

(2003) 09 AHC CK 0293

Allahabad High Court

Case No: Criminal M.W.P. No. 7699 of 2002

Good Cause Association

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 5, 2003

Acts Referred:

- Constitution of India, 1950 - Article 151, 154, 226

Citation: (2003) 3 ACR 2931

Hon'ble Judges: V.S. Bajpai, J; R.K. Dash, J

Bench: Division Bench

Advocate: S.R. Singh and P.K. Singh, for the Appellant; B.N. Singh, S.S.C. and Girdhar Nath, S.C. and Satish Chandra Misra and Amarjeet Singh and A.G.A., for the Respondent

Judgement

R.K. Dash, J.

This is the Petitioner's second journey to this Court against the State as well as the Chief Minister and other officials ; its earlier Writ Petition No. 2423 of 1997 having been finally disposed of with certain observations. In the said writ petition, the Petitioner had made certain allegations against the present Respondent No. 2 and prayed for issue of a writ, order or direction directing the Vigilance Commissioner and Central Bureau of Investigation (C.B.I. for short) for investigation of the offences of cheating and criminal breach of trust. Further prayer was made to direct the aforesaid public authorities to come before the Court and furnish an undertaking to perform their duties of investigation within stipulated time.

2. The grievance of the Petitioner as appears from the order, Annexure-1, was with regard to creation of Greater N.O.I.D.A. and investment of huge amount from public exchequer for creation of Ambedkar Park. The Court upon hearing the counsel for the Petitioner, Advocate General for Respondent No. 2 and counsel for the C.B.I. disposed of the said writ petition with the observation and direction that the Comptroller and Auditor General of India which has taken up inquiry as entrusted to

it by the State Government with regard to creation of Ambedkar Park shall make all endeavour to conclude the inquiry preferably within four months. As regards the allegation concerning Greater Noida, in view of submission made by the learned Counsel appearing for the C.B.I. that pursuant to notification by the Central Government, the matter had been entrusted to C.B.I. for investigation, the Court held the writ petition to have become infructuous.

3. More than five years thereafter, the Petitioner filed the present writ petition when Respondent No. 2 was elected as leader of the ruling coalition and became Chief Minister of the State. The prayers as made in the writ petition are:

(i) to issue a writ, order or direction commanding the opposite parties No. 1, 3 and 4 (State of U. P., Central Bureau of Investigation and Comptroller and Auditor General of India) to submit all inquiry reports made against opposite party No. 2 ;

(ii) to issue a writ, order or direction to comply the direction of this Court made in the earlier writ petition and to put Opposite Party Nos. 2 and 5 on criminal trial and to punish them.

4. On behalf of Respondent-State, two short counter-affidavits were filed ; one by Ram Brikchh Prasad, Special Secretary, Appointment, Government of Uttar Pradesh and other Amitabh Tripathi, Under Secretary, Housing and Urban Planning, Government of Uttar Pradesh. The Special Secretary in the counter-affidavit has stated that the C.B.I. after holding inquiry concerning Greater Noida submitted report on 31.3.1999 recommending that such action as deemed fit may be taken against Babu Ram, the then Chairman of Greater Noida and for departmental action against Yogesh Kumar. After receiving the recommendation, explanations were called from those two officers. Upon receipt of explanations, the Industrial Development Commissioner reported that no case for taking any action is made out against Yogesh Kumar on the basis of materials available on record. So far Babu Ram is concerned, upon examination, it was decided not to take any action against him since he had already retired from service. In the counter-affidavit filed on behalf of the C.B.I., it appears that the allegations against these two officers was with regard to passing resolution for changing nature of the land from industrial to home-stead and after thorough inquiry, the C.B.I. recommended for taking departmental action against them.

5. So far the allegation with regard to Ambedkar Park, it is stated in the counter-affidavit of the Under Secretary that the Comptroller and Auditor General of India made a special audit and submitted a report which was ultimately placed before State Legislative Assembly on 15.7.1999 and as provided under Articles 151 and 154 of the Constitution, the said report is being examined and considered by the Public Accounts Committee of the U.P. Legislative Assembly and since the said Committee is seized of the matter, no writ petition would lie for directing to hold a parallel probe.

