

(1994) 04 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13639 of 1993

M/s. Munna Industries

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 7
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 23 Rule 1, 11
Constitution of India, 1950 — Article 226

Citation : AIR 1994 All 391 : (1994) 2 AWC 1064

Hon'ble Judges : N.L. Ganguly, J;B.L. Yadav, J

Bench : Division Bench

Advocate : C.L. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

N. L. Ganguly, J.—The petitioners filed writ petition No. 20874 of 1993 during summer vacations on 18-6-1993. The petitioners in the writ petition prayed for the following reliefs:

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to give effect of the order dated 20th June, 1992 issued by the Linkage Committee of the Coal India Ltd. in accordance with its policy;

(ii) Issue a writ, direction or order in the nature of mandamus directing the respondents to supply Grade-E Kakri ROM to the petitioner unit forthwith in accordance with the linkage order dated 20th June, 1992 sanctioned by the Coal India Ltd.;

(iii) Issue a writ, direction or order which this Hon'ble Court may deem fit and proper in the circumstances of the cases; and

(iv) Award costs of the writ petition to the petitioner.

2. An application for interim stay was also moved with the writ petition on which

the following stay order passed:

"Learned standing counsel has accepted notice on behalf of respondent No. 1.

Notices -- meant for respondents Nos. 2,3 and 4 shall be sent by registered post returnable within two months. Counter affidavit may be filed within two months. In addition to the normal mode of service, the petitioner shall also serve the respondents Nos. 2, 3 and 4 outside the Court personally and will file an affidavit of service. Office will issue necessary notices to the petitioner.

List this petition for admission in the last week of September, 1993.

Till further orders of this Court respondents Nos. 2, 3 and 4 are directed to supply Kakri Grade-E ROM raw material to the petitioner in pursuance of the order dated 20th June, 1992 (Annexure 3) to the writ petition) within one month.

Sd. D. P. S. Chauhan 19-6-1993."

3. Another application for amendment was also filed on 19-6-1993 before the learned single Judge. No orders for amendment etc. was passed. An application dated 12-8-1993 with affidavit was filed on behalf of the respondents Nos. 1 and 2 requesting the Court to hear writ petition No. 20874 of 1993 along with the records of writ petitions Nos. 12264 of 1993 and 13639 of 1993 so that the writ petitions may be finally heard and decided before 9-8-1993, which was the date fixed by this Court. Similar application was also moved on 12-8-1993 on behalf of the respondents Nos. 2 and 3. The stay vacation application was moved on behalf of the respondents Nos. 2 and 3 on 12-7-1993.

4. It would be relevant to refer to writ petition No. 12264 of 1993 filed by the petitioner against the answering respondents. The prayers in the said writ petition are quoted as under:

(a) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondents to give forthwith effect of the coal requirement linkage dated 20th June, 1992 sanctioned by the Coal India Limited;

(b) Issue a writ, order or direction in the nature of MANDAMUS directing respondents to supply coal to the petitioner unit forthwith in accordance with coal requirement linkage dated 20th June, 1992 sanctioned by the Coal India Limited after making assessment of the quantity of coal of the petitioner unit like that of similarly situate industrial units of District Mirzapur and direct them to fulfil the promise made by the Coal India Limited in pursuance of its letter dated 23-10-1991;

(c) Issue any other writ, order, or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case; and

(d) Award costs of the petition to the petitioner."

5. This writ petition was finally disposed of by the Division Bench of Hon''ble Mr. Justice A. P. Misra and Hon''ble Justice S. N. Saxena, by the order dated

23-3-1993. It would be important to note that prayer (b) of the above writ petition, to be hereinafter mentioned as "writ petition", for issuing a direction in the nature of mandamus directing the respondents to supply coal to the petitioner unit forthwith in accordance with the coal requirement linkage dated 20-6-1992 sanctioned by the Coal India Ltd., was not allowed or accepted by this Court. The writ petition was disposed of with the observations that the petitioner's representations dated 27-7-1992, 20-8-1992, and 3-2-1993 were directed to be disposed of by the respondents within the month from the date of filing of a certified copy of the order before the said authority by means of a speaking order. Thus it is evident and clear that the writ of mandamus prayed for enforcing the coal requirement linkage order dated 20-6-1992 was not allowed by this Court and so far the question of issuing a mandamus to enforce the said linkage order became final by the order of this Court dated 23-3-1993.

