(2011) 05 AHC CK 0358

Allahabad High Court

Case No: Writ C. No. 74069 of 2005

Secretary, Krishi Utpadan Mandi Smiti and Another		APPELLANT
	Vs	
Presiding Officer, Labour Court and Another		RESPONDENT

Date of Decision: May 13, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 32

Citation: (2011) 6 ADJ 955 : (2011) 130 FLR 9 : (2011) 2 UPLBEC 1687

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

This is a thoroughly ill advised and misconceived writ petition. A reference was made by order No. 13597 "whether the workman Respondent Raj Kumar Upadhyay was validly terminated or not?" which was registered as Adjudication Case No. 382 of 2003. The employer raised preliminary objection about validity of reference pursuant whereto a preliminary issue was framed as under:

Whether reference made by the Govt. is malafide. If so, its effect?

2. This issue has been answered by Labor Court against the employer saying that the employer could not show mala fide. Merely because workman has challenged his termination in Writ Petition No. 13607 of 1998, which has been dismissed as not pressed or that he filed another writ petition No. 6991 (S/S) of 2000 wherein a direction was issued that the workman may be considered in the light of the directions issued in the judgment dated 11.8.2000 passed in Writ petition No. 1346 (S/S) of 2000 (Mukesh Kumar v. U.P. Rajya Krishi Utpadan Mandi Parishad and Ors.) vide judgment dated 15.12.2000 but ultimately both the judgments of Lucknow

Bench were set aside in State of U.P. Vs. Neeraj Awasthi and Others, , it would not make the reference mala fide.

3. Sri B.D. Mandhyan, Sr. Advocate, learned Counsel for the Petitioner could not point out before this Court as to how mere fact that workman filed two writ petitions before the Court, in which issue referred for adjudication was not at all decided, would result in making reference mala fide.

4. Besides, it is well settled that the person against whom plea of mala fide is taken shall be imp leaded eo nomine since plea of mala fide is not available against unnatural person. The Apex Court has gone to the extent that in absence of impalement of a person eo nomine, against whom plea of mala fide is alleged, Court cannot not even entertain the plea of mala fide.

5. The Apex Court in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, of the judgment, held:

It is a settled law that the person against whom mala fides or bias was imputed should be imp leaded eo nomine as a party Respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is volatile of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not imploded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.

(emphasis added)

6. In AIR 1996 SC 326, J.N. Banavalikar v. Municipal Corporation of Delhi, in para 21 of the judgment, it has been held:

Further in the absence of impalement of the person who had allegedly passed mala fide order in order to favor such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.

7. In All India State Bank Officers'' Federation and Others Vs. Union of India (UOI) and Others, the Hon''ble Apex Court has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been imp leaded, the Petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court relevant are reproduced as under:

The person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favor Respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been imp leaded as Respondents. This being so the Petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit.

(emphasis added)

8. In Federation of Railway Officers Association and Others Vs. Union of India (UOI), it has been held:

That allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.

(emphasis added)

9. The aforesaid view has been followed by various Division Benches of this Court including Dr. Harikant Mishra v. State of U.P. and Ors. 2008 (4) ADJ 36 : 2008 (2) ESC 1312 and Salahuddin v. State of U.P and Anr. 2008 (3) ADJ 705. In view of the above, since the person against whom the plea of mala fide has been leveled is not imp leaded, I have no hesitation in declining the contention of the Petitioner to assail the impugned order on the ground of mala fide.

10. Moreover, the learned Counsel for the Petitioner could not tell as to whose mala fide it has challenged and interestingly State Government is not even a party in this writ petition.

11. Neither reference made in the Labor Court, in my view, was barred by any principle of law namely estoppels or res judicata or waiver. On the pretext of preliminary objection, the Petitioner has been able to defer adjudication for almost six years.

12. It is also well settled when a writ petition is withdrawn, the dismissal of writ petition would not operate as res judicata to bar a Civil suit or remedy elsewhere like adjudication by Labour Court.

13. In Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, it has been observed that withdrawal of writ petition filed in a High Court may not bar other remedies like a suit or a petition under Article 32 of Constitution of India since withdrawal did not amount to res judicata, though another writ petition under Article 226 before the High Court could not be entertained for the same cause of action. The Court said:

...While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the Petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.

14. I, therefore, find no legal or factual error in the view taken by Labour Court when preliminary objection raised by the employer has no force. Moreover, Apex Court in

the case of S.K. Verma Vs. Mahesh Chandra and Another, has also criticized the approach of employer in getting the industrial adjudication delayed by approaching High Court against an order deciding preliminary issue or preliminary objection. It says that instead of delaying adjudication process at the interlocutory level, the employer must approach High Court after final adjudication otherwise it would frustrate capacity/capability and the strength of the poor workman by prolonged litigation in the hands of mighty employer. The Court said:

There appears to be three preliminary objections which have became quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimization etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag: workmen from Court to Court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporation will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures.

15. Considering the above facts and circumstances of the case, in my view, the writ petition is thoroughly misconceived. It is not only sheer wastage of time of the Court but also abuse of the process of law and it should be dismissed with exemplary cost.

16. The writ petition is dismissed with cost which I quantify to Rs. 45,000/-.