
(1978) 04 CAL CK 0062
In the Calcutta High Court
Case No : Civil Revn. No. 586 of 1977

Sm. Sujata Maitra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-04-1978

Acts Referred:

Constitution of India, 1950 — Article 227(1), 227(5)

Citation : AIR 1978 Cal 374 : 82 CWN 894

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Bhupendra Kumar Dey, for the Appellant; Krishna Dula Mukherjee, for Opposite Party No. 3 and Bimal Kumar Datta, Intervener with leave of Court, for the Respondent

Judgement

Salil Kumar Datta, J.—This Rule is directed against the order of the West Bengal Co-operative Tribunal dated Dec. 21, 1976 reversing on appeal an award of the Co-operative Development Officer and Arbitrator-II dated June 18, 1976.

2. It appears that there was a dispute between the petitioner and the opposite party No. 3 in respect of shares in the Surendranath Co-operative Housing Society Ltd. as also the right, title and interest in Suit No. 22 Unit No. 1, East Block of the Society.

3. The petitioner who is the widow of late Tapan Kumar Mitra claimed, with her mother-in-law, the suite as the heirs and legal representatives of the deceased while his brother, the respondent No. 3 claimed the suite as also the shares of the deceased in the society on the basis of a nomination made in his favour by the deceased earlier u/s 69 of the West Bengal Co-operative Societies Act, 1973. The Arbitrator held that the heirs and legal representatives are entitled to the suite while the respondent No. 3 is entitled to the shares of the deceased in the Society. On appeal, the Co-operative Tribunal while confirming the decision on the shares held that the respondent No. 3 was entitled to a transfer of the shares to him and on his being accepted as a member of the society, the suite would

vest in him with all liabilities. The connected application under Article 227 of the Constitution was moved on Feb. 28, 1977 on which the instant Rule was issued.

4. Mr. K. D. Mukherjee raised a preliminary objection as to the maintainability of the application in view of the amendment to the Article 227 of the Constitution by the forty second amendment which came into force with effect from Feb. 1, 1977. It was contended that the High Court's power of judicial or administrative superintendence over tribunals and other authorities not under its appellate or revisional jurisdiction had been taken away and the impugned order being one of the West Bengal Co-operative Tribunal, this court has no jurisdiction to interfere with the impugned order. This contention is now to be examined with reference to the like provisions under the earlier constitutional Acts.

Section 107 of the Government of India Act, 1915 provides as follows:

"Section 107, Powers of the High Courts with respect to Subordinate Courts.-- Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say:--

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys and clerks and officers of courts."

5. In considering the scope of interference u/s 107, Rankin C. J. in *Manmatha Nath v. Emperor*, (1932) 37 Cal WN 201 : (AIR 1933 Cal 132) observed:--

"The general superintendence which this Court has over all jurisdictions subject to appeal is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. It does not involve responsibility for the correctness of their decisions either in fact or in law."

The court was of opinion that if there is no evidence at all for the charge, or a defect of jurisdiction or fraud on the part of the prosecutor or error on "face of proceedings," these will be cases calling for interference u/s 107 even though Section 439 of the Cr. P. C. 1898 had no application. In *The Municipality of Sholapur Vs. Tuljaram Krishnasa Chavan*, , it was held that the District Court exercising judicial functions under Bombay City Municipalities Act, 1898 is a Subordinate Court u/s 107 of the Government of India Act, 1915, if, not u/s 115 of the Code and the order of the District Court could be set aside if he had no

jurisdiction to pass it. The position accordingly appears to be settled that the superintendence envisaged u/s 107 of the Government of India Act, 1915 was accepted and interpreted by courts as not merely administrative superintendence but judicial superintendence as well over courts under its appellate jurisdiction in certain specified circumstances even though no appeal or revision was specifically provided for such interference. Though such remedy as quashing the orders or judgments under challenge was available by issue of writs of certiorari by Presidency High Courts, further directions in respect of the matter might not be possible under such writs.