6. It appears that after the directions by this Court dated 23-3-1992 for deciding the representations of the petitioner, the representations were decided by the contesting respondent by the order dated 19/20-4-1993. The order passed by the General Manager (Sales) of the Northern Coalfield India Ltd. dated 19/20-4-1993 is filed as Annexure 7 to the II writ petition. The petitioner's representations were disposed of by the said order. It was stated that the papers pertaining to the petitioner's unit were sent to the marketing Division of CIL, Calcutta. The petitioner was advised to contact CIL, Calcutta for any further information. In regard to the petitioner's representations it was said in the order dated 19/20-4-1993 that in view of the limited liability of Grade-E Coal in N.C.L. the matter has been referred to CIL to release coal other subsidiaries to meet the requirement of the petitioner. Similar action has been taken in the case of other bricketing units. In writ of petition No. 13639 of 1993, which was filed by the petitioner on 30-4-1993, hereinafter referred to as "the II writ petition", the Court was pleased to pass the following order:

Petitioner is permitted to implead Chief of Marketing/ Chairman Linkage Committee Coal India Limited as respondent No. 4. Learned Standing counsel has accepted notice on behalf of respondent No. 1 and Shri G. C. Bhattacharya on behalf of respondents Nos. 2 and 3. Notice be sent to respondent No. 4. In addition to normal mode of service, service may also be effected on respondent No. 4 personally. Office to give necessary copies of requisite notice along with the copies of the said application, writ petition, its annexures and affidavit to the learned counsel for the petitioner within three days. Service may be effected within a period of ten days thereafter. Affidavit of service may be filed by the next date fixed in this case.

Learned standing counsel and counsel for the respondents Nos. 2 and 3 may file counter affidavit within one month. Rejoinder affidavit may be filed within three weeks thereafter.

List this petition for admission on 13th July, 1993.

In the meanwhile petitioner may approach respondent No. 4 with representation for allocation of the Grade Coal as sanctioned by the Linkage Committee by order dated 20th June, 1992. While making the representation the petitioner will also annex the copy of the order dated 19th April, 1993, passed by the General Manager (Sales) respondent No. 3, on the representation of the petitioner. The respondent No. 4 in view of the order already passed by the Linkage Committee as aforesaid and also taking into consideration, the investment made by the petitioner in setting up its industry on huge cost, will pass appropriate orders on the said representation.

The petitioner before us desires "E* Grade coal but agrees that even if this is not available respondent may consider to allocate coal as sanctioned by the Linkage Committee. The said representation of the petitioner will be disposed of within three weeks on making of the said representation before the said authority by passing a speaking order. The said authority will also make the said order available for perusal of this Court by the next date fixed in this case through its counsel.

Sd/-A.P.M. Sd/-S.N,S.

7. In fact by filing the II writ petition the petitioner has not been able to obtain any interim order immediately to enable the petitioner to get the supply of coal as desired by him earlier. Thus the III writ petition No. 20874 of 1993 was filed by the petitioner against the answering respondents in which the prayer made is already quoted in the early part of this judgment.

8. As already stated, an interim mandamus was issued by the Court during summer vacation on 19-6-1993 to supply Kakri Grade "E" RMO raw material to the petitioner in pursuance of the order dated 20-6-1992, Annexure 3 to the writ petition, within one month.

9. The third writ petition was filed in June, 1993. The stay vacation application was filed on 20-7-1993 raising preliminary objections that firstly, writ petition No. 12264 of 1993 was filed praying for supply of coal to the petitioner in accordance with the coal requirement Linkage dated 20-6-1992 sanctioned by the Coal India Limited. The said writ petition was disposed of by the High Court's order dated 23-3-1993. The representation of the petitioner has been decided by the order dated 19/20-4-1993. Again by another writ petition No. 13639 of 1993 in II Writ Petition the same prayer for giving effect to the linkage requirement dated 20-6-1992 sanctioned by the CIL was prayed and the order dated 19/20-4-1993 was also said to be quashed.

