

(2002) 05 AHC CK 0020

In the Allahabad High Court

Case No : C.M.W.P. No's. 39057 and 39060 of 1999

U.P. State Sugar Corporation Ltd.

APPELLANT

Vs

Special Judge (E.C. Act)/ Additional District Judge and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Advocates Act, 1961 — Section 16
Allahabad High Court Rules, 1952 — Rule 15
Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 225, 226
Government of India Act, 1915 — Section 108
Land Acquisition Act, 1894 — Section 18, 23, 54

Citation : (2003) 6 AWC 4792

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Rajesh D. Khare, for the Appellant; Deo Raj and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—This case was heard on 15.9.1999 by this Court and after hearing the Court has been pleased to pass the following orders : "Learned standing counsel has appeared on behalf of Respondent Nos. 1 to 4 and Sri Amit holding brief of Sri Deo Raj, learned Counsel for the Respondent No. 5. Learned standing counsel for Respondent Nos. 1 to 4 prays for and is granted four weeks for filing counter-affidavit. Rejoinder-affidavit may be filed within one week thereafter. List this case for admission in the week commencing 1.11.1999.

Petitioner is directed to serve the Respondent No. 5 personally as also by registered post A.D.

Operation of the impugned order dated 21.7.1999 at Annexure-4 to the writ petition will remain stayed provided the Petitioner, as claimed, has already deposited the amount granted, as claim, by the Respondent No. 2, as in respect

of said deposit no dispute has been raised by the Petitioner. If the said amount has not been deposited, the present interim order will not be effective."

2. This petition was adjourned on several occasions on 2.5.2002 and 8.5.2002 and 17.5.2002 Sri R. D. Khare, learned Counsel for the Petitioner has sent illness slip which has been objected by learned Counsel for the private Respondent. When this case was listed for hearing on 17.5.2002 the petitions were sought to be adjourned on the ground of illness, however in absence of learned Counsel for the Petitioner after hearing learned standing counsel and on perusal of records the present petitions are being decided.

3. The brief facts necessary for adjudication of the case are that the Petitioner is a unit of U.P. State Sugar Corporation Ltd. engaged in the manufacture of white crystal sugar by vacuum pan process. The State of U.P. had acquired the land which included the land of Respondent No. 5 for modernisation and expansion of the Petitioner unit and in reference to acquisition award No. 16 dated 23.11.1987 was passed by the Respondent No. 2 (Special Land Acquisition Officer, Bijnor district Bijnor). The Respondent No. 5 (Raj Pal Singh) filed an application u/s 18 of the Land Acquisition Act for enhancement of the compensation awarded by Respondent No. 2 and in these proceedings, the Petitioner was not made a party and an application u/s 18 of the Land Acquisition Act was moved before Special Judge (E.C. Act)/Additional District Judge, Bijnor). The Respondent No. 5 initiated Execution Case No. 6 of 1993 before the Respondent No. 1 for execution of the decree dated 29.9.1993 (Annexure-3) in pursuance of the judgment of same date. The Respondent No. 1 started recovery proceeding against the Petitioner, therefore, the Petitioner was constrained to file an objection on 26.9.1998 u/s 47, Code of CPC categorically stating therein that the Petitioner was not made a party either in the award Reference Case No. 88 of 1988 as well as in Execution Case No. 6 of 1993, therefore, the decree cannot be executed against the Petitioner. The Respondent No. 1 on 21.7.1999 (Annexure-4) passed the impugned order whereby the Special Land Acquisition Officer, Bijnor, was directed to recover the amount under the decree also. It appears that U.P. State Sugar Corporation Ltd. has been declared sick by the Board of Industrial and Financial Reconstruction (B.I.F.R.) by order dated 21.8.1995 (Annexure-6) now the order dated 21.7.1999 (Annexure-4) has been challenged in the present case. In order dated 21.7.1999, the Special Judge (E.C. Act)/Additional District Judge noted that in the order dated 21.7.1999, despite the decree passed on 29.9.1993, the amount of award has not been paid to the concerned authority whereas agriculture land has been acquired on the expenses of Petitioner. It has also noted that only State Government has been made a party. Therefore, the decree is to be executed against the State Government. In the light of the above observation the Special Judge (E. C. Act)/Additional District Judge in its order dated 21.7.1999, has directed that the Special Land Acquisition Officer, Bijnor to proceed for realisation of amount of compensation from U.P. State Sugar Corporation Ltd. and to deposit the same on 1.9.1999, to the Court and for realisation of such compensation amount the recovery was also directed to be

issued against the U.P. State Sugar Corporation Ltd., Bijnor in accordance with law.

