

(2005) 03 RAJ CK 0047

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1383 of 1996

Ramesh Chand Tiwari

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 225, 226, 227
Government of India (Amendment) Act, 1935 — Section 224(2)
Government of India Act, 1915 — Section 107
Rajasthan High Court of Judicature Rules, 1952 — Rule 125, 130, 131, 134
Rajasthan High Court Ordinance, 1949 — Section 18, 43, 46
States Reorganisation Act, 1956 — Section 52, 54, 57

Citation : AIR 2005 Raj 208 : (2005) 2 RLW 1073 : (2005) 2 WLC 305

Hon'ble Judges : Shiv Kumar Sharma, J; Shashi Kant Sharma, J; K.S. Rathore, J

Bench : Full Bench

Advocate : P.S. Asopa and A.K. Bhandari, Maneesh Acharya, Ajeet Bhandari, Ashok Gaur, S.P. Sharma, Manish Bhandari, N.K. Maloo, R.K. Agrawal, Suresh Sahni, Virendra Lodha, Prahlad Singh, Manoj Kumar Sharma, Anil Upman, Pradeep Kaluania, S.S. Hora, Sanjay Mehrish and Sunil Samdariya, Assisted the Court, R.D. Rastogi and N.S. Chauhan, for the Appellant;

Judgement

Shiv Kumar Sharma, J.—Following question has been referred to us for adjudication:-

"Whether intra court appeal to the Division Bench is maintainable against the order/judgment rendered by the learned Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India?"

SUPERVISORY JURISDICTION

2. In our endeavour to answer the question, we may begin with noticing that the power of superintending control conferred by Article 227 of the Constitution is similar to the control exercised by the Court of Kings Bench over the inferior Courts of England under the Common Law. The history of Article 227 and its

scope were considered by the Apex Court in *Waryam Singh and Another Vs. Amarnath and Another*, , and it was indicated that the material part of Article 227 substantially reproduces the provisions of Section 107 of Government of India Act 1915, except that the power of superintendence has been extended by the Article also to tribunals.

The history of Article 227 suggests that the framers of our Constitution believed that they were restoring to the High Court the power which had been taken away by Section 224 of Government of India Act, 1935. In the original Constitution of India Article 227 was devised to empower the High Court to exercise its supervisory jurisdiction not only over inferior courts within its territory but also over statutory or quasi judicial Tribunals to ensure that all these inferior bodies exercise the powers conferred on them "within the bounds of their authority" and "in a legal manner". But the supervisory jurisdiction of the High Court over all administrative tribunals was abolished by the 42nd Amendment Act, 1976 on the ground that it caused delay and obstruction in the implementation of Government Policies. The Pre-1976 position has however been resolved by the 44th Amendment Act, 1978, so that all the Tribunals other than Military Tribunals are again brought under the supervision of the High Court.

3. Article 227 of the Constitution has been the subject matter of various decisions. In *Baby Vs. Travancore Devaswom Board and Others*, , the Apex Court held that the powers of the High Court under Article 227 are in addition to the powers of revision conferred on it by other legislation.

4. In *Achutananda Baidya Vs. Prafulla Kumar Gayen and others*, , their Lordships of the Supreme Court observed that the power of superintendence of the High Court under Article 227 is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and Tribunals, inferior to High Court, have done what they were required to do. The High Court can interfere under Article 227 in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material or resulting in manifest injustice.

5. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, , the Apex Court held that the power of the High Court under Article 226 and 227 of the Constitution is always in addition to the revisional jurisdiction conferred on it. The curtailment of revisional jurisdiction of the High Court u/s 115 CPC by Amendment Act 46 of 1999 does not take away and could not have taken the constitutional jurisdiction of the High Court to issue a writ of Certiorari to a Civil Court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. It was further indicated that power to

issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court, care, caution and circumspection need to be exercised.

6. In *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, , the Apex Court held that supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

7. In *Mani Nariman Daruwala v. Phiroz N. Bhatena* AIR 1991 SC 1494 the Apex Court indicated that in exercising its jurisdiction under Article 227 of the Constitution of India the High Court could set aside or ignore the findings of fact of an inferior Court or tribunal if there was no evidence to justify such a conclusion.

8. Supervisory jurisdiction may also be exercised by the High Court through writ of certiorari. With regard to the character and scope of writ of certiorari following proportions may be taken as established:-

(i) The court issuing certiorari acts in exercise of supervisory and not appellate jurisdiction;

(ii) Certiorari will be issued for correcting errors of jurisdiction;

(iii) The power of issuing a writ of certiorari is wider than the power of revision.

