

A UTTAR PRADESH JAL VIDYUT NIGAM LIMITED & ORS.

v.

BALBIR SINGH

(Civil Appeal No. 5667 of 2021)

B SEPTEMBER 13, 2021

[M. R. SHAH AND ANIRUDDHA BOSE, JJ]

- Uttar Pradesh Reorganization Act, 2000: s. 35(2) – Transfer of proceedings from Allahabad High Court to Uttarakhand High Court – Creation of the State of Uttarakhand – Writ petition filed by the appellants pending before the High Court of Allahabad challenging the judgment and award passed by the Presiding Officer, Labour Court, Dehradun was required to be transferred to the High Court of Uttarakhand by the Chief Justice of the High Court of Allahabad in exercise of power under Sub-Section (2) of Section 35 – However, the writ petition was not transferred – When the said writ petition came up for hearing before the Allahabad High Court, the High Court permitted the appellants to withdraw the said writ petition with liberty to file the same before the appropriate court- High Court of Uttarakhand and hence, the appellants filed the writ petition before the High Court of Uttarakhand – However, after 5 years of filing of writ petition, the Single Judge of the High Court of Uttarakhand dismissed the said writ petition by observing that the Coordinate Bench of the Allahabad High Court by permitting the appellants to withdraw writ petition pending before it with liberty to file the writ petition before the High Court of Uttarakhand, barged into to override the provisions contained under Sub-Section (2) of Section 35 by adoring himself with the powers of the Chief Justice of Allahabad High Court as contemplated under Sub-Section (2) of Section 35; and that too when award was challenged before the Uttarakhand High Court after 19 years of its pendency – Sustainability of – Held: Not sustainable – Judicial order passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition cannot be said to be contrary to the provisions contained under Sub-Section (2) of Section 35 – Furthermore, there was no delay at all on the part of the appellants in challenging the award passed by the Labour Court, Dehradun –*

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Thus, the order passed by the High Court being unsustainable, is quashed and set aside. A

Judicial discipline/propriety: Mandate of – Held: Judicial discipline/propriety demands to respect the order passed by the Coordinate Bench and more particularly the judicial order passed by the Coordinate Bench of the High Court. B

Allowing the appeal, the Court

HELD: 1.1 On the creation of the State of Uttarakhand, the jurisdiction over the Labour Court, Dehradun would only vest with the High Court of Uttarakhand. Therefore, the writ petition pending before the High Court of Allahabad challenging the judgment and award passed by the Presiding Officer, Labour Court, Dehradun was required to be transferred to the High Court of Uttarakhand by the Chief Justice of the High Court of Allahabad in exercise of power under Sub-Section(2) of Section 35 of the Uttar Pradesh Reorganization Act, 2000. As the writ petition before the High Court of Allahabad was against the judgment and award passed by the Labour Court, Dehradun, Sub-Section (3) of Section 35 shall not be applicable. Therefore, as such, the writ petition before the High Court of Allahabad was required to be transferred to the High Court of Uttarakhand. However for whatever reason the writ petition filed by the appellants before the High Court of Allahabad was not transferred. Therefore, when the writ petition pending before the High Court of Allahabad came up for hearing before the Allahabad High Court, the High Court permitted the appellants to withdraw the said writ petition with liberty to file the same before the appropriate court i.e. in the instant case the High Court of Uttarakhand. Accordingly, the appellants filed the writ petition before the High Court of Uttarakhand. However, after 5 years of filing of writ petition, the Single Judge of the High Court of Uttarakhand dismissed the said writ petition by observing that the Coordinate Bench of the Allahabad High Court was not justified in permitting the appellants to withdraw the writ petition with liberty to file fresh petition before the appropriate court. The Single Judge of the High Court of Uttarakhand observed that by permitting the appellants to withdraw writ petition pending before it with liberty to file the writ petition before the appropriate court-High Court of

