Rama and Company Vs State of M.P. and Another

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: April 3, 2007

Acts Referred: Constitution of India, 1950 â€" Article 226, 227, 323A

Citation: (2007) 3 JLJ 220 : (2007) 3 MPHT 325 : (2007) 3 MPLJ 154

Hon'ble Judges: Subhash Samvatsar, J; Sanjay Yadav, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Subhash Samvatsar, J.

This judgment shall govern the disposal of above mentioned writ appeals.

These appeals are filed by the appellant being aggrieved by the order dated 2-2-2000 passed by the learned Single Judge of this Court in W.P.

No. 543/1999 and connected petitions. Initially these appeals were registered as LPA No. 39/2000, LPA No. 38/2000, LPA No. 36/2000 and

LPA No. 35/2000 but were dismissed by this Court vide order dated 28-8-2006 on the ground that LPA is not maintainable in view of judgment

of the Supreme Court in the case of Jamshed N. Guzdar Vs. State of Maharashtra and Others, . However, the said appeals were again restored

and registered as writ appeal after coming into force of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005

(hereinafter referred to ""the Adhiniyam, 2005"").

Brief facts of the case are that the Excise Department had auctioned 19 shops of Group No. 1 including 2 shops of country liquor. The appellant

M/s. Rama and Company being the highest bidder their bid was accepted. The auction was held for a period of 99 days and a licence was issued

in favour of the appellant. The said licence contained a condition of lifting of minimum quantity of liquor, failing which the Collector was empowered

to impose fine to the extent of Rs. 25.00 per proof litre. It is alleged that the appellant could not lift the minimum quantity of liquor as agreed by

him, therefore, a show-cause notice was issued to the appellant. The appellant submitted his reply to the said show-cause notice and the Collector

after hearing the appellant has imposed a fine to the extent of Rs. 10.00 per proof litre.

This order was challenged by the present appellant by filing an appeal before the Excise Commissioner and the Excise Commissioner vide its order

dated 29-1-1998 reduced the penalty from Rs. 10.00 to Rs. 8.00 per proof litre. This order was again challenged by the present appellant by filing

an appeal before the Board of Revenue. The Board of Revenue allowed the appeal and further reduced the penalty from Rs. 8.00 to Rs. 3.0 per

proof litre. This order was challenged by the State Government by filing a writ petition. In the writ petition, the State Government has prayed the

following relief:

It is, therefore, most humbly prayed that the petition may kindly be allowed and the writ of certiorari and or any other suitable writ or order or

direction which this Hon''ble Court deem fit and proper in the interest of justice may kindly be issued and the order dated 24-9-1998 (Annexure

P-1) may kindly be set aside and the order passed by the Commissioner Excise M.P. Gwalior (Annexure P-8) may kindly be restored.

The learned Single Judge after hearing the parties allowed the writ petition and set aside the order passed by the Board of Revenue as well as that

of the Excise Commissioner and restored the order of the Collector. Hence, this appeal.

Contention of Shri R.D. Jain, learned Senior Counsel for the appellant has submitted that the order passed by the learned Single Judge is not in

accordance with law and is liable to be set aside. He further submitted that the Writ Court has acted beyond its jurisdiction in setting aside the

order of the Commissioner and the same was not under challenge. Hence, this appeal be allowed and the order of the Board of Revenue be

maintained.

Shri Vivek Khedkar, learned Counsel for the respondents/State has raised a preliminary objection about the maintainability of this appeal. He

submitted that the writ petition filed by the State Government against the order of Board of Revenue was in fact under Article 227 of the

Constitution of India. Hence, this appeal is not maintainable. For this purpose, he has referred to Para 10 of the impugned order dated 2-2-2000,

which reflects that the present appellant has raised an objection before the learned Single Judge that the petition filed by the State Government

challenging the order of the Board of Revenue is in fact a petition under Article 227 of the Constitution of India and a mere wrong decision without

anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India. For this purpose, present

appellant has placed reliance on the judgment of Apex Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, . He submitted that

this objection raised by learned Counsel for the appellant was not overruled by the learned Single Judge and the learned single Judge has interfered

in the order passed by the Board of Revenue by giving a finding that ""It is apparent from these facts that the approach of the Excise Commissioner

and the Board of Revenue is not only absurd but is perverse also"". He submitted that as the learned Single Judge has interfered with the order

passed by the Board of Revenue in exercise of powers under Article 227 of the Constitution of India, therefore, the present appeal is not

maintainable.

Shri R.D. Jain, learned Senior Counsel for the appellant has cited number of authorities to demonstrate that the petition filed by the State

Government was in fact under Articles 226/227 of the Constitution of India. He invited attention of this Court to the cause title, wherein the State

Government has mentioned Articles 226/227 of the Constitution of India. He further submitted that writ of certiorari is always issued under Article

226 of the Constitution of India. Therefore, present appeal is maintainable.

On the other hand Shri Vivek Khedkar, learned Counsel for the respondent/State has submitted that there is marked distinction between language

of Clause 10 of the Letters Patent and Provisions of the Adhiniyam, 2005. He further submitted that scope of appeal under the Adhiniyam, 2005 is

not same that of Letters Patent Appeal.

