

(2010) 01 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2155 of 2010

Pramod Kumar Sagar

APPELLANT

Vs

U.P. Power Corporation Nigam Ltd. and Others

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0120

Hon'ble Judges : V.M.Sahai, J and Virendra Kumar Dixit, J

Judgement

V.K. Dixit, J.—Heard Sri Ranjit Saxena, learned Counsel for the petitioner, Shri J.P. Pandey, learned counsel for the respondent no. 1 to 3 and Standing Counsel for respondent no. 4. We have perused the relevant documents on record.

2. By means of this writ petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for issuance a writ, order or direction in the nature of Certiorari to quash the impugned order of transfer dated 26.12.2009 Annexure18 to the writ petition issued by opposite party no. 1.

3. In brief, it is submitted that the petitioner, Sri Pramod Kumar Sagar was posted as Executive Engineer Revenue, Dakshinanchal Vidyut Vitran Nigam Ltd., Electricity Urban Distribution DivisionIII, Agra and has been transferred to Orai by the impugned transfer order dated 26.12.2009 in the mid session.

4. The main thrust of the learned counsel for the petitioner in this case is on the fact that injustice is caused to the petitioner due to violation of the spirit of the judgement and order of Hon''ble Apex Court dated 21.3.2007 passed in Writ Petition No. C79/1997 Suresh Chand Sharma Vs. Chairman U.P.S.E.B. and others which mandated constitution of an independent committee to approve all proposals for transfer/posting of the officers and staff of the Corporation. Learned counsel for the petitioner informed that the said Independent Committee comprising of Shri Desh Deepak Verma, Principal Secretary, Institutional Finance, Government of U.P. and Shri Navneet Sahgal, Secretary Energy, Government of U.P., Lucknow who is also the ChairmancumManaging Director, U.P. Power

Corporation Limited was constituted for monitoring transfers/postings of the officers and staff of the said Corporation. It is further submitted that the object of appointing the aforesaid independent committee has been totally frustrated as Sri Navneet Sahgal, I.A.S., is holding the post of ChairmancumManaging Director, Uttar Pradesh Power Corporation Ltd., the 2 capacity, in which, he is sending proposals for transfer to the independent committee comprising himself in the capacity of Secretary Energy, Government of Uttar Pradesh, Lucknow which is against the principle of natural justice.

5. Learned Counsel for the opposite parties opposed the arguments advanced by learned counsel for the petitioner and contended that the impugned transfer order was passed in the interest of work.

6. It would be pertinent to mention here the relevant facts and order of Hon''ble Supreme Court in the said case of Suresh Chandra Sharma (supra), the petitioner had filed a writ petition under Article 32 of the Constitution in which the question was raised that the transfer of officers in the U.P.P.C.L. was being made on interference of Ministers and the guidelines for the transfers were not being followed. The Hon''ble Apex Court constituted a highpowered Committee to look into the matter and thereafter an independent committee was appointed which was directed to monitor all postings/transfers of the officers of the Corporation. The Apex Court directed that all the proposals for transfers/postings of the officials should be placed before the independent committee before finalization of postings and transfers and the Committee was to examine the merits of transfers/postings. The committee had submitted a report before the Hon''ble Apex Court making certain recommendations. Before the Hon''ble Apex Court all the five companies expressed their agreement to abide by the recommendations of the independent committee. The Apex Court noticing the recommendations of the independent committee being not opposed, disposed of the writ petition vide order dated 21.3.2007. The useful portion of the said order contained as mentioned below:

On 24.2.2005 the independent committee was appointed and it was directed that all the postings/transfers of officials and staff of Corporation shall be monitored by that Committee. It was also directed that all proposals for transfer/postings of the officials of the staff of the Corporation should be placed before the independent committee before finalization and the committee shall examine and approve transfers/postings on merits in the light of the guidelines for transfer of the officers. The independent committee examined the transfer and postings effected in the Corporation and a large number of cases were examined and it had been observed by the committee that only in small number of cases there were violations of guidelines. As a measure of improvement the committee recommended the following guidelines:1.

