

(2005) 12 AHC CK 0140

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7183 of 2002

Shah Alam

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Citation : (2006) 5 AWC 4235

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : N.S. Chaudhary and Anshu Chaudhary, for the Appellant; Narendra Prasad Shukla, Avinash Tripathi, D.B. Yadav and R.D. Yadav and S.S.C., for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—This petition has been filed for quashing the judgment and order dated 22.01.2002 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter called the "Tribunal") in Original Application No. 68 of 1998 by which the Application of the respondent No. 6 has been allowed and a direction has been issued to cancel the order of appointment of the petitioner (respondent No. 5 before the Tribunal) and restore the applicant to the post of Extra Departmental Branch Post Master (hereinafter called the "EDBPM").

2. Pursuant to the advertisement issued for appointment of EDBPM, the petitioner along with others submitted applications. The application filed by the petitioner was not considered on the ground that it had been submitted on 6th November, 1995 after the expiry of the last date of submission of the application forms which was indicated as 5th November, 1995. An appointment letter was issued in favour of Shri Prem Chand (respondent No. 6) on 08.07.1996. As the claim of the petitioner had been ignored, he filed a representation/complaint before the Chief Post Master General, U.R. Circle, Lucknow who, after examining the matter, directed the Post Master General, Gorakhpur Region, Gorakhpur to consider the application filed by the petitioner in accordance with Rules.

Thereafter, the appointment letter issued in favour of Prem Chand was cancelled and an appointment letter was issued in favour of the petitioner. This compelled Shri Prem Chand to file an Application before the Tribunal, which has been allowed by judgment and order dated 22.01.2002.

3. The Tribunal has held that though the application could have been filed on 6th November, 1995 since 4th and 5th November, 1995 were holidays but since the eligibility certificate was issued on 6th November, 1995, the same could not have been considered and, therefore, the application filed by Shah Alam, the petitioner, could not have been entertained. The Tribunal further found that the Senior Superintendent of Post Offices, Azamgarh acted on the directions of the Post Master General, Gorakhpur while cancelling the appointment of Prem Chand and giving appointment to Shah Alam and therefore his discretion had been impinged. Under these circumstances, the application filed by Prem Chand was allowed.

4. The aforesaid reasoning given by the learned Tribunal is self-contradictory as admittedly, if the Tribunal came to the conclusion that the application form could be submitted on 6th November 1995, we fail to understand how it could say that the required certificate issued on 6th November, 1995 could not be considered. The reasoning itself leads to absurdity and does not appeal to reason. More so, if there had been holidays and for that reason, the application could not be submitted, the same logic could have been extended for the purpose of issuance of the certificates.

5. The Court has to consider the scope and application of doctrine of "lex non cogit at impossibilia" (the law does not compel a man to do what he cannot possibly perform) and "impossibilium nulla obligatio est" (the law does not expect the party to do the impossible). The scope of the said doctrines have elaborately been considered and applied by the Hon"ble Supreme Court in Chandra Kishore Jha Vs. Mahavir Prasad and Others, and Mohammed Gazi v. State of M.P. and Ors. (2000) 4 SCC 342. These maxims which have also been expressed as *impotentia excusate lege* must be understood in the qualified sense that *impotentia* excuses when there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law *Nemo Tenetur ad Impossibilia* (no one is bound to an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. (Vide *Eagar v. Furnivall* 17 Ch. D. 115).

6. In Ref. by President, the Hon"ble Apex Court observed as under:-

The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. Therefore, when it appears that the

performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse.

7. The law is understood to disclaim all intention of compelling to impossibilities and the administration of laws must adopt that general exception in the consideration of all particular cases. Therefore, there are implied obligations not to force a person to do something which is rendered impossible by causes beyond his control. (Vide *Hick v. Rodocanachi* 1899 2 QB 626.

8. Similar view has been reiterated by the Hon"ble Apex Court in *Hira Tikkoo Vs. Union Territory, Chandigarh and Others*, and *HUDA and Another Vs. Babeswar Kanhar and Another*, .

9. Thus, in view of the above, the reasoning given by the Tribunal is not worth acceptance.

10. More so, it remains an admitted fact that the petitioner had been more meritorious than the contesting respondent and the appointment of the petitioner had been in consonance of the law laid down by Hon"ble Supreme Court in *Suman Verma v. Union of India and Ors.* (2004) 12 SCC 57. The Tribunal committed an error in allowing the application of respondent No. 6. The Tribunal erred in recording a finding that appointment of the contesting respondent had been terminated at the behest of the Superior Authority. There had been no such direction which could have impinged the discretion of the Competent Authority.. The Higher Authority had merely asked the Authority concerned to consider the case in accordance with Rules.

11. Thus, the order impugned cannot be sustained in the eye of law. In view Of the above, the petition deserves to be allowed and the order impugned is liable to be set aside. The petition succeeds and is allowed. The impugned judgment and order dated 22.01.2002 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad is hereby set aside.