

(1955) 01 AP CK 0017
In the Andhra Pradesh High Court
Case No : S.R. No. 203-A of 1954

V. Lakshmi Reddi

APPELLANT

Vs

Collector and Addl. Dist. Magistrate, Kurnool and Another

RESPONDENT

Date of Decision : 10-01-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1955 AP 178

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : O. Chinnappa Reddy, for the Appellant; Asst. Govt Pleader, for the Respondent

Judgement

(1) This is petition for the issue of a Writ of Certiorari to quash the proceedings in H.O.M. 3-212 - M/53 dated 29.3.1953 of the Collector and Additional District Magistrate of Kurnool as affirmed by the Board of Revenue (Andhra) in its B. P. Pt. 792 dated 1.3.1954.

(2) The office has taken objection to the maintainability of this writ in view of the decision of the learned Chief Justice in -- Venkayala Janaiah Vs. Board of Revenue (Andhra) and Another, . Following the decision of the Supreme Court in -- Election Commission, India Vs. Saka Venkata Subba Rao and, , the learned Chief Justice held that the Board which is situated in the City of Madras is not within the area of the Andhra State, over which the High Court of Andhra has jurisdiction and that no Writ under Art. 226 can be issued to it. I followed the decision of the learned Chief Justice in - Vishakapatnam Co-operative Motor Transport Society Ltd. Vs. M. Subba Rao and Another,

(3) The learned Government Pleader, to whom notice has been ordered submits that the respondents are willing to waive the objection as to jurisdiction. In Vishakapatnam Co-operative Motor Transport Society Ltd. Vs. M. Subba Rao and Another, , I have considered the question as to whether there can be a waiver of objection to jurisdiction of this Court, to issue a Writ and held that the doctrine of

waiver cannot be invoked in a case where there is total want of jurisdiction.

(4) Mr. Chinnappa Reddy, the learned Counsel for the petitioner contends that the Writ is maintainable as the order sought to be quashed is really that of the District Collector, Kurnool, who is amenable to the jurisdiction of this court and that the order of the Board of Revenue is only an appellate order confirming the order of the Collector. He relied upon two decisions of the Rajasthan High Court -- Madan Mohan Vs. Bankatlal and Others, (D) and -- Har Prasad Vs. Union of India (UOI) and Another, (E), and also the decision of the Travancore-Cochin High Court in -- "Thangalakunju Musaliar v. Venkitachalam Potti", AIR 1954 TC 131. In "Madan Mohan v. Bankatlal (D)" Wanchoo C. J. and Dave J. held that the fact that the High Court cannot issue any writ, direction or order to the Election Commission is no reason why it should not be able to interfere with the order of the Election Tribunal at Bikaner, if such interference is otherwise warranted. They held that if the High Court were to come to the conclusion that the Bikaner Tribunal exceeded its jurisdiction, the High Court can besides quashing the decision of the Tribunal direct the Returning Officer, who is within its jurisdiction, not to hold a bye-election in pursuance of the order of the Election Tribunal.

(5) In "Har Prasad v. Union of India (E)" the facts were these. The petitioner before the High Court was the Head Travelling Ticket Examiner, who on his periodical eye-sight examination was ordered by the Chief Traffic Inspector, Bandikui to rejoin as Head Ticket Collector. The petitioner filed an appeal to the D. T. S. Bandikui, R. S. Ajmer, General Traffic Manager, Bombay and General Manager, Bombay. As a result of these representations, he was asked to appear again before the Chief Medical Officer, Bombay, who maintained his earlier opinion. The petitioner then applied under Art. 226 making the Union of India and the General Manager, Western Railway, as respondents to this petition. An objection was taken that the General Manager had his office outside the jurisdiction of the High Court of Rajasthan and that, therefore, no writ could be issued against him.

It was held that the original order of posting the petitioner, as Head Ticket Examiner, was passed by the C. T. I., Bandikui, and it was that order which was under question in the petition, and that it was immaterial that the petitioner's efforts in setting aside that order right up to the General Manager proved fruitless and that the High Court had jurisdiction to entertain the petition.

Bapna and Ranwat JJ. held that there are two classes of cases where the respondent, a head of a department against whom relief under Art. 226 is sought, is resident outside the jurisdiction of a particular High Court. The first is, where the order is passed by an officer, who is residing or is having his office within the jurisdiction of the High Court and the superior Officer, who resides outside the jurisdiction only confirms that order & dismisses the appeal made by the Subordinate Officer, and the other where the Superior Officer residing outside the jurisdiction of the High Court purports to set aside the order of the Subordinate Officer and substitutes his own order for the same.

