

(2010) 09 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 15 (O) of 2010 and O.O.S. No. 4 of 1989

In Re: Ramesh Chandra Tripathi and Sunni Central Board of Waqfs, U.P. and others

Date of Decision : 17-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 89

Citation : (2011) 2 UPLBEC 1185

Hon'ble Judges : Sudhir Agarwal, J;S.U. Khan, J;D.V. Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.U. Khan, Sudhir Agarwal and D.V. Sharma, JJ.—This application has come up before us on being marked by one of us on 13th September 2010 for placing it before the Bench.

2. Ramesh Chandra Tripathi, defendant No. 17 in O.O.S No. 4 of 1989 has preferred this application purporting to be u/s 89 C.P.C. He has requested for deferment of the pronouncement of judgment and also to direct the parties to resolve the dispute through mediation/conciliation/arbitration and /or in such manner as this Court may deem fit.

3. It is said that after having gone through the Court's order dated 27.07.2010 and having studied the entire scenario as also the projected repercussions and apprehensions of violence, the applicant earnestly and sincerely feels that the wish of this Court, as found mentioned in the order dated 27.07.2010, needs be given due respect so much so he treats as a command. Besides certain media information as also para 89 of the judgment in Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and Others, the applicant has also placed before us two orders of the Apex Court dated 20.08.2010 in O.O.S No. 2 of 1988 appointing two Advocates as mediators in a boundary dispute between the State of Assam and State of Nagaland requesting them to function as coordinators. Relying on the above, the applicant requests that this Court should also direct the parties to

resolve the dispute in question in the same manner.

4. This application was filed without serving copy on the learned Counsels appearing for different parties in these cases. Those Counsels were permitted to receive copy of the application from the office and thereafter they have filed objections to the present application.

5. We have heard Sri Prashant Chandra, Senior Advocate appearing for the applicant.

6. Reply submitted by Sri Jafaryab Zilani, learned Counsel for the Sunni Central Waqf Board, plaintiff in Suit-4 of 1989 (in short "Suit-4"), Sri Hari Shankar Jain, Advocate, learned Counsel for defendant No. 10 in Suit-4 and defendants No. 6/1 and 6/2 in Suit No. 3 of 1989, Ms. Ranjana Agnihotri for defendant No. 20 in Suit-4, Sri R.L. Verma for defendant No. 3 in Suit-4, Sri Madan Mohan Pandey for plaintiff in Suit No. 5 of 1989 and Sri Ajay Pandey, plaintiff of Suit No. 1 of 1989, is also supported with affidavit of concerned parties. All the parties through their Counsel have not only seriously opposed this application but they have termed it as a "serious mischief" on the part of the applicant and, therefore, have requested this Court to reject it with exemplary costs.

7. At the outset Court would like to place it on record that a dispute like the present one, if settled amicably between the parties, it is a most welcome solution and we have no reason to discourage it. There cannot be a quarrel with the proposition that a matter like the present one if resolved with the consent of the parties, that would be the best way of dealing with such matter. It is well known that a Court of law decides a dispute and not a problem. We would be the last one for not probing such an alternative redressal forum and device provided there is some kind of sincerity, bona fide and possibility, may be a very small ray of hope.

8. However, the record shows that here is a bunch of cases which has history of several decades of its own and of extraordinary nature. Efforts at different levels were made rigorously, persistently and with due seriousness but in vain. Such efforts were made not only by the parties concerned but at the level of different authorities so much so, that even three Prime Ministers at different times took serious initiative to find out whether the dispute can be resolved amicably and peacefully and took all possible steps in this direction. It is in furtherance thereof, even legislation has twice come into being to enable the parties to reach at an amicable solution. Several times the matter was taken to the Apex Court also where, as we are informed, the Hon'ble Court did observe for amicable settlement in the matter. A White Paper was published by the Government of India and even a Presidential Reference was made to the Apex Court. At the instance of the then Prime Minister a very high power Committee was constituted, representatives of both the parties and several other persons were allowed to participate in the meeting in presence of high officials including the Minister of State in the Central Government but with no result.