10. In this case the parties have exchanged their counter affidavit, supplementary counter affidavit and rejoinder. The learned counsel for the respondents Nbs. 2 and 3 pressed the preliminary objection that the relief pressed and claimed by the petitioner in the first writ petition between the parties for enforcing the order dated 20-6-1992 sanctioned by the Coal India Limited was not granted by this Court. Instead the petitioner's four

representations were directed to be decided by the order of this Court. The learned counsel for the respondents urged that the linkage order dated 20-6-1992 could not be challenged and agitated by the petitioner in successive writ petitions. Secondly, the learned counsel for the respondents submitted that the third writ petition 20874 of 1993 filed by the petitioner was not in view of the fact that the petitioner's writ petition No. 13639 of 1993 practically with the same relief was pending before this Court. It was urged that the 11 writ petition on the same and similar grounds was also not maintainable.

11. Heard the learned counsel for the parties on the question of preliminary objections raised by the respondents about maintainability of the III writ petition No. 20874 of 1994. The learned counsel for the respondents cited 1993 (1) UPLBEC 165 Anand Kumar Gupta v. State of U.P., 1993 (2) Civil and Revenue Cases 1264, Anwar Jamil v. State of U.P., 1992 (2) Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, , Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and also relied on Chapter XXII Rule 7 of the High Court Rules. The learned counsel for the respondents also referred to the decision reported in 1992 (1) UPLBEC 223 , Pradeep Goyal v. Regional Manager, Region II, State Bank of India, Zonal Office, Merrui. During the course of arguments reference to the reported cases relied on the aforesaid judgment referred, namely T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, were also referred.

12. The learned counsel for the petitioner in reply to the legal arguments about the maintainability to the II and III writ petitions relied on the case reported in 1978 UP Tax Cases 261, M/s. Janta Cold Storage v. Superintendent of Central Excise, Farrukha-bad, AIR 1956 Nag 128, B. N Saoji v. State of Madhya Pradesh 1975 AWC 76, Gonda Kshetriya Sahkari Samiti Ltd. v. Assistant Registrar, Co-operative Societies 1991 (1) UPLBEC 355 , Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, , Devendra Pratap Narain Rai v. State of U.P.

13. Before examining the case law cited by the learned counsel for the parties it would be necessary to examine the reliefs Nos. (i) to (iii) of the first "writ petition by which the petitioner had prayed for a writ or direction the nature of mandamus commanding the respondents to-give effect to the order dated 20-6-1992 issued by the Linkage Committee of the Coal India Limited. If we examine the reliefs claimed in the writ petition and the III writ petition it will be clear that the petitioner has claimed the same reliefs for issuing writ order or direction in the nature of mandamus for giving effect to the order dated 20-6-1992 passed by the Linkage Committee of the Coal India Limited. The language used in the prayer in three writ petitions is practically the same with least variation. It is to be noted that when the first writ petition was filed by the petitioner, the Division Bench of this Court by their judgment dated 30-4-1993 disposed of the writ petition with the observation that the petitioner shall make a representation before the respondents for redress of the grievances. The authority was directed to dispose of the representation of the petitioner by a

speaking order. The relief, which was claimed by the petitioner in the I writ petition, was not given by the High Court. In other words, the relief claimed by the petitioner in the I writ petition was refused. Thus the same relief whether could be prayed for and granted in the subsequent writ petition or not. The proposition of law as submitted by the learned counsel for the respondents is that successive writ petitions on the same facts could not be entertaining. The learned counsel for the respondents referred to Chapter XXII, Rule 7 of the Rules of the Court:

"Chapter XXII, Rule 7 -- No second application on same facts where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts."

14. It was argued relying on the decision reported in 1986 SC 391 forward Construction Company v. Prabha't Mundal (Regd) and the decision reported in G.K. Dudani and Others Vs. S.D. Sharma and Others, that the consistent view of the Supreme Court is that a writ petition was dismissed on the ground of being not fit for interference by this Court, a second writ petition on the same question/controversy is not maintainable. Therefore, the subsequent writ petition on the same ground and for the same relief, as claimed in the earlier writ petition, was barred and was not maintainable. The principle of res judicata, as provided in the Civil Procedure, Code also comes into play. After considering the above cases, there is no other option but the only inference that could be drawn is that the petitioner having prayed for issuance of a writ of mandamus for giving effect to the order of the linkage Committee dated 20-6-1992, which was not allowed, could not raise and prayed for the said relief in the II writ petition. This principle of law has been highlighted by the Hon'ble Supreme Court in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, in the following words at page 92:

"But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also not on the ground of res judicata but on the ground of public policy It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again...."

