
(2010) 07 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 5931 of 2010 (M/B)

Smt. Kamla Devi	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (2011) 113 RD 607

Hon'ble Judges : Ritu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Judgement

Pradeep Kant, J.—Heard Sri Raghvendra Singh, learned Senior Advocate for the Petitioner and Sri Mukund Tiwari, learned State Counsel for the Respondents.

2. Before proceeding with the hearing of this petition, we orally required the learned Counsel for the Petitioner to reply that prima facie since this petition appears to be an abuse of the process of the Court, therefore, why exemplary costs be not awarded against the Petitioner. This writ petition is the off-shoot of an interim order passed in Writ Petition No. 3046 (M/B) of 2010 in re: Smt. Kamla Devi v. State of U.P. and Ors. which has also been decided by the Court today i.e. on 30.7.2010. The said writ petition was heard by a Bench consisting of one of us Pradeep Kant, J. and Hon'ble Shabihul Hasnain, J. The writ petition has been allowed by the said Bench, and the impugned order dated 29.3.2010 ceasing the financial and administrative powers of Smt. Kamla Devi as Adhyaksha of Zila Panchayat, Pratapgarh has been quashed. The Respondents have been directed to allow the Petitioner to function as Adhyaksha, Zila Panchayat, Pratapgarh with immediate effect.

3. After the judgment was reserved in Writ Petition No. 3046 (M/B) of 2010 and before the same could be pronounced, Petitioner Smt. Kamla Devi filed this writ petition during vacations, alleging that in the aforesaid Writ Petition No. 3046 (M/B) of 2010, an interim order was passed on 6.4.2010 to the effect that in the meantime, the status and facilities of the Petitioner as "Adhyaksha" shall not be

disturbed, but she was not being allowed to discharge the administrative and financial powers of Adhyaksha though she was supposed to have been permitted to do so in terms of the aforesaid interim order.

4. On 18.6.2010, a Division Bench of this Court passed the following order:

Hon"ble Devi Prasad Singh, J.

Hon"ble Yogendra Kumar Sangal, J.

Sri I.B. Singh learned Senior Counsel assisted by Sri S.M. Royekwar, learned Counsel, has appeared.

Impalement application filed by Sri S.M. Royekwar learned Counsel, on behalf of Ram Kishore, is taken on record.

The Petitioner may file objection to the impalement application within a week.

List in the week commencing 5.7.2010 along with Writ Petition No. 3046 (M/B) of 2010.

In the meantime, the Petitioner shall be permitted to discharge duty keeping in view the order dated 6.4.2010 passed by this Court till the next date of listing.

Sri Prashant Singh "Atal" learned Counsel has appeared on behalf of O.P. No. 4.

5. It appears that despite the aforesaid direction, the Petitioner was not allowed to function and discharge the administrative and financial powers of Adhyaksha; therefore, she moved an application under Article 215 of the Constitution. On 5.7.2010, during the course of hearing, the Counsel for the Petitioner stated that he does not want to press the application filed under Article 215 of the Constitution. A Division Bench of this Court passed the following order:

Hon"ble Uma Nath Singh, J.

Hon"ble Devendra Kumar Arora, J.

Sri I.P. Singh, learned Counsel for the Petitioner does not want to press the C.M. Appl. No. 62432 of 2010, filed under Article 215 of the Constitution of India for initiating contempt proceedings at this stage, hence, the application is dismissed as not pressed.

However, learned Counsel for the Petitioner also states that the order dated 18.6.2010 has not been complied with and the Petitioner has not been allowed to join.

He further states that the District Magistrate, Pratapgarh, is responsible for violating the said order of this Court.

Sri Prashant Singh "Atal", learned Counsel appearing for opposite party No. 4, states that he has already given his opinion to Additional Chief Executive Officer, Zila Panchayat, Pratapgarh, to comply with the order dated 18.6.2010 but so far

he has not received any instruction.

Issue notice to the District Magistrate, Pratapgarh, as to why contempt proceedings be not initiated against him for non compliance of the order dated 18.6.2010.

List on 26.7.2010.

6. The order, it appears, was not complied with and in the meantime, before the date fixed i.e. 26.7.2010, an application for vacation of interim orders dated 18.6.2010 and 5.7.2010 was filed by the State. This application under the roaster fixed by Hon"ble the Chief Justice was taken up by this Court on 15.7.2010 and thereafter again on the request of parties, it was posted for 16.7.2010, on which date arguments of Counsel for the parties were heard and orders reserved, and till the pronouncement of the order, the directions issued in both the aforesaid interim orders were kept in abeyance.

