
(2006) 09 AHC CK 0107
In the Allahabad High Court

Krishna Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Constitution of India, 1950 — Article 219

Citation : (2007) 2 AWC 1789

Hon'ble Judges : Rakesh Sharma, J; Jagdish Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri Santosh Kumar Awasthi, learned Counsel for the petitioner and Sri Dipak Seth, learned Assistant Solicitor General of India appearing on behalf of the opposite parties.

2. At the outset, learned Counsel for the petitioner has submitted that this writ petition may be treated as public interest litigation petition as he has raised several legal and constitutional issues like judicial accountability and freedom of individual etc. in this case.

3. Sri Dipak Seth, learned Assistant Solicitor General of India appearing for the respondents has strongly resisted the writ petition. At the outset, Sri Dipak Seth, has raised preliminary objection that the controversy raised in this writ petition has already been concluded by this Court in W.P. No. 6200 (S/S) of 2002 vide judgment and order passed on 14.5.2004. A special appeal filed under Chapter VIII, Rules 5, 9 and 10 of Allahabad High Court Rules, 1952, against the said judgment and order dated 14.5.2004, had been dismissed by this Court on 15.10.2004. Being aggrieved thereby, petitioner filed a Review Petition No. 322 of 2004, which was also dismissed on 11.5.2004. Thus, the controversy raised in the petition has already been concluded by this Court by passing three judgments, i.e., on 14.5.2004, 15.10.2004 and 11.5.2005. Now, the same matter cannot be reopened and reagitated by filing this P.I.L. petition.

4. Sri Santosh Kumar Awasthi, learned Counsel for the petitioner has made detailed submissions. He has led the court to the contents of his petition, materials on record to highlight his submissions that he wants to assail the legality, validity and correctness of various actions initiated by the opposite parties which were in utter violation and disregard of the relevant constitutional provisions. As per learned Counsel for the petitioner, the Division Bench has acted in utter violation of Article 219 (Schedule III of the Constitution). The judgment and order suffers from jurisdictional defect and several errors have crept in the judgment. He has reiterated all the submissions, which were made before this Court while dealing with the petitioner's original writ petition, application for interim relief alongwith the special appeal and the review petition. The petitioner has laid stress that manifest error of law apparent on the face of record may be removed by this Court. He has prayed for constituting a larger Bench for disposal of this P.I.L. petition.

5. We have heard learned Counsel for the parties and perused the record.

6. We have carefully delved into the record of this case and perused the judgments and orders passed by this Court on 14.5.2004, 30.7.2004, 15.10.2004 and 11.5.2005.

7. The petitioner has assailed the order of dismissal passed on 16.1.2002, as a result of the Summary Court Martial held against him. He has sought several other reliefs, which have been indicated in the relief clause of the writ petition. This Court had declined to grant these reliefs and dismissed his earlier petition. This Court has finally adjudicated upon the matter and the writ petition was dismissed on 14.5.2004. The special appeal filed by the petitioner was also dismissed on 15.10.2004, by a Division Bench of this Court, upholding the judgment of Hon'ble the single Judge. The review petition filed by the petitioner for reviewing the judgment and order dated 15.10.2004, was also dismissed by the Division Bench of this Court on 11.5.2005. Thus, this Court has already dealt with all the submissions made by the petitioner and passed detailed, reasoned and speaking orders while dealing with the original writ petition filed by the same petitioner against the same respondents.

8. The present writ petition is barred by "the rule of conclusiveness of the judgment" which is based partly on the maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the State that there be an end to law suits) and partly on the maxim "nemo debet bis vexari pro una et eadem causa" (no man should be vexed twice over for the same cause). The law is settled that an erroneous decision on a question of law attract the doctrine of res judicata between the parties. "Res judicata pro veritate accipitur" is the full maxim which has, over the years, shrunk to mere "res Judicata". Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and Others,

9. In view of this, it would be impermissible to permit the petitioner to raise the same issue inter se where such an issue has been decided in an earlier

proceeding. The petitioner must be stopped from raising the same issue both on the principles of estoppel and constructive res judicata vide *Viaubai v. Shrikram Tikaram* AIR 1999 SC 451.

10. In view of above discussion, the writ petition is dismissed.