

Court No. - 88

Case :- CRIMINAL APPEAL No. - 729 of 2022

Appellant :- Vikram Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Santosh Kumar Tiwari, Neeraj
Kumar Pandey

Counsel for Respondent :- G.A., Pankaj Kumar Singh

Hon'ble Sanjay Kumar Singh, J.

Heard Shri Shiv Kumar Pal, learned Government Advocate assisted by Shri Rabindra Kumar Singh, learned Additional Government Advocate representing the State and Shri Santosh Kumar Tiwari, learned counsel for the appellant.

On 16.8.2022, when this case was taken up, learned Additional Government Advocate submitted that record of this case is not available with him due to major fire broke out on 17.7.2022 in the office of Advocate General at Prayagraj in which most of the records have been reduced to ashes, the Court passed the following orders:

"1. On the matter being taken up, learned Additional Government Advocate for the State of U.P. submits that record of this case is not available due to major fire broke out on 17.07.2022 in the office of Advocate General at Prayagraj, in which most of the records have been reduced to ashes. It also submitted that learned counsel for the appellant despite knowing about the aforesaid incident, did not provide one additional copy of paper book to the office of

Government Advocate and prayed for adjournment of the case for a day.

2. On putting query that today in how many cases records are not available, learned A.G.A. informed the Court that today 329 cases are listed in list of fresh cases, out of which records of 289 cases are not available. Similarly, 74 cases are listed in additional cause list, out of which records of 73 cases are not available.

3. On the other hand, learned counsel for the appellant apprised the Court that he has already served one additional copy of the paper book on 27.07.2022 to the office of Government Advocate. It is also submitted that not only before this Court but in other criminal Courts also, same situation exists and no effective steps are being taken by the State in this regard.

4. Having regard to the submissions of learned counsel for the parties, this Court is of the view that it is a very sorry state of affair that today about one month has elapsed from the said incident dated 17.07.2022 but proper functioning in the office of Government Advocate at Prayagraj has not been restored back. Several cases are being adjourned on account of non-availability of records or proper instructions with the State counsel, as a result thereof, litigants are suffering. Learned counsel whose cases are being listed are also facing difficulty

on adjournment of the cases due to want of records with the State counsel. On account of said unfortunate incident, request for granting two or three weeks time for reconstruction of records and seeking instructions has already been given to the State, but considering the larger interest of the litigants and lawyers, such request cannot be accepted for an indefinite period. It is also relevant to mention that it is very difficult for junior/young lawyers to bear additional expenses of getting the whole record photocopied for providing the same to the State.

5. This Court is of the view that additional burden/expenses of reconstruction or photocopy of records should be borne by the State Government by installing photocopier machines or developing some other mechanisms which is the duty of the State. This Court is also of the view that for proper adjudication and just decision of the cases, records and proper instructions within time must have been with the State counsel. Though the learned A.G.A. and Brief Holders, who are appearing before this Court are taking much pain in collecting the records from the learned counsel whose cases are being listed and maintaining the same by making entries, etc. in the separate register in order to assist the Court, but it appears that they are also helpless as they are not aware about the further measure adopted by the State Government in the matter of reconstruction of records, as no written

guideline/instruction has been issued by the State in this regard. Even lawyers and Courts are not aware about the efforts made by the State Government in order to handle the situation and ensure the proper functioning.

6. In view of the above, let an affidavit be filed either by the Principal Secretary (Law)/Legal Remembrancer, State of U.P. or by any competent Officer duly authorized by him having full knowledge about the aforesaid issues indicating therein as to what steps/measures have been taken by the State for reconstruction of records and seeking instructions in order to ensure the smooth functioning of the Courts within two days, failing which the Principal Secretary (Law)/Legal Remembrancer, State of U.P. shall appear before this Court in person on the next date of hearing.

7. List this case on 18.08.2022 as fresh for further hearing before this Court.

8. Learned Government Advocate shall communicate this order to the Principal Secretary (Law)/Legal Remembrancer, State of U.P. forthwith."

Pursuant to aforesaid order of this Court dated 16.08.2022, an affidavit of compliance on behalf of the Principal Secretary (Law), Government of U.P., Lucknow duly sworn by Mr. Radhey Mohan Srivastava, presently posted as Special Secretary / Additional Legal Remembrancer, Legal

Cell, High Court, Allahabad, has been filed, which is taken on record.