7. Learned Counsel for the State pressing his application for vacation of interim orders submitted that the writ petition itself is not maintainable as the judgment in Writ Petition No. 3046 (M/B) of 2010 challenging the order of cessation of administrative and financial powers of the Petitioner as Adhyaksha was already reserved before summer vacations on 21.4.2010 and, therefore, no fresh writ petition could have been filed for implementing the interim order passed in that writ petition. He has also pleaded that the interim order dated 6.4.2010 did not allow the Petitioner to discharge the administrative and financial powers or to function as Adhyaksha but only her status and facilities as Adhyaksha were protected and, therefore, it was a misreading of the interim order, and a misleading plea raised in the writ petition.

8. Learned Counsel for the Petitioner, in response, submitted that the interim order aforesaid, passed in Writ Petition No. 3046 (M/B) of 2010, in substance meant that the Petitioner should be allowed to function and discharge her duties as Adhyaksha and exercise administrative and financial powers, and since despite the aforesaid interim order she was deprived of the administrative and financial powers, she had to file the instant writ petition during vacations. The argument is that the interim order could not have been allowed to be frustrated by deliberate act of the Respondent-State under the pretext that the judgment in the earlier petition was reserved.

9. Learned Counsel for the Petitioner has also raised a plea that this Bench cannot hear this matter as the order of a coordinate Bench cannot be modified or nullified by another Bench. The emphasis is that in the instant case, a Division Bench of co-ordinate jurisdiction suo motu issued contempt notice to the District Magistrate; therefore, that notice cannot be discharged by another Bench. The argument is that the matter should be sent to the same Bench.

10. We have no doubt nor can there be any debate that once the writ petition, wherein the substantive order (impugned order dated 29.3.2010) was the

subject-matter of challenge, was heard by a Division Bench having co-ordinate jurisdiction and the judgment was reserved, no fresh writ petition could have been filed in respect of any matter which arises or flows either from the impugned order or from the interim order passed or direction issued in the said writ petition.

11. It also cannot be a matter of argument that in a matter where the judgment is reserved by a Division Bench, no other Bench has jurisdiction to entertain any plea or to interpret any interim order otherwise, in a fresh writ petition, pending pronouncement of the judgment. In case there is any grievance with respect to compliance or non-compliance of any order passed in such a writ petition, an application can be moved before the same Bench, or if a case is made out, contempt proceedings can be initiated, but a fresh petition can neither be filed nor can be entertained by another Bench having co-ordinate jurisdiction.

12. On merits also, we have to see what the interim order meant and what did it provide. The interim order dated 6.4.2010 passed in Writ Petition No. 3046 (M/B) of 2010 reads as under:

Hon"ble Pradeep Kant, J.

Hon"ble Shabihul Hasnain, J.

Notice on behalf of opposite party Nos. 1 to 3 has been accepted by learned Chief Standing Counsel and 4 by Sri Prashant Singh "Atal".

List this case be listed on 15.4.2010 as fresh.

In the meantime the learned Standing Counsel shall seek instructions in the matter. Learned Counsel for the Zila Panchayat Sri Prashant Singh " Atal" says that he may be allowed to file counter-affidavit in the meantime.

Let him do so.

The copy of the counter Affidavit shall be served on the Counsel for the Petitioner at least two days before the date fixed on which date the matter may be disposed of finally.

In the meantime the status and facilities of the Petitioner as "Adhyaksha" shall not be disturbed.

Application for impalement moved by Sri Raj Kumar is allowed.

Let necessary incorporation be made out in the body of the petition.

13. The aforesaid interim order was passed only for protecting the status and facilities of the Petitioner as Adhyaksha. There was no direction for allowing her to work and discharge the administrative and financial powers of Adhyaksha. This is evident by the fact that the order impugned, by means of which the powers of the Petitioner were ceased, was not stayed by the Court nor any direction was issued to permit her to discharge such functions in presence of the said order.

The protection of status and facilities was provided after arguments being heard on both the sides and it being clear that merely by cessation of financial and administrative powers, the Adhyaksha cannot be deemed to have been removed from office and, therefore, the Petitioner would be entitled to occupy office-room in Zila Panchayat with all facilities she was drawing coupled with the facility of vehicle etc. There is no provision under the Act or relevant rules which prohibits the Adhyaksha, whose administrative and financial powers have been ceased, from styling himself/herself as Adhyaksha nor does it provide that facilities and perks, which are attached to such office, can also be ceased.

