

(17) After hearing the counsel for the parties, I am of the opinion that the view taken by the learned Judge was erroneous in law. When a party claims that a particular dispute cannot be referred to arbitration, because it related to a period after the death of a partner and it was, therefore, outside the arbitration agreement, it is for the Court to decide that matter and not leave it to the Arbitrator to pronounce on the same. It is only after the Court comes to the conclusion that a particular dispute can in law be referred to the Arbitrator for decision that the same can be so referred. The view that I have taken is supported by a decision of the Madhya Pradesh High Court in *Hindustan Steel Ltd., Bhilai Steel Project, Bhilai, District Durg. v. M/s. Kaushal Construction Company, Architects Engineers and Contractors, Durg. M.P. (1)*, and there it was held that where one of the parties contended that a certain dispute, which was placed before the Arbitrator, was outside the scope of the arbitration agreement, it was his right to have the question determined by the Court. I would, therefore, reverse the decision of the trial Judge on issue No. 1 and hold that it is for the Court to decide whether the dispute sought to be referred to arbitration for the period subsequent to the death of Som Nath, fell within the arbitration agreement and was covered by the partnership-deed. It is needless to point out that if any dispute is so covered, the same can be referred to arbitration.

(18) In view of what I have said above, I would direct the trial Judge to redecide issue No. 1 in the light of the observations made above. The revision petition is disposed of accordingly.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BADLU,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 2806 of 1970.

November 9, 1970.

*The Punjab Chaukidara Rules (1876)—Rules 11 and 42—The Punjab Laws Act (IV of 1872)—Section 39-A—The Punjab General Clauses Act*

(1) A.I.R. 1966 M.P. 249.

(I of 1898)—Section 4 and 6—Rule 42 providing for appeal to Deputy Commissioner against the orders of his own delegate—Whether *ultra vires*—Section 39-A of Act IV of 1872 repealed and re-enacted by Act XXIV of 1881—Rules framed under the repealed section—Whether come to an end automatically.

*Held*, that it is open to the Legislature or to the rule making authority to provide for an appeal to the principal against the order of its own delegate. The principal authority does not, by delegating it to a subordinate authority, obliterate its own power and jurisdiction. From the combined reading of rules 11 and 42, of the Punjab Chaukidara Rules (1876), it is apparent that it is permissible for the Deputy Commissioner to delegate his powers under rule 11 and keep the appellate authority under rule 42 with himself. There is nothing abhorring in this procedure and therefore rule 42 of the Rules providing for appeal to Deputy Commissioner against the orders of his delegate is not *ultra vires*. (Para 6)

*Held*, that section 4 of Punjab General Clauses Act, 1898, states that unless a different intention appears, the repeal of a Punjab Act by another Punjab Act shall not effect the previous operation of any thing duly done or suffered thereunder. Section 6 of the same Act provides that where any Punjab Act repeals and re-enacts, with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. Hence the rules which were framed under the original section 39-A of the Punjab Laws Act of 1872, would accordingly be deemed to have been passed under the substituted section 39-A which was re-enacted by Act XXIV of 1881 and will not come to an end automatically. (Para 7)

*Petition Under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, Order or Direction be issued quashing the order of Respondent No. 2, dated 15th January, 1970, and upholding that of the Deputy Commissioner, Rohtak, dated 28th April, 1969, and further praying that the operation of the impugned order be stayed during the pendency of the writ petition.*

R. K. CHHOKKAR, ADVOCATE, for the petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL, HARYANA WITH H. N. MEHTANI, ASSISTANT ADVOCATE-GENERAL, HARYANA, for Respondents Nos. 1 to 3.

U. D. GAUR, ADVOCATE, for Respondent No 4.

#### JUDGMENT

NARULA, J.—(1) Two questions relating to the correct interpretation and true scope of rule 42 of the Punjab Chaukidara Rules, 1876 (as amended up to May, 1965) call for decision in this

petition under Articles 226 and 227 of the Constitution of India in the following circumstances :—

