Court to quash an order dated the 22nd December 1953, passed by the Additional Custodian of Evacuee Property, Madhya Pradesh, and confirmed on appeal by the Deputy Custodian of Evacuee Property, Jabalpur, on 15th January 1953. It is admitted that the order of the Deputy Custodian was taken up in revision by the petitioner before the Custodian-General, New Delhi, and that the revision application failed. The order of the Custodian-General has not been exhibited in these proceedings.

2. On the authority of a decision of their Lordships of the Supreme Court in Election Commission, India Vs. Saka Venkata Subba Rao and, , affirmed later by their Lordships in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , the learned single Judge declined to quash the orders of the intermediate tribunals on the ground that the writ of this High Court cannot reach the Custodian-General. The learned single Judge also referred to certain decisions of this High Court, particularly in Shamji Naranji v. State of Madhya

Pradesh, M. P. No. 42 of 1952 D/-27-2-1953 (Nag) (C) and Burhanpur National Textile Workers Union v. Labour Appellate Tribunal, M. P. No. 300 of 1953 D/-29-10-1953 since reported in ILR 1955 Nag 108: (AIR 1955 Nag 148) (D).

The reason given by the learned single Judge is that the order of the Deputy Custodian must be deemed to have merged in the order of the Custodian-General, and that since the writ of this Court cannot run beyond the territorial jurisdiction of this Court the order of the Custodian-General cannot be touched and it is useless to quash the intermediate orders of the Tribunal situated within the jurisdiction of this Court. The learned single Judge also followed a Division Bench decision of the Allahabad High Court, reported in Hafiz Mohammad Yusuf Vs. The Custodian General, Evacuee Properties, New Delhi and Others,

3. It is contended that the view expressed in these several cases needs to be re-considered in the light of the pronouncement of the Bombay High Court, reported in Sipahinalani v. Fidahusseini 58 Bom LR 344 (F). In that case the learned Chief Justice of the Bombay High Court and Dixit, J., ruled that the High Court can quash an order even though it be confirmed on revision by the Custodian-General because the order of the intermediate tribunal does not merge in that of the Custodian-General. The learned counsel appearing for the Custodian drew our attention to several other cases in which this point has come up for decision and a view contrary to that of the Bombay High Court has been taken.

Chief among them is the decision of Allahabad High Court, reported in Azmat Ullah and Others Vs. The Custodian, Evacuee Property, U.P., Lucknow, ; Dungardas and Another Vs. Custodian Rajasthan and Another, ; Collector of Customs, Madras Vs. A.H.A. Rahiman, ; and Joginder Singh v. Director, Rural Rehabilitation, (S) AIR 1955 Pep 91 (J). No doubt, in none of these cases was the Bombay decision referred to, but the result reached is exactly contrary to that reached in the Bombay case.

4. We have thus to consider whether the view taken in the Bombay High Court is the correct one. It may be pointed out that the Bombay decision was given before the decision of their Lordships of the Supreme Court, reported in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, . In that case their Lordships drew a distinction between those cases where a subordinate agency works within the jurisdiction of the High Court under the direction of a superior situated outside, but independently, and those cases in which the order of a superior tribunal which cannot be reached remains outstanding, and the anomaly of two contradictory orders comes into existence.

Their Lordships referred to three cases in which the view had been taken that if the superior tribunal's final order cannot be quashed by the High Court then it was not open to the High Court to intervene by quashing an earlier order. The ruling of the Supreme Court was apparently not before the Bombay High Court, because the case decided by that Court was earlier. We have thus to see what effect, if any, the decision of their Lordships of the Supreme Court has upon the

Bombay view.

5. To begin with, it was laid down in *Election Commission, India Vs. Saka Venkata Subba Rao and, ,* that the test laid down by the Privy Council in AIR 1943 164 (Privy Council) , that a cause of action attracts jurisdiction is not applicable to Article 226 of the Constitution. Their Lordships ruled that wide as the powers of the High Courts are under Article 226 they are circumscribed in two distinct ways. They stated that one such limitation is that the normal and ordinary location of the office of the authority must be within the territories of the High Court.

