Supreme Court of India
M.C. Rahbar And Anr. vs Union Of India And Ors. on 11 May, 1967
Author: K Hegde
Bench: K Hegde
JUDGMENT K.S. Hegde, C.J.

(1) The principal question that arises for decision in this writ petition under Articles 228 and 227 of the Constitution is whether rule 104 of the Rules framed under the Displaced Persons (Compensation' Rehabilitation) Act, 1954 (to be hereinafter referred to as the Act'), is ultra virus section 24 of the Act.

(2) The petitioner is a partnership firm. The partners of that firm are evacuees horn an area, which now forms a part of West Pakistan. Plot No. l/5. Industrial Area, Kirtinagar, New Delhi, was allotted to the petitioner by the Rehabilitation Department in March. 1952. The petitioner's case is that though it accepted the offer of the Government to purchase the plot on the terms stipulated by the Rehabilitation Department, the Department has now sold the same by public auction on June 19, 1963, and purchased by the 4th respondent. The petitioner's objection to the sale of that property has been overruled by the Managing Officer. The petitioner's appeal against that order to the Assistant Settlement Commissioner has been dismissed, its revision petition to the Deputy Chief Settlement Commissioner has also been dismissed and lastly, its application under section 33 of the Act has also been dismissed by the Central Government. Hence this petition.

(3) In this case, I am principally concerned with the question, whether the order of the 2nd respondent made in No. 85/D/9-R/347, dated March 30, 1964, suffers from any error of law apparent on the face of the record. As mentioned earlier, the petitioner is a partnership firm. As against the order of the 3rd respondent, the petitioner (4) We have now to see whether the aforementioned rule 104 is ultra vires section 24 of the Act. Sections 22 and 23 provide for appeals against the oldest made under the Act. Section 23 reads:- "23.(1)Subject to the provisions of sub-section (2), any person aggrieved by an order of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant settlement Commissioner or Managing Corporation under this Act may, within thirty days from the date of the order, prefer an appeal to the Chief Settlement Commissioner in such form and manner as may be prescribed: Provided that the Chief Settlement Commissioner may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) No appeal shall he from any order passed in appeal under section 22. (3) The Chief Settlement Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit."

From that section it is seen that it prescribes not only a period of limitation for filing the appeal, but it also empowers the appellate authority to entertain an appeal after expiry of the period mentioned in the section "If be is satisfied that th- appellant was prevented by sufficient cause from filing the appeal in time."

(5) Now we come to section 24. which empowers the Chief Settlement Commissioner to exercise his revisional powers in respect of orders made under the Act. That section says:- "24.(1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit."

(The remaining portion of the section is not relevant for our present purpose.) From a reading of section 24, it is clear that the Chief Settlement Commissioner can exercise the power conferred on him by that section "at any time " In other words, no period of limitation is prescribed for the exercise of that power, (6) Now we come to rule 104. the rule impugned in this case. That rule was framed by the Central Government in exercise of the powers conferred on it under section 10 of the Act. The rule in question reads: "104,(1) A petition for revision under the Act shall be drawn up and presented in the same manner and within the same period as a memorandum of appeal ana shall be accompanied by a copy of the order sought to be revised."

* * * * (Sub-rule (2) of that rule is not necessary for our present purpose). Rule 103 deals with procedure for appeals, Sub-rule(i) (thereof says that a memorandum of appeal shall be presented in person by registered post or through a duly authorised agent within thirty days of the date of the order appealed against. I he period of limitation prescribed in rule 103 (1) is wholly superfluous as sections 22 and 23 themselves lay down the period of limitation for filing appeals. The question whether the expression "some period", mentioned in rule 104 (1).. relates to the period mentioned in 1-1112 .103 (1) or that mentioned in sections 22 and 23 is immaterial for our present purpose. In either case, the period allowed is thirty days from the date of the order complained against. The question for consideration is whether the rule making authority was competent to presents any period of limitation for invoking thw there visional jurisdiction of the Chief Settlement Commissioner in view of section 24.

