

Court No. - 34

Case :- Public Interest Litigation No. of 2019

Petitioner :- In Re: Dispute Relating to Place of Establishment of Adjudicatory Forum Like Specialized Tribunal etc.

Hon'ble Sudhir Agarwal,J.

Hon'ble Rajeev Misra,J.

1. When we commenced Court proceedings in the morning, we found no counsel present, except some Standing Counsel in the Court room. Bench Secretary informed that today also High Court Bar Association has resolved to abstain from judicial work and this has been conveyed by letter dated 15.08.2019 signed by President and Secretary of Association, which has been circulated under orders of Hon'ble The Chief Justice endorsing as under :

“Let this communication be circulated among Hon'ble Judges.”

2. Learned Standing Counsel present in the Court informed us that Lawyers have decided to abstain from work in protest of decision taken by U.P. Government for constituting a Special Tribunal, namely, Education Tribunal at Lucknow so as to take away the cases related to education dispute from High Court.

3. This is the third day at Allahabad when lawyers on account of the above cause are abstaining from work. We are informed that judicial work at Lucknow has also interrupted today which is second day thereat.

4. This is a serious aspect where judicial work of High Court at Allahabad as well as Lucknow both is virtually paralyzed on account of abstention by Lawyers for the reason caused by State Government by taking a decision to constitute Education

Tribunal at Lucknow only so as to relieve workload of High Court in respect of matters dealing with education disputes. We cannot shut our eyes from the fact that Courts at Allahabad and Lucknow both are reeling under acute heavy pendency of cases which has gone beyond 9.25 lacs at both places cumulatively. On the one hand, Stake-Holders are endeavouring to take steps for early disposal of pending matters so that litigants may get justice at an early date but on the other hand, judicial work is paralyzed resulting in virtual non disposal of cases and frustrating the very attempt on the part of Stake-Holders towards reduction in pendency of huge arrears.

5. We are more surprised to hear that this time cause for this situation has been provided by State Government itself. In our view, it is a matter which is directly connected with the administration of justice to the public at large and cannot be left unattended but it requires immediate judicial intervention and cognizance of the situation by Court so as to take necessary steps not only for removing this unfortunate situation but also to provide a sustained solution of the problem.

6. When disputes relating to service matters of Central Government were brought within the ambit of “Tribunal” constituted under Administrative Tribunals Act, 1985 (hereinafter referred to as “Act, 1985”), its vires were challenged on the ground that Tribunals are not proposed to be constituted at the places where High Courts had seats. This was taken to be an important cause affecting validity of Act, 1985 and Tribunals constituted thereunder. Pursuant to observations made by Supreme Court in **S.P. Sampath Kumar vs. Union of India (1987) 1 SCC 124**, Benches of Central Administrative

Tribunal were constituted at the places throughout country where High Courts' seats are situated so as to provide access to litigants at the places where jurisdictional High Courts are situated.

7. Similar observations have been made by Supreme Court later in **Madras Bar Association (2014) 10 SCC 1**. Referring to **S.P. Sampath Kumar (supra)** and seven Judges' Bench in **L. Chandra Kumar vs. Union of India (1997) 3 SCC 261**, Court has said “*Permanent Benches needed to be established at the seat of every jurisdictional High Court.*”

8. We are informed by learned Standing Counsel present in the Court that a legislation has been passed by State legislature for constitution of Education Tribunal at Lucknow and it is pending for assent of Hon'ble the President. Since legislation has not been enforced till date, we find no reason to look into its correctness at this stage, but still for smooth functioning of Court and also to ensure that access to litigants as was available, be not seriously hampered, it is incumbent upon this Court to ensure, if for certain matters, Specialized Tribunals are constituted with an intention to provide alternative remedy and reduce burden of High Court, then Principal Bench of such Tribunal must be available at the Principal Seat of High Court and in any case, litigants should not be put in an adverse situation by denying access to justice by High Court, which was available earlier to the constitution of such Tribunals.

9. We can take judicial notice of the fact that in various States, some Benches of High Courts have been created and justification therefor is that State is bigger in area and to provide easy access to residents of concerned State, Benches are

being provided. Here we find it strange that in the matter of constitution of Tribunals, judicial remedy available to litigants earlier at a nearer place, is being deprived by creating Tribunal Centrally located only at one place in the State. It goes contrary to the very concept of providing access to justice to litigants at a nearer place.

10. There may be reasons for such creation but then State has to explain those reasons to justify that depriving such access to litigants is in the interest of such litigants and there is no alternative but to create a Centrally located Adjudicatory Body at one place only.

11. We also take judicial notice of the fact that in respect of constitution of G.S.T. Tribunal, two Division Benches of this Court have taken different views. A Division Bench at Lucknow Bench comprising of Hon'ble Dr. Devendra Kumar Arora and Hon'ble Alok Mathur, JJ. In P.I.L. Civil No. 6800 of 2019, **Oudh Bar Association High Court, Lucknow through General Secretary and Another vs. Union of India through Secretary Ministry of Finance and Others**, decided on 31.05.2019, has gone to the extent of observing that Seat of High Court of Judicature at Allahabad is not a Principal Seat and there is no permanent Seat at both the places at Allahabad and Lucknow. In observing the same, Division Bench has referred to the provisions of United Provinces (High Court) Amalgamation Order, 1948 and Supreme Court's judgement in **Nasiruddin vs. State Transport Appellate Tribunal**, (1975) 2 SCC 671. It has completely omitted to consider the provisions of **Uttar Pradesh Reorganization Act, 2000**, whereby State of U.P. was bifurcated in the State of Uttranchal and State of Uttar Pradesh

and High Court of Judicature at Allahabad was made High Court of the State of U.P. vide Section 26(1). Section 26(1) reads as under:-

