
(2006) 07 AHC CK 0201
In the Allahabad High Court

Dakshinanchal Vidyut Vitran Nigam Ltd.	APPELLANT
Vs	
Anand Granites and Others	RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 7 ADJ 577 : (2007) 1 AWC 1002

Hon'ble Judges : Rajiv Sharma, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant and Rajiv Sharma, JJ.—This special appeal has been filed by the Nigam and the Executive Engineer against the order passed by the learned single Judge dated 30.6.2006.

2. Necessary facts giving rise to the present special appeal are that the respondent Anand Granites had approached the District Consumer Forum making a challenge to the demand raised by the Corporation approximately of Rs. 17 lacs in respect of certain electricity dues/ penalty towards the Corporation. The District Consumer Forum upheld the claim of Anand Granites and thus the demand made was set aside. According to the case of the respondent Anand Granites that even after the passing of the judgment and order by the District Consumer Forum, the Corporation arbitrarily and maliciously insisted for the payment and did not restore the electricity connection, therefore, a writ petition was filed bearing number 29801 of 2006 (MB) at Allahabad which was disposed of on the same day, i.e., on 26.5.2006. A Division Bench of the Court at Allahabad. (A. K. Yog and V.C. Misra, JJ.) after taking note of the grievance of the petitioner to the writ petition filed by Anand Granites that despite judgment of the District Consumer Forum dated 3.5.2006, the Corporation and its authorities, are arbitrarily harassing him and that he had already filed an application/ representation to the Executive Engineer, the Court directed Anand Granites to file a fresh representation within three weeks alongwith certified copy of the

order and for decision of the same within next six weeks by a reasoned order.

3. Later on during summer vacations the present writ petition was filed at Lucknow on almost the same facts and the reliefs viz.; that despite the order passed by the District Consumer Forum, the private respondent was being harassed by the Corporation for payment and electricity connection was not being restored. However, an additional reliefs was also claimed for issuing a direction for expediting the hearing of pending appeal, etc.

4. The learned single Judge (A. K. Yog, J.) has disposed of the writ petition finally on the same day taking into consideration that so far the actual consumption of power is concerned there were no dues against the petitioner and it was only Rs. 17 lacs which was demanded by the Corporation as penalty. The Court observed that the demand of penalty has also been set aside by the District Consumer Forum and since both the learned Counsel have joined in making a statement that there was no interim order in appeal, the stand taken by the Corporation that since appeal is pending but the power supply shall not be restored unless the respondent deposits the penalty, was not appreciated by the Court as in the absence of an interim order in favour of the Corporation the order of the District Consumer Forum was to be respected.

5. The Court also took into consideration the offer given by the private respondent to deposit Rs. 4 lacs within a week, provided the power supply is resumed in the premises in question belonging to the private respondent. In view of the aforesaid reasons the learned single Judge directed the petitioner to deposit Rs. 4 lacs with the concerned authority of the Corporation and on such deposit, directed for the power to be resumed forthwith. It was further provided that the deposit of aforesaid amount will be subject to any order which may be passed by the State Forum after hearing the parties.

6. Sri Vishal Dixit appearing for the private respondent raised a preliminary objection regarding the maintainability of the special appeal under Chapter VIII, Rule 5 of the Rules of the Court saying that the instant petition was filed under Article 227 of the Constitution and not under Article 226 of the Constitution, and therefore, the special appeal is not maintainable.

7. In support of his submission Sri Vishal Dixit has relied upon the case of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , wherein the Apex Court held that appeal against the judgment of learned single Judge in a petition under Article 226 of the Constitution is maintainable but special appeal (Letters Patent), arising out of the proceedings under Article 227 since is not an original proceeding, therefore, intra-court appeal would not lie against the judgment of learned single Judge of Bombay High Court in a petition under Article 227.

8. In the case of Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others, the Apex Court reiterated that jurisdiction vested in the High Court under Article 227 is a revisional jurisdiction and. accordingly no Letters Patent Appeal is competent from an order passed by a single Judge in

exercise of such jurisdiction.

9. Article 227 confers power of superintendence on the High Court over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. Sub-clause (2) says that without prejudice to the generality of the foregoing provisions, the High Court may:

(a) call for returns from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

10. Chapter VIII, Rule 5 says that an appeal shall lie to the Court from a judgment (not being a judgment passed in exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction (or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a Tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent list in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge).

