

(2006) 02 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Recall Application No. 35338 of 2006 and Civil Miscellaneous Writ Petition No. 58112 of 2005

Sidheswar Mishra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 21

Citation : (2006) 9 ADJ 427 : (2007) 112 FLR 695

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : R.N. Tripathi and S.K. Tiwari, for the Appellant; R.D. Khare, Ranjit Saxena and B.L. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Case has been taken up in the revised list but Sri Ranjit Saxena, counsel for the respondent- Power Corporation is not present. Sri Brij Lal Verma, who is not in the panel of the Power Corporation, states that he is holding brief of Sri Ranjit Saxena in this case. He states that the brief has been handed over to him by Sri Ranjit Saxena for arguing the present recall application.

2. At the outset, Court requested Sri Brij Lal Verma to address the Court whether he, as a private counsel, can hold the brief of Special counsel/Government counsel on the panel of the Corporation or not. Sri Brij Lal Verma submitted that he can argue the matter since he has been directed to do so by Sri Ranjit Saxena.

3. Counsel for the petitioner submits that neither Sri Ranjit Saxena nor Sri Brij Lal Verma can file the recall application and argue the case for the following reasons :

1. The writ petition was decided by judgment and order dated 31.1.2006 after hearing counsel for both the parties. At the relevant time, Sri R.D. Khare had argued the matter on behalf of U.P. Power Corporation- respondent No. 2. Sri

Ranjit Saxena had not been allotted this case by the U.P. Power Corporation at that time. The judgment having been delivered after hearing counsel for the parties, Sri Ranjit Saxena cannot file recall application having been engaged subsequent to the decision in the writ petition.

2. Recall application, if any, can be filed by only Sri R.D. Khare, who was counsel for the Power Corporation at the time of hearing. In case, the writ petition is restored, Sri Ranjit Saxena may be allotted the case by U.P. Power Corporation but a decided case cannot be allotted to any counsel subsequently after the judgment has been delivered.

3. No Vakalantnama has been filed by Sri Ranjeet Saxena along with counter affidavit.

4. The instant recall application was filed on 15.2.2006 by Sri Ranjit Saxena, inter alia, on the ground that the order dated 31.1.2006 is ex parte as it has been passed in absence of any counter affidavit on behalf of the respondents. Counter affidavit has also been filed along with recall application with the prayer to recall the judgment and order dated 31.1.2006.

5. It is averred in the recall application that the Chief Engineer, Hydly, U.P. Power Corporation, 14 Ashok Marg, Shakti Bhavan, Lucknow was not having any information about the orders dated 31.8.2005 and 22.12.2005.

4. It is also submitted by the counsel for the petitioner that notices on behalf of the Corporation had been received by Sri R.D. Khare, counsel for the U.P. Power Corporation who is authorized to receive notices on behalf of the Corporation as such it cannot be said that respondents had no notice or information about the case or orders passed on the writ petition. The judgment dated 31.1.2006 is also not exparte as it has been passed after hearing Sri R.D. Khare counsel for the respondents and case haws been decided on merit.

5. The averments in the recall application that that reason of not filing counter affidavit is that no information was received from Sri R.D. Khare, Advocate for filing the counter affidavit and in absence of receipt of any previous orders dated 31.8.2005 and 22.12.2005, which were communicated to the Chief Engineer, Hydly, U.P. Power Corporation, 14 Ashok Marg, Shakti Bhavan, Lucknow, is fallacious. It is entirely between the Corporation and its counsel. Admittedly the Corporation has appointed Advocates on its panel to receive notices and represent them. Whether the counsel sent the information to the Corporation or not is a matter not in controversy in this petition. It is sufficient that orders were passed after hearing the counsel for the parties and judgment was given on merits.

6. It appears that on 31.5.2005, Advocates were on strike. However, when the matter was taken up, counsel for the respondents was granted a month"s time and no more for filing counter affidavit. Order dated 31.8.2005 is as under:

Hon. Rakesh Tiwari, J.

Advocates are on strike. Learned Counsel for the petitioner and respondent Nos. 1 and 2 are not present.

I have perused the record.

A month's and no more is granted for filing counter-affidavit. Rejoinder affidavit may be filed within three weeks thereafter.

List this petition after expiry of the aforesaid period.

Sd/- Illigible" 31.8.2005.

7. Thereafter the case was listed on 27.10.2005 when again one months further time was granted for filing the counter affidavit as a last opportunity. The case was then listed on 16.1.2006 but was passed over on the joint request of the parties but no counter affidavit was filed. The case was next listed on 23.1.2006. On this date Sri R.D. Khare sent his illness slips. The case was lastly listed on 31.1.2006 when it was decided on merit in absence of counter affidavit after hearing the counsel for the parties.

8. It has been repeatedly held by the Apex Court that the lawyers' strikes are illegal and that effective steps should be taken to stop the growing tendency to go on strikes as they have no right to go on strike. If a lawyer, holding a Vakalatnama of a client, abstains from attending court due to a strike call, he puts himself to personal risk and liability for any action that may be taken by his client.

9. In Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, Tahil Ram Issar Das Sadarangam v. Ramchand Issardas Sadarangam (1993) (3) SCC 256; Common Clause A. Registered Society v. Union of India (1995) 3 SCC 19 ; In Re: Sanjiv Datta and Others, Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, K. John Koshy and Others Vs. Dr Tarakeshwar Prasad Shaw, Mahabir Prasad Singh Vs. M/s. Jacks Aviation Private Ltd., and Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, it was held by the Supreme Court that the advocates have no right to go on strike and the Courts are under no obligation to adjourn the cases on the board because lawyers are on strike. The Courts are not to be privy to such strikes which amounts to denial of justice to the litigants.