It was for this reason that their Lordships held that the High Court had no jurisdiction over the Election Commission, even though the Election Commission sat for the decision of that case within the jurisdiction of the Madras High Court. The effect of that ruling was worked out in Division Bench case reported in ILR 1955 Nag 108: (AIR 1955 Nag 148) (D). There it was pointed out that by reason of Section 15 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the order of the Appellate Tribunal situated at Bombay was effective after the lapse of a certain period, and that unless the order of the Appellate Tribunal could be quashed the High Court should not achieve indirectly what it could not directly.

The case of the Nagpur High Court was considered by their Lordships of the Supreme Court in (S) *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, ,* and their Lordships stated that the Nagpur case and the two other cases which they mentioned were so decided because the order of the inferior tribunal must be taken to have merged in that of the superior tribunal. It may be pointed out that in at least one of the three cases mentioned by their Lordships, viz., the case from Pepsu reported in (S) AIR 1955 Pep 91 (J), the order was one of dismissal of a revision, and yet the reasoning of the Pepsu Court was accepted.

6. The petition, therefore, is that according to the pronouncement of their Lordships of the Supreme Court, the High Court in the exercise of its powers under Article 226 of the Constitution cannot indirectly reach the order of a tribunal whose office is normally situated outside the jurisdiction of that Court. This view is also affirmed in numerous other cases.

In *Dungardas and Another Vs. Custodian Rajasthan and Another, ,* Wanchoo, C. J. and Modi, J., reversed the opinion of that Court given earlier in two cases to one of which Wanchoo, C. J., himself was a party. *Har Prasad Vs. Union of India (UOI)* and *Another, and Barkatali Vs. Custodian General of Evacuee Property of India, .* A similar view was expressed by the Allahabad High Court in a Full Bench decision reported in *Azmat Ullah and Others Vs. The Custodian, Evacuee Property, U.P., Lucknow,*

Recently, in the Madras High Court a Division Bench headed by the learned Chief Justice has laid down that the order of a tribunal should not be quashed when it has merged in an order of an authority situated outside the jurisdiction of the High Court. The learned Chief Justice points out that this is so even if the

superior officer or tribunal modified the order, reverses it, or merely affirms it and even if the order is made on revision: see (S) Collector of Customs, Madras Vs. A.H.A. Rahiman,

7. It would, therefore, appear that the current of authority is against the view of the Bombay High Court. We have now to see whether the reasoning which has appealed to the learned Chief Justice and Dixit, J., can bear scrutiny. The learned Judges compared the exercise of appellate power with the exercise of revisional power.

They stated that an appeal is on a different footing and took the analogy of the CPC to hold that though the order of an inferior Court merges in that of the appellate Court the same cannot be said of revisions u/s 115 of the Code of Civil Procedure. With all due respect it was an error to compare the powers of the Custodian-General exercised under the Evacuee Property Act with those exercised by the High Court u/s 115 of the Civil Procedure Code.

Revisional powers under the CPC only touch upon jurisdiction, viz., its exercise, the refusal to exercise it, or the irregular or illegal exercise of it. The powers which have been given to the Custodian-General by the Evacuee Property Act, Section 27, are of an extremely wide character. To quote the words of Section 27:

"(1) The Custodian-General may at any time on his own motion or on application made to him in this behalf, call for record of any proceeding in which any District Judge or Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:....."

These powers are not less than appellate powers; in fact, if anything, they are more extensive than ordinary appellate powers as they are understood. These powers cannot by any stretch of reasoning be equated to the powers exercised by the High Court u/s 115 of the Civil Procedure Code. To take the analogy, therefore, of the Code of Civil Procedure, particularly Section 115, to reach the conclusion that the order of the Custodian does not merge in that of the Custodian-General is, if we may say so with the utmost respect, to take a wrong turn at the start.

