
(2010) 02 AHC CK 0336
In the Allahabad High Court

Radhey Shyam Mishra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 121 FLR 847

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.

(C.M. Application No. 60617(W) of 2009)

1. Heard Mr. Rakesh K. Chaudhary, learned Counsel for U.P. Cooperative Processing and Cold Storage Federation (applicant) and Smt. Nalini Jain, learned Counsel appearing on behalf of the petitioner.

2. The applicant's counsel submits that the U.P. Processing and Construction Cooperative Federation, the petitioner's appointing authority, has not been impleaded as party. Present writ petition was filed without impleading the U.P. Processing and Construction Cooperative Federation as the respondent.

3. It has not been disputed that the U.P. Processing and Construction Cooperative Federation was a party before the tribunal. At the face of record, the writ petition was allowed without providing opportunity of hearing to the affected party/appointing authority. The petitioner's counsel has relied upon the judgment, reported in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, with submission that once a case is decided finally, it cannot be recalled or modified.

4. On the other hand, learned Counsel for the applicant relied upon the judgment reported in (2006) 7 SCC 597 Budhia Swain and Others Vs. Gopinath Deb and Others, Budhia Swain and Ors. v. Gopinath Deb and Ors. and submits that since

the petitioner has not impleaded the applicant as party, though they were heard before the tribunal, being arrayed as a party, the impugned order is not sustainable. It has also been stated that the petitioner has concealed the material fact with regard to the fact that the applicants were arrayed as party before the Cooperative Tribunal.

5. In the case of Budhia Swain(supra), their Lordships of Hon''ble Supreme Court held that in case the proceeding lacks for inherent jurisdiction or there is fraud or collusion on the part of the petitioner or some prejudice has been caused because of mistake of the Court, the Court has got power to recall its order.

6. In the case of Royal Paradise Hotel(supra), their Lordships of Hon''ble Supreme Court reiterated the principle that a judgment and order may be recalled in case the party was not provided an opportunity of hearing.

7. In the present case, the petitioner has not impleaded his own appointing authority while preferring the writ petition. The writ petition was allowed without providing opportunity of hearing to the appointing authority, i.e. the U.P. Processing and Construction Cooperative Federation. Accordingly, the impugned order dated 29.5.2009 seems to have been passed in violation of principle of natural justice. The petitioner while approaching this Court under Article 226 of the Constitution was expected to implead all those persons as party who were heard and impleaded before the Cooperative tribunal. The action of the petitioner in preferring the writ petition without impleading the applicant as respondent is deprecated.

8. Accordingly, the application is allowed and the order dated 29.5.2009 is recalled.

9. Let the applicant be impleaded as respondent No. 4 forthwith who may file counter affidavit within four weeks, rejoinder thereto within the next two weeks. List thereafter.