

S. P. Gupta and others

Vs

U.P. State Electricity Board and others

Spl. Leave Petn. (Civil) No. 8032 of 1990

(N. D. Ojha, J. S. Verma, S. Ranganathan JJ)

18.01.199

RANGANATHAN, J. :-

1. The petitioners were respondents 8 to 11 in writ petition No. 3031 of 1987 before the Allahabad High Court. The said writ petition was disposed of by the High Court on 28-9-1989 following its earlier order in W. P. 1454/76. It appears that, before the writ petition was decided in a manner adverse to the present petitioners, they had not been served with any notice in the writ petition though they were econominee parties thereto. The petitioners, therefore, preferred SLP No. 1329 of 1989 before this Court. On 23-11-1989 this SLP was dismissed by this, Bench with the following one line order :

"The Special Leave Petition is dismissed."

Thereafter, the present petitioners filed a Civil Miscellaneous Petition in the SLP, purportedly one seeking clarification of the earlier order of the Court. The following order was passed on this application on 14-12-89 :

"Counsel for the petitioners seeks leave to withdraw this application. The application is dismissed as withdrawn."

2. Subsequently, the petitioners had filed a review petition before the Allahabad High Court seeking a review of its earlier order on the writ petition. The High Court dismissed the review petition on 2-4-1990 as being without merit in view of the fact that the SLP against the order sought to be reviewed had already been dismissed by this Court.

3. The petitioners have preferred the present Special Leave Petition against the order of the Allahabad High Court dated 2-4-90. Shri Mohanty, learned counsel for the petitioners, submits that neither the cryptic order of dismissal of the original special leave petition nor the order on the miscellaneous application filed by the petitioners could stand in the way of the Allahabad High Court considering the review petition filed before it on-merits. In support of this contention he relied, inter alia, on the observations in *Daryao v. State of U.P.* (1962) 1 SCR 57 : (AIR 1961 SC 1457); *State of Orissa v. Dr. (Miss) Binapani Dei*, (1967) 2 SCR 625 : (AIR 1967 SC 1269); *Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust* (1978) 3 SCC 119 : (AIR 1978 SC 1283) and *Indian Oil Corporation Ltd. v. State of Bihar* (1987) 167 ITR 897 : (AIR 1986 SC 1780).

4. On the other hand, the learned counsel for the respondent submitted that the petitioner's only grievance against the original order in WP No. 3031/ 87 was that no notice had been served on the

petitioners before the writ petition was allowed. This, however, was a point, specifically, taken up in the original Special Leave Petition filed in this Court. In the subsequent application before this Court, the petitioners had requested this Court to clarify that the order of dismissal of the SLP would not stand in the way of the petitioners moving a review petition in the Allahabad High Court but this was dismissed. In these circumstances, it must be taken that this Court has found no merit in the contention urged by the petitioners against the original Order dated 26-9-1989. It is further pointed out that no prejudice had been caused to the petitioners because of the failure to give notice in the writ petition firstly because the point at issue was directly governed by an earlier decision of the High Court in Writ Petition No. 1454 of 1978* and secondly because in the very order of appointment dated April '89 given to the petitioners it had been clearly stated that the promotion given to them was "purely on ad hoc basis and further subject to the decision of the honourable High Court in the Writ Petition No. 8081 of 1987". The petitioners were, therefore, fully aware of the pendency of the writ petition and, though formal notice had not been issued, there was no violation of the principles of natural justice, since they had adequate opportunity to enter appearance in the writ petition and put forward their contentions.

* Reported in (1989) 2 UPLBEC 545.

5. We have considered the facts and circumstances of the case. We are of the opinion that there are no grounds to interfere under Art. 136 of the Constitution. We need not, for the purposes of this case, examine the precise effect of the earlier orders of this Court and whether they preclude the petitioners from putting in a review application before the High Court. Even assuming that a review application was maintainable and should have been considered by the High Court on merits we do not consider it necessary, in the facts and circumstances of this case, to send the matter back to the High Court for fresh disposal. We are satisfied, having regard to the facts and circumstances of the case outlined earlier, that the petitioners have suffered no prejudice on account of the procedural lapse pointed out by them and that the dismissal of the review application is justified even on merits. We, therefore, dismiss this petition but make no order regarding costs.

Petition dismissed.

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