

Surendra Kumar Dilliwai Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Jan-09-2002

Reported in : 2002(1)MPHT415; 2002(1)MPLJ441

Judge : Deepak Verma and ;A.K. Gohil, JJ.

Acts : Madhya Pradesh High Court Rules and Orders - Sections 1 - Rules 1 and 5; [Code of Civil Procedure \(CPC\), 1908](#) - Order 47, Rule 1; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Misc. Civil Case No. 294/2000

Appellant : Surendra Kumar Dilliwai

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : D.D. Vyas, Addl. Adv. General and ;S. Waghmare, Adv.

Advocate for Pet/Ap. : Shekhar Bhargava, Sr. Adv., i/b., Amit Agrawal, Adv.

Disposition : Misc. civil case dismissed

Judgement :

ORDER

A.K. Gohil, J.

1. The petitioner has filed this review application under Order XLVII Rule 1 of the Code of Civil Procedure against the order dated 5-6-2000 delivered by Hon'ble Shri J.G. Chitre, J., in Writ Petition No. 1167 of 2000 dismissing the same in motion hearing in summer vacation.

2. The material and short facts giving rise to this review petition tie in narrow compass: The petitioner had filed one petition under Articles 226/227 of the [Constitution of India](#) on 31-5-2000 which was registered as Writ Petition No. 1167 of 2000 alongwith two applications, one for urgent hearing and the other application for hearing writ petition in the summer vacation as the matter was very urgent and it was specifically prayed in those applications that the matter is very urgent, therefore it should be heard during summer vacation very early. In the writ petition the order passed by the State Administrative Tribunal in O.A. No. 905 of 1993 on 3-5-2000 was under challenge. Ordinarily such petition was to be listed and was to be heard and decided by the Division Bench but the same was listed before the Single Judge under Rule 5 of Section 1 of the Chapter 1 of High Court Rules. This Rule 5 provides that 'except in a matter which is required by virtue of any law to be heard by a Bench of two or more Judges, a Judge sitting alone whilst acting in the long vacation as a Vacation Judge, may exercise the original and appellate jurisdiction vested in the Court (b) in any matter which he considers urgent'. Thus, the aforesaid writ petition was listed in motion hearing on 5-6-2000 during summer vacation before the Vacation Judge. The learned Vacation Judge after hearing the learned counsel for petitioner and also learned Addl. Advocate General who appeared for respondent Nos. 1 to 4 on advance copy, dismissed as the petition was found unfit for admission. Against which the petitioner has filed this review petition on the ground that the learned Vacation Judge had no jurisdiction to hear and decide the aforesaid writ petition which was filed against the order of the State Administrative Tribunal as under Chapter 1 Rule 1 of Section 1, such petitions cannot be heard by the learned Single Judge and was to be heard and decided by the Division Bench.

3. We have heard Shri Shekhar Bhargava, learned Senior Advocate instructed by Shri Amit Agrawal, for petitioner; Shri D.D. Vyas, learned Addl. Advocate General for respondent Nos. 1 to 4; and Smt. S. Waghmare, learned counsel for

respondent Nos. 5 and 6. None appeared for respondent No. 7/ Tribunal.

4. Learned counsel for the petitioner submitted that the impugned order passed by the learned Single Judge on 5-6-2000 is nullity as he had no jurisdiction to hear the petition against the order passed by the State Administrative Tribunal and matter should have been heard by the Division Bench. In support of his arguments, learned counsel for petitioner cited the decision in the case of L. Chandra Kumar v. Union of India and Ors., reported in AIR 1997 SC 1125, and also relied on a decision in the case of Aribam, Tuleshwar Sharma v. Aribam Pishak Sharma and Ors., reported in AIR 1979 SC 1047, and decision in the case of Pandurang v. State of Maharashtra, reported in AIR 1987 SC 535 and also a decision in the case of R. Rathinam v. State by DSP, District Crime Branch, Madurai District, Madurai and another, reported in 2000(2) SCC 391, para 9 and submitted that the impugned order is nullity and can be set-aside in this review petition by this Court on the ground that there is mistake and error apparent on the face of record.

