
(2002) 01 AHC CK 0094

In the Allahabad High Court

Case No : Special Appeal No's. 1181 and 1199 of 2001

Gokul Dairy and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : AIR 2002 All 70 : (2002) 1 AWC 632 : (2002) CriLJ 1862

Hon'ble Judges : S.K. Sen, C.J;R.K. Agarwal, J

Bench : Division Bench

Advocate : Bushra Maryam and K.P. Agarwal, for the Appellant; Pankaj Bhatiya and C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.K. Sen, C.J.—We have heard Sri K. P. Agrawal, learned senior counsel assisted by Ms. Bushra Maryam for the appellant-writ petitioner, Sri Pankaj Bhatia, learned counsel appearing on behalf of respondent No. 4 and Sri Ran Vijay Singh, learned standing counsel appearing on behalf of the State-respondents.

2. Since both the special appeals arise out of two separate orders passed by the learned single Judge in the same writ petition being Civil Misc. Writ Petition No. 41020 of 2001, they have been heard together and are being decided by a common order.

3. Special Appeal No. 1181 of 2001 is directed against the order dated 7.12.2001 passed in Writ Petition No. 41020 of 2001, whereby the learned single Judge has passed the following order :

"Mr. Ramji Pandey, petitioner No. 2, one of the partners of the firm, petitioner No. 1, is present in person.

Heard learned counsel for the petitioners and Mr. Pankaj Bhatia, advocate, who has appeared for respondent No. 4.

According to Mr. Bhatia, an amount of Rs. 16,00,000 is due against the petitioners at present. The petitioners approached this Court several times and this Court taking a lenient view in the matter directed the petitioners to deposit the amount within the time prescribed, but the petitioners deliberately and wilfully did not deposit the amount in question till date. The petitioners including Mr. Ramji Pandey, have thus flouted the order dated 28.5.1999 passed in Writ Petition No. 23269 of 1999, order dated 28.6.1999 passed in Special Appeal No. 504 of 1999, order dated 18.4.2001 passed in Writ Petition No. 27565 of 2000 and order dated 15.5.2001 passed on an application filed in Writ Petition No. 27565 of 2000 by this Court. All the petitioners are prima facie guilty of contempt of this Court. I, therefore, in exercise of power under Article 215 of the Constitution of India, direct the Court Officer of this Court to take Mr. Ramji Pandey in judicial custody till Sunday. He shall be produced before me on Monday. On the said date Mr. Ramji Pandey and petitioner Nos. 3 and 4 will show cause as to why they should not be punished for committing contempt of this Court. Issue notices to the petitioner Nos. 3 and 4 accordingly. List/put up on Monday."

4. The other Special Appeal No. 1199 of 2001 is directed against the order dated 10.12.2001 passed in the aforesaid writ petition, whereby, the learned single Judge has passed the following order :

"Vide order dated 7.12.2001, Mr. Ramji Pandey, one of the petitioners was directed to be taken into judicial custody and it was also directed that he shall be produced before this Court today. The Court further directed Sri Ramji Pandey and two others to show cause as to why they be not punished for committing contempt of this Court. Today when the case was taken up, Mr. Ramji Pandey was produced in person, but learned counsel appearing for him did not show any cause. On the other hand, he prayed for two days further time to show cause. Request is accepted. Two days further time is granted to the learned counsel for Mr. Pandey to show cause.

List/put up on 13.12.2001. Till then Mr. Ramji Pandey shall remain under judicial custody and shall be sent to Naini Jail, Allahabad. On the aforesaid date, he shall be again produced in person before this Court."

5. The facts, inter alia, involved in these special appeals are that the writ petitioners/appellant obtained loan from Bank of India, Sulemsarai Branch, Allahabad, for the purpose of business. The amount of the loan could not be paid and the appellants approached the bank for its payment in instalments, which was ultimately agreed upon. However, the writ petitioners-appellants paid some of the instalments, but subsequently, committed default. When the recovery proceedings were initiated, the writ petitioners-appellants filed Civil Misc. Writ Petition No. 23269 of 1999, wherein the learned single Judge while disposing of the writ petition vide judgment and order dated 25.5.1999 permitted the writ petitioners-appellants to deposit the amount in the monthly instalment of Rs. 5 lacs each beginning 1st July, 1999. The aforesaid order was challenged by the

writ petitioners-appellants in Special Appeal No. 504 of 1999. This Court disposed of the appeal vide judgment and order dated 28.6.1999. While maintaining the aforementioned judgment, this Court observed that if an objection to the recovery proceedings is filed before the Recovery Officer, the same shall be decided within two weeks and the recovery proceedings were stayed for a period of 3 weeks. Since, further default was committed, the bank pressed for recovery against the writ petitioners-appellants. Thereafter, the writ petitioners-appellants filed another Writ Petition No. 27165 of 2000, whereby, the Division Bench of this Court while finally disposing of the writ petition stayed the recovery proceedings on the statement given by the petitioners-appellants that they shall deposit Rs. 5,00,000 in cash or by bank draft on or before 18th May, 2001 and permitting the petitioners to make a representation before the bank for re-schedulement of the balance amount which may be found due and payable. However, on an application made by the writ petitioners-appellants, the time for depositing the sum of Rs. 5 lacs was extended by one month.

