SUPREME COURT OF INDIA

Union of India

Vs.

Satish Chandra Sharma

C.A.No.2031 of 1979

(V. R. Krishna Iyer and R. S. Pathak, JJ.)

30.11.1979

JUDGEMENT

KRISHNA IYER, J.:-

1. An odd case of sentence of three months' civil imprisonment and attachment of assets of the Centrl Government and two of its officers for default in instant reinstatement of a Railway Inspector removed from service for misconduct occasions this appeal by special leave.

2. The Court system is neither a cloistered virtue nor a self-righteous process and readily re-examines, in the appellate crucible, the judgments rendered at lesser levels even if the subject matter be, as here, alleged disobedience of a judicial order. Justice is not hubristic and truth triumphs by self-criticism. And so, this court, in keeping with such an invigilative perspective, must review the punitive directive of the trial court, affirmed up to the High Court but challenged before us, that the Union of India and its officers in the Railway Department - the appellants - do suffer distraint of property and imprisonment of person for the contempt of its authority by non-compliance with its order of injunction. This case disturbs us somewhat and constrains us to go to the basics in a certain

branch of the jurisprudence of contempt of court.

3. As will presently appear, the synthesis of two seemingly antithetical creeds, both vital to our Republic and powerfully projected by this appeal is the key to the crucial issue where disobedience of a mandatory injunction to retain in service, pendente lite, the respondent, a railway inspector, regardless of the disciplinary proceedings which had by then allegedly culminated in his exit from service (sic). The court shall neither be imperious nor be obsequious. The law, in the area of contempt of court, must avoid the extremes of hyperreactivity to marginal indifference to judicial authority out of pragmatic difficulties and of hypo-respect for court commands in a cavalier spirit of 'the court has no guns. Why care?'

4. The fluid, yet valid, concept of 'contempt of court' Keeps judges under the rule of law; for, personal liberty, under our constitutional order, is protected by a processual armour, even if its deprivation be the product of the judicial process. This caveat is called for in the present case where we are confronted by a bizarre order of contingent imprisonment of unspecified servants and coercive attachment of unparticularised properties of the Union of India. And yet, this order has survived two appeals before arriving here by special leave.

5. The facts are few and the law is not abstruse; yet, in our view, the order under appeal is an overzealous command with fatal failings writ on its face. The respondent, an Inspector in theWestern Railway, was proceeded against for misconduct. He did not show up when the 'show cause' notice was issued; and when the disciplinary steps proceeded further, he artfully rushed to the munsif's court, bypassing the departmental process, and sued for a declaration of immunity and permanent injunction against further govermental action. Inevitably, he moved for an ad interim injuction to restrain the Railways from affecting his position in service by continuing the disciplinary enquiry and to continue to pay his full salary. After hearing both sides the court issued, on April 15, 1974, such an injunction or freeze order, which was appealed against in vain; and eventually, the revision to the High court also proved fruitless. The blanket order, which was sustained, reads thus:

I, therefore, order and direct the N.A. Union of India and its employees not to implement or otherwise put in effect the order of dismissal at 18-1-74 or any other one removing, terminating or dismissing the services of the applicant as I.O.W. of Western Railways and direct further that the applicant shall be retained and continued on post, power, pay, privileges and perquisites attached to the post of Inspector of works, W. Rly. and in the same manner as if no orders of removal or any other one were passed.

In other words he shall be placed in the position as he held it on 14-1-1975 in the matter of pay, power, privileges and all other perquisites that he availed and enjoyed on 14-1-1974 and immidiately before.

The appellants, hopefully but harmfully, as events proved, awaited the decision in the higher courts before implementing the direction for re-instatement. But even while the case of injunction was pending in the District Court, in appeal, an application under 0, 39, R. 2 (3) for disobedience was filed on 15-7-1974. The trial Judge held the appellant guilty and passed a nebulous sentence against nameless culprits on Janury 5, 1976 in these terms:

It is also clear that the non-applicants according to the decision of this court dated 15-4-74 have not continued payment of the wages and other allowances and therefore it fully proved that the non-applicants have not carried out the order dated 15-4-74 of this Court. Now the non-applicants are hereby further ordered that if they fail to comply with the order dated 15-4-74 within 15 days the opposite party shall be visited with the order of attachment of property and sending them to civil jail. As the non-applicant No. 2 has been transferred from Kota Dvision, therefore, the compliance of the order will be made by the present Divisional Superintendent, Kota.

(Translation furnished in court by the learned Solicitor General.)