4. A counter-affidavit has been filed by Respondent No. 5. According to para 5 of the counter-affidavit, it also appears that the award was made in favour of the contesting Respondent dated 29.9.1993 and an execution application on behalf of the contesting Respondent was filed which was registered as Execution Case No. 6 of 1993 and in the said execution application, dated 4.4.1997 was moved on behalf of the Petitioner requesting therein that 33% of the money of the enhanced compensation be accepted and the proceeds of execution be stayed. In para 6 of the counter-affidavit, it has been mentioned that Sri Harpal Singh, advocate, who is District Government Counsel (Civil) is also representing the State Sugar Corporation Unit, Bijnor and an application D-35 was also moved on behalf of the Petitioner which was decided by the executing court by his order dated 16.5.1998 (Annexure-C.A. 3). In para 7 of the counter-affidavit, it has been asserted by Respondent No. 5 that the Petitioner was having the knowledge of the award made by learned Additional District Judge, Bijnor and he failed to file an appeal u/s 54 of the Land Acquisition Act and by moving the application dated 4.4.1997, the Petitioner has submitted to the award. Therefore, according to Respondent No. 5 Petitioner cannot claim that he was not pleaded as party.

5. Supplementary counter-affidavit was filed by Respondent No. 5 and para 2 of same indicates that Petitioner was represented by Sri O. P. Goel, advocate, who had filed vakalatnama duly signed by General Manager, U.P. State Sugar Corporation Unit, Bijnor and also moved adjournment application. A true copy of the vakalatnama is enclosed as S.A.-1 to the supplementary counter-affidavit. In para 3 of supplementary counter-affidavit it also appears that the Petitioner participated in the reference therefore has got no right to file the present writ petition on the plea that the notice was not issued to them in spite of the fact the several applications were moved for seeking time to deposit the amount of award.

6. I have perused the documents and have gone through the contents of the writ petition and the contents of the counter-affidavit as well as supplementary counter-affidavit. Since the State Government has acquired the agriculture land of Respondent No. 5 and was also ready to pay 33% of the money of the enhanced compensation as awarded in connection with the compensation as prayed by Respondent. This Court is also not aware as to whether the order dated 21.7.1999, passed by Special Judge (E. C. Act)/Additional District Judge, Bijnor, has been complied with or not. In this situation, there is no scope for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Therefore, the writ petitions are dismissed.

7. After the dismissal of these petition and before pronouncement of this judgment Sri R. D. Khare, learned advocate for the Petitioner who is generally a sincere and pains taking advocate has however expressed regret for not able to assist the Court in these petitions. Be that it may the petitions have been dismissed on the merits on perusal of the available documents however the issue

of "illness" in the present prevailing circumstances are inviting attention of the judgment of Supreme Court in *Rais Ahmad Vs. State of U.P. and Others*, , in paras 5, 6, 7, 8 and 9 given as under :

5. Article 225 of the Constitution of India provides as under :

225. Jurisdiction of existing High Courts.-Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution.

6. This article provides that the jurisdiction of the High Court, the law administered therein and the respective powers of Judges in relation to the administration of justice shall be the same as they were immediately before the commencement of the Constitution. Thus, the powers of the High Court as they were before the Constitution have been preserved. One of the powers so preserved is the power to make rules of the Court and to regulate the sittings of the Courts.

7. Even before the Constitution came into force, the High Court of Allahabad had already made the rules for regulating its business, etc. in the Court. We would not trace the history whether there did exist rules made u/s 108 of the Government of India Act, 1915 or under the Government of India Act, 1935. The present Allahabad High Court has been reconstituted on amalgamation of the erstwhile Oudh Chief Court with the High Court in 1948. In exercise of the power under Article 225 of the Constitution, the High Court has framed rules known as "the Rules of Court, 1952" which came into force with effect from 15.9.1952. Chapter VI of the rules provides for hearing and adjournment of cases. Rule 15 of this Chapter provides as under :

Chapter VI.-Hearing and Adjournment of Cases (Rules of Court) :

15. (1) The Chief Justice may on the application of an advocate postpone his cases for such time as he may deem proper, if he is satisfied that such postponement is necessary on account of a marriage, death or illness, or any other unavoidable or urgent reason.

