

RAJASTHAN HIGH COURT

Ramesh Chand Tiwari

Vs.

Board of Revenue

Special Appeal (Writ) Nos. 1383 of 1996 and 113 of 1997

(Shiv Kumar Sharma, K.S. Rathore and Shashi Kant Sharma, JJ.)

24. 03.2005

JUDGEMENT

Shiv Kumar Sharma, J.

1. Following question has been referred to us for adjudication:-

"Whether intra Court appeal to the Division Bench is maintainable against the order/judgment rendered by the learned single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India?"

SUPERVISORY JURISDICTION

2. In our Endeavour to answer the question, we may begin with noticing that the power of superintending control conferred by Article 227 of the Constitution is similar to the control exercised by the Court of Kings Bench over the inferior Courts of England under the Common Law. The history of Article 227 and its scope were considered by the Apex Court in *Waryam Singh v. Amarnath*¹ and it was indicated that the material part of Article 227 substantially reproduces the provisions of Section 107 of Government of India Act 1915, except that the power of superintendence has been extended by the Article also to Tribunals.

The history of Article 227 suggests that the framers of our Constitution believed that they were restoring to the High Courts the power which had been taken away by Section 224(2) of Government of India Act, 1935. In the original Constitution of India Article 227 was devised to empower the High Court to exercise its supervisory jurisdiction not only over inferior Courts within its territory but also over statutory or

quasi judicial Tribunals to ensure that all these inferior bodies exercise the powers conferred on them 'within the bounds of their authority' and 'in a legal manner'. But the supervisory jurisdiction of the High Courts over all administrative Tribunals was abolished by the 42nd Amendment Act, 1976 on the ground that it caused delay and obstruction in the implementation of Government Policies. The Pre-1976 position has however been resolved by the 44th Amendment Act 1978, so that all the Tribunals other than Military Tribunals are again brought under the supervision of the High Court.

3. Article 227 of the Constitution has been the subject matter of various decisions. In *Baby v. Travancore Devaswom Board*.² the Apex Court held that the powers of the High Court under Article 227 are in addition to the powers of revision conferred on it by other legislation.

4. In *Achutananda Baidya v. Prafulla Kumar Gayen*³ their Lordships of the SC observed that the power of superintendence of the High Court under Article 227 is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. The High Court can interfere under Article 227 in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material or resulting in manifest injustice.

5. In *Surya Dev Rai v. Ramchandra Rai*⁴ the Apex Court held that the power of the High Court under Articles 226 and 227 of the Constitution is always in addition to the revisional jurisdiction conferred on it. The curtailment of revisional jurisdiction of the High Court under Section 115 Civil Procedure Code by Amendment Act 46 of 1999 does not take away and could not have taken the constitutional jurisdiction of the High Court to issue a writ of *Certiorari* to a Civil Court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. It was further indicated that power to issue a writ of *certiorari* and the supervisory jurisdiction are to be exercised sparingly and when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate Court, care, caution and circumspection need to be exercised.

6. In *Sadhana Lodh v. National Insurance Co. Ltd.* ⁵ the Apex Court held that supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision.

7. In *Mani Nariman Daruwala v. Phiroz N. Bhatena*, ⁶ the Apex Court indicated that in exercising its jurisdiction under Article 227 of the Constitution of India the High Court could set aside or ignore the findings of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion.

8. Supervisory jurisdiction may also be exercised by the High Court through writ of certiorari. With regard to the character and scope of writ of *certiorari* following proportions may be taken as established:-

- (i) The Court issuing *certiorari* acts in exercise of supervisory and not appellate jurisdiction;
- (ii) Certiorari will be issued for correcting errors of jurisdiction;
- (iii) The power of issuing a writ of *certiorari* is wider than the power of revision.

9. In *State v. Navjot Sandhu* ⁷ the Apex Court propounded thus:

- (i) The jurisdiction under Article 227 can not be limited or fettered by any Act of the State Legislative;
- (ii) The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order :
- (iii) The power must be exercised sparingly, only to keep subordinate Courts and Tribunals within the bounds of their authority to see that they obey the law.

The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also can not be exercised "as the clock of an appeal in disguise".

10. In *Shiv Shakti Co-operative Housing Society v. Swaraj Developers* ⁸ their Lordships of the SC observed that even if revision is held to be not maintainable, there should not be a bar on a challenge being made under Article 227 of the Constitution.

11. Conjoint reading of the afore-quoted case law would reveal that writ of *certiorari* under Article 226 is an exercise of its original jurisdiction by the High Court whereas supervisory jurisdiction under Article 227 is not an original jurisdiction, but it is akin to appellate, revisional or corrective jurisdiction.

INTRA COURT APPEAL

12. Having carefully examined the very nature of supervisory jurisdiction, we will now briefly refer the relevant case law relating to intra Court appeal.

