

(1972) 02 DEL CK 0032

In the Delhi High Court

Case No : Letter Patent Appeal No. 22 of 1968

Union of India

APPELLANT

Vs

Navin Bharat

RESPONDENT

Date of Decision : 25-02-1972

Acts Referred:

Citation : (1972) 8 DLT 229 : (1983) 2 ILR Delhi 171

Hon'ble Judges : V.S. Deshpande, J;P.S. Safer, J;B.C. Misra, J

Bench : Full Bench

Advocate : S.S. Chadha, Amarjit Singh, S.N. Chopra and R.L. Roshan, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) An application for revision preferred by Messrs. Navin Bharat (respondents herein) u/s 24(l) of the Displaced Persons (Compensation and Rehabilitation) Act.. 1954 hereinafter called the Act) to the Chief Settlement Commissioner was dismissed by him by the impugned order elated 30th March, 1964 on the sole ground that it was presented after the expiry of 30 days which was the period of limitation prescribed for "a petition for revision under the Act" by rule 104(1) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the Rules). A further revision against the order dated 30th March, 1964 was" dismissed by the Central Government on 1-7-1964. The writ petitions filed by the respondents against these orders was allowed and both these orders were quashed by the learned then Chief Justice of this Court who held that rule 104(1) purporting to prescribe a period of limitation of 30 days for filing a revision u/s 24(1) of the Act was ultra virus the rule-making power conferred on the Government by section 40 thereof specially because section 24(1) itself empowered the Chief Settlement Commissioner to revise an order "at any time" and rule 104(1) could not, Therefore, cut down the period of limitation for filing a revision application u/s 24(1) to 30 days. The Union of India and the authorities acting under the Act have, Therefore, appealed against the above

decision of the learned former Chief Justice.

(2) The question for decision before us Therefore, is the same, namely : Whether the dismissal of a revision petition u/s 24(1) of the Act as barred by the Limitation provided by rule 104(1) of the Rules was illegal ?

(3) To answer this question, it would be useful to examine the scheme of those provisions of the Act" which provide for the three different remedies of appeal, review and revision against orders passed by the various officers acting under the Act including the periods of limitation, if any, for invoking them. The scheme appears to us to be as follows : A. Appeals : (i) First Appeal : Section 22 provides for appeals to the Settlement Commissioner against the orders of Settlement Officer or Managing Officer. (ii) Second Appeal: Section 23 provides for appeals to the Chief Settlement Commissioner against the orders of Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner or an Assistant Settlement Commissioner or a managing corporation.

(4) Each of these appeals has to be filed by the aggrieved person within 30 days from the date of the order appealed against. B. Review : (i) u/s 25(1) an aggrieved person may apply for review of an order of the Settlement Officer u/s 5 from which no appeal is allowed u/s 22 within 30 days from the date of the order to the Settlement Officer for the review of his order. (ii) Clerical or arithmetical mistakes may be corrected at any time by an Officer or authority under the Act.

(5) Revisions : (i) (a) u/s 24(1) of the Act, the Chief Settlement Commissioner may at any time suomotu call for the record of any proceeding under the Act for the purpose of satisfying himself as to the legality or propriety of any order passed by the authorities mentioned in sections 22 and 23 and may pass such order in relation thereto as he thinks fit. (b) Without prejudice to the generality of the foregoing power, if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to him was obtained by fraud, false representation or concealment" of any material fact, then he may pass an view or revision may not be available to an aggrieved party. Such residuary orders could be corrected by the exercise of this inherent power of review provided by section 25(2) or by a suo motu revision under sections 24(1), 24(2) and section 33. The essence of the suo motu powers is that they can be exercised in respect of the orders against which no statutory remedies are available. An aggrieved person could not have been given an unlimited right of appeal, review or revision to be exercised by him at any time in as much as that would have encouraged laches and would have .kept the sword of Damocles hanging on the head of the authorities, and other persons that the aggrieved person may come up at any time in appeal, review or revision to disturb long settled arrangements. The authorities acting under the Act could be entrusted with the exercise of suo motu powers in the interest of justice under sections 25(2), 24(1) and 24(2) and section 33 without

having to do so within a prescribed period of time.