9. In 1993 a Parliamentary enactment came abating all the suits connected with the matter and acquiring the property in suit but when tested on the anvil of constitutionality, a Constitution Bench of the Apex Court struck down the provision which abated all these cases. That is how, we are required to decide these cases. The Presidential Reference remained unanswered by the Constitution Bench of the Apex Court. In its Judgment in Dr. Ismail Farooqui (Supra) the Apex Court observed that here is a kind of dispute which ought to be decided amicably and expressed its hope that the parties shall take steps in this direction. One and half decade since then has passed but with no result. We may also notice that while returning the Reference, the Apex Court observed that the same cannot be answered since this was a matter in issue in suits pending before this Court and the same have to be decided in the light of the evidence adduced by the parties.

10. One of us (Hon''ble Sudhir Agarwal, J.) was nominated in this Bench in September 2008 and thereafter final hearing commenced on 29th September 2008. During the course of arguments persistently the Court requested and advised the learned Counsels to find out some possibility of compromise in the matter as that would be the best way of resolving the dispute but nothing came forward. In a period of about eleven months the Court held actual hearing for 75 days and throughout the said period this Court made such efforts though also continued with the hearing since it did not intend to give an impression to the parties-that the Court is not capable of hearing and deciding the matter or that the Court is reluctant or that the Court otherwise does not want to decide the matter even if there is no otherwise hindrance or obstruction in such a course. The hearing could not conclude due to elevation of His Lordship Hon''ble Mr. Justice S.R. Alam, J. as the Chief Justice of Madhya Pradesh High Court. The Bench was reconstituted in December 2009 and we commenced hearing on 11th Jan. 2010. Due to reconstitution the learned Counsels for the parties requested for addressing the Court afresh. We had no option. They were justified in such request. We tried to continue with the hearing on day to day basis and in a period of about seven and half months the matter was actually heard on 90 days. During this period also, unrelently, we made efforts by requesting learned Counsel for the parties to find out the possibility of compromise, if any. Some of the parties very bluntly told us that in the nature of the rights asserted by them, scope of compromise is absolutely nil. None was ready to part away even a single inch of land and said that it is for the Court to decide but they cannot make any surrender whatsoever. When we reserved the judgment on 26th July 2010, we made another effort and passed order informing the parties that on 27th July 2010 we shall sit in Chamber to find out any possibility of resolving the dispute amicably taking recourse of Section 89 CPC. For a few ours on 27th July 2010 we made our efforts but the learned Counsels for parties very frankly and succinctly expressed their view that there is no question of any settlement on their part in the matter and due to the nature of the claim they assert it cannot be surrendered to any extent. Faced with the situation but undeterred, still

having some hope we passed order on 27th July 2010, leaving it open to the parties that before delivery of judgment if they find out any possibility of compromise, they may approach the OSD requesting for formation of Bench. This shows endeavour on the part of the Judiciary at the highest level in the country as well as the Province, in the last few decades. This also shows our anxiety of finding out ways and means, if any, for amicable solution of the dispute during the course of final hearing. But then the moot question is how long it should/can continue. Is it ad infinitum. Here lies a clash with our constitutional duty and obligation that whenever a dispute is brought before a Court of law it must be resolved expeditiously and in any case within a reasonable time.

