

(2011) 04 AHC CK 0461

In the Allahabad High Court

Case No : Special Appeal Defective No. 323 of 2004

Ram Dhyan Singh

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Citation : (2012) 2 ADJ 97

Hon'ble Judges : S.U. Khan, J;S.P. Mehrotra, J;S.K. Singh, J;Pankaj Mithal, J;Amitava Lala, J

Bench : Full Bench

Judgement

Amitava Lala, J.—In the aforesaid special appeal a Division Bench of this Court by an order dated 23rd April, 2004 referred two questions for the purpose of due consideration by a larger Bench. The questions so referred are as follows:

1. Whether a writ will lie even in the matter of non-statutory contract?
2. Whether a writ will lie in cases relating to fair price shops e.g. grant, cancellation, suspension, etc. of fair price shops.

2. Accordingly, a five Judges' Bench was constituted on 05th November, 2004. Time to time members of the Bench were changed. During the pendency of this reference, another Division Bench of this Court by an order dated 27th January, 2009 passed an order in Special Appeal No. 1942 of 2008 (Sheet Gupta v. State of U.P. and Ors.) taking different view than that of Ram Dhyan Singh Vs. State of U.P. and Others, and opined that the decision of Ram Dhyan Singh (supra) requires reconsideration by a larger Bench, particularly in view of the decision in the case of Vajara Yojna Seed Farm Kalyanpur and Ors. v. Presiding Officer, Labour Court II, U.P. Kanpur and Anr. reported in 2003 (1) ESC 492, of another coordinate Bench and framed the following question:

Whether a special appeal under the provisions of Rule 5 of Chapter VIII of the Rules of the Court lies in a case where the judgment has been given by a learned

Single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the U.P. Scheduled Commodities Distribution Order, 2004?

3. Accordingly, a Full Bench consisting of three Judges was constituted to decide such question. Such Full Bench by its judgment and order dated 11th December, 2009, reported in 2010 (1) ESC 273 (All) (FB) (Sheet Gupta v. State of U.P. and Ors.) answered the question saying that the special appeal is not maintainable under the provisions of Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. It was further specifically held therein that Ram Dhyan Singh (supra) does not lay down the correct law.

4. Against this background, this Bench is of the opinion that when a three Judges' Bench has already held that Ram Dhyan Singh (supra) does not lay down the correct law, no answer is required to be given in respect of the questions referred in such special appeal having been not maintainable. Hence, we decline to give answer to the questions raised under the special appeal. Therefore, no further order is required to be passed.

5. Accordingly, the reference is treated to be disposed of finally.