
(2004) 11 AHC CK 0024

In the Allahabad High Court

Case No : Writ Petition No. 5443 (M/B) of 2004

Tanda Textiles and Processing Mills (P.) Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 AWC 440

Hon'ble Judges : Rajiv Sharma, J; Pradeep Kant, J

Bench : Division Bench

Advocate : A.N. Trivedi and Rahul Srivastava, for the Appellant; V.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and Rajiv Sharma, JJ.—Heard the learned Counsel for the petitioner Sri Abhinav N. Trivedi and Sri Rahul Srivastava, holding brief of Sri U. P. Singh, advocate on behalf of the respondent-Power Corporation.

2. Before dealing with the merits of the case, we would like to remind one and all that the decision in the writ petitions are taken on the basis of the affidavits filed by the parties. Affidavits so filed, form pleadings and the basis for deciding the lis between the contesting parties. Due sanctity has to be attached to the affidavits and it is the bounden duty of the learned Counsel appearing in the matters and particularly those who are drafting the petition to put correct facts on record and assist the Court truthfully, honestly and legally by placing all facts into the affidavits, which are relevant and are necessary for either raising a dispute or deciding an issue or for getting a judgment from the Court. Tendency is fast developing of bringing such facts on record, may be correct or not, which may persuade the Court to pass an order in favour of one or the other party. Equal responsibility lies upon the Court to see that the process of administration of justice is not polluted and for that matter verify the facts as far it could be, before relying upon the affidavits filed. Instances are no less in number and the

tendency is fast developing that facts are pleaded in such a manner, which may give some benefit to the party concerned. Framing of facts and pleading them in a way so that they may be read in the correct perspective, which may be advantageous to the parties concerned, is not forbidden in law and it depends upon the art of drafting which requires mentioning of all facts for pleading a case but while doing so, care has to be taken that the facts are neither tainted nor they are twisted nor are manipulated and, of course, the relevant facts are not concealed. Since the affidavits form part of the pleadings in jurisdiction under Article 226 of the Constitution, and the remedy under Article 226 is a constitutional remedy, more caution and precaution has to be taken by all concerned to see that this system of judicial dispensation of justice is not misused or abused.

3. The case in hand is an example where the petitioner, an industry, has been avoiding payment of dues towards electricity charges from the year 1990 and in getting such a long rope, the Company has taken shelter either of the High Court or of the Minister concerned and has succeeded in not making the payment till date. Needless to mention that our prologue to the present judgment has got a nexus and direct relation with the facts of the present case, which have compelled us to remind that time has come where more care has to be taken in approaching the High Courts and the lawyers should not rely only upon oral version of the dispute which is told to them by their clients but before drafting the petition, should verify each and every fact on the basis of the documentary evidence and particularly with respect to those points where the parties, once or on several times had already approached the High Court. In such cases, it would be essential for a man of ordinary prudence to go through the orders which have been passed in such writ petitions, which have been filed and if those orders are not placed initially by the client, it would be better to inspect the record or unless the orders are not shown, not to file the petition, otherwise the problem which is being faced by the learned Counsel for the petitioner in this case, would be faced by all such lawyers. This is an advice to the young lawyers and no insinuation or aspersion on their working.

4. The petitioner industry applied for a load of 360 KVA on 17.6.1988. The said load was sanctioned and electricity connection was duly granted. The petitioner industry started functioning. It is said that on 27.7.1990, the petitioner Company applied for reduction of load to the extent of 100 KVA as its requirement was found below 200 KVA. Allegedly, the petitioner Company submitted BL form as per requirement of the Electricity Department on 14.6.1990. As per the averment made in the petition, despite several requests made by the petitioner, load was not reduced and bills were continuously being sent on the basis of 360 KVA load.

5. It is the further case of the petitioner, that the petitioner, under the belief that it had applied for reduction of load to the extent of 100 KVA and, therefore, was not required to make payment of the bills unless load was reduced, did not make any payment and when bill to the tune of Rs. 18,53,712 including arrears was

raised in the year 1997 on 360 KVA load, the petitioner preferred a Writ Petition No. 3239 (MB) of 1997 in this Court in which a conditional order of stay was passed against the recovery and also restraining disconnection, subject to deposit of Rs. 7 lakhs being made by the petitioner within six weeks. This order was not complied with.

