State Of M.P. & Ors vs Visan Kumar Shivcharan Lal on 5 December, 2008

Equivalent citations: AIR 2009 SUPREME COURT 1999, 2009 AIR SCW 1655, (2009) 1 JCR 156 (SC), (2009) 4 LAB LN 732, 2009 (1) SCALE 187, 2008 (15) SCC 233, (2009) 120 FACLR 313, (2009) 1 SCT 534, (2009) 1 SCALE 187, (2009) 1 CURLR 68, (2009) 3 SERVLR 407

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Bench: Mukundakam Sharma, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7134 OF 2008

(Arising out of SLP(C) No. 1313 of 2007)

State of Madhya Pradesh & Ors. ....Appellants

Versus

Visan Kumar Shiv Charan Lal ....Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench of the Madhya Pradesh High Court Jabalpur Bench holding that the Letters Patent Appeal was not maintainable. Initially, the matter was agitated by the respondent No.1 (hereinafter referred to as the `employee'), before the Labour Court under reference made under Section 10 of the Industrial Disputes Act, 1947 (in short the `Act'), which was decided in favour of respondent no.1. Thereafter the writ petition was filed

which was dismissed by learned Single Judge. The Division Bench, as noted above, dismissed the Letters Patent Appeal on the ground that it was not maintainable as the order was in terms of Article 227 of the Constitution of India, 1950 (in short the `Constitution'). According to the appellant, the nomenclature is of no consequence. It is the nature of the relief sought for and the controversy involved which determines the Article which is applicable.

3. In addition, the High Court seems to have gone by the nomenclature discription of the writ petition to be one under Article 227 of the Constitution. The High Court did not consider the nature of the controversy and the prayer involved in the Writ petition. As noted above, the prayer was to quash the order of the Labour Court.

4. Section 2 of the Act reads as follows:

> "2(1) An appeal shall lie from a judgment or order passed by the 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."

5. This Court in Hari Vishnu Kamath v. Ahmad Ishaque and Ord. (AIR 1955 SC 233) held that the High Court while issuing writ of certiorari under Article 226 of the Constitution can only annul a decision of a Tribunal whereas under Article 227 of the Constitution it can issue further directions as well. As noted above the prayer in the Writ Petition was to set aside the decision of the Labour Court.

6. In Umaji Keshao Meshram v. Radhikabai [AIR 1986 SC 1272] it was noted as follows:

> "Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered High Courts as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction (see Mahomedalli Allabux v. Ismailji Abdulali (AIR 1926 Bom 332), Raghunath Keshav Khadilkar v. Poona Municipality,(AIR 1945 Bom 7) Ryots of Garabandho v. Zemindar of Parlakimedi (AIR 1943 PC 164) and Moulvi Hamid Hasan Nomani v. Banwarilal Roy [(1946-

47) 74 Ind App 120,130-131]. In the last mentioned case which dealt with the nature of a writ of quo warranto, the Judicial Committee held:

"In Their Lordships' opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of ordinary original civil jurisdiction."

By Article 226 the power of issuing prerogative writs possessed by the Chartered High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High Courts. A series of decisions of this Court has firmly established that a proceeding under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding (see, for instance, State of U.P. v. Vijay Anand Maharaj [(1963) 1 SCR 1,16], CIT v. Ishwarlal Bhagwandas [AIR 1965 SC 1818], Ramesh v. Seth Gendalal Motilal Patni (1966 (3) SCR 198), Arbind Kumar Singh v. Nand Kishore Prasad[1968 (3) SCR 322] and Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand (AIR 1972 SC 1598)."

7. In para 106, it was noted as follows:

"106. The non obstante clause in Rule 18, namely, "Notwithstanding anything contained in Rules 1, 4 and 17 of this chapter", makes it abundantly clear why that rule uses the words "finally disposed of". As seen above, under Rules 1 and 17, applications under Articles 226 and 227 are required to be heard and disposed of by a Division Bench. Rule 4, however, gives power to a Single Judge to issue rule nisi on an application under Article 226 but precludes him from passing any final order on such application. It is because a Single Judge has no power under Rules 1, 4 and 17 to hear and dispose of a petition under Article 226 or 227 that the non obstante clause has been introduced in Rule 18. The use of the words "be heard and finally disposed of by a Single Judge" in Rule 18 merely clarifies the position that in such cases the power of the Single Judge is not confined merely to issuing a rule nisi. These words were not intended to bar a right of appeal. To say that the words "finally disposed of" mean finally disposed of so far as the High Court is concerned is illogical because Rules 1, 4 and 7 use the words "be heard and disposed of by a Divisional Bench" and were the reasoning of the Full Bench correct, it would mean that so far as the High Court is concerned, when a Single Judge hears a matter and disposes it of, it is finally disposed of and when a Division Bench disposes it of, it is not finally disposed of. The right of appeal against the judgment of a Single Judge is given by the Letters Patent which have been continued in force by Article 225 of the Constitution. If under the Rules of the High Court, a matter is heard and disposed of by a Single Judge, an appeal lies against his judgment unless it is barred either under the Letters Patent or some other enactment. The word "finally" used in Rule 18 of Chapter XVII of the Appellate Side Rules does not and cannot possibly have the effect of barring a right of appeal conferred by the Letters Patent. As we have seen above, an intra-court appeal

against the judgment of a Single Judge in a petition under Article 226 is not barred while clause 15 itself bars an intra-court appeal against the judgment of a Single Judge in a petition under Article 227."