(6) The suo motu powers may be exercised in theory by the authorities concerned without being moved by any one to do so. But in actual practice, the knowledge that some order has to be reviewed or revised suo motu would be obtained by the concerned officer or the Chief Settlement Commissioner or the Central Government only from some interested person. The usual method by which this, information would be given by such a person would be by way of an application. Therefore, in actual practice, applications are made to invoke the exercise of these suo motu powers of review or revision by the interested persons.

(7) It is in this background that we have to understand the rule-making power conferred on the Central Government by section 40 of which the relevant portion is :

"40. Power to make rules. (1) The Central Government may by notification in the Official Gazette, make rules to carry out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: (1) the form and manner in which appeals and applications for review or revision may be preferred or made under this Act and the procedure for hearing such appeals or application for review or revision;"

How should we understand the expression "application for review or revision ?" On the one hand, it certainly includes the application for review u/s 25(1) and the application for revision u/s 24(4). For these statutory rights of review and revision can be enforced by the aggrieved persons only by making the applications within the prescribed period of limitation of 30 days. In this respect, these applications for review and revision stand on the same footing as the "appeals" which also are governed by the statutory period of limitation.

(8) But the question on the other hand is whether the expression "application for review and revision" in section 40(2)(1) of the Act includes applications made by interested persons to persuade an authority, the Chief Settlement Commissioner and the Central Government to exercise their suo motu powers of review and revision. On this question, two views are possible. On one view, the construction of section 40(2)(1) should be made strictly in the light of what the provisions of sections 22, 23, 24(4) and 25(1) require. Applications as such are required to be made only under these provisions for the exercise of the statutory rights of appeal, review and revision- On this view, the Central Government was empowered to make rules u/s 40(2)(1) only in respect of these applications expressly contemplated by these statutory provisions. If section 40(2)(1) is so understood, then rule 104(1) would also have to be similarly understood. Rule 104(1) is as follows:

"104. Procedure for revision. (1) A petition for revision under the Act shall be drawn up and presented in the same manner and within the same period as a

memorandum of appeal and shall be accompanied by a copy of the order sought to be revised."

Just as sections 22 and 23 while giving rights of appeals themselves prescribe the periods of 30 days during which the appeals are to be filed, similarly section 24(4) while giving the right of revision itself prescribes the period of 30 days during which the revision has to be filed before the Central Government. Even then rule 103(1) says that a memorandum of appeal shall be filed within 30 days of the date of the order appealed against. The Central Government was not persuaded to refrain from prescribing this period of limitation for the purpose of filing an appeal in rule 103(1.) of the Rules by the fact that sections 22 and 23 had already prescribed these periods of limitation for appeals and it was quite unnecessary to repeat the same under rule 103(1). In the same way, rule 104(1) can be understood to mean that the Central Government has again prescribed the period of limitation of 30 days for the filing of a petition for revision under the Act even though u/s 24(4) the period of 30 days had already been fixed for it. We are, Therefore, of the view that just as rule 103(1) reproduces the period of limitation already fixed for appeals by sections 22(1) and 23(1), rule 104(1) reproduces the period of limitation already fixed for a revision by section 24(4) of the A.ct. We understand section 40(1) of the Act as giving the power to the Central Government to effectuate section 24(4) in providing for this period of limitation in rule 104(1). With great respect, Therefore, we do not see any conflict between rule 104(1) and section 24(1) in as much as the period of limitation prescribed by rule 104(1) did not apply to an application for revision presented u/s 24(1) at all but only to an application for revision made u/s 24(4).