11. The learned Counsel for the appellant in response has submitted that the present petition cannot be said to have been filed under Article 227 of the Constitution and merely because it was titled as such, it would not partake the character of a petition under Article 227 of the Constitution but would still be a petition under Article 226 if at all any such petition can be said to be maintainable, though neither petition under Article 226 nor under Article 227 of the Constitution was maintainable for getting the order passed by the District Consumer Forum executed/complied with by a party to the proceedings.

12. Relying upon the provisions of Article 227 of the Constitution, he submitted that Article 227 gives power of superintendence to the High Court over all Courts which means that every High Court shall have superintendence over all Courts and Tribunals throughout its territorial jurisdiction, and therefore, a petition alleging non-compliance of the order passed by the Tribunal by a Corporation or a party to the claim before the Consumer Forum cannot be said to be a petition under Article 227 of the Constitution.

13. Powers under Article 227 can only be exercised over Courts and Tribunals and not against parties where no obligation rests upon the Court or Tribunal to

execute or implement the order passed by them when no application for execution or taking any appropriate action under the relevant provisions of the Act have been taken before the Tribunal or Court. If a party to the proceedings is avoiding execution or implementation of the order passed by the District Consumer Forum remedy lies in approaching the Forum by taking appropriate steps, and not by filing a petition before the High Court.

14. In the case of Shama Prashant Raje Vs. Ganpatrao and Others, , the Supreme Court defined the scope of jurisdiction of the High Court when it may interfere with the findings of inferior Tribunal, wherein it was observed that notwithstanding the fact that jurisdiction of High Court acting in proceedings under Articles 226 and 227 is supervisory, not appellate, if perusal of the order of an inferior Tribunal leads the High Court to conclusion that (i) such Tribunal has committed a manifest error by misconstruing a document; or (ii) that on the material on record a reasonable man could not have come to the conclusions reached by the Tribunal; or (iii) the Tribunal has ignored relevant material; or (iv) taken into consideration inadmissible material, High Court would be fully justified in interfering with the findings of the inferior Tribunal.

15. In the instant case, no direction was sought for against the District Consumer Forum (Tribunal) nor the judgment and order passed by the Tribunal is under challenge, simply because the petitioner felt that the Corporation was not complying with the order, instant petition was filed. Power of superintendence under Article 227 is to be exercised against the Courts and the Tribunals in case the High Court comes to the conclusion that the order passed by the Tribunal or any other Court in relation to which it exercises territorial Jurisdiction, suffers from any such illegality as defined in the case of Sharma Prashant Raje (supra).

16. In any case the petition for giving effect to the order passed by the District Consumer Forum and consequently having electricity connection in the instant case cannot be said to be a petition filed within the meaning of Article 227 of the Constitution. The plea therefore, that the special appeal would not lie does not stand as the aforesaid petition can only be treated a petition under Article 226 filed in the original jurisdiction of the High Court. Even the reliefs which have been claimed in the petition is that for issuing a writ in the nature of mandamus (prerogative writ under Article 226 of the Constitution) against the present appellant to resume the electricity supply of the respondent which has been illegally disconnected and has not been restored inspite of the orders passed by the District Consumer Forum. Further reliefs were claimed with respect to pending appeal to be decided expeditiously and a writ in the nature of mandamus to the U.P. Electricity Regulatory Commission to pass the order in respect of the proceeding pending before the Special Court at Mahoba. The aforesaid reliefs make it clear that the instant petition was not a petition under Article 227 of the Constitution but a petition under Article 226 of the Constitution where writ of mandamus was also claimed whereas in a petition under Article 227, the issuance of prerogative writ is not to be claimed.

17. At this Juncture it would be relevant to mention that after the close of arguments, the appellants counsel Sri Ranjeet Saxena informed the Court that in appeal against the order passed by the District Consumer Forum, the State Forum has passed an interim order of stay, on the same day, staying operation of the entire orders. The counsel for the appellants though was not possessed of the copy of the stay order but gave this statement on the basis of instructions received.

18. Sri Vishal Dixit. however, feigned ignorance of the stay order granted by the Appellate Forum, however, stated that the order passed by the Appellate Forum may be directed to be complied with.

19. It is also pertinent to mention here that on 30.6.2006, when the impugned order was passed by the learned single Judge, the appeal against the order passed by the District Consumer Forum finally on 22.6.2006 was itself filed on 30.6.2006 itself. On the date of filing the appeal and on that very date the writ petition was filed and the orders were passed by finally disposing of the same.

