

(1966) 06 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 59 of 1965

Union of India (UOI)

APPELLANT

Vs

Rajkumar Rajinder Singh and Others

RESPONDENT

Date of Decision : 01-06-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 1, 115
General Clauses Act, 1897 — Section 3(8)
Government of Union Territories Act, 1963 — Section 55

Citation : AIR 1967 HP 1

Hon'ble Judges : Om Parkash, J.C.

Bench : Single Bench

Advocate : K.L. Misra, General, U.P and Prithvi Raj, for the Appellant; Mohan Lal and Chhabil Dass, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Om Parkash, J.C.

1. This revision-petition, against an order of the learned District Judge, Mahasu, raises an important question of law, with respect to the appointment of recognized agents, on behalf of the Central Government, for purposes of signing and verifying plaints and written-statements, and acting in suits, instituted, against that Government in Himachal Pradesh, a Union territory. The determination of the question involves the consideration of Order XXVII of the CPC and of the following two notifications :

(1) Government of India, Ministry of Law, Notification No. S. R. O. 282 dated the 21st January, 1958.

"In pursuance of Clause (1) of Article 239 of the Constitution and in supersession of the notification of the Government of India in the Ministry of Law, No. S. R. O. 699, dated the 8th April. 1953, the President hereby directs that the functions assigned to the Central Government by Order XXVII of the First Schedule to the

CPC 1908 (5 of 1908), shall be discharged, in relation to a Union territory other than Delhi, by the Administrator of that Union territory, by whatever designation he may be appointed. "

(2) Himachal Pradesh Administration, Law Department Notification No. LR 107-420/54. dt. the 21st April, 1961.

"In exercise of the powers vested in him under Rules 1 and 2 of Order XXVII of the Code of Civil Procedure, read with Government of India, Ministry of Law Notification No. S. R. O. 282 dated the 21st January, 1958 and In supersession of all the previous Notifications on the subject, the Lieutenant Governor, Himachal Pradesh is pleased to authorise all the Collectors of the Districts in Himachal Pradesh and all Secretaries, Under-Secretaries and Heads of Departments of Himachal Pradesh Administration to act for the Central Government, to sign and verify plaints and written statements in suits by or against the Central Government and also to act for the Central Government in respect of any judicial proceeding. This Notification shall not affect any act already done on the basis of the previous Notifications. "

2. The circumstances giving rise to the aforesaid question of law may be set forth :

Respondent No. 1 had filed a suit against the Central Government and others for a declaration and the issue of a perpetual injunction that he was the owner of a large tract of land, described in the plaint, and was entitled to cut and remove trees and other produce from the land and that the Central Government and the Government of Himachal Pradesh be restrained, by the issue of a perpetual injunction, from interfering, In any manner with his rights in the land, the trees and the produce. The suit was contested, on behalf of the Central Government and the Government of Himachal Pradesh. A joint written statement was filed. The written statement was signed and verified by the Secretary (Forests) to the Himachal Pradesh Government. The Secretary (Forests) had appointed Shri Prithvi Raj advocate as counsel for the Central Government.

An application was put in, on behalf of respondent No. 1, questioning the competence of the Secretary (Forests) to sign and verify the written statement or to appoint counsel, on behalf of the Central Government. It was contended that the Secretary (Forests) had no authority to sign the written statement and to appoint counsel, on behalf of the Central Government and that as such there was no valid written statement and no valid appearance, on behalf of the Central Government. It was prayed that proceedings against the Central Government may be ordered to be ex parte. The application was opposed, on behalf of the Central Government. The contention of respondent No. 1 that the written statement and the appearance, put in, by the counsel, were not valid was repudiated. It was pleaded that the Lieutenant Governor (Administrator) Himachal Pradesh, who had been authorised, by the President, by the Notification dated the 21st January, 1958, to discharge the functions of the

Central Government under Rules 1 and 2 of Order XXVII of the Code of Civil Procedure, had authorised, by the Notification dated the 21st April, 1961, the Secretaries and other officers of the Government of Himachal Pradesh, mentioned therein, to sign and verify written statements and to act on behalf of the Central Government and that Secretary (Forests) was, therefore, competent to "sign the written statement and to appoint counsel on behalf of the Central Government

3. The learned District Judge, Mahasu, who was seized of the suit, accepted the contention of respondent No. 1 that the Secretary (Forests) had no authority to sign and verify the written statement or to appoint counsel, on behalf of the Central Government and that as such there was no proper written statement and no proper appearance, on behalf of the Central Government. The view of the learned District Judge was that the import of the Notification dated the 21st January, 1958, was that the Administrator of a Union territory was authorized, personally, to sign plaints and written statements, on behalf of the Central Government and that he could not delegate those functions to other officers and the Notification dated the 21st April, 1961, authorizing_ Secretaries and other officers to sign pleadings on behalf of the Central Government was ultra vires of the powers of the Administrator and was invalid.