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- A **Uttarakhand, the Coordinate Bench of the High Court of Allahabad barged into to override the provisions contained under Sub-Section (2) of Section 35 of the Act by adoring himself with the powers of the Chief Justice of Allahabad High Court as contemplated under Sub-Section (2) of Section 35 of the Act for transfer of pending matters before the Allahabad High Court. It is observed by the Single Judge that the liberty granted by Allahabad High Court permitting the appellants to file a fresh writ petition before the appropriate court, would not make the writ petition tenable before the High Court of Uttarakhand and that too when a challenge is given to the award before the Uttarakhand High Court after 19 years of its pendency. The Single Judge also observed that even the institution of the writ petition before the High Court of Uttarakhand challenging the award passed by the Labour Court, Dehradun dated 31.05.1997 would be suffering from the principles of laches. [Para 3.1][98-B-C; 99-D-H; 100-A-D]**
- D **1.2 The judicial order passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition pending before the Allahabad High Court with the liberty to file fresh writ petition before the appropriate court cannot be said to be contrary to the provisions contained under Sub-Section (2) of Section 35 of the Act as observed by the Single Judge in the impugned order. The order under Sub-Section (2) of Section 35 of the Act by the Chief Justice of the Allahabad High Court for transfer of pending matters before the Allahabad High Court to the High Court of Uttarakhand is an administrative order. If that power was not exercised and subsequently it was found that proceedings which were required to be transferred in exercise of power Sub-Section (2) of Section 35 of the Act, has not been transferred, it does not preclude the High Court of Allahabad to pass a judicial order and that too permitting the appellants to withdraw the writ petition pending before it and to file it before an appropriate court. As such the High Court in such a situation would be absolutely justified in permitting to withdraw the writ petition pending before it with liberty to file it before an appropriate court having jurisdiction, on the creation of the new State-State of Uttarakhand. [Para 3.2][101-A-D]**
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1.3 The another reason which is assigned by the High Court while passing the impugned order is that if the writ petition is filed before it-the High Court of Uttarakhand challenging the judgment and award of the Labour Court, Dehradun dated 31.05.1997, it would be suffering from the principles of laches. The said reason is absolutely unsustainable. The High Court has not appreciated that the writ petition before the High Court was filed immediately which remained pending before the High Court of Allahabad for about 14 years and thereafter after the appellants withdrew the writ petition from the Allahabad High Court immediately the writ petition was filed before the High Court of Uttarakhand. Therefore, there was no delay at all on the part of the appellants in challenging the award passed by the Labour Court, Dehradun. Therefore, in such a situation there was no question of any delay and laches. [Para 3.3][101-E-G]

1.4 Even otherwise once a judicial order was passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition with liberty to file a writ petition before the appropriate court (the High Court of Uttarakhand) and thereafter when the appellants preferred the writ petition before the High Court of Uttarakhand, the Single Judge of the High Court of Uttarakhand is not at all justified in making comments upon the judicial order passed by the Coordinate Bench of the Allahabad High Court. The Single Judge of the High Court of Uttarakhand was not acting as an appellate court against the judicial order passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition with liberty to file a writ petition before an appropriate court. Judicial discipline/propriety demand to respect the order passed by the Coordinate Bench and more particularly the judicial order passed by the Coordinate Bench of the High Court, in the instant case the Allahabad High Court which as such was not under challenge before it. Therefore, the observations made by the High Court of Uttarakhand in the impugned order on the judicial order passed by the Single Judge of Allahabad High Court dated 24.04.2014 permitting the appellants to withdraw the writ petition pending before it with liberty to file fresh writ petition before the appropriate court (the High Court of Uttarakhand) is absolutely unwarranted and is

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- A **unsustainable. The impugned order passed by the High Court dismissing the writ petition without entering into the merits of the case is unsustainable, and as such quashed and set aside. [Para 3-5][101-G-H; 102-A-E]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5667 of
B 2021.

From the Judgment and Order dated 26.11.2019 of the High Court of Uttarakhand at Nainital in Writ Petition No.1314 of 2014 (M/S).

Sunil Kumar Jain, Adv. for the Appellants.

Ms. Meha Ashok Aggarwal, Adv. for the Respondent.