An unsuccessful appeal and an unrewarding revision ensued. The High Court hortatively told the Union of India that the law is the king of kings and, admonished in high-sounding style

that the State functionaries should at least after 28 years of the functioning of the Constitution and rule of law in this country, realise, understand and literally and faithfully implement the judicial pronouncement by showing respect to law. All the officers, the citizens in general, the litigants and the State functionaries in all seriousness should keep the following eternal saying of the greal jurist Maharshi Manu as uppermost in our mind, i.e. 'Law is the King of Kings --far more rigid and powerful than they, there is nothing higher than law; and by its powers the weak shall prevail over the strong and justice shall triumph'. I wish this should not only be exhibited as the guidelines in all Government offices, important public institutions, street, corners and road corners but acts upon both in letter and spirit by all irrespective of the office, profession, status and assignment which one holds in life.We agree but wish to add that the Manu text be exhibited also in court-halls together with Cromwell's famous statement which the great Judge, Learned Hand wanted should be hung on legislative and court halls: 'I beseech you, in the bowels of Christ, think it possible that you might be mistaken!'

6. If we scan the anatomey of the Munsif's order, which was upheld all along, we notice awesome implications that if, within 15 days, compliance with the injunction did not take palce--which implied payment of long years' salaries and re-induction into service of the respondent (who had by then been removed), all of which required much more time to secure sanctions and drawals of moneys in a mammoth hierarchical machine-the oppisite parties (who, among them?) shall be visited with the order of attachment of property (which?) and sending them (whom?) to civil jail (for how long?). As the non-applicant No 2. has been transferred from Kota Division therefore, the

compliance of the order will be made by the present Divisional Superintendent, Kota (and so, the transferee officer was in peril of imprisonment?). The braketed interrogations are ours, briefly to indicate that where liberty and property are to be deprived it is fundamental that vagueness is a fatal vice even if the issuing authority be the court. The infirmity was corrected in small part by the High Court in revision as we will presently notice.

7. Anyway, this order was stayed by the High Court on 5-3-1976 until it finally dismissed the revision on January 20, 1979. And it is the appellant's case that salaries thereafter have been paid, calculations have been made, sanctions obtained and moneys withdrawn and all the dues of years are ready to be disbursed. The question is whether the action for disobedience was legal and justified, and, in any case, the draconian punishment of Government by attaching its properties and putting its servants in jail was a desertion of judicial discretion whose hall-mark is to be firm but not authoritarian, liberal but not petulant, and ever informed by realism and impressed with contrition.

8. We have here an interlocutory injunction, though unusual, whose soundness is being tested in a separate proceeding in this court,. Let us, pro tempore, assume its valid existence and focus on the follow-up of alleged breach and visitation of punishment. What was the direction? Could it be practical to comply within that time, having due regard to the inertia of administrative proceses? Was there recusant refusal, and, if so, by whom, in the conspectus of facts here? When does the court go to the extreme of imprisonment of Government servants at lesser levels, who have to act on orders from above, for disobedience? It is the path of judicial discretion to temper justice with mercy or practise the opposite? Above all, though arising in limine, can there be an order of contingent attachment of unspecified properties? Can the Court imprison any one unidentified in the order by making an omnibus direction leaving the life-giving parts blank to be filled up long after the judgment and, perhaps, to allow the bailiff to sieze whom he regards as the violator? Maybe, 'Hurry Kills' and 'hasten slowly' are mottos good for everyone who exercises power either at the wheel of an automobile or through the pen of a public functionary.

9. We will proceed to resolve these questions which enbosom their answers in their very formulation. For instance, does not the mere asking call for the obvious answer that no order by however high a power can be fair or reasonable if it jeopardises the person of a citizen wearing the armour of Part III, without so much as specification the identity of the human being upon whom the authority is to lay hands. And yet, the learned Munsif merely directed that 'the opposite party' (a plurality of three, including the Central Government) be sent to civil jail. Moreover, the order notices that the Divisonal Superintendent (P. 2) has been transferred and yet the innocent tranferee is put in peril of incarceration. Realising this fatal flaw, the High Court sought to repair the yawning tear by making the following observation-cum-direction:

The learned Munsif Magistrate, who passed the earlier order on January 5, 1976 could not proceed with the proceedings for sending the petitioners concerned to Civil Jail and also of attachment of the property. It would be for the Munsif concerned to name the officer concerned who is required to be

sent to Jail and further to give details of the property to be attached for the purpose of compelling compliance as per finding already given in judgment dated January 5, 1976 as modified in appeal. (emphasis added) The court was relentless even when informed that the payment of salary pursuant to the order passed by the High Court had already been made. The concluding portion of the High Court's judgment stated that the Munsif concerned should take prompt action "for executing his order in respect of sending disobeying officers to jail and the attachment of the property concerned as mentioned in his judgment....." Both the orders keep the identity of the key persons and properties in uncertainty.