8. The learned Division Bench of the Bombay High Court observed that the order would not so merge even if the order of the Custodian-General was given on merits. We again respectfully differ from this observation. The order which the Custodian-General may pass on revision may be of three kinds. It may either confirm the order of the inferior tribunal or modify it or reverse it. Whatever may be said of the first category, there is no doubt whatever that the effective and outstanding order in the other two categories would be that of the Custodian-General.

To say that the order of the Custodian-General even if passed on merits does not supplant or replace the order of the Custodian would be not to give effect to the

provisions of Section 28 of the Evacuee Property Act. In that section it is clearly laid down that every order of the Custodian-General shall be final. No doubt, the finality which is given is for the purpose of excluding other civil remedies and it may not touch the jurisdiction given to the High Court by Article 226 of the Constitution.

This jurisdiction has never been held to be taken away by providing that such and such order is final and we do not here consider the question whether certiorari can be taken away even by an express pronouncement. There may, therefore, be no finality where the High Court concerned has jurisdiction but the order itself remains final, whether it be of one kind or another, till it is quashed. In other words, it follows that the order of the Custodian-General remains enforceable according to its own tenor, unless it is quashed or rescinded in some way known to law.

Ordinary remedies of the civil law are not available in view of the clear statement of law contained in Section 28 of the Act. The only means by which the order can be put out of the way is a writ from the High Court under Arts. 226 and 227 of the Constitution laying aside the powers of the Supreme Court from the present consideration. The question is thus whether the High Court can by a writ made under Article 226 reach the Custodian-General.

9. It is admitted before us, and it cannot be gainsaid, that the office of the Custodian-General is located outside the territories assigned to this High Court. It therefore follows that the writ of this High Court cannot run to the Custodian-General. The question is whether we can by quashing an order confirmed by the Custodian-General reach the same result.

Here we would only affirm what was stated in ILR (1955) Nag 108: (AIR 1955 Nag 148) (D), and also by the Allahabad High Court in the Full Bench case above referred to that no Court does indirectly what it cannot do directly. If the writ of this Court cannot run to the Custodian-General, then this Court would not try by an indirect method to achieve this result.

We are not certain whether the quashing of the order of the Custodian without doing anything further in the matter of the order of the Custodian-General will have any effect in law. The Custodian-General's order affirms the order of the Deputy Custodian, and u/s 28 of the Evacuee Property Act the Custodian-General's order is also final.

If we cannot get rid of the order of the Custodian-General because he is outside our jurisdiction then we cannot effectively get rid of the Deputy Custodian's order, even though we may quash it. In such a state of affairs there will be two contradictory orders, namely, one of the Custodian-General and the other of the High Court. Such a contingency cannot be contemplated and was not contemplated as arising under Article 226 of the Constitution.

10. Our attention was drawn to the decision of a single Judge of this Court in

Shrimati Betulbi v. Custodian of Evacuee Property, M. P. No. 228 of 1955 D/- 10-11-1955 (Nag) (P). In that case the learned single Judge distinguished the Allahabad and the Nagpur cases and observed that there was no merger of the order passed by the Deputy Custodian in that of the Custodian-General when the revision was merely dismissed.

We think, that regard being had to the scheme of the Act with which we are dealing and the finality which is given to every order of the Custodian-General, it is impossible to deal with earlier orders which have been affirmed by the Custodian-General. The effect of Section 28 of the Evacuee Property Act is to make the order of the Custodian-General paramount, and necessarily the order of the inferior tribunal must be taken to have merged in it.

11. In view of this, we respectfully dissent from the Bombay view expressed in 58 Bom LR 344 (F) and also the view expressed by the learned single Judge in M. P. No. 228 of 1955 D/- 10-11-1955 (Nag) (P); and we respectfully follow the view taken in (S) Collector of Customs, Madras Vs. A.H.A. Rahiman, and the cases referred to in that decision.

12. The appeal fails and is dismissed; but in the circumstances of this case we make no order about costs.