6. Section 224 of the Government of India Act, 1935 made the following provisions:

"Section 224. Administrative function of the High Court--

(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,--

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts, and

(d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

7. In *Jahnabi Prosad Banerjee and Another Vs. Basudeb Paul and Others*, , the Court surveyed the history of revisional powers of the High Court and noted that the right of superintendence conferred by Section 107 of the Government of India Act, 1915 included superintendence in judicial matters and the High Court could correct any error in a decision of a Court subject to its appellate jurisdiction even in cases not covered by Section 115 of the Civil P. C., in order to prevent injustice. It was further observed that power of judicial interference was taken away by Section 224 of the Government of India Act, 1935 and this section confined the revisional powers to administrative matters while Sub-section (2) does not confer a general, power of judicial interference in cases not otherwise subject to appeal or revision.

8. The Constitution in Article 227 restored the position as u/s 107 of the Government of India Act, 1915 and even extended it to all tribunals throughout the territories in relation to which the High Court exercises its jurisdiction. The provisions of Article 227 which came into force on Jan. 26, 1950 are as follows:--

"227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may--

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

9. The construction of the said Article 227 has been before the Courts and it was held in *Waryam Singh and Another Vs. Amarnath and Another*, that this Article went further than Section 224 of the Government of India Act, 1935 under which the superintendence was purely administrative. Further, the Article restored the position u/s 107 of the Government of India Act, 1915 which inter alia provides judicial superintendence as well. This proposition was followed in the case of *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, . It will also be noticed that cl. (2) of Article 227 which provides for administrative superintendence is "without prejudice to the generality of the foregoing provision" i.e. judicial superintendence as envisaged in cl (1).

10. The High Court however placed self-imposed limitations in exercising powers under this Article 227. Such interference is to be used most sparingly and the article cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power of appeal. Its function is limited, as held by the Supreme Court, to seeing that the Subordinate Court or tribunal functions within the limits of its authority and jurisdiction or the order of a court or tribunal is not violative of the fundamental basic principles of justice and fair play or that there is no patent or flagrant error in procedure or law. The High Court may also

justifiably intervene under this article when the order passed results in manifest injustice.

11. We now come to the last step of our survey. By the Constitution (Forty-second Amendment) Act, 1976, Section 40, the following amendment was made to Article 227.

Section 40. Amendment of Article 227:--

(a) for Clause (1), the following clause shall be substituted namely:--

(1) Every High Court shall have superintendence over all courts subject to its appellate jurisdiction.

After Clause (4), the following clause shall be inserted, namely:

(5) Nothing in this article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

12. The amendment, which as already stated came into force on Feb. 1, 1977, did not absolutely curtail the judicial superintendence of courts by the High Court subject to its appellate or revisional jurisdiction. It confined the operation of the article to courts only and tribunals were expressly excluded. On a close examination of the different clauses of Article 227 unamended or amended, it appears that clauses thereof are operative independently of each other, so that none of the clauses curtail or affect the operation of any other clause therein and together are complementary to achieve the superintendence -- administrative and judicial -- of subordinate courts under its appellate or revisional jurisdiction. The judicial superintendence is clearly envisaged by Clauses (1) and (5) though confined under Clause (1) to court subject to the appellate jurisdiction of the High Court or under Clause (5) to judgments of any inferior court subject otherwise to appeal or revision.

13. The word "court" has not been defined in the Constitution. There can be little dispute that the court includes hierarchy of courts civil and criminal, constituted under the relevant laws of the State or Centre, which are invested with the inherent and sovereign judicial powers of the State. The Tribunal, as held in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, is also a seat of justice and it shares some of the characteristics of the court. There are however different types of tribunals like purely administrative tribunals or domestic tribunals in departmental proceedings. The decisions of such tribunals do not have the finality and enforceability of their decisions nor do they exercise any of the judicial powers of the State conferred upon them by statute. There may be other types of Tribunals which are entrusted with judicial functions, that is to say of deciding litigated questions according to law, deriving their powers from the State and exercising judicial powers of the State. Such tribunal will constitute a court as observed by Mahajan, J. (as he then was) in *The Bharat Bank Ltd., Delhi*

Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, . The judicial power, it was observed, means the power which every sovereign authority must of necessity have to decide controversies between its subjects or between itself and its subjects, whether the rights relate to life, liberty and property. Such tribunal must have the power to give a binding and authoritative decision.

