
Rajeshwari Vs United India Insurance Company and Others

Tr. C.M.P. No. 15778 of 1982

Court: Madras High Court

Date of Decision: July 26, 1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 151, 24#Constitution of India, 1950 â€” Article 227#Government of India Act, 1915 â€” Section 107#Motor Vehicles Act, 1988 â€” Section 110A

Hon'ble Judges: T. Sathiadev, J

Bench: Single Bench

Advocate: K. Subramanian, for the Appellant; M.V. Chandran, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Sathiadev, J.

Petitioner filed M.O.P. No. 523 of 1982 on the file of Additional Sub-Judge-II, Chengalpattu, claiming compensation u/s

110-A of Motor Vehicles Act, since her husband was killed in a motor accident that took place at 7-30 p.m. on 13th July, 1982 near Kothari

Chemicals in Ennore Express Road, when he was driving the van TMQ 7815. She claims that all the witnesses to be examined are in Madras and

it would be extremely difficult for her to take all the witnesses to attend several hearings by Tribunal, located in Chengalpattu and by transfer of the

proceedings, none of the parties to the proceedings would be prejudiced, if the Tribunal at Madras is directed to hear the matter.

2. On behalf of first Respondent-insurance company, it is stated that by invoking Section 24 of the Code of Civil Procedure, the proceedings

cannot be transferred and hence, this petition is not maintainable.

3. This petition is filed by invoking Sections 24 and 151, CPC and during the course of the hearing, learned Counsel for Petitioner sought for

permission to include Article 227 of the Constitution of India and accordingly it has been granted.

4. Article 227 of the Constitution of India reads as follows:

(1) Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may--

(a) call for return from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates

and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any

law for the time being in force and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or Tribunal constituted by or

under any law relating to the Armed Forces.

5. The Supreme Court, in dealing with the scope and ambit of Article 227, held in *Waryam Singh and Another Vs. Amarnath and Another*, that it

confers on the High Court a power of judicial superintendence apart from and independently of the provisions of other laws conferring revisional

jurisdiction on the High Court. It was observed that material part of Article 227 substantially reproduces the provisions of Section 107 of the

Government of India Act, 1915, except that the power of superintendence has been extended by this article also to Tribunals. It was a case

wherein the Rent Controller and the District Judge exercising jurisdiction under the East Punjab Urban Rent Restriction Act, 1949, were held to be

Tribunals, functioning within the jurisdiction of the Judicial Commissioner of Himachal Pradesh. Repelling the contention that Clause (2) of Article

227, confers on the High Courts only administrative superintendence over subordinate Courts and Tribunals it was held that when Clause (2) is

expressed to be without prejudice to the generality of the provisions in Clause (1), such a restricted power is not contemplated in Article 227.

6. In *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*, considering the scope of supervisory jurisdiction of the High Court

under Article 227, it was held that Article 227 cannot be limited by any Act of the State Legislature and its supervisory jurisdiction extends to

keeping the subordinate Tribunals within the limits of their authority and to see that they obey the law.

7. Learned Counsel for Petitioner would then refer to *Gajbir Singh v. Satbir Singh* AIR 1968 P.& H. in which the court took the view that, even

assuming that Section 24, Code of Civil Procedure, cannot be invoked for transfer of a case to another Court, High Court has got ample powers

under Article 227 to transfer the same.

8. In *Pyda Venkatanarayana and Another Vs. Thota Ramaswamy and Others*, , Article 227 was held to be entirely distinct and different from

Article 226 and that Article 227 confers upon High Court a power of supervision over all judicial matters decided by any Court or Tribunal within

the State and therefore, in that case, it was held that it was eminently a fit and proper case, in which power of superintendence should be exercised

for transferring the election petition to another Deputy Registrar for disposal.