- C The Judgment of the Court was delivered by

M. R. SHAH, J.

Leave granted.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26.11.2019 passed by the High Court of Uttarakhand at

- D Nainital in Writ Petition No.1314 of 2014 (M/S) by which the High Court has dismissed the said writ petition preferred by the appellants herein without entering into the merits of the case, the original writ petitioner has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

- E That the respondent herein raised an industrial dispute challenging his termination dated 15.06.1996. The dispute was referred to the labour court. The Presiding Officer, Labour Court, Dehradun, passed an award dated 31.05.1997 holding that the termination order is illegal. The Labour Court directed the reinstatement of the respondent with full back wages.

- F Feeling aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Dehradun in case No.180 of 1996, the original petitioners - appellants herein preferred Writ Petition No.6898 of 1997 before the High Court of Allahabad. That the High Court of Allahabad passed a conditional interim order staying the execution of award and on condition to deposit the entire back wages before the Labour Court. The

- G appellant complied with the same and deposited the amount of back wages. That during the pendency of the aforesaid writ petition, the State of Uttarakhand came to be created and the jurisdiction of the Labour Court, Dehradun came within the jurisdiction of the State of Uttarakhand.

- H 2.1 In that view of the matter and in view of Section 35 of the Uttar Pradesh Reorganization Act, 2000, the proceedings pending before

the High Court at Allahabad were required to be transferred to the High Court having jurisdiction, in the present case the High Court of Uttarakhand. However, writ petition No.6898 of 1997 was not transferred by the Chief Justice of the High Court of Allahabad for whatever reason. Therefore when writ petition No.6898 of 1997 though was required to be transferred to the High Court of Uttarakhand as what was challenged before the High Court of Allahabad was the judgment and award passed by the Labour Court, Dehradun, the jurisdiction of which subsequently vested with the High Court of Uttarakhand, came up for hearing before the Allahabad High Court on 24.04.2014 and the Allahabad High Court was of the view that since the award has been passed by the Labour Court, Dehradun and therefore the jurisdiction does not lie with the High Court of Allahabad and therefore permitted the appellants herein - original writ petitioner to withdraw the writ petition with liberty to file fresh petition before the appropriate court i.e. High Court of Uttarakhand. That thereafter the appellants herein preferred the present writ petition before the High Court of Uttarakhand which was numbered as writ petition No.1314 of 2014, challenging the award dated 31.05.1997 passed by the Presiding Officer, Labour Court, Dehradun in case No.180 of 1996. That thereafter the matter was listed before the learned Single Judge of the High Court of Uttarakhand on 26.11.2019. By the impugned order the High Court has dismissed the said writ petition without entering into the merits of the case solely on the ground that in view of the provisions contained under Sub-Section (2) of Section 35 of the Uttar Pradesh Reorganization Act, 2000 (hereinafter referred to as 'the Act'), the power to transfer the case lie with the Chief Justice of the High Court of Allahabad and therefore the Coordinate Bench of Allahabad High Court was not justified in granting liberty to the appellants herein – original writ petitioner to withdraw the writ petition with liberty to file fresh writ petition before the appropriate court. The Single Judge of the High Court of Uttarakhand observed that the liberty granted by the High Court of Allahabad permitting the appellants to withdraw the writ petition pending before it with liberty to file fresh writ petition before the appropriate court is just contrary to the provisions contained under Sub-Section (2) of Section 35 of the Act.

2.2 Feeling aggrieved and dissatisfied with the impugned order passed by the High Court of Uttarakhand, the original writ petitioners have preferred the present appeal.

- A 3. Having heard the learned counsel appearing for the respective parties and considering the impugned order passed by the High Court of Uttarakhand, we are of the opinion that the impugned order passed by the High Court dismissing the writ petition without entering into the merits of the case is unsustainable.
- B 3.1 It cannot be disputed that as such on the creation of the State of Uttarakhand, the jurisdiction over the Labour Court, Dehradun would only vest with the High Court of Uttarakhand. It also cannot be disputed that therefore as such the writ petition pending before the High Court of Allahabad challenging the judgment and award passed by the Presiding Officer, Labour Court, Dehradun was required to be transferred to the High Court of Uttarakhand by the Chief Justice of the High Court of Allahabad in exercise of power under Sub-Section (2) of Section 35 of the ‘Act’.