At the outset, Shri S.K. Pal, learned Government Advocate submits that after the unfortunate incident of outbreak of fire in the office of the learned Advocate General at Prayagraj on 17.7.2022, the matter was reported to the State Government immediately. Thereafter Additional Chief Secretary (Home), Government of U.P. Lucknow vide letter dated 17.7.2022 directed the District Magistrate, Prayagraj to get the cause of fire ascertained by constituting a committee. Pursuant to the aforesaid letter of the Additional Chief Secretary (Home), Government of U.P., the District Magistrate, Prayagraj constituted a Five Members Committee vide letter dated 17.7.2022 for conducting the enquiry into the matter, which submitted its report on 24.7.2022.

Thereafter, the learned Advocate General also constituted a Four Members Committee comprising Mr. Manish Goyal, learned Additional Advocate General, Mr. M.C. Chaturvedi, learned Additional Advocate General, Mr. Shiv Kumar Pal, learned Government Advocate and Mr. K.R. Singh learned Chief Standing Counsel to make sure that no inconvenience is caused to the Courts and to ensure that urgent and necessary steps were taken to restore the files destroyed in the fire and also to take measure to make the State Law Office functional.

In the affidavit dated 18.8.2022 Shri Shiv Kumar Pal has also indicated the steps taken for expeditious reconstruction of destroyed records and to make office building functional, which are reproduced herein under:

(i) Eventually, vide letter of Law Department, Government of U.P. dated 04.08.2022, the learned Advocate General was again requested to coordinate with Registry of the Hon'ble High Court, Writ Section, Government Departments, Police Headquarters, respective Police Stations and also the learned Counsels of the Petitioners and Respondents for facilitating reconstruction of case files.

(ii) The process for reconstructing the files is being done on a war footing. For this purpose, the co-operation and assistance of the Bar Association and the Advocates' Association of the Hon'ble High Court has been solicited. By communications addressed to the office bearers of the aforesaid associations, a request has been made to seek the help of learned counsels for petitioners / applicants, to provide copies of their petitions / applications, so that the same may be photocopied, and the files may be reconstructed.

(iii) Due to the fire incident, apart from the large number of files which were destroyed, colossal damage was caused to the fittings and furniture, and the racks used for storing the files / records were gutted on the 6th, 7th, 8th, and 9th floors. The files of criminal cases were stored on the 6th floor, which was badly gutted in the unfortunate fire incident.

Due to security concerns the electricity department, office of Assistant Director, Electricity Security, Prayagraj issued instruction dated 01.08.2022 prohibiting the use of

floor numbers 6th, 7th, 8th and 9th until additional wiring / extensions etc. were not properly in place.

In the aforesaid context, the Superintendent Engineer, Nirman Khan No.1, P.W.D., Prayagraj sent a communication to the Director, MNNIT, Prayagraj dated 08.08.2022, with the urgent request that the details of the structural investigation report for floor Nos. 6th, 7th, 8th and 9th be provided at the earliest, to enable the said floors to become functional.

In order to assist the Courts and make available such files as was possible from the 6th floor, oral permission was granted by the District Magistrate, Prayagraj and consequently, although there is no electricity or lights on 6th floor, but by using a torch light the staff make efforts to access files from the 6th floor till it becomes fully usable.

(iv) Due to the fire incident, all the lifts stopped working, and it is very difficult for the staff to transport the files from the 5th floor, which is the place being temporarily used for storing the surviving records.

(v) Urgent correspondence has been exchanged between the office of the Advocate General and the State Government, followed up by personal telephonic communication between the concerned officials, to take urgent steps to rectify the situation at the earliest.

(vi) Diligent efforts are underway to make necessary arrangements, both financial, and with regard to providing necessary manpower, to get the lifts working at the

earliest, to make available paper for photocopying the reconstructed files, and also for 500 racks for their storage on the 5th floor.

(vii) A letter containing the steps, which were necessary to be taken in the aforesaid context, dated 06.08.2022 sent by the Government Advocate, High Court, Allahabad to the Chief Secretary, Government of Uttar Pradesh, Lucknow and the Principal Secretary (Law) / Legal Remembrancer, Government of Uttar Pradesh, Lucknow.

(viii) The committee (constituted by the Advocate General, U.P. High Court, Allahabad) held a meeting on 08.08.2022 and by means of a urgent communication dated 08.08.2022 informed the Principal Secretary (Law) / Legal Remembrancer, Government of Uttar Pradesh, Lucknow about the immediate requirement, as discussed in the meeting, including, heavy duty photocopy machines, JK paper, racks, file-covers, computer systems, heavy duty printers, heavy duty scanners, and repairing of all three lifts. It was also intimated that alternate space / accommodation alongwith sufficient lights and anti-termite treatments were also required, as were four wheeler vehicles for transportation of the files from the alternative accommodation to the office of High Court, and back. This communication emphasized that the requirements detailed therein were to be "on a top priority and most urgent basis".