11. Before proceeding further we also find it appropriate to place on record something about the conduct of the applicant. During the course of argument the applicant was initially represented by a Counsel Sri Vireshwar Dwivedi and after his death by Sri Ramakant Srivastava, Advocate. The applicant's Counsel did not advance any argument though hearing continued as already said, for full 90 days. Though at one point of time he (Sri R.K. Srivastava) informed the Court that he will address the matter on merits but when his turn came, he did not appear. On 27.7.2010 also neither the applicant nor his Counsel attempted to participate in the proceedings which we initiated to find out any possibility of settlement amicably. On 26.7.2010 when we reserved the judgment, it was mentioned therein that the judgment shall be pronounced in the second fortnight of September 2010. Thereafter on 8.9.2010, i.e., after about a month and half we pronounced the actual date for delivery of judgment, i.e., 24th September 2010. The applicant kept silence over the matter throughout. In his application neither he has averred that there is any possibility of settlement of dispute outside the Court or otherwise nor it is mentioned that during this entire period he took any step whatsoever persuading the parties in suits to arrive at a settlement and /or probing the possibility of the settlement of dispute amicably. He also had said nothing about the manner and method whereby the dispute can be attempted to be settled amicably.

12. We may also place it on record that all the three Judges of the Bench were available at Lucknow till 8th September 2010 and two of us were at Lucknow till 9th September 2010 but neither any such request was made nor any application was moved at that time. It is only when two of us sitting at Allahabad holding the Couri thereat, abruptly this application was filed on 13.9.2010 which has been marked by one of us sitting singly on the same date directing to register the application and place before the Bench for disposal.

13. Learned Counsel for the applicant submitted that here is a matter, the nature whereof is such that possibility of settlement should be probed continuously and the Court should not feel tired in making such efforts. Strangely, when we asked what he does mean by "continuously" or whether he suggests any time frame or does he mean "infinity", he could not reply at all. We are really surprised to hear

the wonderful argument by which he tries to frighten a Court of law alleging apprehensions of violence if judgment is delivered and thereby asking the Court not to decide a case. The ways and means may be sophisticated but the end game is clear. This is something what the people of India least expect from a Court of law and that too in a highest Court in a Province.

14. These matters are pending for the last six decades inasmuch as the first suit was filed on 16th January 1950. After transfer of the suits to this Court three Judges are continuously engaged for the last more than 21 years. In the meantime, on several occasions the matter has also travelled and consumed time of the Apex Court as well. Is it what we have to deliver to our future generation that the Courts of law in India are not capable to decide cases for generations and on a mere drop of a hat, an excuse is found to defer the matter or adjourn the case? Are we here to find out ways and means of deferring adjudication or to make adjudication? No case, no dispute and no apprehension can be above the honest discharge of constitutional function by an independent judiciary. The people of India are already having serious complaints in abundance in recent past against the judicial system of this country that it keeps the matter lingering on for generations and attempt to decide cases is minimal.

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 frivolously. 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.

16. All the parties have seriously opposed this application and have termed this as a mischievous attempt on the part of the applicant in not allowing these cases decided even after six decades, particularly when in the judicial proceedings i.e., during the course of hearing learned Counsel for the applicant did not show any interest whatsoever except of ensuring his technical presence. From the tenor of the application and also in the absence of any ground, let alone good ground, the request for deferment of pronouncement of verdict and that too just about ten days before the date of its pronouncement, we are constrained to observe that it lacks bona fide. Reference made to the observations of the Apex Court in Dr. M. Ismail Faruqui (*supra*) is wholly misconceived in the sense that the Apex Court did not suggest even for a moment that the High Court should not decide the

matter at all and prolong hearing on the pretext of possibility of amicable settlement which is certainly not to arrive at in this matter inasmuch as, all the parties have made it very clear to us.

17. The applicant has referred to media reports apprehending widespread violence and law and order situation. We do not intend to make any comment thereon but our experience shows when the Courts have not decided the things, such situation has arisen and has resulted in creating unrest in the public to take the matter on the road but not when any decision has been given by a Court of law. When the matter is decided, particularly, when the concerned Court is not the last Court, the people have further remedy of appeal etc. and, therefore, they patiently pursue such remedy keeping their sentiments in low profile. In the above circumstances, the things remain silent. However, the state of indecisiveness or the impression that the Courts are reluctant to discharge their function, create more serious unrest. For us it is not a matter of simple adjudication but it is our constitutional function and we will be failing in our duty if we fail to discharge such function within a reasonable time. We are conscious of our duty as well as constitutional obligation and shall not allow to weaken the faith of the people of India which they have bestowed upon us.

