

Rustom Cowasjee Cooper

Vs

Union of India

Civil Misc. Petition No. 1195 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

05.05.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. This petition is an off-shoot of the decision of this Court on the constitutional validity of the Banking Companies (Acquisition of Transfer of Undertakings) Act, being Act 22 of 1969. By a majority of ten Judges against one, this Court declared the Act to be unconstitutional. The decision of the Court was given on February 10, 1970.

2. On February 13, 1970 a, meeting was organised by the Blitz National Forum at Vithalbhai Patel House at Delhi. It was presided over by Mr. Mohan Kumarmanglam, an Advocate of this Court. According to the news items published the next day in the 'Hindustan Times', the 'Times of India' and the 'Patriot', a number of persons spoke about the Act and the decision of this Court upon it. Among the speakers were Mr. R. K. Khadilkar, Minister in the Ministry of Finance, Mr. A. S. R. Chari, Mr. Kumarmanglam, Mr. Prabhatkar, Mr. S. M. Joshi, M.P., Mr. Bhupesh Gupta, M.P. and Mr. V. K. Krishna Menon, M.P. These speakers criticised the decision. Mr. R. K. Khadilkar, the 'Hindustan Times' reporter, said that such decisions 'do not enhance the prestige of the judiciary', that such acts on the part of the highest Court 'will only encourage Naxalites who have rejected constitutional means to bring about socialism' and that the judgment would be treated with 'more and more contempt by ordinary people'. He observed that the situation would be rectified by Parliament because ten Judges 'sitting in an ivory tower could not sit over the verdict of Parliament which represented the people'. 'The Times of India' report said that Mr. Khadilkar said that 'Government would soon bring forward an amending measure to offset the dangerous implications for social progress of the community of the Supreme Court judgment in the Bank Nationalisation case' that if necessary the issue whether Parliament or the Supreme Court was the final arbiter of the people's will should be referred to the people and a mandate taken from them, and quoted Pandit Nehru that it was never the intention of the Constitution to make the Supreme Court 'the third house of correction'. The 'Patriot' reported that 'attempts to utilise community savings lying in banks for the welfare of the common man have been blocked by the judiciary', that 'the Supreme Court could not be accepted as the third chamber of Legislature', that he did not 'want to threaten the judiciary' but Parliament would have 'to take steps to respect the feelings of the people for stabilising democracy'. Mr. Khadilkar also wished that the judiciary would take note 'of the changing situation and helped to transform the society for the benefit of the common man'. The three reports also described what the other speakers had said at the meeting.

3. On February 26, 1970, two petitioners (Mr. Krishna Rao Kaushik, M.P. and Lt. Col. H. R. Pasricha), swore an information based on the news paper reports (with copies annexed) that a

serious contempt of this Court was committed by Mr. R. K. Khadilkar inasmuch as his speech had a clear tendency to affect the dignity and prestige of this Court and there was danger of grave mischief in the administration of justice and the confidence of the whole community in the administration of justice was bound to be undermined. Two affidavits sworn in support were based on the newspaper reports.

4. As some of the alleged observations, particularly those reported in the 'Hindustan Times', prima facie exceeded the bounds of legitimate criticism, a notice was issued to Mr. Khadilkar to show cause why action should not be taken against him. In reply Mr. Khadilkar filed an affidavit denying the main allegations. He stated in his affidavits as follows :

"I am a firm believer in the independence of judiciary as an integral part of our democratic polity. I am in entire agreement with the sentiment expressed in Para 1 of the petition, viz., that the dignity of the Hon'ble Supreme Court must be maintained and the administration of justice should not be allowed to be undermined in this country. I have a deep faith in the social and economic objective of our Constitution as enshrined in the directive Principles of the Constitution and the democratic and constitutional methods of achieving them. Indeed, by oath of office, I am duty bound to uphold these objective of our Constitution."

In reply to the specific charge of making statements tending to vilify the Judges and to bring the administration of justice into hatred and contempt, Mr. Khadilkar denied having made the statement attributed to him by the 'Patriot' 'that attempts to utilise community savings in the banks for the welfare of the common man had been blocked by the judiciary' and the statements attributed to him by the 'Hindustan Times' to the affect that :

(a) The majority decision in the Bank case 'did not enhance the prestige of the judiciary'.

(b) Supreme Court judgment would be treated with 'more and more contempt by ordinary people'.

(c) The judiciary has persistently failed to interpret the Constitution and remained static.

(d) Ten Judges sitting in ivory tower could not sit in judgment over verdict of Parliament which represented the people."

He asserted that he had said :

"..... 'no aspersions should be cast on the judiciary and even though the decision had far-reaching consequences. I pointed out, that the judgment was cautiously worded and the learned Judges had not challenged the authority of Parliament to bring forward a measure of nationalisation."

He claimed to have added :

"No desire to cast aspersions on the judiciary and would very much like to see its prestige remained high and its image untarnished. We cannot, however, avoid pointing out wherein according to us the decision is erroneous primarily by reason of

its consequences for attempts at social reform."

He examined what he had said by recalling his speech. It is not necessary to quote his version. He complained that the newspapers had picked out ideas but put them in their own words and that it was not always possible to contradict the newspapers. He expressed his views on the institution of property as a fundamental right to which it is not necessary to refer here. He concluded by saying :

"I may also state that in my comments on the Bank Judgment, no improper motives were attached to the Hon'ble Judges. There was no malice either against the Hon'ble Judges or the institution of Supreme Court, the independence of which I honestly cherish."

In support of his own affidavit, Mr. Khadilkar exhibited affidavits from Messrs. Mohan Kumarmanglam, A. S. R. Chari and S. M. Joshi. In these affidavits (which are ipsissima verb support was given to the denials of Mr. Khadilkar).

5. At an earlier hearing, the petitioners promised to file affidavits of reporters, etc. present at the meeting. At the resumed hearing no affidavits were filed on the ground that the journalists following their code of conduct did not wish to file any material unasked and request was, therefore, made to summon them in the interest of justice. We did not think it necessary to prolong the hearing of the case as on the material before us there was nothing to contradict the affidavits which deny the accuracy of the newspaper reports. We accordingly closed the case for orders.

6. There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves in possession of all truth or hold that wherever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a Judge but because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. Further the supremacy of a Legislature under a written Constitution is only within what is within its power but what is within its power and what is not, when any specific act is challenged, it is for the courts to say. If that were realised much of the misunderstanding would be avoided and the organs of Government would function truly in their own spheres. We are constrained to say also that while fair and temperate criticism of this Court or any other Court even if strong, may not be actionable, attributing improper motives, or tending to bring Judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of Courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. We think this will be enough caution to persons embarking on the path of criticism. With these words we order the papers to be filed.

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