6. Since the amount of bill of the year 1997 was not deposited under the terms of the order nor the orders passed by the High Court were complied with, a recovery certificate was issued in the year 1998, upon which the petitioner, instead of complying with the directions issued by this Court or approaching this Court for extension of time in making the deposit, appears to have approached the State Minister of Energy and succeeded, by exercising his influence, in getting a direction issued to the Chairman from the State Minister for staying the recovery proceedings as recovery certificate was said to be bad by the petitioner. The direction issued by the Minister was dated 25.7.1998, which was issued on the letter of the petitioner himself addressed to the Minister concerned and on 29.7.1998, the Chairman, U. P. State Electricity Board also directed the Chief Zonal Engineer, Lucknow to enquire into the matter and to convey the report to him. On 29.7.1998 itself, the Chief Zonal Engineer directed the Superintending Engineer, Faizabad Division to enquire into the matter personally and also directed to conduct the enquiry as per law. On 31.7.1998 the Superintending Engineer, after conducting the enquiry ordered that the matter regarding reduction of load is under consideration and, therefore, after enquiry recovery certificate would be modified. Therefore, a direction was issued to the District Magistrate, Ambedkarnagar for staying the recovery proceedings. The Executive Engineer, Akbarpur informed the District Magistrate to stay the recovery proceedings because the matter was under consideration for reduction of load, but in spite of request of the Power Corporation, namely, the Executive Engineer, the district authorities refused to stay the recovery proceedings and issued an order for attachment of land and building of the petitioner. This was done on 8.12.1998.

7. The petitioner again filed a writ petition being Writ Petition No. 5 (MB) of 1999 praying for quashing of the recovery certificate and for issuing a direction for making enquiry into the matter. This writ petition was decided on the same date when it was filed, in which a direction was issued that till fresh recovery certificate is issued from the Electricity Board, no recovery shall be made in pursuance of the impugned recovery proceedings. However, the attachment was continued.

8. This Writ Petition No. 5 (MB) of 1999 was decided on the date when it was presented as is apparent from the first paragraph of the order, which says "Heard the learned Counsel for the petitioner as well as the learned standing Counsel, appearing for the opposite parties. This petition is being disposed of at this stage since no contentious issue is involved in the same and it is not to be kept pending any further."

9. A perusal of the array of parties, namely, the respondents in the aforesaid writ petition, which is on record along with the said judgment and order, shows that the Electricity Board was not made a party in the said writ petition, though the recovery proceedings were initiated because of the recovery certificate issued by the Electricity Board and the petitioner was having full knowledge of this fact, a fact which has been brought to the notice of this Court by Sri Rahul Srivastava who has further submitted that despite the fact that the petitioner had not complied with the order of depositing the amount passed by this Court in its own writ petition passed on 19.9.97, the petitioner did not bring this fact also on record in the subsequent writ petition of the year 1999. His submission is that had the Electricity Board been made a party, the aforesaid fact, namely, the petitioner had already filed a Writ Petition bearing No. 3239 (MB) of 1997 and the interim order passed in which writ petition has not been complied with and the same is still pending, would have been brought to the notice of the Court and that the fact that petitioner had no case for reduction of load or for not making the payment since the year 1999, thus, there was no case for interference by the High Court could also have been pleaded and if such an opportunity was given to the Board, it was possible that the petitioner would not have been allowed to have the interim order, which appears to have been passed in ignorance of the earlier order passed by this Court. His submission is that this was a clear concealment in the said writ petition deliberately made by the petitioner for obtaining an order in its favour.

10. It has been urged by the petitioner that despite the aforesaid, order passed on 5.1.99 in Writ Petition No. 5 (MB) of 1999, the Electricity Board did not communicate any decision of the enquiry, if any, and had again issued fresh recovery certificate on the basis of the same recovery certificate and issued recovery citation for realisation of the electricity dues, which compelled the petitioner to file another writ petition, namely, Writ Petition No. 1859 (MB) of 2001 praying for quashing of the first order of attachment dated 3.1.1999 and also for releasing the entire items and property attached by means of the order aforesaid and also for modification of the judgment and order dated 5.1.1999 passed in earlier Writ Petition No. 5 (MB) of 1999.

11. Learned Counsel for the petitioner Sri Abhinav N. Trivedi has not been able to satisfy the Court that under what circumstances the aforesaid relief could have been granted in the third writ petition when against the same recovery, petitions were already filed by the petitioner in which orders had already been passed by the Court. It has further been alleged that, the respondents again completely flouting the orders of the Court issued forged certificate which was challenged in Writ Petition No. 3239 (MB) of 1997, which is still pending. In this writ petition the petitioner challenged the attachment order and prayed for quashing of the recovery proceedings.

