

ORDER**A.F.R.**

In

Application No. 111257 of 2014

In re:

Civil Misc. Writ Petition No. 5822 of 2014

Anil Kumar Verma

Vs.

U.P. State Industrial Development Corporation Ltd. & Ors.

....

A request has been made in the application signed and presented by Shri Shanti Bhushan, learned Senior Counsel, appearing on behalf of the third respondent in the above noted petition, for transfer of the writ petition which is being heard by a Division Bench of this Court consisting of Hon'ble Mr. Justice Arun Tandon and Hon'ble Mr. Justice Arvind Kumar Mishra-I to another Bench. The application has been presented on the administrative side. In terms of the request which was made by the learned Senior Counsel that the application may be set down for hearing, an opportunity has been granted to the learned Senior Counsel for being heard in support of the application as well as to all other learned counsel appearing on behalf of the parties to the proceedings.

2. In the writ proceedings which are pending before the Division Bench, the appointment of the third respondent to the Uttar Pradesh State Industrial Development Corporation Ltd. (UPSIDC) has been called into question. On 29 January 2014, the Division Bench noted that the High School mark sheet together with a copy of the High School examination certificate was produced. Learned Standing Counsel was directed to produce the original cross list of the High School examination of 1976 with reference to the roll

number, while the counsel for Awadh University was directed to ensure the production of the cross list of the B. Tech examination for 1983. The hearing was posted to 5 February 2014.

3. The proceedings came up before the Division Bench on 5 February 2014 when the Court noted certain discrepancies between the cross list of the High School examination and the mark sheet. The petitioner was permitted to serve the third respondent by 7 February 2014 and the hearing was directed to stand over to 10 February 2014. On 13 February 2014, appearance was entered on behalf of the third respondent by Mr. Shishir Prakash, Advocate who was to appear with Mr. R.B. Singhal, Senior Advocate. On 12 February 2014, an application for transfer of the proceedings filed on behalf of the third respondent on the administrative side was placed before me. The following order of rejection was passed on 12 February 2014:

“The application is thoroughly improper and lacking in substance. Such uncalled for aspersions against the Bench must be deprecated.

Rejected.

Sd/-

(Chief Justice)
12.2.2014”

4. It is not in dispute that the third respondent then engaged a second set of Advocates. The Advocates withdrew their Vakalatnama when the present set of Advocates was engaged. The third respondent filed a short counter affidavit upon being served and specifically requested the Division Bench to

summon certain additional records. The relevant part of the short counter affidavit of the third respondent reads as follows:

“That in the facts and circumstances of the case in the interest of justice Hon'ble Court may be pleased to direct High School and Intermediate Board to produce order directing for enquiry relating to examinee bearing roll number 511719 of High School examination 1976, copy of the letter-patrank : go-3-rkc/932 dated 30.07.1976, enquiry report submitted by the enquiry committee and order of the correction dated 25.8.1976 by letter go (2)1128 before this Hon'ble Court and the District Inspector of Schools, Kanpur Nagar may also be directed to seize relevant record such as class 9th examination result of 1975 of Sri Gandhi Vidya Peeth Inter College, Ghatampur, Kanpur, the relevant scholar register, transfer certificate form book and the register maintained for relevant information relating to the students from Sri Gandhi Vidya Peeth Inter College, Ghatampur, Kanpur and produce the same in sealed cover before this Hon'ble Court.”

5. This request of the third respondent assumes significance because the grievance of the third respondent, on basis of which a transfer application is sought to be pressed, is that the Division Bench has undertaken what the third respondent regards is an intrusive scrutiny in regard to his educational qualifications and service records. The application filed by the third respondent was allowed in part by the Division Bench by an order dated 3 March 2014 with the following observations:

“Two applications have been filed on behalf of Arun Kumar Mishra. One along with short counter

affidavit and the other seeking impleadment. So far as the application filed along with short counter affidavit is concerned, we at this stage deem it appropriate to direct the Board of High School and Intermediate through its Secretary to ensure production of letter Patrank: go-030rkc/932 dated 30.07.1976, enquiry report submitted by the enquiry committee and the order of correction dated 25.08.1976 by letter go-030 (3) 1128 qua the candidate with Roll No.511719 of High School Examination 1976.

So far as the impleadment application is concerned, we at this stage do not find it necessary to implead either Kamla Nehru Institute of Technology, Sultanpur or Gandhi Vidhyapeeth Inter College. However since Kamla Nehru Institute of Technology, Sultanpur as on date is an autonomous college of the U.P. Technical University, Lucknow and was earlier an autonomous college to Dr. Ram Manohar Lohia Awadh University, Faizabad, we direct the Vice Chancellors of both Universities to ensure that all original records pertaining to admission of Arun Kumar Mishra in B. Tech. degree course at Kamla Nehru Institute of Technology, Sultanpur, tabulation sheet of each year of examination along with other certificates which may have been issued by the college are produced before this Court on 10.03.2014 in original.”