(2) Badlu petitioner, a Chowkidar of village Chulkana, tehsil Sonapat, district Rohtak, made a complaint against Shri Chand, respondent No. 4, who was the Daffadar of that village. The Sub-Divisional Officer (Civil), Sonapat, made enquiries into the complaint and by his order, dated November 6, 1968, (Annexure 'A') held that Shri Chand was not performing his duties properly, but let him off with admonition. Shri Chand was allowed to continue in his post though he was warned to be more careful in future. Against the order of the Sub-Divisional Officer, the petitioner preferred an appeal to the Deputy Commissioner, Rohtak. That appeal was allowed by the order of the Deputy Commissioner, (who was also the Collector of the district), dated April 28, 1969, (Annexure 'B'). He held that Shri Chand, respondent could not be retained on the post of Daffadar. He, accordingly, set aside the order of the Sub-Divisional Officer and dismissed Shri Chand from the post of Daffadar. I am given to understand that by a subsequent order the petitioner was appointed as Daffadar in place of Shri Chand. This is being mentioned in order to make it clear that the petitioner had some actual interest in this litigation though, even otherwise, he would have been entitled to maintain his petition as the proceedings against Shri Chand had been initiated by him.

(3) Shri Chand respondent, who was naturally aggrieved by the order of the Deputy Commissioner filed an appeal to the Commissioner, Ambala Division, Shri R.I.N. Ahuja, the Commissioner, allowed the appeal by his order, dated January, 15, 1970 (Annexure 'C') and set aside the order of the Deputy Commissioner on the solitary ground that the Sub-Divisional Officer had passed his order (Annexure 'A') in exercise of powers which had been delegated to him by the Deputy Commissioner under rule 11 of the Chaukidara Rules and, having so delegated those powers, the Deputy Commissioner could not again exercise the powers himself in appeal. On that basis alone, the order of the Deputy Commissioner dismissing Shri Chand was set aside as being illegal and void and the order of the Sub-Divisional Officer was restored. That order of the Commissioner was impugned in this petition. The State as well as Shri Chand have contested the petition. Learned counsel for the petitioner has submitted that (1) the Commissioner had no jurisdiction to pass the impugned order and (2) the order of the Deputy

Commissioner was within his jurisdiction and, therefore, the Commissioner's order suffers from an error of law apparent on its face. The answer to both these questions depends on the correct interpretation of rule 42. Rules 11 and 42 of the Chaukidara Rules, which have been framed under section 39-A of the Punjab Laws Act, 1872, may be reproduced at this stage :—

"11. The Deputy Commissioner, or the officer duly authorised by him in that behalf, may dismiss any village watchmen or daffadar for any misconduct or neglect of duty or physical unfitness for the performance of his duties.

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42. All orders of the Deputy Commissioner in regard to the fixing of the number of village watchmen, the mode of their remuneration and the levying of the same, shall be subject to control, revision and alteration by the Commissioner to whom he is subordinate, but all orders by a delegated authority shall be appealable to the Deputy Commissioner or to such authority as the Deputy Commissioner may specify."

The learned counsel for the State was not able to defend the impugned order of the Commissioner. Mr. U. D. Gaur, learned counsel for respondent No. 4, who has argued this case with great ability, however, submitted that though the Commissioner had no jurisdiction to interfere with the order of the Deputy Commissioner because of the limited revisional jurisdiction vested in the Commissioner by the opening part of rule 42, I should decline to interfere in this case as the result of merely setting aside the order of the Commissioner would be to restore the order of the Deputy Commissioner which was passed by him without having any jurisdiction to do so. Mr. Gaur has secondly contended that the second part of rule 42, which purports to confer on the Deputy Commissioner jurisdiction to hear appeals against orders passed by himself through his delegate is invalid and *ultra vires*. Since the vires of a rule framed by the State Government had been questioned by Mr. Gaur, I gave notice of this petition to the Advocate-General of Haryana, who has, in response to the notice, been heard today.

(4) Right of appeal does not exist unless it is conferred by some statute. It is the common case of both sides that the jurisdiction of the Commissioner in the matter of interfering with the order of the Deputy Commissioner is confined to the first part of rule 42. This means that the Commissioner can revise or alter only such orders of a Deputy Commissioner which relate to the fixing of the number of watchmen, the mode of the remuneration of village watchmen or relate to the levying of the same. No revisional or appellate jurisdiction has been conferred on the Commissioner to interfere with any other kind of order passed by the Deputy Commissioner (or his delegate) under the Punjab Chaukidara Rules. It is plain that the order of the Deputy Commissioner (Annexure 'B') neither related to the fixing of the number of village watchmen nor to the mode of the remuneration nor to the matter of levying of the same. The order of the Commissioner is, therefore, clearly without jurisdiction and is liable to be quashed on that short ground.