12. In that writ petition, no interim order has been passed in favour of the petitioner as has been informed by the parties' counsel and affidavits have been

directed to be exchanged. This petition has been filed, which is fifth in number against the same recovery for which the bill was issued in the year 1997 and against which recovery proceedings were initiated in the year 1998. In this petition again prayer has been made for quashing the impugned citation of demand dated 24.10.2004 by means of which an amount of Rs. 28,34,458 plus collection charges has been required to be deposited by the petitioner. The petitioner appears to have moved a representation/ objection before the Tehsildar and, therefore, a prayer has also been made in the alternative that till disposal of the aforesaid objection by the Tehsildar, the recovery proceedings be directed to remain in abeyance.

13. Sri Rahul Srivastava has produced before us a copy of the order passed by the Executive Engineer dated 27.12.01 by means of which the Executive Engineer has decided the matter in deference of the order passed by this Court in Writ Petition No. 5 (MB) of 1999 dated 5.1.1999. The Executive Engineer has found that the petitioner never applied for reduction of load as alleged by the petitioner and that the amount which was demanded in the year 1997 was Rs. 18,53,712.05, of which the last date of payment was 5.7.97. The petitioner, instead of making the deposit of the aforesaid amount, approached the High Court in Writ Petition No. 3239 (MB) of 1997, wherein an interim order was passed on 19.9.97 to the effect that in case the petitioner deposits an amount of Rs. 7 lakhs within six weeks, the recovery proceedings against the petitioner shall remain in abeyance and the electricity connection shall not be disconnected.

14. It has been specifically stated in the order passed by the Executive Engineer that it was for the first time that the petitioner raised the dispute regarding the reduction of load in this petition though in the counter-affidavit filed by the Electricity Board in the aforesaid petition of 1997, it has been specifically stated that the petitioner had not applied nor had moved any application dated 27.7.1998 for reduction of the load nor any such application finds mention in the record nor the petitioner has produced any such receipt nor there is any receipt of acceptance in the record of the Board. The petitioner had also been duly informed by Executive Engineer, Electricity Distribution Division, Akbarpur, vide letter dated 21.9.1997, and a copy of which has also been served upon him. As a result of the default committed by the petitioner in making deposit of Rs. 7 lakhs as per the direction of the Court, action was taken on 7.11.1997 and the electricity connection was disconnected on that date. In these circumstances, notice of demand was again issued on 18.11.1997 and on 19.12.1997, a recovery certificate u/s 5 was issued for an amount of Rs. 20,91,468.98. Since the amount was not deposited, therefore, attachment orders were passed on 8.12.1998. The petitioner again filed a writ petition challenging the aforesaid attachment order dated 8.12.1998 being Writ Petition No. 5 (MB) of 1999 and obtained an order as has been mentioned in the earlier part of the judgment.

15. In this petition the petitioner did not disclose that the petitioner had earlier filed Writ Petition bearing No. 3239 (MB) of 1997 and that the same was pending

and he had not deposited the amount as directed by the Court under the interim order passed in the aforesaid writ petition.

16. The Executive Engineer, however, proceeded to consider the grievances raised by the petitioner in obedience of the order passed by a Division Bench of this Court in Writ Petition No. 5 (MB) of 1999 on 5.1.1999 but has found that the petitioner had never applied for reduction of load and that an amount of Rs. 20,91,478,90 had become due and for want of deposit being made by the petitioner, it has swelled to Rs. 28,84,437.45, out of which an amount of Rs. 50,000 was deposited by the petitioner and, therefore, the total amount which is payable was found to be 28,34,437.45 on 24.12.2001. Copy of the order passed by the Executive Engineer is being placed on record as has been given by the learned Counsel for the respondents.

17. Learned Counsel for the petitioner admits that the order passed by the Executive Engineer on 24.12.2001, issued on 27.12.2001, was, filed along with the counter-affidavit in the writ petition of the year 2001 and thus was duly communicated to the petitioner and the same has not been challenged till date either by filing a departmental appeal, if the same was maintainable, or in the writ petition.

18. At this juncture learned Counsel for the petitioner says that that the said order was challenged by means of an interim relief application, whereas Sri Rahul Srivastava has clarified that no challenge to the aforesaid order was made in the writ petition but only a prayer for staying the said order was made. Such a prayer for interim relief in a petition under Article 226 of the Constitution cannot mean that the said order is also under challenge.