(ix) The Principal Secretary (Law), Government of U.P., Lucknow was personally present at Prayagraj on 05.08.2022 and 08.08.2022 and attended the meeting of

committee constituted by the learned Advocate General, U.P. consisting of two learned Additional Advocate Generals, Government Advocate and Chief Standing Counsel, High Court, Allahabad and deliberated the issue of ensuring reconstruction of case files which have been destroyed in the fire outbreak.

(x) The Principal Secretary, Law, Government of U.P. requested the committee constituted by the learned Advocate General, U.P. for deliberating the report of five member committee submitted by the District Magistrate, Prayagraj and expedite the process of reconstruction of case files. In the said meeting held on 05.08.2022 and 08.08.2022 at Prayagraj, the issue of reconstruction of damaged floors of Advocate General office was discussed. It was decided that till such time the office of Advocate General is restored for smooth functioning, a proper space shall be assigned. It would be pertinent to mention herein that the alternative space at Hon'ble High Court has been provided.

(xi) The State Government has taken cognizance of the urgent and immediate requirement, to take steps in the aforesaid context, and with this purpose in mind, and to ensure expeditious measures to be implemented to restore smooth working of the office and to enable the files to reach the courts on time, a meeting was held on 10.08.2022, which was attended by 7 members i.e. Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow, Additional Director General of Police (Prosecution), U.P., Lucknow, Government Advocate, High Court, Allahabad, Chief Engineer (Civil), Public Works

Department, Headquarter, U.P., Lucknow and Chief Engineer (Electrical), Public Works Department, Headquarter, U.P., Lucknow. In the aforesaid meeting, discussions were held in detail and a road-map was prepared to ensure that the destroyed files were restored / reconstructed expeditiously and the working of the State Law Office was made functional at the earliest.

(xii) The four member committee constituted by the learned Advocate General, U.P. requested for fund allocation for purchasing certain equipments, appliances and additional material necessary for facilitating reconstructions of paper book and facilitating proper functioning of the office of learned Advocate General, U.P., High Court, Allahabad vide letter dated 08.08.2022. In terms of the said letter, in order to ensure smooth functioning of the office of Advocate General, U.P. and also to ensure that no hindrance is caused in the smooth functioning of Hon'ble High Court, the aforesaid request for funds was made.

(xiii) On the request made by the committee (supra) financial arrangement in the form of a Budget totaling Rs. 1,98,30,000/- has been sanctioned and released in favour of Government Advocate, High Court, Allahabad on 11.08.2022 to facilitate the process of reconstruction of files and to meet the expense thereof. The request made by learned Government Advocate, High Court, Allahabad was for ten (10) Photostat copy machines and while these would be purchased from the main sanctioned budget, the district administration has arranged for immediate supply of four (4) Photostat machines, which have been installed in

the premises of office of Advocate General, U.P., High Court, Allahabad.

(xiv) In order to ensure availability of instructions, particularly in Bail Applications, vide letter of Additional Director General of Police (Prosecution), U.P., Lucknow dated 11.08.2022 all the Joint Directors (Prosecution) of the State of U.P. stationed at respective districts have been directed to coordinate with the learned Government Advocate and ensure availability of instructions.

(xv) By means of letter of Additional Chief Secretary (Home), Government of U.P., the Director General of Police, U.P., the Divisional Commissioners, all the District Magistrate and all Senior Superintendent of Police/ Superintendent of Police have been directed to nominate Nodal Officer and Additional Nodal Officers in all the Districts who are required to coordinate with the office of the learned Government Advocate, High Court, Allahabad and the concerned Police Stations in order to facilitate the reconstruction of files which have been destroyed in the Fire Outbreak on 17.07.2022.

(xvi) Vide Government Order dated 16.08.2022, the Principal Secretary, Law, Government of U.P. had issued directions to all the Additional Chief Secretaries, Principal Secretaries of the Department of Government of U.P., Divisional Commissioners and District Magistrate have been required to coordinate with the learned Chief Standing Counsels of Government of U.P. at Allahabad and ensure reconstruction of paper book which have been destroyed in the Fire incident occurred on 17.07.2022 in the Office of

learned Advocate General, U.P., High Court, Allahabad.

(xvii) Vide Government Order dated 16.08.2022 the Principal Secretary, Law, Government of U.P. had issued directions to the Commissioners of Police, All Senior Superintendent of Police / Superintendent of Police of all the Districts to ensure the reconstruction of Paper Book of all criminal cases pending before the Hon'ble High Court at Allahabad by facilitating the coordination between the respective police stations and the Office of the Government Advocate at Allahabad with further note of caution that the aforesaid exercise should be strictly adhered and expedited.