8. In Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha [1993 Supp. (1) SCC 11] this court with reference to an unreported judgment in Ratnagiri District Central Co-operative Bank Ltd. v. Dinkar Kashinath Watve, C.A. No. 520 of 1989 decided on 27.1.1989 held as follows:

"Even when in the cause title of an application both Article 226 and Article 227 of the Constitution have been mentioned, the learned single Judge is at liberty to decide, according to facts of each particular case, whether the said application ought to be dealt with only under Article 226 of the Constitution. For determining the question of maintainability of an appeal against such a judgment of the Single Judge the Division bench has to find out whether in substance the judgment has been passed by the learned Single Judge in exercise of the jurisdiction under Article 226 of the Constitution. In the event in passing his judgment on an application which had mentioned in its cause title both Articles 226 and 227, the Single Judge has in fact invoked only his supervisory powers under Article 227, the appeal under clause 15 would not lie. The clause 15 of the Letters Patent expressly bars appeals against orders of Single Judges passed under revisional or supervisory powers. Even when the learned Single Judge's order has been passed under both the articles, for deciding the maintainability against such an order what would be relevant is the principal or main relief granted by the judgment passed by learned Single Judge and not the ancillary directions given by him. The expression `ancillary' means, in the context, incidental or consequential to the main part of the order.

Thus, the determining factor is the real nature of principal order passed by the Single Judge which is appealed against and neither the mentioning in the cause title of the application of both the articles nor the granting of ancillary orders thereupon made by learned Single Judge would be relevant. Thus, in each case, the Division Bench may consider the substance of the judgment under appeal to ascertain whether the Single Judge has mainly or principally exercised in the matter his jurisdiction under Article 226 or under Article 227. In the event in his judgment the learned Single Judge himself had mentioned the particular article of the Constitution under which he was passing his judgment, in an appeal under clause 15 against such a judgment it may not be necessary for the appellate bench to elaborately examine the question of its maintainability. When without mentioning the particular article the learned Single Judge decided on merits the application, in order to decide the question of maintainability of an appeal, against such a judgment, the Division Bench might examine the relief granted by the learned Single Judge, for maintainability of an appeal, the determination would be the main and not the ancillary relief. When a combined application under Articles 226 and 227 of the Constitution is summarily dismissed without reasons, the appeal Court may consider whether the facts alleged, warranted filing of the application under Article 226 or under Article 227 of the

Constitution."

9. Thereafter this Court explained the ratio laid down in the case of Umaji's case (supra) and expressed thus:

> "...In Umaji case it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of 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. Rule 18 of the Bombay High Court Appellate Side Rules read with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge."

10. In Mangalbhai & Ors. v. Radhyshyam (Dr.) [AIR 1993 SC 806] it was, inter alia, observed as follows:

> "The learned Single Judge in his impugned judgment dated December 11, 1987 nowhere mentioned that he was exercising the powers under Article 227 of the Constitution. The learned Single Judge examined the matter on merit and set aside the orders of the Rent Controller as well as the Resident Deputy Collector on the ground that the aforesaid judgments were perverse. The findings of the Rent Controller and Resident Deputy Collector were set aside on the question of habitual defaulter as well as on the ground of bona fide need. Thus in the totality of the facts and circumstances of the case, the pleadings of the parties in the writ petition and the judgment of the learned Single Judge leaves no manner of doubt that it was an order passed under Article 226 of the Constitution and in that view of the matter the Letters Patent Appeal was maintainable before the High Court. After taking the aforesaid view one course open was to set aside the order of the Division Bench and to remand the matter for being disposed of on merits by the Division Bench of the High Court. However, taking in view the fact that this litigation is going on for nearly a decade and also the fact that even the learned Single Judge in his impugned order dated December 11, 1987 had remanded the case to the Rent Controller, we considered it proper in the interest of justice to hear the appeal on merits against the judgment of the learned Single Judge. We have heard learned counsel for the parties at length on the merits of the case."