19. From the facts, as have come on record and which we have stated above, clearly show that the petitioner has not come with clean hands and has concealed material facts, not only in this petition but also in the writ petition filed in the year 1999, namely, Writ Petition No. 5 (MB) of 1999 and also all the times pleaded facts by putting blame upon the respondents in initiating the recovery proceedings and has not hesitated in coming this Court again and again by filing multiple writ petitions for the same cause of action and in substance for the same relief against the recovery by putting the facts in a manner that he liked. There is a clear finding of the Executive Engineer in his order dated 24/17.12.2001, that at no point of time the petitioner applied for reduction of load and that no such application was available in the record nor any receipt was produced by the petitioner nor any such receipt was available on record. As a matter of fact, it is admitted to the learned Counsel for the petitioner that in the year 1997, when the petitioner approached this Court, he had not made any representation before the Executive Engineer at that time against the bill raised nor he has made any representation till the year 1999, when an order was passed by the Division Bench of this Court for issuance of fresh recovery certificate after enquiry which was directed to be instituted under the order of the Minister and thereafter under the direction of the Chairman, the enquiry was

to be concluded.

20. The fact that the petitioner had challenged the bill on the ground that he had applied for reduction of load to the extent of 100 KVA, and in that writ petition an order of stay was passed requiring the petitioner to make a deposit of Rs. 7 lakhs within a given period and benefit of the said order was duly availed by the petitioner inasmuch as his electricity was not disconnected nor any recovery proceedings were proceeded with for the time being, but the petitioner did not make the deposit, ought to have been brought on record but the petitioner deliberately did not bring this fact to the knowledge of the Court in the writ petition of the year 1999 nor in this writ petition.

21. So far the writ petition of the year 1997 is concerned, of course, till then there was no order passed by the Executive Engineer and, therefore, there was no occasion for bringing such an order on record but this fact was actually in the knowledge of the petitioner when he filed the writ petition in the year 1999 that the stay order passed was not complied with. Not only this, that this fact was not deliberately disclosed but also the petitioner did not implead the Electricity Board as a party in the Writ Petition No. 5 (MB) of 1999 and obtained an interim order by simply giving copy to the standing counsel. The writ petition was decided on the same day when it was presented.

22. We would like to put a word of caution for the standing counsel also that before making concession that they do not want to file counter-affidavit in a writ petition, they must make sure as to whether the subject-matter relates to their domain or it is the right of some third person which they are conceding, as in the present case, the Electricity Board was the affected party wherein recovery was under challenge but was not made a party. The petition clearly revealed that there were electricity dues which were sought to be recovered through the agency of the State, therefore, the standing counsel was under an obligation to inform the Court that the Electricity Board was not a party and that no order can be passed which would be detriment to the interest of the Electricity Board, without it being impleaded. Silence on the part of the state counsel has lingered the proceedings of recovery for a period of more than five years. Loss has also occasioned to the Electricity Board and, of course, the liability of the petitioner has also increased to a great extent.

23. The petitioner having approached this Court in the year 1997 against the same very bill for which present recovery is continuing wherein final amount has increased because of the delay in not making the payment of the demanded amount of the year 1997, it cannot be said that it is fresh cause of action where writ after writs could have been filed and each and every time whenever fresh demand notice was issued, even if, it was of enhanced amount for the reasons stated above.

24. In this petition, petitioner has deliberately concealed all these facts including the fact that the petitioner had filed writ petition in the year 1999 and had not

deposited Rs. 7 lakhs and despite default being committed, he has been able to stall the recovery proceedings since the year 1997 till date. The petitioner had been putting blame upon the respondents in allegedly illegally issuing bills and initiating recovery proceedings but has not disclosed at any point of time his own conduct.

25. The petition, therefore, suffers from concealment of material facts and has been filed with a deliberate attempt to mislead the Court and obtain an order which itself disentitles the petitioner to have any relief from this Court. The writ petition is dismissed.

26. Under the circumstances, we impose a cost of Rs. 20,000 upon the petitioner, which shall be deposited with the Legal Aid Authority within a period of two months, from the date of issuance of a certified copy of this order, failing which the aforesaid amount shall be recovered as arrears of land revenue. The District Magistrate shall see that the amount is recovered accordingly, and is deposited with the Legal Aid Authority.