Section 35 of the Uttar Pradesh Reorganization Act reads as under:-

- D “35. *Transfer of proceedings from Allahabad High Court to Uttarakhand High Court:-*
- E *(1) Except as hereinafter provided, the High Court at Allahabad shall, as from the appointed day, have no jurisdiction in respect of the transferred territory.*
- F *(2) Such proceedings pending in the High Court at Allahabad immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Uttarakhand shall, as soon as may be after such certification, be transferred to the High Court of Uttarakhand.*
- G *(3) Notwithstanding anything contained in subsections (1) and (2) of this section or in section 28, but save as hereinafter provided, the High Court at Allahabad shall have, and the High Court of Uttarakhand shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in*
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respect of any order passed by the High Court at Allahabad before the appointed day: Provided that if after any such proceedings have been entertained by the High Court at Allahabad, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Uttarakhand, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly. A

(4) *Any order made by the High Court at Allahabad.*

(a) *before the appointed day, in any proceedings transferred to the High Court of Uttarakhand by virtue of sub-section (2) or* C

(b) *in any proceedings with respect to which the High Court at Allahabad retains jurisdiction by virtue of sub-section (3), shall for all purposes have effect, not only as an order of the High Court at Allahabad, but also as an order made by the High Court of Uttarakhand.”* D

As the writ petition before the High Court of Allahabad was against the judgment and award passed by the Labour Court, Dehradun, Sub-Section (3) of Section 35 of the Act shall not be applicable. Therefore, as such, the writ petition before the High Court of Allahabad was required to be transferred to the High Court of Uttarakhand. However for whatever reason the writ petition filed by the appellants before the High Court of Allahabad being writ petition No.6898 (M/S) of 1997 was not transferred. Therefore when the writ petition pending before the High Court of Allahabad came up for hearing before the Allahabad High Court, the High Court permitted the appellants to withdraw the said writ petition with liberty to file the same before the appropriate court i.e. in the present case the High Court of Uttarakhand. Accordingly, the appellants filed the writ petition before the High Court of Uttarakhand. However, after 5 years of filing of writ petition, by impugned order dated 26.11.2019 the learned Single Judge of the High Court of Uttarakhand has dismissed the said writ petition by observing that the Coordinate Bench of the Allahabad High Court was not justified in permitting the appellants to withdraw the writ petition with liberty to file fresh petition before the appropriate court. The learned Single Judge of the High Court of Uttarakhand has observed that by permitting the appellants to withdraw

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- A writ petition pending before it with liberty to file the writ petition before the appropriate court – High Court of Uttarakhand, the Coordinate Bench of the High Court of Allahabad has barged into to override the provisions contained under Sub-Section (2) of Section 35 of the Act by adoring himself with the powers of the Chief Justice of Allahabad High Court as contemplated under Sub-Section (2) of Section 35 of the Act for transfer of pending matters before the Allahabad High Court. It is observed by the learned Single Judge that the liberty granted by Allahabad High Court permitting the appellants to file a fresh writ petition before the appropriate court dated 24.04.2014, will not make the writ petition tenable before the High Court of Uttarakhand and that too when a challenge is given to the impugned award before the Uttarakhand High Court after 19 years of its pendency. The learned Single Judge has also observed that even the institution of the writ petition before the High Court of Uttarakhand challenging the award passed by the Labour Court, Dehradun dated 31.05.1997 would be suffering from the principles of laches.
- D 3.2 None of the aforesaid grounds are tenable at law. It cannot be disputed that after the creation of the State of Uttarakhand the jurisdiction over judgment and award passed by the Labour Court, Dehradun would vest with the High Court of Uttarakhand and not with the High Court of Allahabad. Therefore, the writ petition pending before the High Court of Allahabad challenging the judgment and award passed by the Labour Court, Dehradun was as such required to be transferred by the Chief Justice of the High Court of Allahabad to the High Court of Uttarakhand in exercise of power under Section 35 of the Act. For whatever reason the said writ petition was not transferred. That does not mean that despite the above, jurisdiction of the High Court of Allahabad against the judgment and award passed by the Labour Court, Dehradun would continue. Therefore subsequently when the writ petition came up before the High Court of Allahabad and having realized and observed that the jurisdiction against the judgment and award passed by the Labour Court, Dehradun would vest with the High Court of Uttarakhand, the High Court of Allahabad rightly permitted the appellants to withdraw the said writ petition pending before it with the liberty to the appellants to file fresh writ petition before the appropriate court. In the present case, the appropriate court would be the High Court of Uttarakhand only. Therefore as such no error was committed by the High Court of Allahabad permitting the appellants to withdraw the writ petition pending before it with the liberty to file a fresh writ petition before the court having

