

ITEM NO.6

COURT NO.1

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 3608/2005

(Arising out of impugned final judgment and order dated 23/12/2004 in WP No. 4160/2004 passed by the High Court Of Judicature at Allahabad, Lucknow Bench)

MANENDRA NATH RAI & ANR.

Petitioner(s)

VERSUS

CHIEF SECRETARY, U.P. GOVT. & ORS.

Respondent(s)

(with appln. for directions and exem. From filing O.T. and further direction and permission to file additional documents and permission to file addl. Documents and interim relief and office report)

(For final disposal)

Date : 02/03/2016 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Ms. Mahalakshmi Pavani Sr.Adv. (A.C.)
Mr. G.Balaji, Adv.

Petitioner-in-person

For Respondent(s) Mr. Siddharth Luthra, Sr. Adv.
(State of U.P.) Mr. C. D. Singh, Adv.
Ms. Sakshi Kakkar, Adv.
Mr. Nitin Saluja, Adv.
Ms. Syrona, Adv.

Mr. Dinesh Kumar Garg, Adv.

R-4 Mr. P.N.Mishra, Sr. Adv.
Mr. Gaurav Bhatia, AAG
Mr. Saral Chaturvedi, Adv.
Mr. Shivpal Singh, Adv.
M/s. Bhatia & Co., Adv.

UPON hearing the counsel the Court made the following
O R D E R

This special leave petition arises out of an Order dated 23.12.2004 passed by the High Court of Judicature at Allahabad, Lucknow Bench whereby Writ Petition No. 4160 (M.B.) of 2004 filed by the petitioners has been dismissed.

When the matter came up initially on 04.03.20015, we had issued notice to the respondents in response to which respondents No. 1, 2 and 3 have entered appearance and filed their respective counter affidavits. Respondents No. 4 and 5 have not however chosen to do so. A reading of our Order dated 11.09.2008 shows that a prayer for grant of four weeks' time to the said respondents for filing their counter affidavits was accepted. Despite the lapse of nearly eight years ever since, the respondents have not chosen to file any reply to the special leave petition.

When the matter came up today for hearing, learned counsel appearing for respondents No. 4 and 5 sought time to file a counter affidavit to the SLP and place on record certain documents. This prayer on the face of it is belated. All the same looking to the nature of the controversy, the allegations made in the writ petition filed before the High Court and the issues that have been raised by the petitioners, we are of the view that the neglect on the part of respondents No. 4 and 5 is not unintentional. Having said that, we are inclined to grant to the said two respondents four weeks' time finally to file their counter affidavits.

We also find from the averments made in the pleadings on record that the release of the funds in-question was in connection with the celebration of Choudhary Charan Singh birth centenary in the year 2002-2003. The centenary celebrations took the form of construction of buildings for a college being run by respondent No. 5 at Etawah in the State of U.P. The college, we are told, has been established and is managed by a society which is not party to these proceedings. The expenditure incurred by the State has been channelised through U.P.Rajkiya Nirman Nigam Limited. The petitioners case is that the society in-question is entirely controlled by the family of respondents No. 4 and 5, while the Nigam itself is directly under the control of respondent No. 5 who was the Minister In-Charge Public Works at the relevant point of time. Respondent No. 4 happens to be the elder brother of respondent No. 5 and former Chief Minister of the State of U.P. It is in the above backdrop, that we direct respondents No. 4 and 5 to place on record with their affidavits the following:

- 1) A copy of the Memorandum and Articles of Association of Siksha Prasar Samiti as amended up-to-date.
- 2) The composition of the Management Committee as it exists today and as it existed over the past 10 years.
- 3) Audited balance-sheet for the past 10 years.

We are also of the view that not only the Society but U.P.Rajkiya Nirman Nigam Limited ought to be added as party respondent to these proceedings. We accordingly add them as party respondents and direct issue of notice to them returnable within

four weeks. Mr. Gaurav Bhatia, Adv. Appears and accepts notice on behalf of the society. Notice shall, therefore, issue only to U.P.Rajkiya Nirman Nigam returnable within four weeks. Notice shall specifically call upon the Nigam to file an affidavit indicating the following:

1) What is the extent of construction work which the Nigam has undertaken for the benefit of the society and its college?

2) What is the total amount that has been spent on the said construction work?

3) What is the period during which release of funds has taken place and under whose orders?

The respondents-State of U.P. shall also file an additional affidavit indicating whether any audit or other objection has been raised in regard to the manner in which the funds for construction of hostel etc. through U.P.Rajkiya Nirman Nigam Limited have been allocated or spent out of the contingency funds of the State. In case any such objections have been recorded either by the Comptroller and Auditor General of India or from any other quarter, a copy of the objections raised as also the explanation to the same shall be placed on record.

The State shall also indicate whether any other expenditure has been incurred by it in regard to the centenary celebration of Siksha Prasar Samiti, if so, what is the kind of such expenditures. In particular, whether any amount has been released by way of grant-in-aid or by way of assistance in any other form in favour of any other institution in the State of U.P. If so, the particulars and extent of such aid the names of those in whose favour such aid

has been granted or assistance extended shall also be given in the affidavit along with the particulars of those in management of the Institution. The State shall also indicate whether on the date of the release of the funds and construction of additional building etc. by the Nigam mentioned above, the college in question was offering "higher education". The college it is believed has started offering post-graduate courses for arts only w.e.f. 2007 onwards implying thereby that as on the date the funds were released, the college was not actually a college offering higher education.

Rejoinder, if any, be filed by the petitioner within two weeks from the date the counter affidavit is filed.

Post on Thursday, the 21st April, 2016.

(Shashi Sareen)
AR-cum-PS

(Veena Khera)
Court Master