(9) Just to make the discussion complete, however, we shall consider the contrary argument that section 40(2)(1) enabled the Central Government to frame rules not only regarding the applications for revision to be made u/s 24(4) but also with regard to the other applications for revision which may be made u/s 24(1) to the Chief Settlement Commissioner and u/s 33 to the Central Government. For, we cannot altogether shut our eyes to the fact that in actuality interested persons would move these authorities by making applications to them to persuade them to exercise powers u/s 24(1), section 24(2) and section 33. If section 40(2)(1) is construed to cover these a application for revision also then only the question whether rule 104(1) conflicts with section 24(1), and section 33 would arise. For, sections 24(1) and 33 expressly state that the Chief Settlement Commissioner and the Central Government may exercise these suo motu powers at any time. It must then necessarily follow that they can be moved by the interested persons to exercise these powers at any time.

(10) The scope of the rule-making power u/s 40(1) is to carry out the purposes of the Act. If the purpose of the Act is to enable the Chief Settlement Commissioner and the Central Government to exercise the suo motu powers of revision at any time, it cannot be said that this purpose would be effectuated by rule 104(1) which limits the period of making of an application to move these

authorities to exercise these powers to 30 days.

(11) The scope of section 40(2)(1) is firstly to provide for "the form and manner in which appeals and applications respect, Therefore, we do not see any conflict between rule 104(1) and section 24(1) in as much as the period of limitation prescribed by rule 104(1) did not apply to an application for revision presented u/s 24(1) at all but only to an application for revision made u/s 24(4). Just to make the discussion complete, however, we shall consider the contrary argument that section 40(2)(1) enabled the Central Government to frame rules not only regarding the applications for revision to be made u/s 24(4) but also with regard to the other applications for revision which may be made u/s 24(1) to the Chief Settlement Commissioner and u/s 33 to the Central Government. For, we cannot altogether shut our eyes to the fact that in actuality interested persons would move these authorities by making applications to them to persuade them to exercise powers u/s 24(1), section 24(2) and section 33. If section 40(2)(1) is construed to cover these a application for revision also then only the question whether rule 104(1) conflicts with section 24(1), and section 33 would arise. For, sections 24(1) and 33 expressly state that the Chief Settlement Commissioner and the Central Government may exercise these suo motu powers at any time. It must then necessarily follow that they can be moved by the interested persons to exercise these powers at any time. The scope of the rule-making power u/s 40(1) is to carry out the purposes of the Act. If the purpose of the Act is to enable the Chief Settlement Commissioner and the Central Government to exercise the suo motu powers of revision at any time, it cannot be said that this purpose would be effectuated by rule 104(1) which limits the period of making of an application to move these authorities to exercise these powers to 30 days. The scope of section 40(2)(1) is firstly to provide for "the form and manner in which appeals and applications for review or revision may be preferred." The meaning of "form" in which these applications are to be made is well known. They must be divided into proper paragraphs containing necessary allegations and must end with a prayer clause. The meaning of "manner" is also not difficult to understand. For instance, rule 103(1) says that a memorandum of appeal shall be presented in person, by registered post or through a duly authorised agent. This is the manner of its presentation. Can the further provision in rule 103(1) and rule 104(1) that the appeal or the application for revision must be presented within 30 days of the date of the order complained against be said to be a provision relating to the "manner" of their presentation ? We do not think that the time within which an application is to be presented has to do anything with the manner of its presentation. The provision regarding limitation is a separate provision altogether. This is shown by the fact that in clause (1) of section 40(2) of the Act the three expressions, namely, "the form", "manner" and "the time within which an application" may be made are used with three distinct meanings. It is a well known rule of interpretation of statutes that the same words and expressions used by the Legislature in the same Act are presumed to be used in the same sense. If, Therefore, the words "form" and "manner" are used in clause

(a) of section 40(2) in a sense different from the expression "the time within which an application. may be made" then it would be reasonable to think that the expression "the form and the manner" used in clause (1) of section 40(2) did not include the "time within which" an application for revision is to be made. The power to prescribe a period of limitation for making an application for revision is not, Therefore, contained in the expression "the form and the manner" used in clause (1) of section 40(2).