jurisdiction. The aforesaid cannot be said to be adoring himself with the powers of the Chief Justice of Allahabad High Court. The judicial order passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition pending before the Allahabad High Court with the liberty to file fresh writ petition before the appropriate court cannot be said to be contrary to the provisions contained under Sub-Section (2) of Section 35 of the Act as observed by the learned Single Judge in the impugned order. The order under Sub-Section (2) of Section 35 of the Act by the Chief Justice of the Allahabad High Court for transfer of pending matters before the Allahabad High Court to the High Court of Uttarakhand is an administrative order. If that power was not exercised and subsequently it was found that proceedings which were required to be transferred in exercise of power Sub-Section (2) of Section 35 of the Act, has not been transferred, it does not preclude the High Court of Allahabad to pass a judicial order and that too permitting the appellants to withdraw the writ petition pending before it and to file it before an appropriate court. As such the High Court in such a situation would be absolutely justified in permitting to withdraw the writ petition pending before it with liberty to file it before an appropriate court having jurisdiction, on the creation of the new State – State of Uttarakhand.

3.3 The another reason which is assigned by the High Court while passing the impugned order is that if the writ petition is filed before it – the High Court of Uttarakhand challenging the judgment and award of the Labour Court, Dehradun dated 31.05.1997, it would be suffering from the principles of laches. The aforesaid reason is absolutely unsustainable. The High Court has not appreciated that the writ petition before the High Court was filed immediately which remained pending before the High Court of Allahabad for about 14 years and thereafter after the appellants withdrew the writ petition from the Allahabad High Court immediately the writ petition was filed before the High Court of Uttarakhand. Therefore there was no delay at all on the part of the appellants in challenging the award passed by the Labour Court, Dehradun. Therefore in such a situation there was no question of any delay and laches.

4. Even otherwise once a judicial order was passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition with liberty to file a writ petition before the appropriate court (the High Court of Uttarakhand) and thereafter when the appellants preferred the

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- A writ petition before the High Court of Uttarakhand, the learned Single Judge of the High Court of Uttarakhand is not at all justified in making comments upon the judicial order passed by the Coordinate Bench of the Allahabad High Court. The Single Judge of the High Court of Uttarakhand was not acting as an appellate court against the judicial order passed by the High Court of Allahabad permitting the appellants to withdraw the writ petition with liberty to file a writ petition before an appropriate court. Judicial discipline/propriety demand to respect the order passed by the Coordinate Bench and more particularly the judicial order passed by the Coordinate Bench of the High Court, in the present case the Allahabad High Court which as such was not under challenge before it. Therefore the observations made by the High Court of Uttarakhand in the impugned order on the judicial order passed by the learned Single Judge of Allahabad High Court dated 24.04.2014 permitting the appellants to withdraw the writ petition pending before it with liberty to file fresh writ petition before the appropriate court (the High Court of Uttarakhand) is absolutely unwarranted and is unsustainable.
- D 5. In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order dated 26.11.2019 passed by the High Court of Uttarakhand at Nainital in Writ Petition No.1314 of 2014 (M/S) is hereby quashed and set aside. The writ petition is directed to be restored on the file of the High Court of Uttarakhand. Considering the fact that the dispute is very old, we request the High Court to finally decide and dispose of the Writ Petition No.1314 of 2014 (M/S) at the earliest and preferably within a period of six months from the date of receipt of the present order. The Registry is directed to communicate this order to the High Court of Uttarakhand forthwith.
- E F No costs.

Nidhi Jain

Appeal allowed.