15. In the present case if we examine the facts after the representation of the petitioner was disposed of by a speaking order by the respondent, the petitioner was encouraged to file a writ petition on the same facts before the High Court. The Division Bench was pleased to call for a counter affidavit and no direction or positive relief was granted to the petitioner in the month of April, 1993. The facts clearly show that the design and purpose of the petitioner was to get an order from the High Court to enable them to get supply of coal as per the Linkage order of 20-6-1992. Having failed in their attempt the petitioner waited for about two months and in the month of June, 1993 filed another writ petition praying for

an interim mandamus for supply of coal in pursuance of the order dated 20-6-1992 passed by the Linkage Committee. Thus obviously the petitioner indulged in bench-hunting tactics to enable him to procure an interim direction in the nature of mandamus to the respondents to supply coal in pursuance of the order dated 20-6-1992 passed by the Linkage Committee. In the body of the writ petition it was mentioned that earlier a writ petition was filed but that would not be sufficient to hold that the petitioner had not concealed anything before the Court. During summer vacations the Judge has to consider large number of cases and generally relies on verbal arguments of the learned counsel. It appears that in the III writ petition the petitioner had succeeded in obtaining the interim direction.

16. As observed above, we have no doubt and hesitation in holding that a relief which was claimed by the petitioner in the I writ petition/which was not granted to him, as claimed, in subsequent writ petition the same relief could neither be prayed for nor could be granted. It would be barred by the principle of res judicata as well as Chapter XXII, Rule I I of the Rules of the Court.

17. Now we would discuss the cases cited by the learned counsel for the petitioner. In 1978 UP Tax Cases 261 the Division Bench of this Court observed that a writ petition for quashing the orders of the Assistant Collector and the Appellate Collector, which were also challenged by means of a revision during the pendency of the writ petition the revision was rejected. The application for amendment in the writ petition was filed and the Court was of the view that amendment in the writ petition after the judgment in the revision was not proper. The proper course was to file a fresh writ petition. The present writ petition and the facts therein are wholly distinguishable. The first writ petition was neither pending nor during the pendency of the first writ petition the representation of the petitioner was decided by the authority concerned. The same relief was sought by way of II writ petition. The relief claimed by the petitioner in the first writ petition was refused and the same relief could not be prayed for in the II writ petition. Thus the authority cited is of no assistance to the petitioner. The other case reported in AIR 1956 Nag 129 referred to by the learned counsel for the petitioner is on the point that an application to enforce the order is not an application to execute the decree. This authority is also not for controversy as in the present case. This is not a new circumstance which may enable the petitioner to file a II writ petition seeking the same relief of enforcing the order of the Linkage Committee dated 20-6-1992. This II writ petition is pending. In the meantime a HI writ petition was filed during summer vacations and interim orders obtained for giving effect to the Linkage order. As narrated above this was the glaring case of bench-hunting to enable the petitioner to obtain interim directions in his favour. The same relief, which was sought in the II writ petition could not be asked for in the writ petition. In view of the observations made earlier relying on the decision of the Supreme Court we are of the firm view that the III writ petition during the pendency of the II writ petition cannot be allowed to be maintained. The III writ petition is also liable to be dismissed as not

maintainable in view of the provisions of Chapter XXfl, Rule 1 of the High Court Rules and the general principle about the maintainability of writ petition as enunciated by the Hon"ble Supreme Court. The decision of Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, is about the bar of Order II, Rule 2, C.P.C. which was said to be not applicable in the case of prerogative writ under Art. 226 of the Constitution. The nature of the relief and the facts in the present case are wholly distinguishable from the facts of the case reported in Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, and the said judgment is of no assistance to the petitioner. The decision of this Court reported in 1975 AWC 76 where the learned single Judge of this Court was pleased to observe that the cause of action in pending writ petition is entirely different from that which was sought to be unjust through amendment application. Such cause of action be not introduced by the amendment application. In the other decision of 1991 (1) UPLBEC 355 Shyam Gas Company v. State of U.P. the controversy involved is not akin to that of the present writ petition and the decision is of not much help in view of the decision of the Supreme Court referred to by as earlier.

18. The only point that survived for our consideration is whether the II writ petition No. 13639 of 1993 filed by the petitioner seeking the reliefs quoted above is maintainable and any relief can be given to the petitioner in the II writ petition. We have already referred to the reliefs claimed in the three writ petitions. The perusal of the reliefs claimed in the. II writ petitions show that the reliefs (ii) and (iii) and the same reliefs as claimed in the I writ petition for issuing a direction or writ of mandamus for supplying the coal in accordance with the Linkage Order dated 20-6-1992. The said relief was already refused in the I writ petition and the same reliefs cannot be granted or considered in the II writ petition for the reasons already recorded.