6. Against the order of the Division Bench dated 3 March 2014, a Special Leave Petition was filed before the Supreme Court. While disposing of the Special Leave Petition, the Supreme Court, in its order dated 10 March 2014, specifically held that the summoning of the additional record which was considered relevant was wholly innocuous and as harmless as

was the summoning of the record of the two Universities. The Supreme Court observed as follows:

“The High Court has no doubt noticed the application filed by the petitioner but given no reasons why the record sought to be summoned thereby, is not relevant to the question that falls for determination before it. Be that as it may summoning of some additional record considered relevant is wholly innocuous and as harmless as summoning of the record from the two Universities. We therefore see no reason why the entire record, referred to in the prayer made in the application, mentioned above, should not also be summoned from those in custody thereof, for perusal by the High Court. We accordingly direct summoning of the said record also, no matter without issuing any notice to the respondents in this petition, for we are of the opinion that any such notice will result in the unnecessary delay and procrastination.”

The Supreme Court also observed that the High Court was justified in curbing dilatory tactics that may be adopted by any party to the proceedings and in preventing unnecessary delay:

“We make it clear that even the High Court shall be free and indeed justified in preventing any unnecessary delay or dilatory tactics by curbing any such attempt suitably, should it be of the view that any one of the parties is trying to delay the proceedings unnecessarily.”

7. On 10 March 2014, the third respondent through learned Senior Counsel made a request that the presiding Judge of the

Division Bench should recuse himself from the case and stated that an affidavit in support would be filed by the next day. An affidavit was filed in support of the application for recusal of the presiding Judge of the Division Bench which, the Division Bench directed, would be considered on the date of hearing which was posted to 20 March 2014. On 10 March 2014, the tabulation registers produced by the University were examined by the Court in the presence of counsel for the third respondent. On 13 March 2014, a Special Leave Petition was filed before the Supreme Court to challenge the order of the Division Bench dated 10 March 2014. In the order of the Division Bench a further direction was issued by the Court for the production of records. On 14 March 2014, when the Special Leave Petition against the order of the Division Bench dated 13 March 2014 came up, the Supreme Court held that there was no reason to interfere and the Special Leave Petition was accordingly dismissed. The Supreme Court declined to accede to the request of the third respondent and issue a direction for the transfer of the matter from the Bench which was currently hearing the proceedings before this Court. However, the third respondent was permitted to move an application on the administrative side before the Chief Justice of this Court for appropriate orders on the subject. The Supreme Court observed thus:

“...The petitioner may if so advised move the Hon'ble Chief Justice of the High Court of Judicature at Allahabad on the administrative side for appropriate orders on the subject in which event the Hon'ble Chief Justice shall be free to examine whether there is any real

apprehension of miscarriage of justice or the grievance is only an attempt at forum shopping.”

8. The Supreme Court observed that if an application is moved before the Chief Justice of the High Court and the fact of the filing of such an application is brought to the notice of the Division Bench currently hearing the case, the learned Judges may stay their hands pending final disposal of the application on the administrative side. The Special Leave Petition was, accordingly, disposed of. The order passed by the Supreme Court was duly taken note of by the Division Bench on 20 March 2014 and the proceedings were directed to be listed for 25 March 2014. Meantime, the Registrar General was directed to place the application, if any, made by the third respondent before the Chief Justice by 24 March 2014.

9. Learned Senior Counsel appearing on behalf of the third respondent submits that he has a reasonable apprehension on the basis of the orders which have been passed and hence proceedings should be transferred from the Division Bench which is currently hearing the case to any other Bench of this Court. Learned Senior Counsel submitted that the counsel appearing on behalf of the petitioner may make it clear as to whether he is opposing the application for transfer and if he is opposing the application, that in itself is a circumstance which would cast doubt on the fairness of the proceedings before the Division Bench. Learned Senior Counsel further submitted that the orders which have been passed by the Division Bench create a reasonable apprehension in regard to the fairness of the proceedings since the Judges have taken upon themselves the role of an investigating agency, calling for the records pertaining to the third respondent from the Board of

High School and Intermediate Education, the University and the service records. Learned Senior Counsel submitted that there was no reason or justification for the Division Bench to (i) entertain a writ petition seeking a writ of quo warranto against the appointment of the third respondent in the UPSIDC which has been made in 1986; (ii) make a reference to the cross list of the Board of High School and Intermediate Education in the order dated 29 January 2014; (iii) overlook in the order dated 5 February 2014 that the overwriting in the name of the third respondent is on the letter “रा” and not “ना”; (iv) directing that the application for recusal would be considered on 13 March 2014 when the writ petition was to come up for hearing; (v) directing the personal presence of the Vice Chancellor in the event the records were not produced before the Court.