14. It was noted in *Bapusaheb Balasaheb Patil and Others Vs. The State of Maharashtra and Others*, followed in *Shripatrao Dajisaheb Ghatge and Another Vs. The State of Maharashtra and Another*, , on a survey of all relevant judicial authorities in particular of the decision in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, that a tribunal or authority will be a court (i) if it is basically a court with power to give a definitive judgment or a decision in a lis between the parties which has the finality and authoritativeness that would bind them appearing before it so far as the rights litigated before it are concerned and (ii) the appointment of the tribunal or an authority as well as the source of its power must be the judicial powers of the State coming to it from the statute itself. To it is also to be added the enforceability of such orders or judgments through the process of law. Such tribunal or authority must also follow the normal judicial procedure in arriving at its decision. It will require the parties to file their respective statements, follow the rules or norms of evidence in determining questions of fact by compelling attendance of witnesses or production of documents, hold public trial wherever possible and hear the parties or consider their respective cases according to law and the principles of natural justice before arriving at its decision. Such tribunal or authority will be, it is obvious, court as understood in accepted legal parlance and must be taken to be so as contemplated under Article 227 of the Constitution in absence of any definition in the Constitution.

15. Even so, to be amenable to provisions of Article 227 as amended there is a further condition which is an imperative one, namely, that such court must be subject to the appellate jurisdiction of the High Court as stated in cl. (1) or the judgment that may be interfered with must be of an inferior court which is subject to appeal or revision by the High Court.

16. In respect of Clause (1) of Article 227 it seems that the judicial superintendence is confined to courts which are under the appellate jurisdiction of the High Court, The appellate jurisdiction so contemplated obviously includes the courts created by the statutes providing hierarchy of courts, including all the subordinate courts thereunder and may not possibly include the tribunals or authorities which though courts in legal parlance on the tests noted above are not really subject to the appellate jurisdiction of the High Court under any statute. In such cases, it may be possible to contend that judicial interference will not extend to decisions of such tribunals or authorities which are not subject to the appellate jurisdiction of the High Court.

17. Clause (5), though has been put in the double negative form, means that

there may be judicial interference against any judgment of any inferior court which judgment is otherwise subject to appeal or revision, obviously by the High Court. The definition of court in this clause includes all authorities and tribunals which satisfy the above tests. If any judgment of such court in the State which is obviously an inferior court to the High Court, is subject to appeal or revision by the High Court, the judicial interference under Article 227 will be warranted in law in appropriate cases. We may mention here some statutes wherein provisions have been made for appeal to the High Court against judgments of such tribunals or authority which on the tests indicated above are courts in legal parlance. Such statutes are--

1. The Chartered Accountants" Act 1947--Section 21.
2. The Employees" State Insurance Act, 1948--Section 82.
3. The Workmen"s Compensation Act--Section 30.
4. Trade and Merchandise Marks Act. 1958-- Section 108.
5. Patents Act, 1970-- Section 116.
6. The Motor Vehicles Act, 1939-- Section 110 (d) against decrees of the Claims Tribunal.
7. The Income Tax Act-- Section 269-H against the order of the Appellate Tribunal.
8. Foreign Exchange Regulations Act, 1947 _ Section 23(EE) or Foreign Exchange Regulation Act, 1973 -- Section 54, from the order of the Appellate Board.
9. The Calcutta Improvement Act, 1911-- Section 77-A from the decision of the Calcutta Improvement Tribunal.