10. The judiciary is accountable to the public and the dispensation of justice cannot be stopped for any reason including strike by lawyers. The apex court has held that right to speedy justice is included in Article 21 of the Constitution of India. In Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., and Raj Deo Sharma Vs. The State of Bihar, it was held that the litigant has a right to speedy justice.

11. Similarly in Manoj Kumar v. Civil Judge, Deoria (Writ Petition No. 33778 of 1997 decided on 10.10.97), the Division Bench of this Court has held that:

Before parting with this case, we would like to mention that it is deeply

regrettable and highly objectionable that there are strikes in District Courts in U.P. in flimsy and frivolous pretexts and some District Courts function only for about 60 or 70 days in a year. This is a shocking state of affairs and will no longer be tolerated by this Court. The judiciary and bar are both accountable to the public and they must behave in a reasonable manner so that cases are decided quickly and thus the faith of the public in the judiciary is maintained. Surely, the public has a right to expect this from us.

12. The same view is followed in *Suresh Chandra Varshney & Co. v. State of U.P.* (Writ Petition No. 15342 of 2000 decided on 30.3.2000) and *Siddhartha Kumar and others Vs. Upper Civil Judge, Senior Division, Ghazipur and others*,

13. It is consistent view of Hon"ble Supreme Court that the Advocate cannot go on strike and it is illegal. No latitude can be given in this regard. It is interse matter between the parties and their counsel to file counter affidavit and no blame can be put on the Court that it has proceeded with the case in absence of the counter-affidavit.

14. The Court is not inclined to open "Pandora's Box" for the following reasons-

Firstly: The law is well settled that recall or review application can be filed only by the counsel who had argued the case and not by a subsequent counsel who is engaged after the decision.

Secondly: The recall application in the instant case is in the nature of review application as the judgment has been delivered on merits after hearing the counsels for the parties and the prayer is to recall the judgment and hear on merits again.

Thirdly: When the recall filed by Sri Ranjeet Saxena was listed Sri Brij Lal Verma could not have been authorized by Sri Ranjeet Saxena to argue the application and the case on merits, the following reasons.

(a) Sri Ranjeet Saxena is appointed by the Corporation on its panel to argue to argue its cases and Sri B.L. Verma. The U.P. Power Corporation is a Estate within the meaning of Article 12 of the Constitution and the position of a counsel on its panel is Akur standing counsel appointed by the Government,

(b) Along with standing counsels, brief holders are also appointed by the State Government. If the Corporation had not appointed any brief holders the counsel on the panel cannot handover his government brief to any counsel who is not on the panel to argue government brief.

(c) In any event it was the duty of Sri Ranjeet Saxena to have been present to argue the recall application filed by him in order to avoid excuse again by the Corporation that case was argued by Sri B.L. Verma who is not on its panel and not by Sri Ranjeet Saxena who is on the panel of thue Corporation.

(d) It is very easy to allege by a subsequent counsel that information to his client was not given. If that be the case the recall application ought to have been filed

through Sri R.D. Khare. Consequently the case after the judgment has been allotted to Sri Ranjeet Saxena by the Corporation to get recall of order and judgment dated 31.1.2006.

15. Thus it is not in dispute that Sri R.D. Khare appeared in this case and no counter affidavit was filed by the department subsequently and he argued the matter in the absence of counter affidavit. In these circumstances, Sri Ranjit Saxena being subsequently engaged in the case could not file this recall application and it is liable to be rejected. Even Vakaltnama had not been filed along with the counter affidavit and the recall application by Sri Ranjit Saxena.

16. From the above the following admitted facts appear: -

1. Sri R.D. Khare is the counsel authorized to receive notices on behalf of the respondents.
2. After receipt of notices, he appeared and was heard.
3. Time was granted to the respondents to file counter affidavit but no counter affidavit was filed.
4. Judgment was delivered after hearing counsel for the parties. Even though, judgment has been delivered in the absence of counter affidavit, it cannot be said to be ex parte or not on merits as the case has been decided on merits of the case.
5. It is well settled that after the judgment has been delivered, recall/review application can be filed only by the counsel who had appeared and argued the case and not by any subsequently engaged counsel.

17. In so far as the question whether Sri Brij Lal Verma could have also appeared in the case on behalf of Power Corporation is concerned, there is no iota of doubt in my mind that where State Government/Power Corporation/an instrumentality of the State appoints a counsel, only he can hold the brief and not by any private Advocate. Analogy may be drawn from the fact that Standing counsel appointed by the State Government can not transfer their briefs to any private counsel. Brief Holders are also appointed by the State Government so that in the absence of Standing counsel, brief can be held by the Brief Holder. As the standing counsel cannot entrust Government files or brief to any private counsel, similarly, a counsel appointed on the panel of the Advocates by Government/Corporation/instrumentality of the State, also cannot hand over the Government file/brief to a private lawyer. Sri Brij Lal Verma, therefore, had no authority of law either to hold the brief of Sri Ranjit Saxena or to argue the recall application in the absence of Sri Ranjit Saxena. As stated earlier, neither Sri Ranjit Saxena could not have filed this recall application for the reason given in the judgment above nor Sri. B.L. Verma could have argued the matter on the instructions of Sri Ranjeet Saxena who had not even filed Vakalatnama duly executed by the competent authority. The judgment was delivered on merits after hearing Sri R.D. Khare, as such the, recall application is liable to be rejected on both the

counts.

18. For the reasons given in the order the recall application is accordingly rejected.