
(2011) 09 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52734 of 2007

Abdul Mazid

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 ADJ 69

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—Heard Sri P.N. Saxena, learned Senior Counsel at length and perused the record.

2. At the outset he pointed out that this writ petition was listed on 9.9.2011 in the heading "Group of Cases Likely to be Infructuous". He said that this case is not infructuous. Since the fair price shop's agreement was cancelled, therefore, it was not rendered infructuous. He further submitted that this writ petition is of 2007, therefore, if is not infructuous, then it has to be listed before appropriate Court for admission and hence it ought to be released to be listed for appropriate Bench.

3. I am, however, not inclined to accept the above submission. The jurisdiction assigned to this Court as per the determination of Hon"ble the Chief Justice is as under:

Fresh, order, admission, hearing Misc. Writs (except Writs arising out of suits and Educational Institutions)

AND

Listed Misc. Writs (except Writs arising out of suits and Educational Institutions) from January 1st, 2009 onwards including Bunch Cases.

Misc. Writs upto the year 1994 and for the year 1997 and infructuous cases irrespective of the year for Orders, Admission and Hearing.

Cases for Final Hearing/Disposal starting from the oldest of the category assigned.

4. The cases which are listed with the title "Group of Cases Likely to be Infructuous" are further shown under the heading "Admission or Hearing or Order" as the case may be. These cases are to be listed irrespective of the year. What is evident from there is that if the cases are actually infructuous they have to be simply dismissed without any detailed order. In case the cases are not infructuous from the bare perusal of the record or counsel do not agree to the situation and points out that the case is not infructuous then the Court will hear the matter for the purpose it is listed namely "Admission or Hearing or Order". The underline idea already is very clear. The cases are not to be tossed in different Benches for technical reasons. They are assigned under a particular heading, listed in the Court and as circumstances and the facts of the case require, the Court shall proceed accordingly. It shows that the case may proceed further for admission or hearing instead of simply listed from one Court to another. If the only thing required to be seen by the Court is whether the case has become infructuous or not thereafter has to be directed to be listed before another Court, this is simply a wastage of time and would make further headings "Order, Admission and Hearing", redundant. Once the cases are shown in the cause list with certain purpose, nothing is to be treated to be redundant or without any meaning. Afterall the cause list is published under the authority of Hon"ble the Chief Justice. The determination of the work is also within the domain of Hon"ble the Chief Justice. If a case has not become infructuous already, the Court shall proceed to take up the matter and hear for the purpose it is listed namely "Order, Admission or Hearing" and will pass appropriate order. If after hearing the parties the Court finds that the case deserves to be admitted when listed under the head "Admission" it can admit the same and direct to be listed for hearing after exchange of pleadings, if not already exchanged, and if the pleadings are exchanged, then it may be directed to be listed for hearing in its own turn. However, if the Court finds after hearing the parties or in case of non-appearance of the counsel for the petitioner or the parties, after perusal the record on its own that it does not deserves admission, it can dismiss the matter at the admission stage. Similarly if counsel for the parties agreed, the Court can also decide the matter finally at the admission stage itself without formally admitting it as permitted in the Rules. Similarly, if the cases are listed under the heading "Likely to be Infructuous" with the heading "Orders or Hearing" the Court shall proceed accordingly.

5. What learned counsel for the petitioner has contended if accepted would mean that just for a ministerial job of whether the case has rendered infructuous or not, on mere statement of counsel for the petitioner or from the record and thereafter would direct it to be listed in some other Court. This also cannot be

the intention of Hon"ble the Chief Justice while assigning the cases in the manner as discussed above as it would simply consume enough time without any effective proceedings and result. An interpretation which shall import unnecessary burden on the Court without any effective work, when this Court is realing under a heavy pressure of extra-ordinary pendency of cases. The interpretation which would enhance adjudication of cases and disposal, should be adopted and not something which would only hamper adjudication of the matter on merit or otherwise. Now the litigants do not want simply date. They are more interested in getting cases decided at an early date.