10. We are a little startled that a court in the contempt jurisdiction should deprive the personal liberty of a person without naming in the order whom the court's bailiff should take into custody or the jail authorities should receive. Equally clearly, how could property be taken without its being particularised in the judgment, disregarding procedural obligations? It is not as if without hearing the officer to be jailed and his case against detention considered, the Munsif gave ad hoc details of property to be attached without hearing the owner thereof as to his version about why his property should not be touched. The constitutional sanctity of liberty and the (then) protection of property will become chimerical and the processual law will hang limp if the substantive order is silent and identifying the offender is left over as a ministerial measure. The High Court was in error in leaving it to the trial court to designate such names when it actually issued the ministerial order to execute its decretal order. Nameless humans cannot be whisked off to prison even in the name of contempt by insertion of the name after the judgment is delivered. Natural justice is a pervasive doctrine integral to processual fairplay in Indian jurisprudence. For this reason alone, the extant order under challenge is vulnerable against both the attachment of unspecified property and detention of unnamed contemners.

11. Independently of this invalidatory circumstance, it is apparent that there is no ground for judicial indignation once the facts are appreciated in their realistic setting. The order of injunction was made by the trial court on 15-4-74 and brought before the High court where the revision petition was dismissed on 3-1-1979. Strictly speaking, the order of injunction had not been stayed and should have been obeyed. It is no excuse to say that when appeal and revision pend, litigative hopes lull people into insuouciance. While this is not prudent, it is component in judging about obstinate non-compliance. To institute a proceeding for disobedience of an injunction commanding reinstatement of a Government servant purportedly removed from service by the higher officers of the Railway, together with payment of salary for prior periods, is a stultification of the jurisdiction, if sufficient time is not given. A little touch of realism would have easily convinced the High Court that a Government servant of the Union of India who had been removed from service for miscouduct could not be reinstated with full back pay immediately the order was made by the Court. It had to be communicated to various officers, orders had to be made at various levels, files had to move and notings made for gestation before implementation. All this takes time and when the court order is eventually effectuated, the salary of the officer will, of course, have to be paidwith effect from the original date of the impugned threat of action.To proceed to punish in haste without pausing to realise how government functions is not fair in this drastic jurisdiction where personal freedom is in peril. The description of its processes, as prevalent in the days of Lord Curzon, holds good today. Here are his impatient words dipped in pungent ink:

".....the administration had become ponderous like an elephhant--'very stately, very powerful, with a high standard of intelligence, but with a regal slowness in its gait'".*

* Curzon, Cited in Earl of Ronaldshay, Life of Lord Curzosn London 1928 Vol. 2 p. 64

"Round and round, like the diurnal revolution of the earth, went the file, stately, solemn, sure and slow: and now, in due season, it has completed its orbit, and I am invited to register the concluding stage."**

** Curzon to Hamilton, 21 Feb. 1901

We are in no mood to condone wilful procrastination nor suffer wanton stagnation in Administration as a ground for default in obeying court orders. The law does not respect lazy bossess not 'cheeky' evaders. But no proof of that species of guilt has been brought to our notice. Mere inaction has no long mileage where mens rea is a sine qua non.

12. We, therefore, regard the court's order, holding the appellants in contempt, a hasty measure probably annoyed by absence of instant compliance.

13. The severity of the sentence is beyond comprehension. We cannot understand how the court could ignore the fact that salary had been paid from the date of the High Court's order up to date and the readiness to pay the back salaries, on securing the appropriate sanction and drawal of cheque, had been represented to the court, Before us, the learned Solicitor General said that the entire back wages were ready to be paid and the necessary cheque had already been drawn. We see no inclination on the part of the Government of India to adopt a challenging attitude against the court's writ. It is well-known that the contempt power should be kept sheathed and the sword should be drawn only sparingly if the court is convinced that there has been wilful defiance of disobedience. Moderation lends dignity to power and we feel that the facts of the present case far from call for any stronger step that an admonition to comply within a realistic spell of time and stiffer action thereafter. We do not take the view that the Union of India should be shown undue indulgence or its officers singular solicitude. But once there is clear evidence of active obedience, coupled with expression of regret, delayed though the compliance be due to the enevitable time-lag induced by paperlogged procedures, the court may be clement. Here, compliance and contrition are now present.

14. In these circumstances, we allow the appeal and record the undertaking of the Union of India, the 1st appellant, that the entire salary due to the respondent will be paid within one week from today.

Appeal allowed.