13. In *re Tripuliswami Naidu* ⁹ *Aidal Singh v. Karan Singh*, ¹⁰ *Sukhendra Bikash Varua v. Hare Krishna*, ¹¹ and *Braham Dutt v. People's Co-operative Society*, ¹² it was held that the jurisdiction vested in the High Court under Article 227 is a revisional jurisdiction and accordingly no intra Court appeal is competent from an order passed by a single Judge in exercise of such jurisdiction.

14. The Apex Court in *Umaji Keshao Meshram v. Radhikabai*, ¹³ held that the appeal filed against the order of the single Judge to the Division Bench was rightly dismissed as being not maintainable because under Clause 15 of the Letters Patent an intra-Court appeal against the decision of the single Judge exercising jurisdiction under Article 227 is barred.

15. The principle laid down in the case of *Umaji Keshao Meshram* has been reiterated in *Sushila Bai Laxminarayan Mudliyar v. Nihal Chand*, ¹⁴ and in *Ratnagiri. D. C. Co-operative Bank v. Dinkar Kashinath Watv* ¹⁵ the Apex Court explained and clarified the position of law declared by it in *Umaji Keshao Meshram*, (AIR 1986 SC1272).

16. In *Lokmat News Papers Pvt. Ltd. v. Shankar Prasad* ¹⁶ the Apex Court held that if a single Judge exercises jurisdiction under Article 226. Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be

maintainable.

17. Division Bench of Rajasthan High Court in *Anandi Lal v. State*,¹⁷ followed the ratio indicated in *Umaji Keshao Meshram*, (AIR 1986 SC1272) and held that if the Court comes to the conclusion that the petition could be filed only under Article 227, intra Court appeal before the Division Bench against the order of single Judge would not be maintainable.

18. Again in *Mohan Lal v. Lal Chand*,¹⁸ the Division Bench ruled that intra Court appeal against the order of single Judge is not maintainable where the writ petition filed before the single Judge show that it is purely under Article 227 of the Constitution.

19. In *Punjab National Bank v. Purewal*¹⁹ it was however observed by another Division Bench that intra Court appeal lies against the order passed by the single Judge in exercise of Article 227 of the Constitution.

20. In *Sher Singh Meena v. Chief Engineer*,²⁰ the principle laid down by the Apex Court in *Umaji Keshao Meshram* was followed and it was held that no intra Court appeal lies to the Division Bench against the judgment order of the single Judge rendered in exercise of supervisory jurisdiction under Article 227 of the Constitution.

HIGH COURT ORDINANCE RULES AND ARTICLE 225 OF THE CONSTITUTION :

21. We may pause here to cast a look backward to see how Rajasthan High Court Ordinance 1949 (for short 'ordinance 1949') came into existence. The Ordinance was promulgated by His Highness the Raj-pramukh on June 21, 1949 in exercise of the powers conferred by paragraph (3) of Article X of the Covenant and all other powers enabling him in this behalf. Section 18 provides filing of appeal to the High Court from Judgment of Judges of the Court. It reads as under:-

"18. Appeal to the High Court from judgment of Judges of the Court.- (1) An appeal shall lie to the High Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under Section 43 or in the exercise

of criminal jurisdiction of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the Judgment declares that the case is a fit one for appeal."

22. The Ordinance 1949 repealed with the promulgation of Judicial Administrative Laws (Repeal) Act, 2001 and the following question was referred for determination to Full Bench in *State of Rajasthan v. R. C. Misra*, ²¹ :-

"Whether the right to file intra Court appeals stands abrogated with the repealing Act coming into force on August 29, 2001 by which the Rajasthan High Court Ordinance 1949 was repealed notwithstanding the several other existing provisions preserving the powers of the High Court in the matter of administration of justice as contained in Article 225 of the Constitution read with Sections 52, 54 and 57 of the State Re-organization Act, 1956?

Answering the reference the Full Bench observed thus:-

"The right of intra Court appeal does not stand abrogated with the Repealing Act of 2001 coming into force on August 29, 2001 by which the Rajasthan High Court Ordinance 1949 was repealed. The right to the intra Court appeal in the High Court of Judicature for Rajasthan and the jurisdiction of the Division Bench to hear the appeal against the judgment of the learned single Judge of this Court as was vested under Article 225 of the Constitution and later on conferred under Section 52 of the State Reorganisation Act 1956 and the Rajasthan High Court Rules, therefore, was not affected or abrogated by the repeal of the Rajasthan High Court Ordinance 1949 which has long ceased to be governing statute in respect of subjects dealt with under Article 225 of Chapter V, Part VI of the Constitution and on the subject matters dealt with in Part V of the State Reorganization Act 1956."

23. At this juncture it may be useful to refer to the Rules of the High Court of Judicature for Rajasthan 1952 (for short 'Rules of 1952') which were made by the High Court in exercise of powers conferred by Section 46 of Ordinance 1949. Rule 134 of Rules of 1952 which is related to Special Appeal (intra- Court appeal) reads as under:-

"134. Special Appeal. A person desiring to prefer a Special Appeal from the Judgment of a single Judge shall present a duly stamped memorandum of appeal within thirty days from the date of such Judgment. Where such appeal is presented after the period mentioned above, it shall be accompanied by an application supported by an affidavit explaining the cause of delay and it shall be rejected unless the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within the aforesaid time.

