
Good Cause Association Vs State of U.P. and Others

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

Court: Allahabad High Court

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.