20. Since appeal itself was filed on 30.6.2006 and the State Forum was closed during summer vacation upto 30.6.2006, there was no occasion to make a statement before the learned single Judge by either of the parties that no interim order was passed in the appeal as there was no occasion till that date to consider the application, for interim relief.

21. Since an interim order of stay has been passed in appeal by the Appellate Forum the parties shall be governed by the said order as has been observed by the learned single Judge in the impugned order also.

22. We would like to place on record that Anand Granites when first filed the writ petition at Allahabad complaining that the Forum's order is not being complied with and arbitrary demand is being raised, did not bring to the notice of the Court, that the order dated 3.5.2006, which was sought to be enforced was not an order of the Forum nor the same could have been treated as such. The reason being that on 3.5.2006 the two members, viz.; the Chairman and a member who pronounced the order had some difference of opinion and therefore, the matter was referred to a third member to decide the controversy who finally decided the same on 22.6.2006. That being so, there was no occasion for filing of the writ petition for compliance of the order passed by the Forum as that time, i.e. on 26.5.2006, no such orders were passed which could be said to be the order passed by the Forum, in view of the difference of opinion between the Chairman and the member for which reference was made to the third member which was still pending on the date when the writ petition was filed, i.e. on 26.5.2006. There was thus, no occasion nor any cause of action for Anand Granites to file the writ petition aforesaid.

23. The conduct of Anand Granites, i.e., the respondents in approaching the Court at Allahabad on 26.5.2006, complaining that the order passed by the Tribunal dated 30.5.2006, is not being complied with by the Corporation and that

arbitrary demand is still being made despite the penalty having been set aside by the District Consumer Forum and that no reconnection is being done, could not have given any cause of action to file the aforesaid writ petition, for the reasons (i) the allegation that after the judgment and order passed by the Tribunal on 3.5.2006, still any demand was raised, was not substantiated by any such demand and (ii) the order dated 3.5.2006, was not an order passed by the Tribunal (Forum) as the matter stood referred to the third member who gave his verdict on 26.6.2006.

24. Similarly the instant writ petition was filed only with a view to get an order of reconnection from this Court knowing fully well that the final verdict of the forum had come only on 22.6.2006 and the appeal against the said order was filed on same very date on which date the writ petition was filed, i.e., 30.6.2006 at Lucknow.

25. The respondents plea that because the Executive Engineer while deciding the representation in pursuance of the directive issued by a Division Bench, filed at Allahabad since had mentioned that the electricity connection cannot be restored in view of pendency of the appeal, the respondents were swayed to file the writ petition, at Lucknow, would not be sufficient to hold that there was any final order against which any appeal or writ petition could have been filed though it appears that the Corporation also treating the order dated 3.5.2006 as the order of the Tribunal had gone in appeal against the said order despite the fact that it was not a final order which order was passed on 22.6.2006.

26. If the District Consumer Forum had decided the claim in favour of the respondents on 22.6.2006 the appellants were at liberty to file the appeal before the Appellate Forum. In view of our observation made above it is clear that the appeal could not have been considered for hearing on 30.6.2006, the date on which it was filed as the functioning of the Forum was closed upto 30.6.2006. The action of the respondents in approaching this Court with an allegation that illegal demand is being raised and reconnection is not being done once again under the given circumstances, was a clear abuse of the process of the Court. No evidence has been shown to us, to establish that even after the orders passed by the Forum any demand has been raised. The order passed by the Tribunal was open for challenge in appeal, which remedy the appellants availed almost immediately after the order of the Tribunal. The private respondent, however, in the meantime again approached this Court, with the same grievance, which he had made in the earlier writ petition filed at Allahabad, though there was no occasion for doing so.

27. In fact no cause of action had accrued to the respondents to approach the Court either on 26.5.2006 or 30.6.2006.

28. We have given the aforesaid facts only with a view to explain the conduct of the private respondent but we do not intend to make any observation with respect to the orders passed by the Division Bench at Allahabad or by the

learned single Judge, at Lucknow.

29. For the reasons stated above, the order passed by the learned single Judge is liable to be set aside which is hereby set aside and in view of the fact that the interim order has already been passed by the Appellate Forum and the parties have stated that they would abide by the order so passed, no further orders are required to be passed.

30. The appeal is allowed. No order as to costs.