

Court No. - 48

Case :- WRIT - B No. - 3900 of 2023

Petitioner :- Parmal Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashok Kumar Singh

Counsel for Respondent :- C.S.C

Hon'ble Saurabh Shyam Shamshery,J.

1.Heard Sri Ashok Kumar Singh, learned counsel for the petitioner and Sri A.K.Rai, learned Additional Chief Standing Counsel.

2. In this writ petition there is a challenge to an order dated 17.10.2023, whereby the Additional Director of Consolidation has rejected the transfer application filed by the petitioner under Rule 65 (2) of Uttar Pradesh Consolidation of Holding Rules, 1954 on the ground that reasons given therein were not sufficient and has placed reliance on ***Kaneej Fatma Vs. Mohd. Tayyab, 2014:AHC:200376.***

3. Learned counsel for the petitioner has referred paragraph numbers 5, 6,7 and 8 of transfer application which are reproduced hereinafter:

"5- यह कि मा0 महोदय जी को अवगत कराना है कि माननीय बन्दोबस्त अधिकारी चकबन्दी महोदय जो विपक्षीगण के धन के प्रभाव के फलस्वरूप हमसाझ होकर विपक्षीगण के पक्ष में आदेश हेतु गुणदोष के आधार पर कार्यवाही न कर संवैधानिक तथ्यों के विपरीत जाते हुए एकपक्षीय रूप से विपक्षीगण के पक्ष में ही कार्यवाही की जा रही है , तथा आदेश निस्तारण का प्रयास विपक्षीगण के पक्ष में किये जाने हेतु सभी विधिक पहलुओं का पूर्णतया उल्लंघन करते हुए किया जा रहा है।

6- यह कि माननीय महोदय जी को अवगत कराना है कि विपक्षीगण द्वारा माननीय पीठासीन अधिकारी द्वारा सांठ-गांठ के फलस्वरूप माननीय महोदय जी के समक्ष स्थानान्तरण प्रार्थना पत्र के बावत प्रार्थना पत्र पर संज्ञान लेकर प्रार्थी को दिग्भ्रमित करने का प्रयास किया गया, जबकि माननीय महोदय जी के

समक्ष कोई भी स्थानान्तरण प्रार्थना पत्र विपक्षीगण द्वारा प्रस्तुत नहीं किया गया है, परन्तु पीठासीन अधिकारी महोदय से हमसाझ होकर विपक्षीगण द्वारा इस प्रकार की अवैधानिक कार्यवाही संचालित करायी जा रही है तथा पीठासीन अधिकारी महोदय द्वारा विपक्षीगण के पक्ष में आदेश निस्तारण का प्रयास किया जा रहा है तथा पूर्व में भी चकबन्दी अधिकारी के आदेश पर विपक्षीगण के पक्ष में स्थगन आदेश पारित किया गया है।

7- यह कि माननीय बन्दोबस्त अधिकारी चकबन्दी जो कि विपक्षीगण के दबाव एवं प्रभाव में आकर कार्य कर रहे हैं, उनके द्वारा सभी संवैधानिक तथ्यों का उल्लंघन करते हुए प्रार्थी के तथ्यों एवं साक्ष्यों को दर किनार किया जा रहा है एवं विपक्षीगण के पक्ष में आदेश किये जाने हेतु सभी विधिक पहलुओं का पूर्णतया उल्लंघन करते हुए जल्दी-जल्दी की तिथि नियत की जा रही है तथा विपक्षीगण के पक्ष में आदेश हेतु संवैधानिक तथ्यों के विपरीत जाते हुए तत्परता बरती जा रही है।

8- यह कि विपक्षी द्वारा ग्राम में यह ऐलानिया बयान किया जा रहा है कि उसकी पीठासीन अधिकारी महोदय से बात चीत हो चुकी है, तथा आदेश उसी के पक्ष में पीठासीन अधिकारी महोदय द्वारा निस्तारित किया जायेगा तथा पीठासीन अधिकारी महोदय द्वारा भी खुले न्यायालय में अपनी मंशा पूर्णतया विपक्षीगण के पक्ष में व्यक्त की जा चुकी है, जिससे यह पूर्णतया स्पष्ट है कि प्रार्थी को उक्त जनपद से निष्पक्ष रूप से न्याय नहीं प्राप्त होगा तथा न्यायहित में यह अत्यन्त आवश्यक हो गया है कि उक्त अपील का स्थानान्तरण जनपद - मुजफ्फरनगर से किसी भी अन्य जनपद में स्थानान्तरित कर दिया जाय। जिससे हम प्रार्थी के साथ न्याय हो सकें।"

4. Learned counsel for the petitioner further submits that there are sufficient grounds to allow the transfer application since the petitioner was under a bonafide belief that he would not get justice from the concerned authority.

