

Shri Baradakanta Mishra Ex-Commissioner of Endowments

Vs

Shri Bhimsen Dixit

Criminal Appeal No. 312 of 1971

(J. M. Shelat, S. N. Dwivedi, Y. V. Chandrachud JJ)

29.09.1972

JUDGMENT

DWIVEDI, J. -

1. The appellant is a member of the Superior Judicial Service of the State of Orissa. He was at one time officiating as District Judge. At the relevant time he was functioning as Commissioner of Hindu Religious Endowments, Orissa. The office of the Commissioner is created by the Orissa Hindu Religious Endowments Act.

2. In village Sanabagalpur there are two deities. The Additional Assistant Commissioner of Hindu Religious Endowments took action under Section 27 of the said Act for appointing an interim trustee of the deities. The person incharge of the deities made an objection under Section 41 of the said Act that the Act did not apply as the deities were consecrated under a private endowment made by him. The Additional Assistant Commissioner rejected the objection by his order, dated July 26, 1967. Without making any inquiry under Section 41 he held that prima facie there was a public endowment. He did not appoint the objector as a trustee of the deities. The objector filed a revision under Section 9 of the said Act before the appellant.

3. During the period intervening between the rejection of the objection by the Additional Assistant Commissioner and the filing of the revision by the objector, the identical issue was raised before the Orissa High Court in Bhramarbar Santra and Others v. State Orissa and Others. (ILR 1970 Cut 54) In that case the High Court held that the Assistant Commissioner cannot appoint an interim trustee under Section 27 of the said Act until he has held an inquiry under Section 41 and has found that there was no hereditary trustee of the religious institution.

4. At the hearing of the revision, the aforesaid decision was cited before the appellant by the applicant. After hearing the parties, the appellant made the following order :

"1 It is said on behalf of the petitioner that he has filed a petition under Section 41 of the Act. But no evidence is produced to that effect, thereby disclosing that their plea is humbug. The next argument is that the learned Assistant Commissioner should have first decided that the institution has no hereditary trustee. The Assistant Commissioner has impliedly done so.

2. The next argument that without a final declaration as to the nature of the institution, no appointment under Section 27 can be made, does not seem to be correct. The decision in the High Court on Bantala case would not be applicable to this instance. Further against the

order, we have moved the Supreme Court, and as such, the matter can be safely deemed to be sub judice.

3. In order to establish that the petitioner is the hereditary trustee, he has to file an application under Section 41 of the Act. No doubt the court can initiate such a proceeding. But we should not do it where the institution appears to be safely a public one, in this instance, a Siva temple."

5. The applicant filed a writ petition in the High Court against this order. The Division Bench, on hearing the applicant, issued notice for contempt of the High Court to the appellant. The High Court took exception to the following sentence occurring at the end of Paragraph 2 in his order :

"Further, against the order we have moved Supreme Court, and as such, the matter can be safely deemed to be sub judice."

6. The appellant appeared before the High Court in response to the notice. According to him the apparently objectionable sentence in his order "was not at all the basis for (his) decision". He said that the revision was dismissed by him after distinguishing the case before him from the facts of Bhramarbar Santra case (supra). He further pleaded "that under the Constitution the decisions of the Supreme Court are law of the land. So I bona fide, was of the opinion that when a matter is under appeal, or otherwise before the Supreme Court, the point of law, becomes sub judice and only a decision of the Supreme Court in the matter, would be binding on the Subordinate Court". It was also pleaded that the proceeding before him was an administrative proceeding and that the act of not following the decision of the High Court in such a proceeding "may not amount to contempt of court".

7. The High Court did not accept his pleas in justification. It was held that the appellant "refused to follow" the decision in Bhramarbar Santra case (supra). The High Court further held that "we do not find any trace of bona fides of the contemner in the order, dated January 19, 1970 The contemner is a senior judicial officer who has already put in 23 years of service; having been recruited as a Munsif he has now risen to the rank of District Judge. We regret to find that though he has functioned as a judicial official for about 23 years he has not been able to pick up the approach and attitude of a judicial officer and has actuated by the boas so often manifested in actions of the executive today while disposing of a judicial proceeding and when found fault with has come up with the stand that he was acting administratively."

8. After examining the matter further the High Court said : "The conduct of the contemner far from being bona fide is clearly mala fide one and he intencionally avoided to follow the decision of this Court by advancing grounds which were most inappropriate". On that view of the matter the High Court found him guilty of contempt of court and admonished him in open court and directed him to pay Rs. 300/- as costs of the proceedings.

9. Shri Daphtary, counsel for the appellant, rightly did not seek to support the justificatory pleas. His argument now is that the appellant is not guilty of Contempt of Court, for the sentence in the appellant's order, found objectionable by the High Court, neither interferes with the administration of justice nor scandalises the High Court.

10. Shri Daphtary as well as the Solicitor-General appearing for the State have stated before us that there is no decided case either in support of or against the argument. But the absence of a precedent

should not preclude an act being held to be contempt merely because it is novel or unusual provided it is comprehended by the principles underlying the law of Contempt of Court. The absence of precedent should however put the court on guard that the area of contempt is not being unduly expanded (Vide 17 Corpus Juris Secundum 21). The present case then is to be decided on principles and analogy.

11. Contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. [Vide 17 Corpus Juris Secundum pages 5 and 6; Contempt by Edward N. Dangel (1939 Edn.), page 14, Oswald's Contempt of Court (1910 Edn.), pages 5 and 6].

12. It is a common place that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and jeopardise the preservation of law and order. The appellant's case is to be examined in the light of the foregoing principles and analogy.

13. The remark in the appellant's order found objectionable by the High Court is this : "Further, against the order we have moved the Supreme Court, and as such the matter can be safely deemed to be sub judice". It may be observed that on the date of the order nothing was pending in the Supreme Court; only a petition was pending in the High Court for a certificate to appeal to the Supreme Court from the decision in Bhramarbar Santra case (supra). The appellant has thus made a wrong statement of fact. Secondly, the use of the personal pronoun "We" is also significant. It indicates that the appellant identified himself as a litigant in the case and did not observe due detachment and decorum as a quasi-judicial authority. Lastly, we agree with the High Court that it is not possible to believe that the appellant could have entertained the view that as soon as a petition for certificate to appeal to the Supreme Court was filed in the High Court against its decision, the binding character of the decision disappeared. He has had 23 years' judicial experience and he could scarcely entertain that belief. We agree with the High Court that the appellant deliberately avoided to follow its decision by giving wrong and illegitimate reasons and that his conduct was "clearly mala fide".

14. Under Article 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi-judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court. Accordingly the decisions of the High Court were binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons. In East India Commercial Co., Ltd. Calcutta and Another v. The Collector of Customs, Calcutta. ((1963) 3 SCR 338 at 366 : AIR 1962 SC 1893) Subba Rao, J., observed :

"The Division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under Section 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all courts and

tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

15. The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law.

16. Our view that a deliberate and a mala fide conduct of not following binding precedent of the High Court is contumacious does not unduly enlarge the domain of contempt. It would not stifle a bona fide act of distinguishing the binding of precedent, even though it may turn out to be mistaken.

17. As a result of the foregoing discussion, we think that the High Court has rightly found the appellant guilty of contempt. So we dismiss the appeal.

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