14. The interpretation thus, as was made by the Petitioner, does not flow from the interim order which was passed in the substantive writ petition.

15. The interim order passed in Writ Petition No. 3046 (M/B) of 2010 was absolutely clear with no ambiguity and did not require any interpretation otherwise, by the Petitioner or by another Bench.

16. On the plea that this Bench cannot hear the application for vacation of interim order, suffice would be to mention that by merely passing an interim order, the writ petition does not become "tied up" nor the Bench of co-ordinate jurisdiction having jurisdiction to deal with such matter, under the roster prepared by the Chief Justice, loses its power to vacate or modify the interim order. There cannot be any dispute that the interim orders passed by a Bench can be vacated by another Bench having jurisdiction to deal with the matter.

17. There is one more aspect of the matter which creates doubt upon the bona fides of the Petitioner in filing the present petition and rather it supports the plea of the Respondents that the petition was filed only with a view to procure an order from the Court in her favour under the pretext of the interim order passed in Writ Petition No. 3046 (M/B) of 2010, knowing fully well that the interim order does not allow her to discharge the administrative and financial powers. The interim order was passed on 6.4.2010 and the judgment was reserved on 21.4.2010. No such complaint, was made at any point of time regarding noncompliance of the aforesaid interim order nor the matter was brought to the notice of the Court before summer vacations. It was as late as on 18.6.2010 during vacations i.e. after a lapse of more than two months from the date of passing of the interim order that this writ petition was filed. In case the Petitioner was aggrieved or was of the view that that under the aforesaid interim order she has been permitted to discharge functions of Adhyaksha, she could have moved an application as promptly as it could be. The very fact that no such application was moved before vacations, proves beyond doubt that the Petitioner very well understood the text and meaning of the interim order and the effect thereof. But only with a view to obtain an order for being allowed to discharge the administrative and financial powers, took a chance, by this innovative method, that too by misinterpreting the interim order passed in the earlier writ petition.

18. Learned Counsel for the Petitioner could not satisfy the Court as to how this

writ petition was maintainable in the facts and circumstances stated above and for allegedly enforcing the interim order passed in other writ petition (No. 3046 (M/B) of 2010) in which judgment was reserved and which did not permit the Petitioner to discharge her administrative and financial powers.

19. We are, therefore, of the considered opinion that the attempt on the part of the Petitioner to seek an order from the Court under the pretext of the interim order passed in other writ petition, judgment in which was reserved and that too, which did not flow from the said order, was not a bona fide act but a total abuse of the process of the Court. The filing of instant petition was wholly uncalled for, ill-advised, and a case of obtaining favorable order, by misleading the Court. Neither the writ petition was maintainable nor the other Bench was having jurisdiction to entertain this writ petition.

20. In regard to the plea that suo motu notice of contempt has been issued by another Division Bench, therefore, this Court has no jurisdiction to discharge or set aside the order issuing notice of contempt, suffice would be to observe that this plea loses its significance for the reason that once the interim order issued by the Court is recalled and the writ petition is dismissed, there would be no occasion for proceeding with the contempt and taking action against the District Magistrate. The order dated 5.7.2010 issuing notice for initiating contempt proceedings against the District Magistrate, Pratapgarh, thus, cannot be sustained nor it survives.

21. In view of the discussion held above, this writ petition is dismissed being not maintainable.

22. This is a case, where the Petitioner, on her part, made a full-fledged calculated effort to regain her authority for exercising her administrative and financial powers by filing the present writ petition despite the fact, that there existed no such direction in the interim order passed in Writ Petition No. 3046 (M/B) of 2010 and though she could not succeed in getting the fruits of the interim order passed in the present writ petition, such an attempt ought to have been thwarted by dismissing this writ petition at the threshold, we, therefore, while dismissing the writ petition, under the facts and circumstances stated above, find it expedient that the Petitioner be saddled with costs which we assess as Rs. 20,000/-. The costs shall be deposited in this Court within one month. If the Petitioner fails to deposit the said amount, within the time prescribed, the said amount shall be recovered as arrears of land revenue by the District Magistrate on recovery certificate being issued by the Registrar of this Court.

23. On deposit so being made, the same shall be remitted to the account of the Mediation Centre of this Court at Lucknow.

24. Before parting with the judgment, we would also like to mention that though Sri Mukund Tiwari, learned State Counsel has expressed his apology, but we express our displeasure on the manner in which the application for vacation of stay order has been drafted and the language used therein. The concerned

officers of the State should have exercised necessary restraint in choice of words while drafting the said application and placing it before the Court.