9. In *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, , the Apex Court propounded thus:

(i) The jurisdiction under Article 227 can not be limited or fettered by any Act of the State Legislative;

(ii) The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;

(iii) The power must be exercised sparingly, only to keep subordinate courts and tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also can not be exercised "as the clock of an appeal in disguise."

10. In *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*, , their Lordships of the Supreme Court observed that even if revision is

held to be not maintainable, there should not be a bar on a challenge being made under Article 227 of the Constitution.

11. Conjoint reading of the afore quoted case law would reveal that writ of certiorari under Article 226 is an exercise of its original jurisdiction by the High Court whereas supervisory jurisdiction under Article 227 is not an original jurisdiction, but it is akin to appellate, revisional or corrective jurisdiction.

INTRA COURT APPEAL

12. Having carefully examined the very nature of supervisory jurisdiction, we will now briefly refer the relevant case law relating to intra court appeal.

13. In *re Tripulswami Naidu* AIR 1955 Mad 287 *Aidal Singh and Others Vs. Karan Singh and Others*, *Sukhendu Bikash Barua Vs. Hare Krishna De and Others*, and *Braham Dutt v. People's Cooperative Society* AIR 1961 Pun 24, it was held that the jurisdiction vested in the High Court under Article 227 is a revisional jurisdiction and accordingly on intra court appeal is competent from an order passed by a Single Judge in exercise of such jurisdiction.

14. The Apex Court in *Suk Das Vs. Union Territory of Arunachal Pradesh*, held that the appeal filed against the order of the Single Judge to the Division Bench was rightly dismissed as being not maintainable because under Clause 15 of the Letters Patent an intra-court appeal against the decision of the Single Judge exercising jurisdiction under Article 227 is barred.

15. The principle laid down in the case of *Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others*, and in *RDCCB v. Dinkar* the Apex Court explained and clarified the position of law declared by it is *Umaji Keshao Meshram*.

16. In *M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad*, , the Apex Court held that if a Single Judge exercise jurisdiction under Article 226, Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable.

17. Division Bench of Rajasthan High Court in *Anandi Lal v. State* AIR 1996 Raj 154 : RLW 1996(1) Raj. 396 followed the ratio indicated in *Umaji Keshao Meshram* and held that if the Court comes to the conclusion that the petition could be filed only under Article 227, intra court appeal before the Division Bench against the order of Single Judge would not be maintainable.

18. Again in *Mohal Lal v. Lal Chand* 2001 (1) WLC (Raj.) 129 : RLW 2000(4) Raj. 142, the Division Bench ruled that intra court appeal against the order of Single Judge is not maintainable where the writ petition filed before the single Judge show that it is purely under Article 227 of the Constitution.

19. In *Punjab National Bank v. Purewell* 2002(1) WLC (Raj.) 67 RLW 2002(2) Raj. 963, it was however observed by another Division Bench that intra court appeal lies against the order passed by the Single Judge in exercise of Article 227 of the

Constitution.

20. In *Sher Singh Meena v. Chief Engineer* 2004(4) WLC (Raj.) 288 the principle laid down by the Apex Court in *Umaji Keshao Meshram* was followed and it was held that no intra court appeal lies to the Division Bench against the judgment order of Single Judge rendered in exercise of supervisory jurisdiction under Article 227 of the Constitution.

HIGH COURT ORDINANCE/RULES & ARTICLE 225 OF THE CONSTITUTION:

21. We may pause here to cast a look backward to see how Rajasthan High Court Ordinance 1949 (for short "ordinance 1949") came into existence. The Ordinance was promulgated by His Highness the Rajpramukh on June 21, 1949 in exercises of the powers conferred by paragraph (3) of Article X of the Covenant and all other powers enabling him in this behalf. Section 18 provides filing of appeal to the High Court from Judgment of Judges of the Court. It reads as under:-

"18. Appeal to the High Court from judgment of Judges of the Court.- (1) An appeal shall lie to the High Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence u/s 43 or in the exercise of criminal jurisdiction of the Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal."

22. The Ordinance 1949 repealed with the promulgation of Judicial Administrative Laws (Repeal) Act, 2001 and the following question was referred for determination of Full Bench is *State of Rajasthan v. VRC Misra* 2003(2) WLC (Raj.) 235:-

"Whether the right to file intra court appeals stands abrogated with the Repealing Act coming into force on August 29, 2001 by which the Rajasthan High Court Ordinance 1949 was repealed notwithstanding the several other existing provisions preserving the powers of the High Court in the matter of administration of justice as contained in Article 225 of the Constitution read with Sections 52, 54 & 57 of the State Reorganisation Act, 1956?