5. In reply Shri D.D. Vyas, learned Addl. Advocate General submitted that Rule 5 of Chapter 1 of Section 1 of M.P. High Court Rules and Orders specifically provides a jurisdiction to the learned single Judge sitting alone in the long vacation as a Vacation Judge who will be deemed to be exercising the powers of Division Bench by virtue of the provisions contained in the aforesaid Rules. Accordingly the dismissal of writ petition by a Single Judge in such circumstances would be deemed to have been dismissed by the Division Bench and placed reliance on the Division Bench decision of this Court in the case of Sanjay Kumar Shri vastava v. State of M.P. and Ors., reported in AIR 1988 MP 154. His further submission was that this Rule 5 is an exception to Rule 1 of Chapter 1 of Section 1 of the M.P. High Court Rules and Orders and this exception is applicable to a Vacation Judge when he is sitting in a long vacation as a Vacation Judge. His further submission was that in none of the cases which are cited by the learned counsel for petitioner, the question of powers of a Single Judge sitting as a Vacation Judge were under consideration. It was further submitted that the learned Single Judge has not committed any mistake or error which is apparent on the face of record and thus submitted that this review petition is not maintainable and is liable to be dismissed.

6. Smt. S. Waghmare, learned counsel for respondent Nos, 5 and 6 also supported the arguments of Shri Vyas and further submitted that in the case of *Shyam Bihari v. State of Madhya Pradesh*, reported in 1973 MPLJ 590, the word 'Ordinarily' which has been used in Rule 1 (q) (iv) and according to this word 'ordinarily' the jurisdiction of learned Single Judge to hear classes of cases in particular circumstances cannot be ruled out and cannot be treated as a nullity because the learned Judge has passed the order in a writ petition exercising the powers under Rule 5. Therefore, in particular set of circumstances the learned Single Judge was fully authorised to exercise the powers of Division Bench.

7. We have heard the learned counsel for the parties and perused the record and also considered the rival submissions. In our considered opinion, there is no substance and merit in this review petition. It is not in dispute that as per Rule 1 of Chapter 1 of M.P. High Court Rules and Orders, a writ petition against the order of State Administrative Tribunal should ordinarily be heard and decided by the Division Bench but Rule 8 of the Rules and Orders has provided exceptions to Rule 1 and according to this Rule 5 in a long vacation when a Single Judge is sitting as a Vacation Judge, can exercise the powers of Division Bench. In the of *Sanjay Kumar Shri vastava* (supra), the Division Bench of this High Court has already clarified the legal position and has already held as under:--

'Apparently R. 5 of Chapter 1 confers power on a Single Judge sitting alone whilst acting in the long vacation as a Vacation Judge to exercise original and appellate jurisdiction vested not in any particular Bench but in the Court. In other words even though factually the Vacation Judge is a Single Judge, by legal fiction, he will be deemed to be exercising the jurisdiction of a Division Bench in matters cognizable by a Division Bench by virtue of the provision contained in this behalf in Rule 5 of Chapter 1 of the High Court Rules. This provision has apparently been made to meet the difficulty pointed out above, namely that in the absence of such a provision a Single Judge would have no jurisdiction to entertain a matter cognizable by a Division Bench. In this view of the matter, the dismissal of the writ petition by a Judge sitting alone whilst acting in the long vacation as a Vacation Judge would be deemed to be the dismissal of the writ petition by a Division Bench which alone is competent to entertain such a petition.'

8. Apropos, we are also of the same view that by virtue of the exceptional provisions contained in Rule 5 of Chapter 1 of the M.P. High Court Rules and Orders, a Single Judge sitting alone whilst acting in the long vacation as a Vacation Judge, by legal fiction, will be deemed to be exercising the jurisdiction of a Division Bench in the matters which are cognizable by a Division Bench. Therefore, in this case it would apparently be deemed that the writ petition which was entertained, heard and dismissed by a Single Judge sitting in vacation as Vacation Judge was entertained by a Division Bench. Thus, in the presence of such a clear legal provision, no case for review is made out. We also do not see any mistake or error apparent on the face of record, in the case.

9. Rightly so in the case of Aribam Tuleshwar Sharma (supra), cited by the learned counsel for petitioner, it has been clearly held by the Apex Court that :--

'The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.'

10. Recently in case of Lily Thomas etc. etc. v. Union of India and Ors., reported in 2000 (3) AIR SCW 1760, it has been reiterated by the Supreme Court after discussing the entire case law on the subject that for interference in review petition there should be an error which is a patent and not a mere wrong decision and the word any other sufficient reason appearing in Order 47, CPC must mean 'a reason sufficient on grounds atleast analogous to those specified in the rule'. A wrong or erroneous decision can only be interfered in an appeal and not in review petition.

11. Consequently, we do not find any merit and substance in this review petition and also we do not find any case for interference in this review petition as there is

no mistake or error apparent on the face of record and this petition thus fails and is hereby dismissed without any order as to costs.

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