19. The only question that survives is for consideration of the legality and correctness of the order dated 19-4-1993 passed by the respondent on the representation of the petitioner in pursuance of the order of the High Court. We have heard the learned counsel for the petitioner, who has placed the aforementioned order or representation before us. The Chapter of enforcing the order dated 20-6-1992 is now closed. It has only to be seen whether the representation of the petitioner was correctly and legally decided after the orders of the High Court. We have examined the impugned order. The petitioner was advised by the said order to contact CIL Calcutta for further information. It was categorically held that in view of the limited availability of E-grade coal in NCL. the matter had been referred to CIL with a request to release he coal from other subsidiaries to meet the requirement of the petitioner. Similar action had been taken in the case of other bracketing units. It appears that after the order dated 19-4-1993 the petitioner without approaching the authorities, as directed, preferred to come to the High Court in III writ petition. It is not now open for the petitioner to claim the relief for the prayer, which was already refused by implication for giving effect to the Linkage order dated 20-6-1992. By raising arguments afresh about the promissory and equitable estoppel again and again

in the writ petition successively the same relief cannot be given to the petitioner even after the representation was decided. It was open for the High Court at the time of disposal of the I writ petition to have issued a positive direction giving effect to or enforcing the order dated 20-6-1992. Since it was not passed at that time, it is clear that no such order was ever contemplated to be passed at a future date. The I writ petition was disposed of finally. In view of the aforesaid facts by filing the II writ petition, the same pleas which were raised in the I writ petition could not be permitted to be raised in the II writ petition. Thus, in view of the facts narrated and discussed above the II writ petition for the limited question of even examining the order on representation by the respondent cannot be maintained and the II writ petition is also liable to be dismissed.

20. Before parting with the case, we would like to observe that it is very often seen that the same petitioner files number of writ petitions, one after the other by adding any subsequent order passed by the respondents in the same case. Such petitioner files IInd and IIIrd writ petitions contending that by passing of the subsequent order, there arose a subsequent fresh cause of action and for every fresh cause of action, fresh writ petitions could be filed. In many such cases, it is, not even mentioned that earlier writ petitions filed by such petitioner is pending. Although in the present writ petition, it has been I disclosed in the body of the writ petition. The filing of successive writ petitions for the same cause of action or with additional cause of action arising during the pendency of the earlier writ petitions gives rise to multiplicity of writ petitions and the multiplicity of the interim orders obtained by the parties also create problems before the respondents many a time. It is well known and settled that subsequent order which is said to be a subsequent cause of action needs no filing of fresh writ petition but by seeking appropriate amendment in the pending writ petition, such relief which may be needed in respect of subsequent order, could easily be incorporated in the pending writ petition. This is not done and successive writ petitions are filed which is adding to accumulations of number of writ petitions before this court. The provisions of Chapter 22, Rule 7 of the High Court Rules, no doubt provisions that no second application on the same facts, where an application has been rejected, shall be entertained on the same facts. This rule does not cover the situation arising presently in large number of writ petitions. We consider it necessary and appropriate that amendment in Chapter 22 of the High Court Rules are required which may require a petitioner to categorically state in the first paragraph of the writ petition that no earlier writ petition in the same matter or arising out of the same matter is pending or decided before this court. If such statement is made by the petitioner in the writ petition, multiplicity of the writ petitions by the same parties could be avoided and for subsequent orders, if any, passed requiring a relief by the petitioner, could be added in the writ petition itself by seeking appropriate amendments. We request that the Hon"ble" Chief Justice may get suitable amendments made in Chapter 22 of the High Court Rules incorporating the suggested provisions. The Hon"ble Chief Justice may get the matter placed before the Full Court meeting at

the earliest for necessary considerations of the suggestions given in the judgment.

21. In view of the facts and circumstances of the case, the preliminary objection of the respondents is allowed. The II writ petition No. 13639 of 1993 and writ petition _No. 20874 of 1993 (III writ petition) both are liable to be dismissed as not maintainable with costs.

22. Registrar is requested to place a copy of the judgment before the Hon''ble Chief Justice within a fortnight.

23. Petitions dismissed.