
(1994) 04 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Revision No. 217 of 1993

State of M.P. and Others

APPELLANT

Vs

Maganlal Jain

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(3), 15(3), 19, 28, 29

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 136

Citation : (1994) JLJ 466

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; T.C. Singhal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—State has filed this Civil Revision u/s 115 of the Code of Civil Procedure, against the order passed by the Executing Court in Execution proceedings of a decree passed in Civil Suit No. 16-B of 1992, decided on 24.2.1993 by Additional District Judge, Mungaoli, district Guna.

2. Plaintiff, decree-holder, was holding a civil post, who instituted a suit on 5.4.1991 for recovery of a medical claim of Rs. 36,650.25 paise for the expenses incurred in his bye-pass surgery at Appollo Hospital, Madras. After service of summons, the State did not represent and chose to remain ex parte. An exparte decree was passed which was put to execution wherein an objection was raised by the Suite that in view of Section 28 of the Administrative Tribunals Act, 1985, for short, the "Act", that as the Suite Administrative Tribunal, for short "SAT" was constituted since 8.11.1991 in the State of Madhya Pradesh, therefore, the suit was not cognizable by the civil Court because of the exclusion of the jurisdiction. Even if the suit was filed, the Court ought to have transferred the suit to Tribunal as provided by Section 29 of the Act. Therefore, the ex -parte decree passed is without jurisdiction and is a nullity which cannot be executed.

Executing Court rejected the objection, hence, this revision.

3. Shri K.N. Gupta, learned Government Advocate for the State and Shri T.C. Singhal, learned Counsel for the Respondent, heard.

4. To deal with the question raised, it will be appropriate to refer to Section 28 and 29 of the Act which read thus:

28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution. - On and from the date from which any jurisdiction, power and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matter concerning recruitment to any service or post or service matters concerning members of any service of person appointed to any service or post, no Court except -

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947), or any other corresponding law for the time being in force shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such requirement or such service matters.

29. Transfer of pending cases. - (1) Every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment within the jurisdiction of such Tribunal shall stand transferred on that date to such Tribunal:

Provided that nothing in this Sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society) being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal shall stand transferred on that date to such Tribunal:

Provided that nothing in this Sub-section shall apply to any appeal pending as aforesaid before a High Court.

Explanation. -- For the purposes of this Sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation (or society), means the date with effect from which the provisions of Sub-section (3) of Section 14, as the case may be, Sub-section (3) of Section 15 are applied to such local or other authority or corporation or society.

(3) Where immediately before the date of establishment of a Joint Administrative

Tribunal any one or more of the States for which it is established, has or have State Tribunal or State Tribunals all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation. - For the purposes of this Sub-section "State Tribunal" means a Tribunal established under Sub-section (2) of Section 4.

(4) Where any suit, appeal or other proceeding stands transferred from any Court or other authority to a Tribunal under Sub-section (1) or Sub-section (2), -

(a) the Court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as as may be, in the same manner as in the case of an application u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under Sub-section (3), the Joint Administrative Tribunal may pro. ;cd (sic) to deal with such case from the stage which was reached before it stood so transferred.

(6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunal (Amendment) Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any Court, shall together with the records thereof, stand transferred on such commencement to such Court.

(7) Where any case stands transferred to a Court under Sub-section (6) that Court may proceed to deal with such case from the stage which was reached before it stood so transferred.

5. A bare look to Section 28 shows that after the enforcement of the Act, on establishment of the Tribunal, jurisdiction of Court or authority constituted under the Industrial Disputes Act, 1947 in respect of matters which fall within their jurisdiction is excluded to deal with and adjudicate the disputes relating to service matters of the employees of the civil service.

6. A bare reading of Section 29 shows that every suit or other proceeding except appeal, pending before any Court or other authority immediately before the date of establishment of a Tribunal under the Act, on the cause of action which is cognizable by the Tribunal shall stand transferred on that date to such Tribunal, and on transfer the Tribunal has to deal with such cases from the stage which was reached before it stood transferred.

7. Admittedly, the suit was instituted after the enforcement of the Act and when the Respondent was in the State service and was holding a civil post, his claim to get medical reimbursement relates to the conditions of his service, therefore, on establishment of Tribunal his suit stood transferred in view of Section 29, and

was liable to be dealt with by the Tribunal and not by the civil Court. It is also not a fact in dispute that the Tribunal is established from 8.11.1991 and has started functioning, therefore, on the date of establishment of the Tribunal, it was the Tribunal alone which only can adjudicate upon all disputes relating to "service matters" as defined in Section 3(q) of the Act. As the claim for medical reimbursement fell within the expression "service matters", therefore, in view of Section 28 of the Act, the jurisdiction of the Civil Court to pass the decree was clearly excluded and hence the decree so passed is a nullity because of the lack of inherent jurisdiction in the civil Court.

8. It is fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. See, *Kiran Singh and Others Vs. Chaman Paswan and Others*,

9. In case of *Sunder Dass Vs. Ram Prakash*, the Supreme Court following its earlier decisions in *Kiran Singh's case (supra)* and in case of *Seth Hiralal Patni Vs. Sri Kali Nath*, reiterated the view and observed in para 3 of the Report thus:

Now, the law is well settled that an executing Court cannot go behind the decree nor can it question its legality or correctness. But, there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the Court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the Court to try the case and a decree which is a nullity is void and can be declared to be void by any Court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing Court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing Court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all.

10. A Full Bench of this Court in the case of *Bhaskarrao Vs. Lilavatibai*, following the decision in *Kiran Singh's case (supra)*, has laid down that where a decree is passed by a Court which inherently lacks in its jurisdiction remains nullity; nullity remains a nullity and can be so declared at any stage, and that can be declared as such by the Executing Court.

11. In the present case, in view of Section 28 of the Act, the Civil Court was not competent to pass the decree; the decree so passed is a nullity and is declared as nullity.

12. Reliance of Shri T.C. Singhal on two Division Bench decisions of this Court in

Dr. S.K. Mathur v. State of M.P. 1991 MPJR SN 15 and Union of India v. Chhota 1993 (11) MPWN 1 S3, is of no help, as the decision in the case of Dr. S.K. Mathur relates to execution of a decree passed by Civil Court touching "service matter" prior to coming into force of the Act, therefore, this Court observed that the execution is not liable to be transferred u/s 29 of the Act. The case of Chhota relates to post-retiral (sic) benefits of a Class IV railway employee of which the order was passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court.

13. Before parting with the case, it would be appropriate to observe that the Petitioner-State in para 4 of its objections filed on 29.9.1993 in Executing Court, has stated that the medical bill of the Respondent has been sent for sanction to Director of Medical Education", Bhopal and the decision on that is awaited. Therefore, though this Court has held the decree as a nullity but, it is expected from the State Government that it shall take a decision expeditiously on the claim of reimbursement of the Respondent/employee as he is now retired. If the reimbursement is sanctioned, there will be no occasion for any litigation. However, if it is declined the Respondent shall be free to approach the Tribunal.

14. In the result, the revision is allowed, decree being a nullity, cannot be executed. Execution proceedings be closed. No costs.