

(2020) 02 UK CK 0054
In the Uttarakhand High Court
Case No : Special Appeal No. 985 Of 2019

Sujeet Kumar Vikas

APPELLANT

Vs

Uttarakhand Information Commission & Others

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 UK CK 0054

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Bhupesh Kandpal, Dharmendra Barthwal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This intra-court appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, is preferred against the order passed by the learned Single

Judge in Writ Petition (M/S) No.2597 of 2019 dated 10.10.2019.

2. The appellant herein filed the Writ Petition challenging the order passed by the appellate authority dated 05.10.2016, and the order dated 04.01.2018

passed by the Uttarakhand Information Commissioner, whereby a penalty of Rs.25,000/- was imposed upon the appellant-writ petitioner; and further

directions were issued to initiate a disciplinary inquiry against him.

3. In the order dated 05.10.2016, the appellate authority held that the petitioner had not supplied the information sought for; and he should desist from

such acts in future. Aggrieved thereby, the fourth respondent herein preferred an appeal to the Uttarakhand Information Commissioner who, by his

order dated 04.01.2018, imposed a penalty of Rs.25,000/- on the petitioner, and directed initiation of disciplinary proceedings against him.

4. On these orders being subjected to challenge before this Court, the learned Single Judge opined, in the order under appeal, that the orders

challenged in the Writ Petition were highly belated, and no explanation had been given as to why the delay had been caused. Acknowledging that the

rules of limitation were not strictly applicable in writ proceedings, the learned Single Judge dismissed the Writ Petition holding that the petitioner had

not bothered to even whisper why the delay had been caused; and the Writ Petition could not be entertained. Aggrieved thereby, the present appeal.

5. Mr. Bhupesh Kandpal, learned counsel for the appellant-writ petitioner, would submit that it is because the appellant-writ petitioner was not served

a copy of the order dated 05.10.2016, could he not challenge the said proceedings earlier; he came to know of the earlier order dated 05.10.2016 only

after the subsequent order dated 04.01.2018 was passed; and the Writ Petition cannot be said to be unduly belated, and to be hit by laches, since the

appellant-writ petitioner was unaware of the order dated 05.10.2016 as it was not communicated to him.

6. On the other hand Mr. Dharmendra Barthwal, learned counsel for the third respondent, would submit that these submissions, now being made on

behalf of the appellant-writ petitioner, are not reflected in the pleadings; such a statement made across the Bar, that too for the first time in an intra-

court appeal, does not merit acceptance; in any event, the appellant-writ petitioner had invoked the jurisdiction of this Court by way of the present Writ

Petition filed on 28.07.2019, more than one and a half years after the subsequent order dated 04.01.2018 was passed; and there is no explanation even

for this delay of one and a half years.

7. The scope of interference in an intra-court appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, is extremely limited. The learned

Single Judge, against whose order the present appeal is filed, is not a court subordinate since both the Division Bench which hears intra-court appeals,

and the learned Single Judge who has passed the order impugned in this appeal, exercise the very same jurisdiction under Article 226 of the

Constitution of India.

8. Unlike an appellate remedy where all questions of fact and law may be open for examination by the appellate Court/tribunal, interference in an intra-court appeal would be justified only where the order under appeal suffers from a patent illegality.

9. The learned Single Judge has non-suited the appellant-writ petitioner on the ground of undue delay and laches. The Writ Petition was filed nearly

three years after the earlier order dated 05.10.2016 was passed, and more than one and a half years after the subsequent order dated 04.01.2018. No

explanation has been furnished, for this delay, in the affidavit filed in support of the Writ Petition. It is for the first time, that too across the Bar, that a

submission is now made that the appellant-writ petitioner was never informed of the order dated 05.10.2016; and he came to know of such an order

having been passed only after the subsequent order dated 04.01.2018 was communicated to him. As no such plea was taken in the Writ Petition nor

was any such contention raised before the learned Single Judge, it would be wholly inappropriate for us to examine this contention for the first time in

intra-court appellate proceedings, more so when such a plea has not even been taken in the affidavit filed before us.

10. As the learned Single Judge cannot be said to have committed a patent illegality in non-suited the appellant-writ petitioner on the ground of delay

and laches, we see no reason to interfere with the said order. The Special Appeal fails and is, accordingly, dismissed.

11. Mr. Bhupesh Kandpal, learned counsel for the appellant-writ petitioner, would seek liberty to file a review application before the learned Single

Judge.

12. Suffice it to observe that dismissal of this appeal shall not disable the appellant-writ petitioner from availing such other remedies as are available to

him in law. No costs.

13. Let a certified copy of this order be furnished to the learned counsel for the parties, by 28.02.2020, on payment of the prescribed charges.