(5) Relying on the judgment of Sinha, J. in *Bimal Chand v. Chairman, Jaigunj Azimgunj Municipality and another* (1), Mr. Gaur, submitted that relief under Article 226 of the Constitution being discretionary and the extraordinary jurisdiction of this Court under that Article being equitable one, I should not exercise the discretion so as to set aside an order which is *non est* if as a result thereof another order without jurisdiction would be revived. What Mr. Gaur submitted was that though there was no occasion for his client to impugn the validity of the Deputy Commissioner's order, as he had succeeded to get it set aside by the Commissioner, the correct legal situation had been reached by one order without jurisdiction having been set aside by another order without jurisdiction. It was on this basis that he submitted that the High Court should not exercise its discretion in support of such action which sought to uphold the order which had been passed without jurisdiction by the Deputy Commissioner. I would not have been inclined to disagree with the proposition of law canvassed by Mr. Gaur, if I had found that the order of the Deputy Commissioner was really without that the scope of the expression "all orders" occurring in rule 42 is jurisdiction. All the learned counsel appearing before me admitted not confined to the kind of the orders of the Deputy Commissioner which are revisable by the Commissioner. In this view of the matter, there is no doubt that within the plain language of the second part

(1) A.I.R. 1954 Cal. 285.

of rule 42, which for all practical purposes is a separate self-contained rule, an appeal did lie to the Deputy Commissioner against the order of his delegate, the Sub-Divisional Officer (Civil). It has been found by the Commissioner, and is otherwise not disputed that the original power under rule 11 is vested in the Deputy Commissioner and it was only because the Deputy Commissioner had authorised the Sub-Divisional Officer (Civil) in that behalf that the order Annexure 'A' was passed by the last mentioned authority. This means the Sub-Divisional Officer (Civil) was acting in exercise of the authority delegated to him by the Deputy Commissioner. According to the plain language of rule 42, therefore, the Deputy Commissioner did have jurisdiction to hear and decide the appeal preferred by the petitioner against the order of the Sub-Divisional Officer.

(6) It is to avoid the effect of the above mentioned findings that Mr. Gaur contended that the relevant part of rule 42 inasmuch as it makes a provision for appeal to the Deputy Commissioner against the order of his own delegate is *ultra vires*. In support of this proposition he referred to the judgment of the Supreme Court in *Roop Chand v. State of Punjab and another* (1). The question which came up for decision before their Lordships of the Supreme Court in *Roop Chand's case* (1), was whether in exercise of its jurisdiction under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (Punjab Act 50 of 1948) the State Government could or could not revise the order of its delegate passed under sub-section (4) of section 21 of that Act. Section 21(4) as it then existed authorised the State Government to hear an appeal against any order of the Settlement Officer (Consolidation) passed under sub-section 3 of that section. Section 41(1) of the Consolidation Act empowers the State Government, *inter alia* to delegate any of its powers or functions under that Act to any of its officers either by name or description. In exercise of the power conferred under sub-section 1 of section 41, the State Government had delegated its functions and powers under sub-section (4) of section 21 of the Act to the Assistant Director of Consolidation. Section 42 of the Consolidation Act (as it was borne on the statute book at the relevant time) authorised the State Government to call for and examine the record

(1) A.I.R. 1963 S.C. 1503.

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of any case pending before or decided by any officer under the Consolidation Act for the purpose of satisfying itself as to the legality or propriety of such an order. The order passed by the Assistant Director of Consolidation as delegate of the State Government under sub-section (4) of section 21 was reversed by the Director of Consolidation to whom the powers of the State Government under section 42 had been delegated. Roop Chand, having failed to get that order quashed from the High Court in writ proceedings succeeded in the Supreme Court on the short ground that the order of the Assistant Director under section 21(4) was not his own order as an Assistant Director, but was an order passed by him as a delegate of the State Government and could not, therefore, fall within the scope of the orders against which power of revision had been conferred by section 42. Their Lordships observed that if they had held to the contrary, it would merely mean that even the order of the Director, who was a delegate of the State Government for exercising the functions under section 42 of the Act, would again be revisable by another officer to whom the powers under section 42 might have been delegated and so on and on, with the result that in this way finality in the matter could never be reached. It was held that it was only an order passed by an officer under the Act in his own right as such officer which was revisable under section 42 and not an order passed by an officer as delegate of the State Government, which order would, for all practical purposes be deemed to be the order of the State Government itself. The pivot of the majority judgment of the Supreme Court was the phraseology of section 42. Learned counsel for the petitioner submitted that if section 42 had stated that the Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by any officer under this Act "or passed by any officer to whom the powers and functions of the State Government under section 21(4) have been delegated" call for and examine the record of any case pending before or disposed of by any such officer or delegate and may pass such order in reference thereto as it thinks fit, the Supreme Court would have upheld the order passed in *Roop Chand's case* (2). I find great force in this submission of Mr. Chhokar. According to the contention of Mr. Gaur, it is not open to the Legislature or to the rule-making authority to provide for an appeal to the principal against the order of its own delegate. I am unable to spell out any such proposition of law from the judgment of the Supreme Court in *Roop Chand's case* (2). In fact, the Supreme Court approved of the