9. On behalf of first Respondent, reliance was placed on the decision of this Court in *Varalakshmi Sundar and Others Vs. Meeran and Another*, ,

which took the view that when Motor Vehicles Act does not contain any provision for transfer of a petition from one Tribunal to another, High

Court is not empowered to transfer the proceedings pending before an Accidents Claims Tribunal to another Tribunal. Referring to the scheme of

the Act, it was held that Accidents Claims Tribunal having been constituted to take away the jurisdiction of the civil Court relating to compensation

which would arise under Act and that only appellate power having been conferred on the High Court under Motor Vehicles Act and when exercise

of powers by High Court could arise only on appeal being preferred and no supervisory jurisdiction having been conferred on the High Court over

Accidents Claims Tribunal, the pending proceedings before Tribunals cannot be transferred. The mere circumstance that the High Court is the

appellate or revisional authority does not empower the exercise of powers of transfer, over claims filed for compensation and pending before

Tribunals.

10. The decision of this Court in *Annamalai v. R. Doraiswamy* 1982 A.C.J. 371 (Madras), was also referred to. The question as to whether

Article 227 could be invoked, was considered in this decision and it was held that though this power can be exercised by High Court either

administratively or judicially, High Court cannot supervise the legislature as it could go against substantial provisions in legislative enactments. It was

then observed therein as follows:

...In other words, whatever power Article 227 confers on the High Court, an amendatory legislative power cannot be one of them. It has already

been noticed that by a substantive provision in the Motor Vehicles Act, the jurisdiction of a Claims Tribunal is severely confined to adjudication of

claims arising out of accidents occurring strictly within the territorial limits of its jurisdiction. It follows that this statutory restriction on the Tribunal's

jurisdiction can be altered only by legislative amendment and not by any other mode. However omniscient the High Court can be under

Article 227, surely it cannot, by its fiat, alter the place of occurrence of a motor accident. The accident spot is an unalterable fact. It follows,

therefore, that the High Court would be powerless, even under Article 227, to change the jurisdiction of Tribunals by exercising the power of

transfer. It can only do so if it has the power, which it has not, of pretending that the accident in question had occurred in the area over which the

transferee Tribunal presides and not in the area where it actually took place. I am satisfied that the High Court has no jurisdiction under Article 227

of Constitution to transfer any pending accident case from the Tribunal having territorial jurisdiction over it to any other Tribunal having jurisdiction

over any other area.

11. In the light of the decisions of the Supreme Court above referred, Annamalai's case 1982 A.C.J. 371 (Madras), the view taken; that when by

substantial provisions of the Motor Vehicles Act, jurisdiction of a Claims Tribunal having been confined to adjudication of claims arising out of

accidents occurring strictly within the territorial limits of its jurisdiction, the statutory restriction existing can be altered only by legislative amendment

and not by any other mode and hence, however omniscient the power that could be exercised by High Court under Article 227, it cannot be

exercised as to go against the substantial provisions in legislative enactments; cannot be correct.

12. In State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., , above referred to, it has been clearly held that the power of

superintendence over all Courts and Tribunals under Article 227, cannot be limited by any Act of the Legislature. When it has been repeatedly held

by Supreme Court that the power of superintendence is both judicial and administrative, to proceed on the basis that for exercising powers under

Article 227, one should look to" the Legislature because exercise of powers under the said article in a particular manner would go against the

substantial provisions of the enactment overlooks the fact that the power exercised under Article 227 is a constitutional power and no legislative

enactment can take away or circumscribe or nullify the exercise of supervisory powers conferred by the Constitution on the High Courts. In the

light of what has been held by the Supreme Court, as above referred, when the power of transfer of proceedings within its jurisdiction is part of the

supervisory jurisdiction, absence of any provision having been made in Motor Vehicles Act for transfer to be effected would not deprive the High

Court of the power to transfer pending proceedings from one Tribunal to another, if circumstances warrant.

13. When Petitioner had stated that she is placed in a disadvantageous position in taking witnesses all the way to Chengalpattu from Madras and

the accident had taken place in the outskirts of Madras and that Claims Tribunal at Madras could hear the matter with least inconvenience to any

of the parties to the proceedings, this is a fit matter wherein, as prayed for transfer requires to be ordered. Hence, this petition is allowed. No

costs.