6. A Full Bench of this Court in a majority order delivered on Sunni Central Board of Waqfs, U.P. and others v. Gopal Singh Visharad and others, 2010 ADJ 1 (SFB) observed:

15. With the increased awareness, the people are getting conscious of their right and do not hesitate in asserting it. If the enforcement of rights get deferred not because of any slackness on their part, but due to extremely slow pace or inaction on the part of judiciary, their complaint cannot be levelled frivolous. In a system of good governance, effective, independent judicial system is not only the requirement but the real crux lies whether it can deliver justice within reasonable time; whether it can decide the issue expeditiously and before the patience of the people exhausts? These are some of the aspects which need be seriously taken up by the Bench and Bar both. This is the high time when not only the Presiding Officers of the Court but also the members of the Bar who are also officers of the Court should ponder over seriously and find out the way in which cases may be decided expeditiously instead of inventing the way for their deferment and adjournments. The Courts are meant for adjudication and not for adjournments or deferment.

7. In view thereabove, I reject the objection raised by learned counsel for the petitioner. Now I am proceeding on the merits of the case.

8. Learned counsel for the petitioner contended that in the show-cause notice it was mentioned that on 7.6.2007 when spot inspection was made only eight persons made complaint that they were distributed essential commodities regularly and the entries regarding distribution of food grains were made on ration cards at the time of distribution of Kerosene oil. He further submitted that at any point of time neither any enquiry report was communicated to the petitioner nor he was apprised of the names of persons who made complaints and therefore, the entire proceedings are in utter violation of Principles of Natural Justice. He also contended that show-cause notice mention only about eight persons while in the cancellation order the Deputy Collector has given a list of about 40 persons and where-from these names come is conspicuous since it was never disclosed to the petitioner and he was never apprised of the facts related to these persons. He submitted that proceedings, therefore, have been conducted on material not disclosed to the petitioner and, therefore, the impugned orders are illegal and liable to be set-aside.

9. In my view the submissions have no substance. Petitioner submitted reply to the show-cause. The reply is on record at page 49 of the writ petition. It does not raise any issue of non-furnishing copy of enquiry report or non-disclosure of names of persons whose statements were recorded. On the contrary it says that affidavits of persons who allegedly made complaint against him are appended wherein they have disputed the complaint. Copy of the affidavits are on record as Annexures 5 and 6. A perusal of Annexure-5 shows signatures of 20 persons and the card numbers mentioned therein tally with the card numbers mentioned in the cancellation order under the heading "B.P.L.". Annexure-6 is an affidavit signed by eight persons whose reference is given in show-cause notice and who belong to the category "Antyodaya".

10. In fact in the show-cause notice 27 persons' names are mentioned under the heading "B.P.L." and eight names are mentioned in respect of Antyodaya" card holders. Out of this, petitioner claimed that eight Antyodaya" and 20 "B.P.L." card holders gave affidavits. This itself belie the contention of learned counsel for the petitioner that he was not made aware of the names of persons other than eight whose reference is given in the show-cause notice. It thus, cannot be said that proceedings are based on same material collected at the back of the petitioner. He was not aware of names of any of the persons, it is not understandable how he could obtain affidavits of 28 persons, when according to him only eight persons were mentioned in show-cause notice. It means that petitioner was well aware with the names of all persons who had made complaints against him and could succeed in getting affidavits from some of them while rest did not give statement in his favour. This is also evident from the fact that no such complaint of non-disclosure of names or non-furnishing of inquiry report was made by petitioner before the appellate authority as is evident from the memo of appeal filed as Annexure 3 to the writ petition. In appeal no such ground was raised by petitioner that he was not given opportunity of hearing or material relied against him before passing the order of cancellation by the Deputy Collector.

11. Both the authorities have recorded findings of fact that the petitioner had committed irregularities in distribution of essential commodities which was supported by complaints of beneficiaries out of which admittedly some of them did not make statement in favour of petitioner and never retracted.

12. In the circumstances, under Article 226 of the Constitution of India, I do not find it a fit case warranting interference.

13. Dismissed.