4. The Central Government has come up in revision against the decision of the learned District Judge. It was contended, on its behalf, that the learned District Judge was in error in holding that the Notification dated the 21st January, 1958, had merely authorized the Administrator to sign pleadings and that the Notification dated the 21st April, 1961, amounted to delegation of powers by the Administrator and was invalid. It was pointed out that the plain meaning of the Notification dated the 21st January, 1958, was that the Administrator was authorized to discharge the functions of the Central Government under order XXVII, CPC and that the function of the Central Government under Rule 1 of that Order was to appoint persons or signing pleadings on its behalf and not to sign pleadings itself. It was, further, pointed out that by virtue of the Notification dated the 21st January, 1968, the Administrator could appoint persons to sign pleadings on behalf of the Central Government under Rule 1, Order XXVII, CPC and that the Notification dated the 21st April, 1961, was not ultra vires of the powers of the Administrator.

5. On the other hand, it was contended, on behalf of respondent No. 1, that the Notification dated the 21st January, 1958, authorised the Administrator only to sign the pleadings and that the Administrator could not delegate that function to the Secretaries or other officers and the Notification dated the 21st April, 1961, was ultra vires of the powers of the Administrator.

6. Rule 1, Order XXVII, CPC lays down that in any suit, by or against the Government, the plaint or written statement shall be signed by such person as the Government, may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is

acquainted with the facts of the case. "Government", in Rule 1. means the Central Government when the suit is by or against the Central Government, vide Rule 8B. "Central Government" has not been defined in the Code of Civil Procedure. That expression has been defined in Section 3(8) of the General Clauses Act. Clause (b) of Section 8 (8) provides that "Central Government" in relation to anything done or to be done after the commencement of the Constitution, means the President and shall Include, in relation to the administration of a Union Territory the Administrator thereof acting within the scope of the authority given to him under Article 289 of the Constitution. The President has, under the aforesaid Article, directed, by Notification dated the 21st, January, 1958, that functions assigned to the Central Government by Order XXVII, Code of Civil Procedure, shall be discharged in relation to a Union territory other than Delhi by the Administrator of that Union territory. The function of the Central Government under Rule 1 of Order XXVII is to appoint persons for signing and verifying plaints and written statements in suits, by or against the Central Government. That function, by virtue of the Notification dated the 21st January, 1968, and Clause (b) of Section 3(8), General Clauses Act, could be discharged by the Administrator. The Administrator was, therefore, competent to appoint persons to sign and verify written statements, on behalf of the Central Government, in suits instituted in Himachal Pradesh. The Notification dated the 21st April, 1961, was not ultra vires of the powers of the Administrator.

7. The contention that the Notification, dated the 21st April, 1961, amounted to delegation of powers by the Administrator and was bad has got no basis and is not sound. As already stated, the Notification dated the 21st January, 1958, authorized the Administrator to act as Central Government in appointing persons for signing pleadings on behalf of the Central Government. It did not, in terms, authorize him merely to sign pleadings himself, The Administrator did not delegate any of his powers to persons appointed to sign pleadings on behalf of the Central Government, on the basis of Notification dated the 21st April, 1961.

8. Reference was made, on behalf of respondent No. 1, to certain Notifications of the Central Government, appointing persons to sign and verify pleadings and to act on its behalf and it was contended that those Notifications led to the inference that it was only the Central Government, and not the Administrator, which could appoint persons for signing pleadings on its behalf. It is unnecessary to refer to the Notifications in detail. Suffice it to say that the Administrator, when appointing persons to sign pleadings under Order XXVII, Rule I Code of Civil Procedure, acts as Central Government, so far as a Union territory is concerned. The Notifications, relied upon, did not relate to a Union territory. They related to the administration of the Departments of the Central Government. The Notifications do not lead to the inference that the Administrator, as Central Government, cannot appoint persons to sign pleadings, under Rule 1, Order XXVII. Code of Civil Procedure.

9. As already stated, the Administrator (Lieutenant Governor) Himachal Pradesh

possessed powers to authorize persons to sign pleadings on behalf of the Central Government in suits relating to the Administration of Himachal Pradesh. The Notification dated the 21st April, 1961, appointing Secretaries and other officers to sign pleadings was within the powers of the Administrator and the Secretaries etc, were competent to sign pleadings, on behalf of the Central Government.