(2) An application under this rule shall be accompanied by a list of cases desired to be postponed specifying the occasion or occasions, if any, when any such case

was previously postponed under this Rule. It shall also indicate the cases in which the date of hearing has been fixed by a Bench. If any omission or inaccuracy in this regard is discovered in the application later, or if any advocate whose such application has been allowed is found to have appeared before any of the Benches of the Court or before any other Court or Tribunal except where the postponement has been ordered specifically on ground of appearance before any particular Court or Tribunal, in any case, whether for orders, admission or hearing, the application for postponement of cases shall stand rejected automatically.

8. The Chief Justice has the exclusive jurisdiction under the Constitution to distribute the business of the Court among various Judges for purposes of disposal of cases. It is the Chief Justice who constitutes and decided about the composition of Division Benches or the Judges who would sit single. This is part of his administrative functions. This rule gives effect to the administrative powers of the Chief Justice and it enables the Chief Justice to adjourn the cases provided an application is given to him on the grounds set out in the rule. This power obviously has been conferred upon the Chief Justice to facilitate the listing of cases. If a counsel on account of the reasons set out in the rule, which also includes his illness, is unable to attend the Court on any particular day or for any particular period of time, he can make an application to the Chief Justice that his cases may not be listed either on that day or during the period mentioned in the application. Once this application is allowed, it becomes the duty of the Registry to give effect to this order by not listing the cases of that counsel before the Court. If, however, such case is listed by mistake, the litigant or the counsel cannot be the sufferer, in accordance with the saying that "the mistake of the Court would not harm a litigant.

9. The tradition in the Allahabad High Court is that an "illness slip" is usually given to the Court Master of the Bench Secretary of the Court and it is expected of the Bench Secretary that he would bring it to the notice of the Court either at the beginning of the day or at the time when the case is called out and taken up for hearing. Once the "illness slip" is brought to the notice of the Court, the case traditionally is adjourned.

8. As observed by Court (Hon"ble R.B. Misra, J.) in his order dated 20.2.2003 in Writ Petition No. 47809 of 1999, V. N. Tiwari v. State of U.P. and others, as below :

It is being noticed that this Court is under heavy pressure of mountainous pendency of cases resulting into and delay in disposal of cases. Delay in disposal of the cases are indirectly denial of justice and creation of menace, peril to the judicial system in the same manner as the abnormally increased and exploded population is creating danger to the country in absence of proper control, population education and planning, creating hurdles to the prosperity of the nation, therefore, the necessity is being felt all around by several concerned to take positive steps towards expediting the pending cases more specifically the

old cases with promptness. The disposal is not only dismissing or summarily expediting the cases but disposal is to render decision and judgment corroborating the material facts and circumstances in reference to the relevant law. Therefore, the important aspects are to get from the parties concerned the adequate material, facts, information, records, documents on affidavit along with the relevant provisions of law with promptitude.

9. It is notable that the "illness slip" normally submitted is not recognised under the Advocates Act, 1961, as well as Bar Council of India Rules and U.P. Bar Council Rules and under the Allahabad High Court Rules, 1952. It is generally seen that ordinarily on the ground of "illness slip", the cases are sought for adjournment, however, to what extent this Court should recognise the illness slip of a counsel if he does not appear on a particular day in one Court in a particular case and on same day learned Counsel appears before another Court in other case or the learned Counsel for the parties in opposition objects the illness of learned Counsel for one party on the ground of its truthness or being it as concocted, in that condition such illness slip becomes indicative of steps towards avoidance to render assistance to a particular Court deliberately in these conditions the Court may at its pleasure inquire into and may discard such "illness slip" or may reprimand the counsel with word of caution. However, the "illness slip" based on genuine ground or when the ailment of learned Counsel persists, may invite the sympathy of the Court and the learned Counsel engaged for rendering assistance to the Court at the pleasure of the Court may further be accommodated. The repeated "illness slip" used as a tool or device to avoid rendering assistance in a case becomes mockery of judicial system and should be deprecated. However, the repeated use of "illness slip" by counsel in a case should be viewed seriously because such device of giving illness slip aid to compilation and pendency of cases. Therefore, this Court after taking into cognizance two repeated illness of learned Counsel for the party may be pleased to ignore any further or third illness if any and may indicate the case to be listed peremptorily on a particular day and on that day if learned Counsel also gives further illness the same should be ignored and if counsel does not render assistance, the case may be decided on the available documents or the Court may appoint amicus curiae or ask any learned advocate to render assistance in the case to decide the same on merits. In any circumstances the "illness slip" of advocate designated and acknowledged as senior advocate u/s 16 of the Advocates Act, 1961 is meaningless and is to be outrightly be ignored by the Court.