5. Learned Additional Chief Standing has supported the impugned order.

6. This Court has considered the issue of transfer in ***Dharmendra Singh Vs. State of U.P. & Ors, 2023:AHC:153820*** and relevant

paragraphs thereof are mentioned hereinafter:

"8. It is well settled that parties to litigation have confidence in the Presiding Officer in regard to the fairness so that justice prevails and in case any reasonable ground of unfairness, parties to lis can approach the authority or the Court to transfer the case from one Court to other. However, the reasons must have substance and may not be raised only for the sake of it or to prolong the litigation.

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11. It would be apposite to refer a co-ordinate Bench judgment of this Court in Transfer Application (Civil) No.524 of 2014, Kaneej Fatma Vs. Mohd. Tayyab decided on 12.11.2014. Relevant paragraphs of said judgment are reproduced hereinafter:

*21. The mere observations of Presiding Officer of the Court while hearing a case does not mean that he has made up his mind in a particular manner so as to justify an allegation of bias against such Presiding Officer and this would not justify transfer of case from one Court to another. A Judge is not expected to remain silent during course of hearing and not to express any opinion. A sphinx like attitude is not expected from a Presiding Officer. There has to be an effective discussion and effective attempt to conciliate or to clarify the misunderstanding or to get the issues clear, so that the issues can be settled or a just and proper decision can be arrived at. If in that process the Presiding Officer would make a statement it should not be misunderstood as an expression of decision. (**Smt. Sangeetha S. Chugh vs. Ram Narayan V. and others, AIR 1995 Karnataka 112 and Official Assignee, Madras vs. Inspector-General of Registration, Bangalore and Anr., AIR 1981 Madras 54 or 24**).*

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23. The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under Section 24 C.P.C., the Court must be satisfied that the apprehension of bias or prejudice is bona fide and reasonable. The expression of apprehension, must be proved proved/ substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer. In Smt. Sudha Sharma (supra) the Court observed that it is the duty of learned counsel to draft the application and made allegations with utmost care and caution. Hon'ble B.M. Lal, J. (as His Lordship then was), said:

"9. a foremost duty casts upon the counsel concerned while drafting and making allegations in the transfer petition against the Judge concerned with utmost care and caution, particularly in making wild allegations against the Presiding Judge. But, it appears that now-a-days it has become common feature to make allegations against the Court Presiding Judge. The counsel should realise that they are also officers of the Court. Introducing fanciful and imaginary allegations as grounds for transfer and harbouring apprehension such grounds that fair and impartial justice would not be done should always be deprecated.

10. Nonetheless, it is also important for all those who are engaged in the task of administering justice to remember that it is incumbent on them to create and maintain such confidence and atmosphere by giving every litigant an assurance by their judicial conduct that fair and impartial justice will be imparted. It is necessary to create such a confidence in the mind of the litigants so that their faith may not be shaken in Courts of law."

24. Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise. (**Rajkot Cancer Society vs. Municipal Corporation, Rajkot, AIR 1988 Gujarat 63; Pasupala Fakruddin and Anr. vs. Jamia Masque and Anr., AIR 2003 AP 448; and, Nandini Chatterjee vs. Arup Hari Chatterjee, AIR 2001 Calcutta 26**).

25. Where a transfer is sought making allegations regarding integrity or influence etc. in respect of the Presiding Officer of the Court, this Court has to be very careful before passing any order of transfer.

26. In the matters where reckless false allegations are attempted to be made to seek some favourable order, either in a transfer application, or otherwise, the approach of Court must be strict and cautious to find out whether the allegations are bona fide, and, if treated to be true on their face, in the entirety of circumstances, can be believed to be correct, by any person of ordinary prudence in those circumstances. If the allegations are apparently false, strict approach is the call of the day so as to maintain not only discipline in the courts of law but also to protect

judicial officers and maintain their self esteem, confidence and above all the majesty of institution of justice."

7. The grounds as quoted above are only on the basis of assumption and if such grounds are considered to be sufficient for transfer of a case, no Officer or Authority would be allowed to work fairly.

8. Any apprehension that a person may not get a fair decision must be based on some material substance and it could not be based on mere assertion or apprehension.

9. Learned counsel for the petitioner has not been able to show any order that any circumstances exist to substantiate his apprehension.

10. In aforesaid circumstances, I do not find any reason to interfere with the impugned order.

11. Writ petition is accordingly dismissed.

Order Date :- 23.11.2023

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