6. Once again the writ petitioners-appellants failed to pay the agreed amount and, therefore, the Bank of India took steps for recovery of the amount and a citation was issued on 4.8.2001. The writ petitioners-appellants challenged the citation by filing Civil Misc. Writ Petition No. 41020 of 2001 in which the learned single Judge had passed the impugned orders against which these two special appeals have been filed.

7. It is quite true that the writ petitioners appellants were granted indulgence in the writ proceedings earlier and obtained benefit of payment by, instalments and also for re-scheduling of instalments from time to time, we do not appreciate the attitude of the writ petitioners-appellants in not paying the instalments. However, we feel that since the writ petitioners-appellants had failed to pay the instalments and approached this Court on the ground that the value of their property was 50 lacs, which has been pledged with the bank, the same should be sold first and the amount due against the writ petitioners-appellants should be realised from the sale proceedings before arresting them.

8. We are, however, surprised that the learned single Judge instead of considering the problem, involved in the matter, issued contempt notice in the writ petition by passing the impugned order dated 7.12.2001 and ultimately sent him to jail. That apart on 10.12.2001, the learned single Judge has also passed a very drastic order. In our view, the learned single Judge has no jurisdiction to pass such orders, as he had no jurisdiction to entertain, hear and decide contempt matters both arising under the provisions of the Contempt of Courts Act or under Article 215 of the Constitution of India, as no such jurisdiction or authority was conferred upon the learned single Judge by the Chief Justice.

9. It is well-settled that the power under Article 215 of the Constitution of India, as was sought to be exercised by the learned single Judge, cannot be exercised in the manner as has been done by the learned single Judge. Such a power, as contemplated, cannot be exercised by the learned single Judge without being

conferred upon such authority or jurisdiction by the Chief Justice. The said proposition of law is well-settled by the following decisions :

- (1) State Vs. Devi Dayal,
- (2) Sohan Lal Baid Vs. State of West Bengal and others,
- (3) Raj Kishore Yadav v. Principal, Kendriya Vidyalaya, Bareilly and Ors. (1997) 1 UPLBEC 26.
- (4) High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others,
- (5) State of Rajasthan Vs. Prakash Chand and Others,
- (6) Dr. L.P. Misra Vs. State of U.P.,

The principles of law being well-settled as has been specifically laid down by us in the case of Y.C. Simhadri, Vice Chancellor, B.H.U. and Others Vs. Deen Bandhu Pathak, are reproduced hereunder :

- (1) The administrative control of the High Court vests in the Chief Justice alone and it is his prerogative to distribute business of the High Court both Judicial and administrative.
- (2) The Chief Justice alone has the right and power to decide how the Benches of the High Court are to be constituted, which Judge is to sit alone and which cases he can and is required to hear as also which Judges shall constitute a Division Bench and what work those Benches shall do.
- (3) That puisne Judges can only do that work which is allotted to them by the Chief Justice or under his directions. No Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice.
- (4) Any order which a Bench or a single Judge may choose to make in a case that is not placed before them or him by the Chief Justice or in accordance with his direction is an order without Jurisdiction and void.
- (5) Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India.
- (6) For exercising the jurisdiction under Article 215 of the Constitution of India, the procedure prescribed by law has to be followed."

10. Since we have discussed the law at length on the point in the aforesaid decision, it is not necessary for us to deal in detail herein. We reiterate the same once again.

11. Following the aforesaid decision, we are of the view that the same principle will also apply to the facts and circumstances of the instant special appeals, as

the jurisdiction to entertain, hear and decide contempt matters had not been assigned to the learned single Judge by the Chief Justice.

12. We, accordingly, hold that the orders passed by the learned single Judge impugned in the instant special appeals are without jurisdiction, and nullity and as such no effect can be given to the same.

13. In view of the foregoing discussions, both the special appeals succeed and are accordingly allowed. The impugned orders dated 7.12.2001 and 10.12.2001 passed by the learned single Judge are hereby set aside and the contempt notice issued to the writ petitioners-appellants and the entire proceedings taken pursuant thereto stands quashed. However, it is made clear that we have not adjudicated the case on merits.

14. In view of the order passed by us in the aforementioned appeals, the ball bonds, if any, furnished by the writ petitioners-appellants are cancelled and the sureties are discharged.