(12) This clause then proceeds to empower the Central Government to provide "the procedure for hearing such appeals or application for review or revision". If the word 6 HCD/83 3 "procedure" is considered by itself unlimited by the context in which it is used, then in a general sense it would include the law of limitation as distinguished from the law of prescription. (Salmond on "Jurisprudence", Ninth Edition, page 650 and Mohammad Arab Vs. Abdul Waheed, . For, limitation is concerned with barring remedies but not with destroying rights while prescription creates or destroys rights. But as observed by the Supreme Court in AIR 1972 1935 (SC) , "there is a difference between the manner in which the jurisprudential lawyers consider the question and the way in which the Judges view the matter". The Supreme Court, Therefore, decided the appeal before them by construing the meaning of the word "procedure" in the context of the words "to be followed in proceedings before such Court". Their Lordships, Therefore were of the view that such procedure was restricted to proceedings which were already before the Court. It could not Therefore, include the provision of a period of limitation within which the proceedings could be instituted. We have, also, Therefore, to consider whether the word "procedure" is used in such a wide sense in clause (1) of section 40(2). It is only "the procedure for hearing such appeals or application for review or revision" with the construction of which we are concerned. The word "such" means those appeals and applications the provision of form and manner of which is contained in the first part of this clause. The stage to which the second part of the clause refers is the stage of hearing of appeals and applications drafted and presented in accordance with the first part of the clause. It is only when an application is drafted and presented that the stage of its hearing comes. The question of prescribing a limitation for the presentation of an application is antecedent to its presentation It cannot arise after its presentation. Therefore, the "procedure for hearing" is necessarily the procedure after the application is already presented and relates to the manner in which it is to be heard. This is why rules 105 and 107 require a notice of the application to be given and provide that an oral hearing is not necessary in case of a revision u/s 33 of the Act if the Central Government thinks fit to dismiss the same without such an oral hearing. These rules illustrate the meaning of "procedure for hearing" satisfactorily. It is not possible to expand the meaning of "procedure for hearing" to include the limitation for presenting the application for revision. Even if, Therefore, section 40(2)(I) of the Act is construed to include not only the application for revision u/s 24(4) but also such applications as may be made, though not provided for by the

Act, under sections 24(1) and 33, still it is only the form and the manner of 0 presenting these applications and the procedure for hearing which could be provided for by rule 104(1). The language of neither section 40(1) nor of section 40(2)(I) can warrant the provision of a period of limitation for the presentation of applications for revision under sections 24(1) and 33. If rule 104(1) is construed to provide for limitation of 30 days for applications under sections 24(1) and 33, then in that respect alone it would be ultra virus the rule-making power of the Central Government u/s 40.

(13) If section 40(2)(I) is construed not to refer to applications under sections 24(1), 24(2) and section 33 at all then the application for revision made by the respondents to the Chief Settlement Commissioner could not be dismissed by him on the sole ground of limitation inasmuch as rule 104(1) did not apply to that application at all. Alternatively, if section 40(2)(I) is construed to include applications for revision under sections 24(1), 24(2) and section 33, still rule 104(1) would be valid insofar as it refers to the form of drafting and the manner of presentation of the application for revision and the procedure for its hearing. It would, however, be invalid insofar as it purports to provide for a period of limitation for their presentation. In this view also, therefore, the application for revision could not be dismissed validly by the Chief Settlement Commissioner by the impugned order dated 30-3-1964. On either view, Therefore, the impugned order was bad and was rightly quashed. The order of the Central Government dated 1-7-1964 upholding the impugned order was also bad and was also rightly quashed.

