

Sheo Mangal vs Ram Charan on 1 April, 1954

Equivalent citations: AIR1954ALL623, AIR 1954 ALLAHABAD 623

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The following question was referred for decision by this Full Bench.

"Whether an Assistant Collector of the first class who is empowered by the Local Government to exercise all the powers of a Collector under Chapter III of the U. P. Agriculturists' Relief Act can transfer a case from his court to the court of any other Assistant Collector empowered under Sub-section (1) of Section 22?"

This reference became necessary as a Bench of this Court had taken the view in -- 'Sampat Kumar v. Moti', 1950 All WR 103 (A), that the power of transfer given to a Collector under Sub-section (2), Section 22, did not empower the Assistant Collector to transfer a case pending in his court to another Assistant Collector empowered under Sub-section (1), of Section 22. The decision of this Court was given on November, 9, 1949, while the U. P. Agriculturists' Relief Act had remained in force from 1935, and during this period of more than 15 years a very large number of cases might have been transferred by Assistant Collectors purporting to act under Section 22(2) of the Act, and two of such cases were listed on the same date before the Court which made the reference.

2. In Sub-section (4) of Section 2 of the U. P. Agriculturists Relief Act (U. P. Act No. XXVII of 1939), Collector is defined as meaning "the officer appointed as Collector of a district under the Land Revenue Act No. 3 of 1901." Section 22(1) is as follows :

"The Local Government may empower any Assistant Collector of the first class to exercise the powers of a Collector under this Chapter."

Section 22 is in Chapter III of the Act, and that Chapter begins from Section 9 and ends with Section 27, and only in three sections the word "Collector" is mentioned. Section 10 provides that "applications under this Chapter shall, if the principal money secured does not exceed Rs. 500, be brought before the Collector, and the word "Court" in this Chapter shall in such cases include the "Collector". It is not disputed that if a notification has been issued by the Government then an Assistant Collector can entertain an application under Section 10 of the Act. Section 23, the other

section in which this word occurs, is as follows :

"An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this Chapter."

The word 'Assistant Collector' being also mentioned, recourse need not be had to Section 22, and orders passed, whether by the Collector or by the Assistant Collector, are made appealable to the District Judge.

To come back to Section 22, Sub-section (1) of that section provides that the Local Government may empower any Assistant Collector of the first class to exercise the powers of a Collector under that Chapter, and Sub-section (2) then provides that the Collector may transfer any proceedings under this Chapter -- (a) from his own court to that of an Assistant Collector empowered under Sub-Section (1); (b) from the court of an Assistant Collector subordinate to him either to his own court or to that of any other Assistant Collector empowered under Sub-section (1). If Sub-section (1), Section 22 does not govern Sub-section (2) of that section, then Sub-section (1) would only be necessary for empowering an Assistant Collector to entertain an application under Section 10, and it was not necessary for the legislature to have said that the Local Government may empower any Assistant Collector of the first class to exercise "the powers of a Collector under this Chapter." Mention of Section 10 of the Act would have been quite sufficient.

3. If the words "to exercise the powers of a Collector under this Chapter" are given their ordinary meaning, then wherever the word "Collector" occurs in Chapter 3, it would include an 'Assistant Collector' and, therefore, the word 'Collector' in Sub-section (2) will also include an Assistant Collector. On the other hand, the learned counsel for the applicants has pointed out that there may be some practical difficulties inasmuch as an Assistant Collector empowered under Sub-section (1) may not be subordinate to an Assistant Collector similarly empowered, and it will be anomalous that one Assistant Collector should transfer a case from his own court to a court of equal jurisdiction. He has pointed out that there is nothing in Sub-section (2) which empowers a Collector to transfer a case from his own court to the court of another Collector.

4. In view of the plain language of the section it is not necessary for us to go into these practical difficulties and it may be that in case of any practical difficulty, the District Judge may be able, in an appeal from an order of a Collector or an- Assistant Collector, to set things right. The fact, however, remains that Sub-section (1) provides that the Local Government may empower any Assistant Collector of the first class to exercise the powers of a Collector under Chapter III, and the power to transfer a case to the court of an Assistant Collector is a power exercisable by a Collector under Chapter III. There is no reason, therefore, why an Assistant Collector should not have the power to transfer a case. Sub-section (2) is a part of Chapter III and is governed by Sub-section (1).

5. The U. P. Agriculturists' Relief Act has now been repealed and it will not be desirable to unsettle a large number of decisions by courts of Assistant Collectors to whom cases might have been transferred by other Assistant Collectors purporting to act under Sub-section (2) of Section 22. Taking all these matters into consideration we consider that an Assistant Collector who has been

empowered to exercise the powers of the Collector under Chapter 3 has the power in a proper case to transfer a case to the court of another Assistant Collector empowered under Sub-section (1).

6. The Rules framed by the Local Government are in these words :

"The powers of a Collector under Chapter III of the Act are under section 22(1) of the Act hereby conferred on all Assistant Collectors of the first class who are in charge of sub-divisions or who have exercised powers of the first class for more than five years."

There may be, therefore, more than one Assistant Collector in a district or a sub-division who is able to take cognizance of an application under Section 10, and, if for some reason one Assistant Collector of the first class has transferred the case to another Assistant Collector of the first class of more than five years standing, there is no reason to think that there will be any practical difficulty.

7. We, therefore, answer the question in the affirmative and overrule the decision in 'Sampat Kumar v. Moti (A)' mentioned above.

8. The answer may be sent to the Bench concerned.