10. The suit, out of which the present revision-petition has arisen, relates to the Forest Department of Himachal Pradesh. The Secretary (Forests) was, therefore, the appropriate officer to sign and verify the written statement, filed in the suit. The written statement signed and verified by the Secretary (Forests) was a valid one.

11. The next question is whether the Secretary (Forests) was competent to appoint counsel on behalf of the Central Government. The appointment of counsel would amount to a contract between the Central Government and the counsel. The point is whether the Secretary (Forests) was competent to enter into a contract on behalf of the Central Government in connection with the administration of Himachal Pradesh. All contracts, in connection with the administration of a Union territory, are contracts made in the exercise of the executive power of the Union, vide Section 55 (a), the Government of Union Territories Act. Article 299 of the Constitution provides that all contracts made in the exercise of the executive power of the Union shall be expressed to be made by the President and all such contracts shall be executed on behalf of the President by such person and in such manner as he may direct or authorise. The President has, by Government of India, Ministry of Law, Notification No. G. S. R. 1161 dated the 1st December, 1958, authorised certain officers to execute contracts, referred to in Article 299, on his behalf, with respect to the Ministries of the Central Government and Union territories. Part XXV A of the Notification relates to the Union territory of Himachal Pradesh. Items Nos. 1 and 10 of that Part show that the Secretary (Forests), who is admittedly the Head of the Forests Department, was competent to execute the contract of appointing counsel, on behalf of the Central Government. The appointment of Shri Prithvi Raj advocate on behalf of the Central Government, by the Secretary (Forests), was a valid one.

12. The learned District Judge was clearly in error in holding that there was no valid written statement and no valid appearance on behalf of the Central Government, in the suit

13. Before parting with the case, an objection, raised, on behalf of respondent No. 1, may be disposed of. It was contended that even if it be held that the learned District Judge had erred in construing the Notifications dated the 21st January, 1958 and the 21st April, 1961, and in holding that the last-mentioned Notification amounted to delegation of powers by the Administrator and was bad, this Court should not interfere with the decision, though erroneous, in revision. Reliance, for this contention, was placed on *Ratilal Balabhai Nazar Vs. Ranchhodbhai Shankarbhai Patel and Another*, In this authority, it was observed that erroneous construction placed upon a statute by the trial Court does not

amount to exercising jurisdiction illegally or with material irregularity and would not furnish a ground for interference u/s 115. Civil Procedure Code.

14. Section 115, CPC is not applicable to Himachal Pradesh, vide sub-para (3) of Paragraph 35 of the Himachal Pradesh (Courts) Order 1948. Revisional powers, on the Court of the Judicial Commissioner, Himachal Pradesh. have been conferred, by paragraph 35 aforesaid. The relevant portion of that paragraph may be cited:

"The Court of the Judicial Commissioner may call for the record of any case which has been decided by a Civil Court subordinate to it and in which no appeal lies to it. and (a) if the Civil Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of Its jurisdiction with material irregularity, or

(b) if on an application made to it the Court of the Judicial Commissioner is of opinion that there is an important question of law or custom involved and that such question requires further consideration, the Court of the Judicial Commissioner may make such order in the case as it thinks fit."

(The rest of the paragraph is not relevant for our present purposes.)

15. It is clear that paragraph 36 confers wider revisional powers on this Court than are contained in Section 115, Code of Civil Procedure. The revisional powers, conferred by paragraph 35, are not confined to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it as in the case of Section 116, but can also be invoked in a case (subject to the limitation about the value of the suit which is not applicable to the present suit) where a Subordinate Court has erroneously decided an important question of law or custom. In the present case, the question whether the Administrator of a Union territory can authorise persons to sign and verify complaints and written statements on behalf of the Central Government in suits pending in the Union territory is an important question of law. The decision of the learned District Judge on the question is palpably erroneous. The question requires further consideration. This Court is justified in interfering with the order of the learned District Judge, in revision, under paragraph 35, aforesaid. The authority *Ratilal Balabhai Nazar Vs. Ranchhodbhai Shankarbhai Patel and Another*, cited on behalf of respondent No. 1, is u/s 115, CPC and is not applicable to the facts of the present case.

16. As a result of the above discussion, the revision-petition is allowed. The order of the learned District Judge holding that there was no valid written statement and no valid appearance on behalf of the Central Government in the suit, is set aside. The suit is remitted to him for disposal in accordance with law, keeping in view the observations, made by this Court.

17. As the point, involved, in the revision-petition was of first impression, the parties are left to bear their own costs of the revision-petition.