(14) In *Smt. Balwant Kaur v. Chief Settlement Commissioner* Air 1964 Punj 33(, a Full Bench of the Punjab High Court were of the view that the meaning of rule 104(1) in regard to an application for revision made u/s 24(1) was the same as the meaning of rule 103(1) in regard to the filing of an appeal. With great respect, we would point out that rule 103(1) merely repeated the provisions of sections 22(1) and 23(1) in respect of the period of limitation within which appeals had to be filed. Its validity could not, Therefore,, be questioned. The provisos to sections 22(1) and 23(1) also empower the Settlement Commissioner and the Chief Settlement Commissioner to condone the delay in the presentation of the appeals. Rule 104(1) on the other hand was not backed by section 24(1) in this respect. On the contrary, in prescribing a period of limitation of 30 days for filing a revision application u/s 24(1) rule 104(1) conflicted with section 24(1) which allows the Chief Settlement Commissioner to exercise the power of suo moto revision there under at any time. Since the laying down of the period of limitation in rule 104(1) was itself outside the rule-making power of the Central Government as pointed out above, we are unable to agree with their Lordship when they observed as follows :

" ORDINARILY, a petitioner will have to file his revision within 30 days, unless, of course, there were special circumstances, which prevented him from doing so. The invariable rule in such cases is that the aggrieved party must approach the

Chief Settlement Commissioner at the earliest possible moment. Where there has been a great unexplained delay or laches in filing the revision, the Chief Settlement Commissioner will naturally refuse to interfere. It is difficult to lay down any hard and fast rule in this connection. It will depend on the facts of each particular case as to whether there are grounds for entertaining the revision after the period of limitation prescribed in the rules. However, the Chief Settlement Commissioner suo motu can interfere with the orders of his subordinates and no limitation is prescribed for that either in the rules or in the statute, but it is understood that he would interfere within a reasonable time depending on the circumstances of each case. It is assumed that he would exercise his discretion in a reasonable manner and not arbitrarily."

(15) In our view, it would be incongruous to hold that while an applicant is restricted by the period of limitation of 30 days laid down by rule 104(1) and must file the application for revision within that period, the Chief Settlement Commissioner would, however, be free to consider the same application and give a decision on the same at any time. This would mean that the Chief Settlement Commissioner must first reject the application as barred by limitation and then proceed to decide it even after the expiry of period of limitation as he is entitled to do so u/s 24(1) if he finds it expedient to say anything about the merits of the application and not to content himself by merely dismissing it on the ground of limitation.

(16) In *Purshottam Lal Dhawan Vs. Dewan Chaman Lal and Another*, , the problem before the Supreme Court was somewhat different. Section 27(1) of the Administration of Evacuee Property Act, 1950 provided that the Custodian-General may at any time either on his own motion or on application made to him in this behalf exercise the power of suo motu revision. Rule 31(5) stated that a petition for revision shall ordinarily be made within 60 days of the date of the order sought to be revised. Their Lordships of the Supreme Court reconciled the apparent conflict between the words "at any time" in section 27 and the period of 60 days laid down as limitation for filing an application for revision in rule 31(5) by emphasising the word "ordinarily" with the result that even application filed after 60 days would not be barred by limitation. Their Lordships at pages 1372-1373 observed that "rule 31(5) does not prescribe any limitation on the Custodian-General to exercise suo moto his revisional power" and that it was a rule of guidance as shown by the use of the word "ordinarily". This method of reconciliation between section 24(1) of the Act and rule 104(1). of the rules before us is not possible in the absence -of the use of any such word as "ordinarily" in rule 104(1). But the reasoning of the Supreme Court in this case would support our view that the words "at any time" used in section 24(1) of the Act would not tolerate the provision of limitation in rule 104(1).

(17) We Therefore, uphold the decision appealed against on the ground that no period of limitation was laid down by rule 104(1) for an application for revision presented to the Chief Settlement Commissioner u/s 24(1) of the Act. If,

however, rule 104(1) were to be constructed as laying down such a period of limitation, then to that extent it would be ultra virus sections 24(1) and 40 of the Act. But it is unnecessary to hold it to be ultra virus inasmuch as its legitimate scope is restricted to the providing of limitation for an application for revision u/s 24(4) only. The appeal is, Therefore, dismissed though for reasons somewhat different from those given by the learned former Chief Justice in allowing the writ petition. In view of the partial success and failure of both the parties on the question of law, we make no order as to costs.