

Roop Chand Vs. State of J. and K. and ors.

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Court : Jammu and Kashmir

Decided On : Apr-28-1999

Reported in : AIR2000J& K43

Judge : A.M. Mir and; O.P. Sharma, JJ.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC), 1977 - Sections 2(2), 2(9) and 2(14) - Order 20, Rule 4; ;Jammu and Kashmir High Court Rules - Rule 57(3); ;Jammu and Kashmir Preservation of Specified Trees Act, 1969 - Section 5

Appeal No. : L.P.A. (W) No. 607 of 1999

Appellant : Roop Chand

Respondent : State of J. and K. and ors.

Advocate for Def. : S.K. Anand, Adv.

Advocate for Pet/Ap. : Ashok Parihar, Adv.

Judgement :

Mir, J.

1. Admit.

Issue fresh notice, Mr. S.K. Anand accepts notice on behalf of respondents.

1A. We have taken up the appeal for final hearing. Heard learned counsel for the parties.

The appeal is directed against the judgment of a learned single Bench passed in OWP No. 807/96 on 13-11-1998. The judgment of the learned single Judge from page one to page four is only reproduction of a Supreme Court finding passed in a case titled T.N. Godavarman Thirumulkpad v. Union of India, reported in 1997 (2) SCC 267 : (AIR 1997 SC 1228). The only addition made by the learned single Judge is a prefacing sentence in the beginning and one towards the conclusion.

In the beginning, the writ Court introduces the case by stating as under :--

'The petitioner submits that he be issued requisite permission to deal with the timber. It be seen that the matter now stands covered by the decision given by the Supreme Court of India in the case reported as T.N. Godavarman Thirumulkpad v. Union of India, 1997 (2) Supreme Court Cases 267.'

Then towards the conclusion the learned single Bench holds as under :--

'This petition is disposed of with a direction that respondents would take notice of the directions given by the Supreme Court and take further action as per directions given by the Supreme Court.

In case any adverse order is passed then the petitioner would be at liberty to challenge again.'

2. Except the above reproduced paras the writ Court does not say anything but only reproduces the Supreme Court judgment. The above facts make it necessary for us to outline the salient features which a judgment must have. The term judgment has been defined in Sub-section (9) of Section 2 of Code of Civil Procedure (hereinafter referred to as the Code) which reads as under :--

'Judgment means the statement given by the Judge of the grounds of a decree or an order.'

'Order' in terms of Sub-section (14) of Section 2 has been defined as :--

'Order formal expression of any decision of a civil Court which is not a decree.'

Similarly the word 'Decree' under Section 2(2) has been defined as under :--

'Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include :--

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.'

Thus a conjoint reading of these definitions brings us to the conclusion that a judgment is a statement of grounds given by a Judge in support of his formal expressions of an adjudication, which must conclusively determine the rights of the parties, projected through the pleadings.

Order 20 of the Code lays down the procedure for drawing of judgments. Under Sub-rule (2) of Rule 4 of the Code, judgments of Courts other than small cause Courts are required to contain a concise statement of case, the points for determination, the decision there on and reasons for such decision.

Same pattern is adopted by J & K High Court Rules. Rule 57, Sub-rule (3) of J & K High Court Rules adopts the four ingredients of Rule 4 of Order 20 supra and lays down as under :--

'57(3) : A judgment shall contain a concise statement of case, the points for determination, the decision there on and the reasons for such decision.'

3. Reading the definition clauses with Order 20, Rule 4 of the Code and Rule 57(3) of the J & K High Court Rules, we come to the conclusion that a judicial finding must satisfy the following conditions :--

1. It must be a formal expression of opinion;

2. The expressions should relate to the adjudication of rights of the parties. Those rights must emerge out of the pleadings.
3. Judgment must aim at finality.
4. It must record reasons.

The above trappings of a judgment can be ensured if the Court first gives out a concise statement of the case and then precedes to indicate the points for determination. After this is done, the Court has to hand down its decision on those points. Lastly it has to lay down reasons for such decision.

It is obvious that all these four ingredients are to be satisfied and all of them are equally important. The importance of those ingredients may vary in degree but all of them are important. Enumeration of points of determination enables the Courts to circumscribe itself fully within the ambit of points in controversy which arise out of the pleadings. A decision or a formal expression of opinion is as important as giving reasons for such decision. There can be no judgment either without a decision of the Court or without reasoning given by the Court in support of its decision. If the decision is given without any reasons then one of the two most essential ingredients will be missed. It is on the basis of the reasons which support a Judgment that the same can be challenged in an appeal. Obviously when no reasons are given, the Judgment is vitiated as being violative of rules of natural justice. It is in this backdrop that Supreme Court of the Country has made it imperative for all the Courts to lay down reasons in support of their Judgments.