10. The lawyers while presenting or handling the cases being adjudicated in the Courts are officers of the Court and owe to the great extent moral as well ethical responsibility to be fair and honest to the facts on records, information being adduced. As an officer of Court, the lawyers are not rendering commercial service to their clients as consumer and as such are acting and rendering assistance to the Courts in dispensation of justice, to uphold the rule of law and it is for such functioning the lawyers are not dragged for their conduct before the

consumer forum. The sole philosophy of honouring the illness slip of lawyers depends on fairness, honesty, and on faith.

11. In *Rais Ahmad v. State of U.P.*, 1999 (4) AWC 3365 (SC): (1996) 6 SCC 391 para 10 of the Supreme Court has held as below: " "Traditions" of a Court are built upon the edifice of co-operation between Judges and lawyers over a period of years. "Traditions" are doctrines, customs, practices, beliefs and usages which are handed down from generation to generation. As pointed out earlier, one of the traditions of the Allahabad High Court, which is now more than 130 years old and has seen many generations of lawyers, is that a case would be adjourned on the "illness slip" of a counsel. This and other traditions of the Court bind the lawyers and Judges in a sacred relationship of mutual trust and understanding. The adjournment of a case on the "illness slip" reflects the Court's respect for the counsel and its consciousness that a lawyer or counsel, though an officer of the Court, is nevertheless a human being who can fall ill. It also reflects the faith and trust the lawyer has in the Court that the Court would, on his "illness slip", adjourn the case."

12. In Webster's Dictionary "Tradition" "a cultural continuity transmitted in the form of social attitudes, beliefs, principles and convention of behaviour, etc. deriving from past experience and helping to shape the present, a convention established by constant practice, a belief, legend, etc. based on oral report, usually accepted as historically true though not verifiable, the transmitting of cultural continuity, beliefs, legends, etc., a religious law or teaching, or a body of these, held to have been received originally by oral transmission. In the Jewish religion these are the laws given to Moses on Sinai and later embodied in the Mishnah. In the Christian religion they are a body of extra biblical teachings handed down orally within the Christian community. In the Moslem religion they are an account of the sayings and doings of Mohammed later embodied in the Sunna traditional.

13. In the Law Lexicon the "Tradition" defines as under : "Oral transmission of knowledge or belief from one generation to another."

14. It is worth mentioning that we have advanced and have gone far ahead in civilisation, material advancements, tremendous scientific achievements but we have all along been sharply declining in human values. The tradition how so old it may be if does not preserve virtues, values, ethics or morality could no longer sustain and is bound to divert to opt stable, proper and perpetual track. Even the old traditions like "Parda Pratha", "Sati Pratha", "Bigamy", "Untouchability", "Casteism", "Regionalism", "Dowry" etc., have lost their efficacy, utility to the need of hour and for the harmony in social life. It is a matter of experience that any system what to say of judicial system if running under pressure and is proning is bound to loose its courtesy, therefore, in order to maintain the harmony and balance of the system and to afford the rule of law and for proper dispensation of justice the factors putting impediments and devices rendering hurdles in functioning of the system are to be discarded or mitigated by the

endeavourance to be made collectively by all those are concerned.

15. The writ petitions are dismissed accordingly.

16. The Registrar General is directed to circulate this order to the learned Advocate General, President of the different Bar Associations of the High Courts as well as to the Bar Association of Subordinate Courts.