dictum of the judgment of the Queen's Bench Division in *Huth v. Clarke* (1), wherein Wills, J., observed that the delegation, as the word is generally used, does not imply parting with powers by the person, who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. If it is, therefore, correct that the principal authority does not, by delegating it to a subordinate authority, obliterate its own power and jurisdiction, the petitioner must succeed in this respect. The combined reading of rules 11 and 42 leads me to think that it would be permissible for the Deputy Commissioner to delegate his power under rule 11 to a Tahsildar and his functions under rule 42 to a Sub-Divisional Officer, if he chose to do so. In that event, no jurisdiction would be left in him to deal with the matter any further. But in the instant case, though he had empowered the Sub-Divisional Officer to exercise his functions under rule 11, he had kept the appellate authority under rule 42 with himself. I am unable to see anything abhorring in the procedure adopted by the Deputy Commissioner. A rule cannot be *ultra vires* another rule. A rule can be struck down if it is *ultra vires* some provision of the statute. It is nobody's case that the relevant part of rule 42 is *ultra vires* section 39-A of the Punjab Laws Act under which the rule has been framed. I am, therefore, unable to find any invalidity in the second portion of rule 42 and upholding its vires, I hold that the order of the Deputy Commissioner was within his jurisdiction.

(7) The only other submission made by Mr. Gaur is that original section 39-A, which existed in the Punjab Laws Act, 1872 as amended in 1875, having been repealed and the present section 39-A having been re-enacted in its place by Punjab Laws (Amendment) Act, 1881, the rules framed under the repealed provision automatically came to an end. This submission is obviously fallacious. Section 4 of the Punjab General Clauses Act (Act I of 1898) states that unless a different intention appears the repeal of a Punjab Act by another Punjab Act shall not effect the previous operation of anything duly done or suffered thereunder. No different intention appears in the repealing Act. Section 6 provides that where any Punjab Act repeals and re-enacts, with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different

(1) L.R. (1890) 25 Q.B.D. 391.

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intention appears, be construed as references to the provision so re-enacted. No provision to the contrary has been pointed out to me. The Punjab Chaukidara Rules, 1876, which were framed under the original section 39-A of the Punjab Laws Act, 1872, would, accordingly be deemed to have been passed under the substituted section 39-A which was re-enacted by Act XXIV of 1881. I am, therefore, unable to find any force in this submission of Mr. Gaur.

(8) No other point was argued before me in this case. All the attacks of Mr. Gaur, against the Deputy Commissioner's order having failed, this petition must succeed. I accordingly allow this petition and quash the impugned order of the Commissioner (Annexure 'C'), dated January 15, 1970, as being wholly without jurisdiction and uphold the order of the Deputy Commissioner (Annexure 'B'), dated April 28, 1969, as the Deputy Commissioner had the jurisdiction to pass that order. In the circumstances of the case, the parties are left to bear their own costs.

N. K. S.

REVISIONAL CRIMINAL

Before H. R. Sodhi, J.

KANWAR RANJIT SINGH SANDHOO,—*Petitioner.*

*versus*

THE STATE OF PUNJAB,—*Respondent.*

**Criminal Revision No. 48-M of 1969.**

November 10, 1970.

*Criminal Procedure Code (V of 1898)—Sections 435, 436, 437, 438 and 523—Punjab High Court Rules and Orders, Volume V—Rule 3 of Chapter 1-A—Revision against a non-appealable order of an original Court—Whether entertainable by the High Court without the Sessions Court being moved first—Section 523—Scope of inquiry under—Stated.*

*Held*, that it has been the usual practice of the Punjab Court to decline to consider an application under section 439, Criminal Procedure Code, unless the petitioner first moves the Court of Session or the District Magistrate as the case may be and that a revision petition would be entertained directly only on exceptional or extraordinary grounds. This salutary practice which has meaning behind it has been adopted in the rules framed by