6. From the factual scenario as aforesaid, what is deducible is that the Petitioner has charged the Ex-Chief Minister Mayawati with two allegations ; one concerning Greater Noida and other, regarding creation of Ambedkar Park. The earlier writ petition was finally disposed of with certain observations as referred to earlier. It appears from the counter-affidavit filed on behalf of the C.B.I. that the allegations against two officers of Greater Noida for changing the nature of land from industrial to home-stead having been found true, recommendation was made for taking departmental action. In such view of the matter, we do not like to make further inquiry by calling upon the inquiry report from the C.B.I. in exercise of power under Article 226 of the Constitution.

7. Adverting to the allegation of creation of Ambedkar Park, as pointed out in the counter-affidavit filed by the Under Secretary, the Comptroller and Auditor General of India having made inquiry submitted report which was then placed before the State Legislative Assembly and the report is now under active consideration of the Public Accounts Committee. The writ petition does not reveal as to what is the Petitioner's grievance regarding creation of Ambedkar Park. Besides, the Court is unaware of the contents of the report of the Comptroller and Auditor General of India, inasmuch as, whether there was misuse or misappropriation of public money or whether work was entrusted to kith and kin of any person holding high office or whether the work undertaken was not according to prescribed norm and standard. Moreover, when Constitutional body is seized of the matter and is scrutinising the report, it is pre-mature for the Court to hold an inquiry to find out any irregularity or lapses on the part of the Government and its officials.

8. It need not be emphasized that the three organs of a democratic State namely, the Legislature, Executive and Judiciary must act independently within parameters of law. One should not impinge the jurisdiction of the other. It is, however, complained that the Legislature and the Executive have lost the track and are acting in a manner detrimental to the interests of the society causing incalculable harm to the socio-economic development of the country. It is by their such act that interests of the poor, downtrodden peasants and factory workers are seriously affected. So the Judiciary which acts as a bastion of the rights and liberties of the citizens when approached by an individual or group of persons or any community complaining abuse or misuse of power by Legislature and the Executive, it becomes its solemn duty to take appropriate action in accordance with law and bring about a check in the exercise of their such power. Certain sections of the society are complaining that Judiciary is very often encroaching upon the functioning of the Legislature and the Executive which is not a healthy sign for democracy. We refrain ourselves from making any observation on this aspect. It is to be grasped that judiciary is the last hope of the people. So, when a citizen complaining abuse or misuse of power by those two organs approaches the Court for appropriate action, the Court does not hesitate taking a decision to bring them within their bounds. Of course, while doing so, the Court may have committed some mistakes, but those are certainly not grave.

No one is infallible and Judiciary is not an exception to it.

9. As has been well said, "judicial review" is a great weapon in the hands of the Judges ; but the Judges must observe the Constitutional limits set by our Parliamentary system upon the exercise of this beneficent power." The Court is to be circumspect while exercising power of review in administrative matters. As the words of "judicial review" imply, it is not an appeal from a decision but a review of the manner in which the decision was made. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as (i) illegality ; (ii) irrationality ("Wednesbury" unreasonableness) ; and (iii) procedural impropriety. In the celebrated judgment in the case of [Tata Cellular Vs. Union of India](#) , the Apex Court held that it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. In a latest decision in the case of [Federation of Railway Officers Association and Others Vs. Union of India \(UOI\)](#) , the Court has also held that unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the Court will not interfere with such matter.

10. Keeping in mind the scope and ambit of power of judicial review in administrative actions, we are not inclined to scrutinise the policy decision of the State for creation of Ambedkar Park, particularly when the Petitioner has not been able to make out any case for judicial review. Added to that, it may be noted, the report of the Comptroller and Auditor General of India regarding expenditure incurred for the said project is under scrutiny by the State Legislature and no decision has yet been taken thereon. We hope and trust, the august House, a trustee of public exchequer will take a decision on the report of the Comptroller and Auditor General of India without further delay to reinforce people's faith in it. In the event, no decision is taken or there is delay in taking a decision, the Court in due discharge of its Constitutional function may pass appropriate orders either suo motu or approach being made by a public-spirited individual or by any association espousing public cause.

11. In view of discussions made above, the writ petition having no merit is dismissed. In the circumstances, there shall be no order as to cost.