4. The Apex Court in a celebrated judgment titled *Vasudeo Vishwanath Saraf v. New Education Institute*, reported in AIR 1986 SC 2105, while referring to the attributes of a judgment, held as under :--

'It is a cardinal principle of rule of law which governs our policy that the Court including writ Court is required to record reasons while disposing of a writ petition in order to enable the litigants more particularly the aggrieved party to know the reasons which weighed with the mind of the Court in determining the questions of facts and law raised in the writ petition or in the action brought. This is imperative

for the fair and equitable administration of justice. More so when there is a statutory provision for appeal to the higher Court in the hierarchy of Courts in order to enable the superior Court or the appellate Court to know or to be apprised of the reasons which impelled the Court to pass the order in question. This recording of reasons in deciding cases or applications affecting rights of parties is also a mandatory requirement to be fulfilled in consonance with the principles of natural justice. It is no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order like 'dismissed' or 'rejected' will be made without passing a reasoned order or a speaking order. It is not, however, necessary that the order disposing of a writ petition or of a cause must be a lengthy one recording in detail all the reasons that played in the mind of the Court in coming to the decision. What is imperative is that the order must in a nutshell record the relevant reasons which were taken into consideration by the Court in coming to its final conclusions and in disposing of the petition or the cause by making the order, thereby enabling both the party seeking justice as well as superior Court where an appeal lies to know the mind of the Court as well as the reasons for its finding on question of law and facts in deciding the said petition or cause. In other words fair play and justice demands that Justice must not only be done but must seem to have been done.'

5. Similar view had earlier been taken by a Bench of the Supreme Court in a case titled *Swaran Lata v. Harendra Kumar*, reported in AIR 1969 SC 1167. It was in that case held that an order only deciding a matter and giving no reasons in its support is not a judgment. Such a decision is fraught with the danger of having been taken on whims and fancies only.

6. In the instant case the writ petitioner claims to be an agriculturist and owns land measuring 4 Kanals comprising Survey No. 765/617/216 situate at Village Bhattan of Tehsil Kishtwar. There were some Kail and Deodar trees standing on this land. Three of the Kail trees were dried and had fallen due to a natural calamity. The writ petitioner applied before the prescribed authority (respondents 3 & 4) under the Jammu & Kashmir Preservation of Specified Trees Act, 1969 and the rules framed thereunder for transportation/lifting of the fallen timber to Kishtwar Town where the same was required for construction of petitioners' house. For

transportation of the timber, permission in terms of form-25 is required. The writ petitioner applied before the respondent No. 2 who refused to issue the requisite permission. The writ petitioner, therefore, filed OWP No. 807/96. It is worthwhile to mention here that Jammu & Kashmir Preservation of Specified Trees Act, 1969, is a statute which governs the subject. Rules under the Act have been framed. These rules provide for transportation of timber grown from proprietary land, therefore, whenever a question with regard to transportation of such timber arises, the Act read with its rules made thereunder, will have to be applied.

7. The historical Judgment delivered by their Lordships of the Supreme Court in Godavarmans case reported in (1997) 2 SCC 267 : (AIR 1997 SC 1228), the Apex Court, in so far as the State of J & K is concerned laid down speaking instructions. Out of these instructions, direction No. 2 relates to transportation of fallen trees. This direction' reads as under :--

'In 'forests', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu and Kashmir Wild Life Protection Act, 1978 or any other law banning such felling or removal of trees.'

Thus under this direction the removal of fallen trees has not been banned but the transportation of the fallen timber was liked to be made either departmentally or through State Forest Corporation.

8. The point in issue for the consideration of the writ Court was as to whether the J. and K. Preservation of Specified Trees Act, 1969 and rules framed thereunder had no application. The writ petitioners' case in clear terms is that the timber he wanted to carry was fallen. Direction No. 2 of the Supreme Court is clear. The intention of this direction is to ensure that strict adherence must be made to J. and K. Wild Life Protection Act and any other law banning felling or removal of trees. The case of the petitioner, in our opinion, can be considered by the prescribed authority under the Act and rules framed thereunder. The thrust of the Supreme Court judgment is to lay a ban on felling. It does not, in our opinion, lay a ban on transportation of the fallen timber from private land under the Act and rules made

thereunder. This judgment seeks a strict observance of the statute and rules and cannot be said to have repealed any of them. However, for transportation of the fallen timber, under rules, the services of the department or State Forest Corporation can in terms of direction No. 2 be availed of. Obviously the Act and the rules read in the light of the above direction would enable the writ Court to dispose of the matter before it.

9. The 'Judgment' of the writ Court when analysed seems to have the following features :--

(i) It does not decide the controversy in issue.

(ii) It leaves the adjudication of the matter for the respondents, not even showing, who out of them should do it.

(iii) It also calls upon the respondent State to interpret the Supreme Court judgment and then apply it and decide the petitioners case. It amounts to delegation of judicial powers to executive.

(iv) It also leaves the writ petitioner free to come to the Court again and challenge the finding of the respondents. Thus the Judgment impugned lacks the attribute of finality.

(v) It does not afford any reasoning, and also does not give out the perception of the writ Court with regard to application of the Godavarmans case supra upon the facts of the case.

We, with respects, are constrained to hold that the writ Court decision lacks in all the essentials required under law for a judgment. We accordingly allow this appeal and set aside the same.

We dispose of the writ petition by directing the respondent No. 2 that he will consider the issuance of Form 25 in respect of fallen trees under the Land Transport Rules. The timber, if allowed to be transported, shall be got transpired through the State Forest Corporation or departmentally, as per direction No. 2 of the Supreme Court, reproduced above. Final decision shall be taken by

respondent No. 2 within a period of four weeks of receiving this order.

No order as to costs.

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