(7) Prima fade, the period of limitation prescribed by rule 104 (1) conflicts with the power given to the Chief Settlement Commissioner under section 24. The rule making authority had no right to cut down the power conferred on the Chief Settlement Commissioner by that section. That section empowers him to exercise his revisional power "at any time." The rule making authority could not have whittled down that power. The learned Deputy Chief Settlement Commissioner got over that difficulty by saying that rule 104(1) does not limit the power of the Chief Settlement Commissioner to revise any order at any time, but it only fixes a period of limitation for an aggrieved party to invoke his jurisdiction. .No right is conferred under section 24, to any of the parties to a proceedings to compel the revisional authority to exercise its power. The Revisional power is conferred on the Chief Settlement Commissiontr. An aggrieved party can only bring his grievance to the notice of the Chief Settlement Commissioner. It is for him consider whether he should exercise his revisional power or not The Chief Settlement Commissioner, for properly exercising his power under section 24, should have access to all sources of information which may bring to his notice the illegality or impropriety committed by his subordinates. It would be a curious reasoning to say that a third party may inform the Chief Settlement Commissioner about the illegality or impropriety of any order

made by a subordinate "at any time," but as aggrieved party cannot do so after the period of thirty days, mentioned in rule 104. There is no basis for such a classification. Rule 104 undoubtedly places an indirect restriction on the power of the Chief Settlement Commissioner. Therefore, I hold that that rule is ultra vires section 24 of the Act.

(8) Now we come to the question, whether any power has been granted to the rule making authority to frame the impugned rule. As seen earlier, the power to make Rules is conferred on the Central Government by section 40 of Act. Sub-section (1) of that section says; "The Central Government may, by notification in the official Gazette, make rules to carry cut the purposes of this Act." Without doubt, one of the purposes of the Act is to confer revisional power on the Chief Settlement Commissioner. By fixing a period of limitation for an aggrieved party to approach the Chief Settlement Commissioner in revision, when the Chief Settlement Commissioner is himself given power exercise his revisional Jurisdiction "at any time, it cannot be said that the rule making authority was furthering any of the purposes of the Act. If an impugned rule plainly runs counter to a provision contained in the statute, the rule must yield the place to the latter. A reading of the various clauses in sub-section (2) of section 40, makes it clear that the Parliament never intended to confer on the Executive a power to fix a period of limitation for invoking the revisional Jurisdiction of the Chief Settlement Commissioner. A comparison of clause (a) of sub-section (2) of section 40 with clause (1) of the sub-section, makes this position clear. The former clause reads; 40.* * * * (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:- (a) the form and manner in which and the time within which, an application for payment of compensation may be made and the particulars which it may contain ."

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The latter clause, which deals with appeals, applications for review or revisions, says

The words "time within which", found in clause (a) do not find a place in clause (1) Fr
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(9) It was argued by Shri Parkash Narain, learned counsel for respondents 1 to 3, that the rules, framed under the Act having been placed on the table of the Parliament, as required by sub section (e) of section 40, they have a sanctity of their own and the Courts must assume that those rules have the approval of the Parliament and, therefore, even it any of these rules conflict with one of the provisions in the Act, the same cannot be struck down. I am unable to accept this contention as correct. A rule is a rule in whatever manner it might have been framed. It can never take the place of a provision in the statute under which it was framed.

(10) The revision petition of the petitioner was dismissed by the 2nd respondent on March 30. 1964, on the sole ground that it was barred by time. The merits of the case have not been considered. That petition was not even dismissed on the ground of laches. Now that I have come to the conclusion that no period of limitation is prescribed for invoking the revisional jurisdiction under section 24 of the Act, it follows that the order in question suffers from an error of law apparent on the face of the record. So far as the order of the Central Government under section 33 is concerned, it is a very laconic order. It merely affirmed the older of the 2nd respondent. It did not deal with the contention

raised in the petition. It is not even a speaking order. As such, that order also suffers from an error of law apparent on the face of the record.

(11) For the reasons mentioned above, the order of the Central Government in case .No. 38(285)/64-IMPA dated July 1, 1904 and that of the 2nd respondent dated March 30, 1964, are hereby set aside. The case will now go back to the 2nd respondent for disposal in accordance with law.

(12) Before leaving this case, it is necessary to mention that the order of the 2nd respondent dated November 27, 1963, is a wholly erroneous order. That revision petition was a properly instituted revision petition. A partner of a firm is competent to represent the firm.

(13) The petitioner is entitled to the costs of this petition from respondents 1 to 3. Advocate's fee Rs. 250.00.