To understand the difference between the two, it is necessary for this Court to consider the language of Clause 10 of the Letters Patent and

language of Section 2 of the Adhiniyam, 2005. Clause 10 of the Letters Patent reads as under:

10. Appeal to the High Court from Judges of the Court.-- And we do further ordain that an appeal shall lie to the said High Court of Judicature at

Nagpur from the judgment (not being a judgment passed in the exercise of the appellate jurisdiction in respect of a decree or order made in the

exercise of the appellate jurisdiction by a Court subject to the superintendence of the said 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 powers of superintendence under the provisions

of section one hundred and seven of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or

one Judge of any Division Court, pursuant to section one hundred and eight of the Government of India and that notwithstanding anything herein

before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division

Court, pursuant to section one hundred and eight of the Government of India Act, made in the exercise of appellate jurisdiction in respect of

decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the judge

who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High

Court or of such Division Court shall be to Us, Our Heirs or successors in our or their Privy Council, as hereinafter provided.

While Section 2 of the Adhiniyam, 2005 reads as under:

An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the

Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article

227 of the Constitution of India.

Learned Counsel for the respondents submitted that under the Letters Patent an appeal lies to Division Bench against a judgment passed by the

Single Bench. He pointed out that powers under Letters Patent could be exercised by Division bench from a judgment of one Judge of the High

Court. Under the Letters Patent an appeal could be filed against a judgment passed by the Court in second appeal upto 1976. Appeal was

provided against a judgment passed by the Single Bench in First Appeal or Misc. Appeal upto 1-7-2002. Thus for exercising powers under

Letters Patent, it was not necessary that judgment must be delivered in original jurisdiction of the High Court.

From perusal of the language of Letters Patent, it is clear that Letters Patent by itself does not create bar exercise of jurisdiction by the learned

Single Judge. The bar is created by the amendment in the Civil Procedure Code. Exercise of original jurisdiction is not a condition precedent for

exercising the jurisdiction by Division Bench under LPA. While, as per Section 2 of the Adhiniyam, 2005, a judgment or order passed by one

Judge of the High Court must be in exercise of original jurisdiction under Article 226 of the Constitution of India and there is a specific bar for

exercise of appellate jurisdiction against the appellate orders and orders passed in exercise of supervisory jurisdiction under Article 227 of the

Constitution of India.

From comparative reading of Clause 10 of the Letters Patent and Section 2 of the Adhiniyam, 2005, it is clear that the scope of both the

provisions are not pari materia and the scope of appeal under the Adhiniyam, 2005 is much narrower than the powers under Clause 10 of the

Letters Patent. The bar of exercising appellate jurisdiction under Article 227 of the Constitution of India is not specifically mentioned in the Letters

Patent. Similarly, there was no specific bar for exercising jurisdiction against an interlocutory order passed by the Division Bench, but these two

bars are specifically inserted in the Adhiniyam, 2005, which makes the difference in the two provisions.

Earlier the Apex Court in the of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , has considered the provisions of Articles

226/227 of the Constitution of India and has laid down that a proceeding under Article227 of the Constitution of India is not original proceeding.

So, the net result is that order if passed under Supervisory jurisdiction under Article 227 of the Constitution of India, therefore, it is excluded under

Letters Patent and no appeal lies against the said order. Subsequently, the Apex Court has considered this aspect in various cases and held that

when a petition is filed both under Articles 226/227 of the Constitution of India and the Judge while deciding the case has not decided the same

under Article 227 of the Constitution of India, then the petition should be treated under Article 226 of the Constitution of India. There are number

of judgments, which lay down that even if the learned Single Judge makes a reference to exercise of powers under Article 227 of the Constitution

of India only, then also it can be seen whether the petition is under Article 226 or 227 of the Constitution of India. There is a very thin line of

distinction between the two and the Apex Court has considered this difference in its judgment in the case of Surya Dev Rai Vs. Ram Chander Rai

and Others, .

The scope of Articles 226/227 of the Constitution of India has been considered by the Apex Court in the case of Hari Vishnu Kamath Vs. Syed

Ahmad Ishaque and Others, and the Apex Court has laid down four propositions, which were subsequently reiterated by the Apex Court in the

case o The Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor, etc., . The four propositions laid down by the Apex

Court in the case of Custodian of Evacuee (supra), are as under:

(i) Certiorari will be issued for correcting errors of jurisdiction;

(ii) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without

giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(iii) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court

will not review findings of fact reached by the Inferior Court or Tribunal, even if they are erroneous;

(iv) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the

proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be

corrected by certiorari but not a mere wrong decision.

Thus, it appears from the judgments in the case of Hari Vishnu Kamath (supra) and Custodian of Evacuee (supra) that Court issuing a writ of

certiorari acts in exercise of a supervisory powers.

