



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
ORIGINAL SUIT NO. 5 OF 2012

STATE OF UTTARAKHAND

...PLAINTIFF (S)

VERSUS

UNION OF INDIA & ANR.

...DEFENDANT (S)

WITH

INTERLOCUTORY APPLICATION NO. 3 OF 2014

AND

INTERLOCUTORY APPLICATION NO. 4 OF 2016

ORDER

1. This order will dispose of an application (I.A. No. 3/2014) preferred by second defendant (hereafter “State of U.P.”) to recall an order made by this Court on 16.12.2013 setting it down *ex parte*. The State of Uttarakhand has filed the present Suit under Article 131 of the Constitution for various reliefs, including a declaration that the allocation of 25% shareholding in the Tehri Hydro Development Corporation (hereafter “THDC”) in favour of the State of

U.P. consequent to the enactment and coming into force of the U.P. Reorganisation Act, 2000, is void with effect from 09.11.2000 and a further declaration that the plaintiff/State of Uttarakhand, is the rightful owner of the said shareholding and consequently, decree of mandatory and permanent injunction to allocate the said shareholding of THDC in its favour and also allocate the dividends from 09.11.2000 till disposal of the suit, to it.

2. This court entertained the suit by proceeding dated 06.12.2012 and by order dated 12.12.2012 dismissed the application for interim relief. On 02.09.2013, it was noticed that chamber summons had been filed and the Registry was directed to take further steps. On 07.10.2013, notice was directed to be served upon the Chief Secretary, State of U.P. as well as the Standing Counsel for the State of U.P. These notices were served – as evident from the order dated 10.11.2013. In spite of service of notice, State of U.P. was not represented on 16.12.2013 and was set down *ex parte*.

3. I.A. No. 3/2014 was filed by State of U.P. on 09.04.2014, seeking recall of the order dated 16.12.2013. The application states that notice of the suit was received by the State of U.P. on 23.10.2013 and the matter was referred to the concerned department. Apparently, THDC was notified of the pendency of the proceedings and evidently upon receipt of information with respect to the order (setting it down *ex parte* on 16.12.2013), further steps were taken,

which included a Joint Meeting of various Departments on 03.02.2014; the appointment of the concerned counsel on 11.03.2014 and instructions being furnished to him to file an application to recall the order setting the State of U.P. *ex parte*. The record also indicates that the plaintiff resisted the application and filed a reply dated 08.06.2016, and further sought decree in terms of Order VIII Rule 1 of the Code of Civil Procedure, 1908.

4. It is apparent from the record that the application for recall of the order of 16.12.2013 was listed for hearing on 07.09.2015 and thereafter, again on several dates, i.e. 16.10.2015, 23.02.2016 and 10.03.2016. No steps were taken, nor was the notice of this court brought to the application. It was only on 06.04.2016 that this court issued notice on the application and listed it again on 27.09.2016, at the request of the counsel for the parties. On 06.02.2017, learned Senior Counsel appeared for the State of U.P. and requested that the application may be allowed subject to payment of costs. On 06.05.2019, matter was again listed and the plaintiff's counsel sought an adjournment.

5. From the above facts, it is evident that, the State of U.P., no doubt, defaulted in entering appearance and was set down *ex parte* by order dated 16.12.2013. Thereafter, I.A. No. 3/2014 was listed and notice issued for the first time on 07.09.2015. The State of Uttarakhand resisted this application. The State of Uttarakhand has, through a separate affidavit, indicated that it

incurred a total expenditure of Rs. 57,48,791/- (Rupees Fifty Seven Lacs Forty Eight Thousand Seven Hundred Ninety One only) as legal costs towards payment of counsel's fee towards 11 hearings.

6. This court is of the opinion that though the State of U.P. was tardy and could not ensure timely appearance, yet, when the concerned officials were made aware of the pendency of the present suit and order dated 16.12.2013, prompt steps were taken.

7. At least, after filing of the application- on 09.04.2014, the State of U.P. cannot be accused of negligence; notice of the application was issued only on 09.04.2016. Furthermore, the plaintiff sought an adjournment at least on two occasions, i.e. 27.09.2016 and 06.05.2019. In these circumstances, it cannot be said that the entire blame for the delay in dealing with the application and the costs thereof are to be borne by the State of U.P.

8. Having regard to the entirety of circumstances, the Interlocutory Application is allowed subject to the State of U.P. paying costs quantified at Rs. 30,00,000/- (Rupees Thirty Lacs only) to the plaintiff/State of Uttarakhand, within four weeks from today. I.A. No. 3/2014 is allowed in the above terms.

9. Subject to the above directions, the State of U.P. is permitted to file its Written statement within four weeks. The plaintiff's replication, if any, shall

be filed within eight weeks from today. The parties shall, in the meanwhile, file their documents. List the suit after twelve weeks for framing the issues.

.....**J.**
[R.F. NARIMAN]

.....**J.**
[S. RAVINDRA BHAT]

New Delhi,
December 6 , 2019.