The learned Judge observed that in the first class of cases, the superior Officer is made a party because the petitioner wants to avail himself of the remedy provided by the rules, but in the second class of cases, the prayer would directly involve a direction to the superior Officer, who is not within the jurisdiction. Making this distinction, the learned Judges held that in a case where the order of a subordinate Officer is affirmed, by an order of the superior officer, then, notwithstanding the fact that the superior Officer resides outside the territorial limits of the jurisdiction of the High Court, a writ could be issued.

(6) In "Thangalakunju Musaliar v. Venkitachalam Poti (FB) (F)", the petitioner in a petition under Art. 226 sought a writ of prohibition against the Income Tax Officer, Trivandrum and the Income Tax Investigation Commission, represented by its Secretary, New Delhi, and Koshi C. J., and Subramania Iyer and M. S. Menon JJ. held that where one of the respondents to the petition is amenable to the jurisdiction of the High Court by reason of his residence and location of his office within the State and all the activities complained about are activities confined to the State, the High Court would be competent to entertain an application under Art. 226, even if the other respondent is not so amenable to its jurisdiction particularly when a writ against the 1st respondent, if issued, is sufficient to stop the mischief complained against.

(7) In "Venkayala Janaiah v. Board of Revenue (Andhra) (A)" the learned Chief Justice was no doubt dealing with a case where the Order of the Board of Revenue sought to be quashed was an order reversing that of the Collector and the contention raised in this Writ Petition did not arise for consideration therein.

(8) In -- K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., their Lordships of the Supreme Court had to consider the question as to whether the Punjab High Court had jurisdiction to issue writs under Art. 226 of the Constitution of India against the Income Tax Investigation Commission, Delhi, which was holding an inquiry in respect of assessee of Uttar Pradesh who were originally assessed in that State. The Supreme Court referred to its earlier decision in Election Commission, India Vs. Saka Venkata Subba Rao and, and also the observations of the Judicial Committee in -- AIR 1943 164 (Privy Council) and at p. 210 of that report stated thus :

"There are only two limitations placed upon the exercise of these powers by the High Court under Art. 226 of the Constitution ; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" that is to say, the Writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories", and this implies that they must be amenable to its jurisdiction, either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Art. 226 of the Constitution is to be determined".

(9) After the very authoritative pronouncements of the Supreme Court in Election Commission, India Vs. Saka Venkata Subba Rao and, and K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., I am unable to follow the decisions of the Rajasthan High Court and the Travancore-Cochin High Court referred to above.

(10) The test is whether the Board of Revenue to whom the writ is sought to be issued is amenable to the jurisdiction of this Court, either by residence or location within its territories. Judged by this test it must necessarily be held that this Court has no jurisdiction to issue a writ against the Board of Revenue which is situated at Madras.

(11) I find it difficult to appreciate the distinction between a reversing order and a confirming order of an appellate authority, so far as the exercise of jurisdiction under Art. 226 is concerned. In my opinion, once there is an appeal to the Board of Revenue the final order is that of the Board of Revenue because the appeal destroys the finality of the order of the District Collector. It is a well settled principle of law that an appeal destroys the finality of the decision and the judgment of the lower Court is superseded by the judgment of the Court of appeal. This is so in all cases where an order is reversed, modified or affirmed on appeal. If so, the order sought to be quashed must be deemed to be that of the Board of Revenue, which is situated outside the territorial jurisdiction of this Court, and when a writ is sought to be issued, it makes no difference whether the order of the Board of Revenue is merely an affirming one or an order of reversal.

In both cases the Order of the Board of Revenue is the order sought to be quashed, and it must follow that this writ is not maintainable in this Court. In fact, I asked the learned counsel for the petitioner whether he would be willing to confine his relief in the writ petition against the District Collector alone and whether he was prepared to say that he is not asking for any relief against the Board of Revenue. The petitioner's learned counsel is not willing to do so. I have, therefore, reached the conclusion that so long as the petitioner seeks relief in a petition under Art. 226 against the Board of Revenue, which is outside the territorial jurisdiction of this Court, it must be held that the petition is not maintainable.

(12) Any other view would also lead to this anomaly namely, that this High Court may issue a Writ against the District Collector, who is subordinate to the Board of Revenue. Whereas, the Madras High Court may issue a Writ against the Board of Revenue, and this, as has been pointed out by the learned Chief Judge in "Vankayala Janaiah v. Board of Revenue (Andhra) (A)" may result in conflicting orders and jurisdiction.

(13) I must, therefore, hold that this petition in so far as it is directed against the Board of Revenue, Andhra, at Madras does not lie, and cannot be entertained in this Court.

(14) Order accordingly.