The Apex Court again considered the scope of certiorari in the case of Ranjeet Singh Vs. Ravi Prakash, . In Para 4 the Apex Court has held as

under:

Though not specifically stated, the phraseology employed by the High Court in its judgment, goes to show that the High Court has exercised its

certiorari jurisdiction for correcting the judgment of the Appellate Court. ********. As to the exercise of supervisory jurisdiction of the High

Court under Article 227 of the Constitution of India also, it has been held in Surya Dev Rai (supra) that the jurisdiction was not available to be

exercised for indulging into re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal.

In another judgment the Apex Court in the case of Krishan Prasad Gupta Vs. Controller, Printing and Stationery, , in Para 44 has held as under:

We wind up this discussion with the last words that though the Tribunal has been constituted as a substitute for the High Court under Article 323A,

the Labour Courts and Industrial Tribunals etc. over which the High Court exercises supervisory jurisdiction continue to function with the

incongruous result that though the High Court cannot quash their judgments, it must continue to supervise their functioning. Let us await the decision

of the Constitution Bench.

Similar view is taken by the Apex Court in the case of L. Chandra Kumar Vs. Union of India and others, , wherein the Apex Court has held that

orders passed by the Tribunal constituted under Article 323A are amendable to the supervisory jurisdiction of the High Court.

In the case of Surya Dev Rai (supra), the Apex Court in Para 10 of its judgment has held that Article 226 of the Constitution of India preserves to

the High Court the power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well settled. It would

suffice to refer to the judgments rendered by the Apex in the case of Hari Vishnu (supra) and in the case of Custodian of Evacuee (supra). In Para

12 the Apex Court has laid down that in the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has

jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High court would not, therefore, for the purpose of

certiorari assign to itself the role of an Appellate Court and step into reappreciating or evaluating the evidence and substitute its own findings in

place of those arrived at by the Inferior Court.

Thus, from all these judgments, it is clear that while issuing writ of certiorari the learned Single Judge of the High Court exercises supervisory

jurisdiction over the orders passed by the various Tribunals, which are not as wide as appellate jurisdiction and is confined to see that the Court or

the Tribunal has acted within its jurisdiction and the exercise of supervisory jurisdiction cannot be equated with the original jurisdiction. Section 2 of

the Adhiniyam, 2005 specifically lays down that an appeal shall lie from the order passed by one Judge of the High Court in exercise of original

jurisdiction.

Thus, the condition precedent for exercising powers of the Appellate Court under the Adhiniyam, 2005 is that the learned Single Judge must

invoke in its original jurisdiction. Thus, it is clear that merely because the High Court has exercised its jurisdiction under Article 226 of the

Constitution of India while issuing a writ of certiorari, even then an appeal shall not lie, because the High Court while issuing a writ of certiorari

under Article 226 of the Constitution of India is in fact exercising supervisory jurisdiction and not original jurisdiction.

Learned Counsel for the appellant has also cited two judgments of the Division Bench of this Court, which were delivered after coming into force

of Adhiniyam, 2005 and in which the Division Bench has held that an appeal shall lie against the judgment passed by the learned Single Judge

against the order passed by the Tribunal. These two judgments cited by learned Counsel for the appellant are in the case of State of M.P. and v.

M.S. Wakankar 2007 (1) MP 99 and in the case of Smt. Shiva Dubey (Jhira) v. Sumit Ranjan Dubey W.A. No. 310/2006, decided on 14-8-

2006.

After perusing both these judgments, we find in both cases that Division Bench has held that an appeal shall lie against the order passed by the

learned Single Judge against the order passed by the Tribunal, but while deciding these cases language of Section 2 of the Adhiniyam was not

brought to the notice of the Division Bench that appeal shall lie only against the order passed by the learned Single Judge in exercise of original

jurisdiction.

The argument raised by learned Counsel for the appellant that appeal is maintainable against every order passed by the learned Single Judge in

exercise of powers under Article 226 of the Constitution of India is not supported by the language of Section 2 of the Adhiniyam, because if the

said interpretation is made, the exercise of original jurisdiction will become redundant. The legislature by use of the words ""in exercise of its original

jurisdiction"" has made its intention clear that an appeal shall lie only if the learned Single Judge has exercised its original jurisdiction. The words ""in

exercise of its original jurisdiction"" qualifies for the words ""Article 226 of the Constitution of India"".

Thus, it is clear that even though an appeal against an order passed by the learned Single Judge in exercise of jurisdiction under Article 226 will lie

only if the learned Single Judge has exercised power as an original jurisdiction and not under supervisory jurisdiction. The supervisory jurisdiction

of the High Court cannot be equated with original jurisdiction. In such circumstances, even if the learned Single Judge has exercised its jurisdiction

under Article 226 of the Constitution of India and issued a writ of certiorari against an order passed by any Tribunal or a Court, then an appeal will

not lie.

In the case in hand the State Government has filed a writ petition under Articles 226/227 of the Constitution of India praying for a writ of certiorari

against the order passed by the Board of Revenue, which is a final Court of fact and thus has invoked the supervisory jurisdiction of the High

Court, which is akin to appellate revisional or corrective jurisdiction that means not original jurisdiction. Hence above mentioned appeals are not

maintainable.

In the result, these appeals fail and are dismissed without any order as to costs.