18. Since the media reports have been referred we find it appropriate to say a few words in this regard also. What we find of late, the reports in media, whether electronic or print, are not exactly correct. Instead of giving correct information to enlighten the masses, incomplete and sometimes incorrect information is given, more as sensation than communication of correct information. The latter is the prime duty and obligation of a responsible media. It appears that in some cases, the people try to highlight a few words in a manner so as to create a sensation. The casualty in such approach is correctness of the information. The media people needs to exercise more care and caution and be more precise. We ourselves have experienced that the information regarding proceedings of this Court have also been conveyed to masses, at some places, incorrectly. At times when the published information relates to a serious situation or sensitive matter which may likely to have serious repercussions, the responsibility of media to accuracy and precision of information is much more. Needless to give a recent illustration where we found such a miss when there was a terrorist attack in Bombay. We do not intend to check or restrain the independence of media world. It is they who form the information limb of any country providing awareness and entitlement to masses but then such information must be ensured to be correct.

19. A Court passes an order sitting in the Court Room which is normally known to the parties in the case and, therefore, used to confine to few individuals. The masses acquire information about the happenings in Court through media. It is therefore, their utmost and sacrosanct duty towards masses to whom they actually serve to provide correct information so that it may avoid any possible backlash or unwanted reaction particularly in a case like the one we are faced with. Any inaccuracy in information is likely to cause much more serious harm.

We add no more on this. We hope and trust that our observations shall be taken in correct perspective and would give a message to powerful wing, which is commonly known as the Fourth State. They shall exhibit their responsibility in a more vigilant, alert, self conscious and self restraint manner so as to subserve the people of this Country in a best possible and responsible manner.

20. Before parting one more thing we intend to add. A lot of news for the last few days are coming about the alleged apprehension towards security of the members of this Bench and the measures taken by the Government in this regard. We intend to place on record and also want to tell everybody that neither we have any apprehension nor we feel any kind of insecurity in discharge of our solemn duty and obligation under the constitution of India. We have full faith and confidence in people of this country who are our real protectors and at whose strength of confidence we work. It is not that we lack any confidence in the Executive in maintaining law and order but the Judiciary of this Country really derive its power from the confidence, the people of India have in it, and not from the State's police power. It is confidence of the people which provides us courage and boldness in discharge of our duties independently, objectively and without fear or favour. We have read in the newspapers that the Prime Minister of the country has assured the people that The Government is capable of meeting any contingency. We cannot comment, but repose confidence in the Government since they are the best Judge of whatever is required in maintaining law and order and/or security of any individual or group of any individuals as the case may be shall be taken care. The arrangement of security is the responsibility of State and they are the authority to assess the requisite measures and not any individual's own perception.

21. The discussions in respect to the application which we have already made shows that this application lacks bona fide and is a clear attempt to divert, deviate and also to create obstruction in final disposal of this matter after more than six decades without there being any reason whatsoever. Considering also the fact that all other learned Counsel appearing for different parties, whether plaintiffs or defendants, have seriously opposed it, we have no hesitation in rejecting this application. Considering the facts and circumstances and also the fact that the applicant without any lawful excuse or reason has filed this application, we hold this attempt mischievous, and, therefore, he deserves to be imposed exemplary cost.

22. For the reasons enumerated above, we reject this application with exemplary costs we which we assess at Rs. 50,000/- (Rupees Fifty Thousand only).

23. Registrar, High Court, Lucknow Bench, Lucknow is directed to send a copy of this order forthwith to the Chief Secretary Government of U.P., Lucknow, Secretary, Department of Home, Government of India, New Delhi and to the Press Trust of India for communication to various media channels as well as print media people for information and compliance. Application rejected.