“26. High Court of Uttaranchal.—(1) As from the appointed day, there shall be a separate High Court for the State of Uttaranchal (hereinafter referred to as “the High Court of Uttaranchal”) and the High Court of Judicature at Allahabad shall become the High Court for the State of Uttar Pradesh (hereinafter referred to as the High Court at Allahabad).” (Emphasis added)

12. Another Division Bench consisting of Hon'ble Bharati Sapru and Hon'ble Rohit Ranjan Agarwal, JJ. in **M/s Torque Pharmaceuticals Pvt. Ltd. Vs. Union of India and Others**, Writ Tax No. 655 of 2018 in its order dated 19.07.2019 has referred the aforesaid Division Bench Judgment of Lucknow dated 31.05.2019 and has said

“it appears that the aforesaid provisions have not been considered at all, hence, prima facie the judgement appears to be bereft with non-consideration of the above facts”.

(Emphasis added)

13. In our view, when Division Bench at Lucknow desired to take a different view than the view taken by Division Bench at Allahabad in its order dated 28.02.2019, it ought to have referred the matter to a larger Bench and the same thing ought to have been done by Division Bench at Allahabad when it referred Lucknow Bench's decision in its order dated 19.07.2019 and virtually declared it *per incuriam*. The issue is of larger public importance. Considering serious situation which has arisen in the last one week when for three days, judicial function

has been paralyzed in Courts at Allahabad and for two days at Lucknow, in our view, the matter need be examined at length by a larger Bench of this Court so that above problem may be resolved and no such situation may arise in future and Courts may run properly.

14. It is more in the interest of litigants whose interest is of prime concern for the Court, since work of judiciary is only administration of justice, i.e. dispensation of justice to litigants and if this is hampered, the very core of the matter for which Institution subsists would get frustrated.

15. We are also of the view that State Government must also answer to its actions by creating such situation and thereby hampering the work of Judiciary. On the one hand, State claims that it is making all efforts for expeditious disposal of cases so that justice is delivered to aggrieved persons at the earliest but simultaneously, by its own actions, the very functioning of Judicial Institution is obstructed.

16. State has to explain, whether it has policy of providing justice to the place nearer the litigants or it has policy of providing justice by creating a Centrally located Adjudicatory Forum in the State only at one place; if so, what are the considerations on which selection of such place is made. State must also explain as to whether it has taken into consideration the dictum laid down by Supreme Court time and again regarding the place of Tribunal at the place where jurisdictional High Courts are situated and if it denies establishment of Tribunal at the place where jurisdictional High Court is situated, what are the considerations which prevail with it to take such decision.

17. We, therefore, issue notice to State of U.P. through Principal Secretary, Secondary Education and Basic Education as also the Principal Secretary, Law/ Legal Remembrancer, State of U.P. to file reply as to what considerations prevailed with the State in constitution of a Tribunal only at one place ignoring the place of Jurisdictional High Court and whether it is the policy of Government to have Adjudicatory Forum, whether Specialized Tribunal or otherwise, only at one place in the State or it has policy of providing justice to litigants nearer to them to the extent it is possible and unless otherwise justifiable cause exists.

18. We also issue notice to Oudh Bar Association, Lucknow as well as High Court Bar Association, Allahabad and other recognized Bar Associations of High Court at Allahabad and Lucknow to appear through their Authorized Representatives before this Court and place their point of view on the aforesaid issues.

19. We also find it expedient to observe that abstention from judicial work by Lawyers goes against the interest of litigants. It does not serve the purpose of Lawyers for which they are engaged by litigants. Lawyers are under an obligation to appear in the cases for which they have been engaged by litigants. They have assured their clients to appear and represent them in Court when *vakalatnama* is signed by litigant. We do not find any clause in *vakalatnama* whereby litigant has authorized an Advocate not to appear in Court when it is listed. Such abstention from Court affects in various ways, the litigants. Bail Applications filed by those who are languishing in jail remain undecided and on account of Lawyers' abstention from work, such persons without any fault on their part, continue to remain

in jail and their applications remain undecided by Court when they are listed. Similar is the position in respect of variety of cases and we need not bulk this order by giving such references.

20. Suffice it to mention that Lawyers are Officers of Court. When they ensure their clients that their dispute can be resolved by the process of law, it is more important for Lawyers themselves that their disputes are also resorted by process of law instead of resorting to take decision for abstention from work i.e. strike.

21. Supreme Court repeatedly has held that strike by Lawyers is illegal. Lawyers being stake-holders of the Institution of dispensation of justice must show due respect to the law laid down by Supreme Court. They should not resort to an action which is in blatant defiance of law laid down by Supreme Court. In fact, when they pass such a resolution of abstaining from work, and also communicate to Court with a request that Courts should also not pass adverse orders *ex parte*, virtually they invite Court and Judges to become a part to their illegal strike. This is neither permissible in law nor warranted nor should have been done at all. Therefore, we hope and trust that so long this matter is considered and decided by this Court, Lawyers will resume work, which is more in the interest of their clients, litigants in general and Institution of justice in particular.

22. Let this case be registered as Public Interest Litigation with title **“In Re: Dispute Relating to Place of Establishment of Adjudicatory Forum Like Specialized Tribunal etc.”**. The Office shall place this matter after registering before Hon'ble the Chief Justice for constitution of an appropriate Bench as observed above, so that the matter may be heard on 30th August,

2019.

23. List on 30.08.2019.

(Justice Rajeev Misra)

(Justice Sudhir Agarwal)

16.08.2019