10. In assessing whether a case for transfer of the proceedings has been made out, it would, at the outset, be appropriate to advert to the *locus classicus* on the subject which is a judgment of Hon'ble Mr. Justice M. Hidayatullah (as the learned Chief Justice then was) in **Gurcharan Das Chadha Vs. State of Rajasthan**¹:

“The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice

¹ (1966) 2 SCR 686

should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

11. The true test to be applied is whether the litigant entertains an apprehension that can be regarded by the Court as being reasonable. The state of mind of the litigant who entertains the apprehension is relevant but that is not dispositive. The apprehension above all must appear to the Court to be a reasonable apprehension. This, in my view, is of the utmost importance and is of the essence. Whether a case should be transferred from a Bench which is hearing it is not a matter of the subjective assessment of a litigant. If it were to be so, it would be all too easy for a litigant to escape from justice by merely casting an aspersion on a Judge hearing the case. The test can never be : 'why should the case not be transferred when there are so many other judges of the Court to whom the case can be assigned'. Justice undoubtedly has to be done and must be seen to be done. But equally, a litigant cannot have the choice of the judge who should hear a case, or avoid a court which is conducting a searching analysis. Judges who hear cases may follow various paths in the conduct of the proceedings but all of them ultimately are designed to ensure that the truth emerges before the Court. A litigant cannot be heard to say that a Judge who is pursuing a

line of enquiry to unravel the truth should recuse herself. The pursuit of justice cannot be made a ground for avoiding a Court. If this were to be permitted, justice and the institutional credibility of Courts of justice would be in grave peril.

12. These sentiments have been placed, in no uncertain terms, in the judgment of the Supreme Court in **Jawant Singh Vs. Virender Singh**² thus:

“It is most unbecoming for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders....”

In a subsequent decision in **Chetak Construction Ltd. Vs. Om Prakash & Ors.**³, the Supreme Court while adverting to these observations held thus:

“Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to “terrorize” or “intimidate” Judges with a view to “secure” orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go “forum-shopping”. A litigant cannot be permitted

2 1995 Supp (1) SCC 384

3 (1998) 4 SCC 577

“choice” of the “forum” and every attempt at “forum-shopping” must be crushed with a heavy hand.”

In **R.K. Anand Vs. Registrar, Delhi High Court**⁴, the Supreme Court made certain observations which, though in the context of a recusal, are of significance:

“In the order the Judge concerned further observed:

“The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting / Bench preference or brow-beating the court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.

The above passage, in our view, correctly sums up what should be the court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an “inconvenient” Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.

We are constrained to pause here for a moment and to express grave concern over the fact that lately

4 (2009) 8 SCC 106

such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.”

13. The third respondent had filed an application on the administrative side, seeking transfer of the proceedings from the Division Bench which is hearing the case, on an earlier occasion, as noted above. That application was rejected by me on the administrative side by an order dated 12 February 2014. Mr. Shanti Bhushan, learned Senior Counsel has, in fact, fairly stated that the order of rejection of that application was correctly passed. I find no reason or justification to allow the present application for transfer. The orders passed by the Division Bench would indicate that proceedings have been conducted in a transparent manner. Significantly, it was the Third Respondent who in his counter affidavit sought that certain records including of the Board of High School & Intermediate Education should be summoned. This was allowed in part on 3 March 2014. The Supreme Court allowed the summoning of the entire record on 10 March 2014. The Third Respondent cannot have a reasonable apprehension on the summoning and examination of records by the Division Bench. Moreover, the Supreme

Court in the order dated 10 March 2014 has also emphasised that the High Court would be justified in preventing unnecessary delay or dilatory tactics by curbing any such attempt suitably. Much of the effort of Learned Senior Counsel is on the correctness of the orders. This is not an appeal. The ambit of the application is whether there is a reasonable apprehension on the basis of which a transfer is sought. There is none. In my view, Judges of the Court are entitled to follow a line of enquiry dispassionately and objectively with a view to reaching the truth of a matter. That may not suit a litigant but that is no ground for transferring the proceedings. The third respondent is making an effort to avoid a Court which is hearing the case. Interim orders of the Court may pose uncomfortable questions to litigants but that is no ground for the Chief Justice to exercise the administrative power to transfer the proceedings. The apprehension which has been expressed in the present case is clearly not reasonable, as explained in the law laid down by the Supreme Court.

14. For these reasons, there is no merit in the application moved on the administrative side for transfer of the above petition to another Bench. The application shall, accordingly, stand rejected.

15. A copy of the order shall be supplied to the parties and be uploaded on the website of the Court.

CHIEF JUSTICE
27.03.2014