No change in the transfer and posting of officers and staff, as approved by the committee, would be made subsequent to the submission of report before the Hon''ble Supreme Court unless and until the Hon''ble Court decides and directs

otherwise;

2. If on account of promotions, new recruitment, emergent and genuine medical ground staff's transfers/postings become inevitable they should be done in accordance with the transfer policy and such transfers/postings should be placed for ex post facto approval at the intervals of three months before the committee comprising two senior secretaries to the Government of Uttar Pradesh, one of whom shall be Secretary incharge of Power in the State Government. While so reporting, the managements of the Corporation shall give written justification of each posting in the format prescribed.

3. If such change involves any violation of transfer policy in force due to any unavoidable reason, it shall be submitted with the reasons for such transfer immediately for approval or rejection by the Committee as mentioned in the preceding paragraph.

7. The Counsel representing all the five companies agreed with the suggestion of an independent committee being constituted and pursuant to the above direction number two they had already formed the committee, consequent upon which the writ petition as disposed of accordingly.

8. In the case of Suresh Chandra Sharma (supra), Hon'ble the Apex Court in its final order dated 21.3.2007 directed to constitute an Independent Committee comprising of two senior Secretaries to the Government of U.P., one of whom shall be the Secretary Energy of the State Government for monitoring all the transfers/postings of the officers and staff of the U.P. Power Corporation Limited. Meaning thereby, the Secretary Energy of the State Government necessarily is to be one of the member of the said independent Committee.

9. The impugned order has been passed by Shri Navneet Sahgal holding the post of ChairmancumManaging Director, U.P Power Corporation Ltd. in which capacity he has sent the proposal for transfer of the petitioner to the aforesaid independent committee of which he himself was member of the Committee in capacity of Secretary Energy Government of Uttar Pradesh, Lucknow, which is against the principles of natural justice. To maintain sanctity, it was not proper for the ChairmancumManaging Director of the Corporation who has passed the order of transfer himself, is also part of the independent committee which was supposed to approve the recommendation for transfer. It is cardinal principle of natural justice that nobody can judge its own cause. In substance, there was no independent consideration by the said Independent Committee with regard to recommendation for transfer/posting of the petitioner as opposite party no. 8, Shri Navneet Sahgal member of the Independent Committee, was Secretary Energy, Government of U.P. and at the same time he was also ChairmancumManaging Director, U.P. Power Corporation Limited. The very purpose of appointing Independent Committee was frustrated, as the impugned transfer order dated 26.12.2009 recommended by the ChairmancumManaging Director of the Corporation and subsequently approved the said transfer order by

the Independent Committee of which Shri Navneet Sahgal, Secretary Energy, Government of U.P. and also the ChairmancumManaging Director of the Corporation was one of the member. Interest of justice demands that the Secretary Energy, Government of U.P. and ChairmancumManaging Director, Power Corporation should be two different Officials and if the State Government confers the powers of ChairmancumManaging Director and the Secretary Energy, Government of U.P. to one person then the very purpose for which the Independent Committee was constituted as directed by Hon"ble the Apex Court in the case of Suresh Chandra Sharma (supra) by its judgement dated 21.3.2007 would be defeated.

10. In view of the above discussions, we hereby direct the State Government to appoint one officer as Secretary Energy, Government of U.P. and another officer as ChairmancumManaging Director of U.P. Power Corporation Limited within one month from today so that two different persons would act as Secretary Energy, Government of U.P. and ChairmancumManaging Director, U.P. Power Corporation Limited. Only after that the impugned transfer order dated 26.12.2009 shall be considered on its own merit by the Independent Committee constituted in compliance of the order dated 21.3.2007 of the Hon"ble Apex Court passed in the case of Suresh Chandra Sharma (supra) for monitoring the transfers/postings of the officers and staff of the U.P. Power corporation. Till the aforesaid directions are carried out by the State Government and two different officers are appointed as Secretary Energy, Government of U.P. and ChairmancumManaging Director of the Corporation, the transfer of the petitioner made by respondent no. 1 by impugned order dated 26.12.2009 Annexure18 to the writ petition, so far as it relates to the petitioner, shall remain in abeyance. The petitioner shall be continued at his present place of posting where he was working prior to the order dated 26.12.2009 and shall be paid his salary.

11. With the aforesaid directions, the writ petition is disposed of finally.