(xviii) Vide Government Order dated 16.08.2022 issued by the Principal Secretary (Law), Government of U.P., Lucknow to the Additional Chief Secretary/Principal Secretary, P.W.D., Government of U.P., Lucknow in order to renovation of the building as soon as possible, a meeting was convened by the State Government under the Chairmanship of Principal Secretary (Law), Government of U.P., Lucknow on 10.08.2022 wherein learned Government Advocate, High Court, Allahabad, Secretary, Department of Home, State of U.P., Chief Engineer, Electricity and Civil, Public Works Department and Additional Director General of Prosecution U.P. Lucknow participated and consequent to this meeting the minutes of meeting was released on 11.08.2022 in order to complete necessary steps and measures decided in the aforesaid meeting.

(xix) On the request of State Government / learned Government Advocate, High Court, Allahabad, the Hon'ble High Court has been pleased to provide the copy through

the Registrar (J) (Criminal), High Court, Allahabad for reconstruction of lost files, in furtherance thereto learned Government Advocate has deputed the persons for receiving the paper books and do the needful.

*(xx) **In order to ensure that no financial burden is put on the learned advocate and being aware of their problems, the State has taken a decision to bear all expenses for the reconstruction of the destroyed files.***

(xxi) In order to facilitate smooth working of the Courts and to make public list of the files which are under reconstruction, the office of Learned Advocate General, U.P. is working on preparation of the list of destroyed files which will be published for the public and the learned advocates through the Bar Association and Advocate Association and the same shall be issued / published shortly.

On the strength of aforesaid facts, main substratum of argument of learned Government Advocate is that since at the initial stage there were different views over getting the record reconstructed, so it took some time to decide the correct course of action. Now a Four Members Committee as mentioned above are making every possible efforts to make sure that no inconvenience is caused in the Court functioning. It is further submitted that state is very serious about the issues relating to incident dated 17.07.2022 and committed to ensure the smooth functioning of the Courts. The Principal Secretary (law) / Legal Remembrance is also

extending full support and taking much pain in getting the decisions taken by the committed executed. Several directions have been issued by him to the authorities concerned for the betterment of smooth functioning. It is also submitted that pursuant to the order of this Court dated 16.08.2022, State Government has taken a decision to bear all expenses for reconstruction of destroyed files and additional burden of expenses of reconstruction of records shall not be put on the lawyers and the litigants. It is pointed out that for facilitating the process of reconstruction of records and to meet the expenses thereof a budget of Rs. 1,98,30,000/- has also been sanctioned and released in favour of Government Advocate, High Court, Allahabad. Decision has also been taken to purchase ten photocopier machines from the sanctioned budget. Considering the urgent need as observed in the order of this Court dated 16.08.2022, four photocopier machines has been immediately installed in the premises of office of the Advocate General at Allahabad for the purpose of reconstruction of record, which has started working. Photostat of the records will be done free of cost. It has also been assured by the learned Government Advocate that list of cases which have been reduced to ashes or destroyed will also be issued/published and copy of the same shall also be provided to the Bar Association, so that there may not be any confusion amongst the members of the bar. Lastly it is submitted that best possible efforts are being made to restore the functioning of the State office and to ensure that the files/instructions are available in the Courts. The

indefatigable endeavour will continue to ensure that proper and satisfactory working is restored as expeditiously as humanly possible.

In view of the above, this Court is satisfied with the speedy steps taken by the State Government pursuant to the order of this Court dated 16.8.2022 for reconstruction of records and also the decision taken by the State government that the additional burden of expenses of reconstruction of records shall not be put on the lawyers and the litigants.

On behalf of the State, the sincere and tireless efforts made by Mr. Pramod Kumar Srivastava-II, Principal Secretary (law) / Legal Remembrancer, State of U.P. and assistance rendered by Mr. Radhey Mohan Srivastava, Special Secretary / Additional Legal Remembrancer in this regard are also highly commendable.

This Court hope and trust that the State Government will leave no stone unturned to complete this task and to restore the normal functioning in the state office at Allahabad at the earliest.

The Commissioner, Prayagraj Zone, Prayagraj and the District Magistrate, Prayagraj who are administrative head of the District-Prayagraj shall also extend full cooperation in true sense in getting the decisions taken by the committee executed on their part.

Put up this matter on 23.08.2022 as fresh before the appropriate Bench for hearing of this case on merits.

Dated: 18.8.2022

Ishrat