The memorandum of appeal shall be drawn up in accordance with Rules 125, 130 and 131 of this Chapter and shall be accompanied by a certified copy of the Judgment or order appealed from along with two extra typed copies of the judgment or order."

24. The only conclusion that can be drawn from Section 18 of Ordinance 1949 and Rule 134 of Rules of 1952 is that any person desiring to prefer intra- Court appeal from the Judgment of the single Judge, may present the same before the Division Bench but if the Division Bench finds that the Judgment of the single Judge was rendered in exercise of revisional jurisdiction, the intra Court appeal shall stand dismissed as not maintainable.

25. The scope of intra-Court appeal was considered in *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple* ²² and it was indicated that a Letters Patent Appeal, as permitted under the Letters Patent, is normally an intra- Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the single Bench. Such is not an appeal against an order of a subordinate Court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

26. In *Mangalbai v. Dr. Radheyshyam*, ²³ it was held that intra-Court appeal is maintainable if the Judgment of the single Judge is in substance under Article 226 of the Constitution.

27. In *Umaji Keshao Meshram*, (AIR 1986 SC1272) (supra) the Apex Court indicated that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the

valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

CONCLUSION :

28. As we have earlier noticed that the Apex Court in *Baby v. Travancore Devaswom Board*, (AIR 1999 SC519) (supra) enlarged and magnified the scope of supervisory jurisdiction under Article 227 of the Constitution. This myth has been smashed that under the power of superintendence the High Court exercises only the revisional jurisdiction. The Apex Court propounded that the powers of the High Court under Article 227 are much wider and in addition to the powers of revision conferred on it by other Legislation. Ratio indicated in *Baby v. T. D. Board* and mandate of Rule 134 of Rules of 1952 escaped notice in *Sher Singh Meena v. Chief Engineer*,²⁴ We support, to the limited extent the view expressed by the Division Bench in *Sher Singh Meena's* case i.e. 'where the Single Judge exercises only revisional powers under Article 227, the intra-Court appeal shall be dismissed as not maintainable'. But we disagree with this opinion of the Division Bench that all judgments orders passed by the single Judge in exercise of supervisory jurisdiction under Article 227 are not amenable to inter-Court appeals, since the supervisory jurisdiction under Article 227 is much wider and akin to appellate, revisional or corrective jurisdiction.

29. We sum up our conclusion, thus:-

(i) The power of superintendence conferred on the High Court under Article 227 of the Constitution is always in addition to the revisional jurisdiction. It is wider than one conferred by Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction. Jurisdiction under Article 227 is not an original jurisdiction but it is akin to appellate, revisional or corrective jurisdiction.

(ii) Any person desiring to prefer intra-Court appeal from the judgment/order of the Single Judge, may present the same before the Division Bench but if the Division Bench finds that the judgment/order of the Single Judge was rendered purely in exercise of revisional jurisdiction, the intra-Court appeal shall stand dismissed as not maintainable. Judgments/orders passed by the Single Judge in

exercise of wider supervisory jurisdiction under Article 227 are amenable to intra-Court appeals.

30. The reference is answered accordingly. Let the matters be placed before the Division Bench.

Order accordingly.

Cases Referred.

1. (1954) SCR 565 : (AIR 1954 SC 215)
2. (1998) 8 SCC 310 : (AIR 1999 SC 519)
3. (1997) 5 SCC 76 : (AIR 1997 SC 2077)
4. (2003) 6 SCC 675 : (AIR 2003 SC 3044)
5. (2003) 3 SCC 524 : (AIR 2003 SC 1561)
6. AIR 1991 SC1494
7. (2003) 6 SCC 641
8. (2003) 6 SCC 659 : (AIR 2003 SC 2434)
9. AIR 1955 Madras 287
10. AIR 1957 All 414
11. AIR 1953 Cal 636
12. AIR 1961 Punjab 24
13. 1986 (Supp) SCC 401 : (AIR 1986 SC 1272)
14. AIR 1992 SC185
15. 1993 Supp (1) SCC 9
16. (1999) 6 SCC 275 : (AIR 1999 SC 2423)
17. AIR 1996 Rajasthan 154
18. 2001 (1) WLC (Raj) 129 : (AIR 2001 Raj 87)
19. 2002 (1) WLC (Raj) 67 : (AIR 2002 Raj 13)
20. 2004 (4) WLC (Raj) 288 : (AIR 2004 NOC 502)
21. 2003 (2) WLC (Raj) 235
22. (1996) 3 SCC 52
23. (1992) 3 SCC 448 : (AIR 1993 S806)
24. 2004 (4) WLC (Raj) 288 : (AIR 2004 NOC 502)