Answering the reference the Full Bench observed thus:-

"The right of intra court appeal does not stand abrogated with the Repealing Act of 2001 Coming into force on August 29, 2001 by which the Rajasthan High

Court Ordinance 1949 was repealed. The right to the intra court appeal in the High Court of Judicature for Rajasthan and the jurisdiction of the Division Bench to hear the appeal against the judgment of the learned Single Judge of this Court as was vested under Article 225 of the Constitution and later on conferred u/s 52 of the State Reorganisation Act 1956 and the Rajasthan High Court Rules, therefore, was not affected or abrogated by the repeal of the Rajasthan High Court Ordinance 1949 which has long ceased to be governing statute in respect of subjects dealt with under Article 225 of Chapter V Part VI of the Constitution and on the subject matters dealt with in Part V of the State Reorganisation Act 1956."

23. At this juncture it may be useful to refer to the Rules of the High Court of Judicature for Rajasthan 1952 (for short "Rules of 1952") which were made by the High Court in exercise of powers conferred by Section 46 of Ordinance 1949. Rule 134 of Rules of 1952 which is related to Special Appeal (intra-court appeal) reads as under:-

"134. Special Appeal. A person desiring to prefer a Special Appeal from the judgment of a Single Judge shall present a duly stamped memorandum of appeal within thirty days from the date of such judgment. Where such appeal is presented after the period mentioned above, it shall be accompanied by an application supported by an affidavit explaining the cause of delay and it should be rejected unless the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within the aforesaid time.

The memorandum of appeal shall be drawn up in accordance with Rules 125, 130 and 131 of this Chapter and shall be accompanied by a certified copy of the judgment or order appealed from along with two extra typed copies of the judgment or order."

24. The only conclusion that can be drawn from Section 18 of Ordinance 1949 and Rules 134 of Rules of 1952 is that any person desiring to prefer intra-court appeal from the judgment of the Single Judge, may present the same before the Division Bench but if the Division Bench finds that the judgment of the Single Judge was rendered in exercise of revisional jurisdiction, the intra court appeal shall stand dismissed as not maintainable.

25. The scope of intra-court appeal was considered in *Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others*, , and it was indicated that a Letters Patent Appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

26. In *Mangalbhai and Others Vs. Dr Radhyshyam Agarwal*, , it was held that intra-court appeal is maintainable if the judgment of the Single Judge is in

substance under Article 226 of the Constitution.

27. In *Umaji Keshao Meshram* (supra), the Apex Court indicated that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

CONCLUSION

28. As we have earlier noticed that the Apex Court in *Baby v. Travancore Devasram Board* (supra), enlarged and magnified the scope of supervisory jurisdiction under Article 227 of the constitution. This myth has been smashed that under the power of superintendence the High Court exercises only the revisional jurisdiction. The Apex Court propounded that the powers of the High Court under Article 227 are much wider and in addition to the powers of revision conferred on it by other Legislation. Ratio indicated in *Baby v. T.D. Board* and mandate of Rule 134 of Rules of 1952 escaped notice in *Sher Singh Meena v. Chief Engineer* (supra). We support, to the limited extent, the view expressed by the Division Bench in *Sher Singh Meena*'s case i.e., "where the Single Judge exercises only revisional powers under Article 227, the intra-court appeal shall be dismissed as not maintainable". But we disagree with this opinion of the Division Bench that all judgments/orders passed by the Single Judge in exercise of supervisory jurisdiction under Article 227 are not amenable to intra-court appeals, since the supervisory jurisdiction under Article 227 is much wider and akin to appellate, revisional or corrective jurisdiction.

29. We sum up our conclusion, thus:-

"(i) The power of superintendence conferred on the High Court under Article 227 of the Constitution is always in addition to the revisional jurisdiction. It is wider than one conferred by Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Jurisdiction under Article 227 is not an original jurisdiction but it is akin to appellate, revisional or corrective jurisdiction.

(ii) Any person desiring to prefer intra-court appeal from the judgment/order of the Single Judge, may present the same before the Division Bench but if the Division Bench finds that the judgment/order of the Single Judge was rendered purely in exercise of revisional jurisdiction, the intra-court appeal shall stand dismissed as not maintainable. Judgments/orders passed by the Single Judge in exercise of wider supervisory jurisdiction under Article 227 are amenable to intra-court appeals.

30. The reference is answered accordingly. Let the matters be placed before the Division Bench.