11. In Lokmat Newspapers (P) Ltd. v. Shankarprasad [1999 (6) SCC 275] it was observed as follows:

"It is, therefore, obvious that the writ petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for the High Court's interference seeking issuance of an appropriate writ of certiorari under Article 226 of the Constitution of India. Basic averments for invoking such a jurisdiction were already pleaded in the writ petition for the High Court's consideration. It is true, as submitted by learned counsel for the appellant, that the order of the learned Single Judge nowhere stated that the Court was considering the writ petition under Article 226 of the Constitution of India. It is equally true that the learned Single Judge dismissed the writ petition by observing that the courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge was not inclined to interfere under Article 227 of the Constitution of India only. The said observation equally supports the conclusion that the learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier, he was considering the aforesaid writ petition moved under Article 226 as well as Article 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the writ petition of the respondent. In this connection, it is profitable to have a look at the decision of this Court in the case of Umaji Keshao Meshram v. Radhikabai [1986 Supp.SCC 401]. In that case O. Chinnappa Reddy and D.P. Madon, JJ., considered the very same question in the light of clause 15 of the Letters Patent of the Bombay High Court. Madon, J., speaking for the Court in para 107 of the Report at p. 473, made the following pertinent observations: (SCC p. 473, para 107) "107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque (AIR 1955 SC 233) before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, 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. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh (AIR 1957 All 414) and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass (AIR 1959 Punj 291) and Barham Dutt v. Peoples' Coop. Transport Society Ltd. (AIR 1961 Punj 24) and we are in agreement with it."

The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such a jurisdiction was invoked and when his writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 (sic 227) of the Constitution of India. This conclusion directly flows from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of the learned Single Judge. It is also necessary to note that the appellant being the respondent in letters patent appeal joined issues on merits and did not take up the contention that the letters patent appeal was not maintainable. For all these reasons, therefore, the primary objection to the maintainability of the letters patent appeal as canvassed by learned counsel for the appellant, has to be repelled. Point 1 is, therefore, answered in the affirmative against the appellant and in favour of the respondent. It takes us to the consideration of points arising for our decision on merits."

12. In Surya Dev Rai v. Ram Chander Rai & Ors. [AIR 2003 SC 3044] after referring to decisions in Custodian of Evacuee Property, Bangalore v.

Khan Saheb Abdul Shukoor, etc. [1961 (3) SCR 855] and Nagendra Nath Bora & Anr. v. Commissioner of Hills Division [AIR 1958 SC 398], T.C. Basappa v. T. Nagappa [AIR 1954 SC 440] and Rupa Ashok Hurra v.

Ashok Hurra [AIR 2002 SC 1771], this Court held at paragraphs 17, 19 & 25 as follows:

> "17. From the aforesaid enunciation of law it is quite vivid and luminescent that the pleadings in the writ petition, nature of the order passed by the learned Single Judge, character and the contour of the order, directions issued, nomenclature given the jurisdictional prospective in the constitutional context are to be perceived. It cannot be said in a hypertechnical manner that an order passed in a writ petition, if there is assail to the order emerging from the inferior tribunal or subordinate Court has to be treated all the time for all purposes to be under Article 227 of the Constitution of India. Phraseology used in exercise of original jurisdiction under Article 226 of the Constitution in Section 2 of the Act cannot be given a restricted and constricted meaning because an order passed in a writ petition can tantamount to an order under Article 226 or 227 of the Constitution of India and it would depend upon the real nature of the order passed by the learned Single Judge. To elaborate; whether the learned Single Judge has exercised his jurisdiction under Article 226 or under Article 227 or both would depend upon various aspects and many a facet as has been emphasized in the afore quoted decisions of the apex Court. The pleadings, as has been indicated hereinabove, also assume immense significance. As has been held in the case of Surya Devi Rai (supra) a writ of certiorari can be issued under Article 226 of the Constitution against an order of a Tribunal or an order passed by the sub ordinate court. In quintessentiality, it cannot be put in a state jacket formula that any

> order of the learned judge that deals with an order arising from an inferior tribunal or the sub ordinate court is an order under Article 227 of the Constitution of India and not an order under Article 226 of the Constitution. It would not be an over emphasis to state that an order in a writ petition can fit into the subtle contour of Articles 226 and 227 of the Constitution in a composite manner and they can coincide, co-exit, overlap imbricate. In this context it is apt to note that there may be cases where the learned single judge may feel disposed or inclined to issue a writ to do full and complete justice because it is to be borne in mind that Article 226 of the Constitutions is fundamentally a repository and reservoir of justice based on equity and good conscience. It will depend upon factual matrix of the case.

19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."

13. The above position was highlighted in M/s. MMTC Ltd. v.

Commissioner of Commercial Tax & Ors. [2008 (13) SCALE 682].

14. In view of what has been stated above, the High Court was not justified in holding that the Letters Patent Appeal was not maintainable. In addition, a bare reading of this Court's earlier order

shows that the impugned order is clearly erroneous. The impugned order is set aside. The writ appeal shall be heard by the Division Bench on merits.

15. The appeal is allowed.

.....J. (Dr. ARIJIT PASAYAT) .....J. (Dr. MUKUNDAKAM SHARMA) New Delhi, December 5, 2008