18. There may again be cases where an appeal from the order of a Tribunal or authority is provided to a Court within the hierarchy of courts, established by statutes. Such courts exercising appellate power are in their turn, subordinate and inferior to the High Court, and judgments of such courts may be subject to appeal or revision by the High Court. In such cases again, the judgments of such subordinate courts also are subject to judicial interference under Article 227 in appropriate circumstances.

19. Under the West Bengal Premises Tenancy Act, 1956, Section 29 the order of the Rent Controller is subject to appeal before the District Judge or Chief Judge, Small Cause Court, with power to transfer such cases to Additional District Judges or Subordinate Judge or to any other Judge of the Small Cause Court, Similarly under the Calcutta Thika Tenancy Act, 1949, Section 27 an appeal lies to the District Judge or the Chief Judge of Court of Small Causes with similar powers of transfer. These appellate authorities are not persona designate, as held in Nandalal Das Vs. Monmatha Nath Ghose and Others, , and they are referred to as Courts which are established under the Bengal, Agra and Assam Civil Courts

Act, 1887 and accordingly they are courts whose judgments are subject to revision even u/s 115 of the Civil P. C. The judgments of such courts are also thus liable to judicial interference under Article 227 in circumstances warranting such interference in view of the provisions of Clause (5). We may note Article 323-A which provides for constitution of service tribunals as also Article 323-B which provides for tribunals for certain purposes like, tax, ceiling on urban properties, foreign exchange, customs, industrial disputes, elections and the like. It was noticed in *Bapusaheb Balasaheb Patil and Others Vs. The State of Maharashtra and Others*, that these are enabling provisions empowering Parliament to make laws providing for the constitution of such tribunals on matters specified therein. It was also laid down in Article 323-B(3)(d) that there may be law made by the Parliament constituting such tribunals which may provide for exclusion of jurisdiction of all courts excepting the Supreme Court under Article 136. It was held that these provisions without more do not imply any intention of excluding all tribunals irrespective of their nature or their functions from the purview of High Court's judicial superintendence while amending the original Article 227.

20. In the instant case, on the tests referred to above, under the West Bengal Co-operative Societies Act, 1973, the Registrar or arbitrator has been conferred full powers to decide the dispute, pass interlocutory orders, hear the parties in accordance with the rules framed thereunder. There are provisions for appeals from the orders of the Co-operative Tribunal which also has all the trappings of the Court. There can be little dispute, on the tests indicated above, that such tribunals or authorities are courts deciding the lis between the parties which are binding on them. But such tribunals or authorities are not subject to the appellate jurisdiction of the High Courts, and their judgments are not subject to appeal or revision by the High Court. It may sound incongruous that the High Court as the highest judiciary of the State is incompetent in law to remedy any defect or error as may be committed by the court, tribunal or authority functioning within its territorial jurisdiction. It will however, be the sagacity of Parliament and of the State legislature to provide for adequate relief if it considers fit and proper in such cases. In this view of the matter as the High Court had no jurisdiction over such tribunals and authorities nor are their judgments subject to appeal or revision by the High Court and as the instant application has been filed after the commencement of the amended provisions of Article 227, this application is not maintainable in law.

21. Mr. De, learned Advocate appearing for the petitioner has filed an application for conversion of the instant application into one under Article 226 of the Constitution. It is difficult at this stage to concede to this prayer, as a Rule has already been issued under Article 227 which has been heard today and it will be for the court exercising constitutional writ jurisdiction to decide whether on such application a Rule can be issued at all. In this view, I reject the application for conversion of the application under Article 227 into one under Article 226.

22. The Rule is, accordingly, discharged. There will be no order as to costs in the circumstances of the cases. The petitioner is given liberty to move the appropriate court for such redress as she may be advised on same cause of action and facts. I make it clear, however, that I have not, as I cannot, entered into the merits of the cases of the respective parties.

23. On the prayer of Mr. De, I direct that status quo shall be maintained for three weeks from today.

24. Let the certified copy of the judgment of the West Bengal Co-operative Tribunal under challenge be returned to Mr. De on his furnishing a plain copy thereof.