

Union of India and Others

Vs

Mario Cabral E SA

Criminal Appeal No. 706 of 1980 and Special Leave Petitions (Criminal) Nos. 155-156 of 1981

(A.P. Sen, Baharul Islam JJ)

10.12.1981

JUDGMENT

SEN, J. -

1. This appeal under Section 19(1) of the Contempt of Courts Act, 1971 (for short 'the Act'), and the connected special leave petitions are directed against two orders passed by the Additional Judicial Commissioner, Goa, Daman & Diu, on October 10 and 17, 1980 by which he directed that the Government of Goa, Daman & Diu should issue accreditation to the respondent within seven days, i.e., by October 17, 1980, later extended by a day and that the Administrator and the Acting Chief Secretary be impleaded to the contempt proceedings and they be issued notices to show cause for contempt. It is somewhat unfortunate that the case should have taken this turn. We feel that the learned Additional Judicial Commissioner should have acted with greater circumspection. The whole controversy before the learned Additional Judicial Commissioner turned on the question whether or not prior residence was a pre-condition for the issue of accreditation, under Rule 2(1) of Section II of the Rules for Accreditation, under Rule 2(1) of Section II of the Rules Accreditation of Press Correspondents and News Agencies (for short 'the Rules'), in the writ petition filed by the respondent, but the question was left undetermined. Rule 2 of Section II of the Rules is as follows :

2. The correspondent of a newspaper, news agency, etc., should fulfil the following conditions for accreditation :

(1) His residence should be at the headquarters of the Government of Goa, Daman & Diu during his period of accreditation.

(2) His full-time occupation should be the profession of journalism.

(3) At the time of application he should have spent not less than three consecutive years in the profession of journalism and/or should be a person of sufficient experience and standing to be able to discharge his duties in a competent responsible manner.

The learned Additional Judicial Commissioner instead of dealing with the question relating to the construction of Rule 2(1) of Section II of the Rules, has unnecessarily raised the spectre of supposed contempt upon the wrongful assumption that there was breach of an undertaking by the Administrator and the Acting Chief Secretary, and wilful disobedience of a lawful direction made by him in the matter of accreditation which lowered the dignity of the court and was calculated to show disrespect to his authority.

2. In order to bring the point in controversy, it is necessary to state a few facts. The respondent Mario Cabral e Sa, a professional journalist, applied for grant of accreditation to the Government of Goa, Daman & Diu, under Rule 2 of Section II of the Rules. It appears that the Accreditation Committee had recommended the grant, but the Government of Goa, Daman & Diu declined the recommendation. The decision of the Government was conveyed to the respondent by a letter dated April 27, 1979 of the Director of Information and Public Relations, Department of Information, Panaji, Goa, informing him that the Government could not allow his application for accreditation since it did not fulfil the requirements of Rule 2(1) of Section II of the Rules.

3. As the Government declined the grant of accreditation, the respondent filed an application under Article 226 of the Constitution before the Court of Judicial Commissioner, Goa, Daman & Diu, for the issue of a writ in the nature of mandamus or an appropriate writ, direction or order in the matter of grant of accreditation. The matter came up for hearing before the learned Additional Judicial Commissioner on April 29, 1980, when he made the following order :

Mr Dias, learned Government Advocate undertakes to advise the Government that accreditation will be issued to the petitioner on condition that he should be at the headquarters of the Government of Goa, Daman & Diu, during his period of accreditation as per Rule 2(1) of Section II of the Rules for Accreditation to Press Correspondents representing Indian Newspapers and News Agencies.

In view of the above assurance furnished on behalf of Government, this Special Civil Application is disposed of accordingly but without costs.

4. On June 9, 1980, the respondent moved the learned Additional Judicial Commissioner for taking action under the Contempt of Courts Act, 1971, against the Union of India, Government of Goa, Daman & Diu, Director of Information and Public Relations, and four others, who are members of the Accreditation Committee, i.e., respondents 1 to 7 therein, for breach of the undertaking given, and thereupon the learned Additional Judicial Commissioner issued show-cause notices. The application was based on the premise that there was an enforceable order. On August 16, 1980, the Director of Information and Public Relations filed a counter-affidavit showing cause. It was stated that the Government had been advised that accreditation and residence of the respondent at Panaji must be simultaneous, and therefore, he had, by his letter dated July 21, 1980, asked the respondent to advise the Government whether he was residing at the headquarters of the Government of Goa, Daman and Diu at Panaji and let him know his address to enable the Government to take further action on his request for grant of accreditation. It then went on to say that the respondent by his reply dated July 24, 1980, stated that he was not residing at Panaji, the headquarters of the Government. It was said that the letter had been addressed to the respondent 'in order to avoid proceedings to cancel his accreditation in the event it is found that he does not reside in Panaji'. Incidentally, the respondent resides at Piedade, an island off the coast, seven kilometers from Panaji. The Government has allotted land to accredited Press Correspondents to build residential houses at Sangolda belonging to the Comunidade of Sangolda, a suburb of Panaji, which, we are told, falls outside the headquarters of the Government of Panaji and is also about seven kilometers away. After the filing of the counter-affidavit by the Director of Information and Public Relations, the respondent filed a supplementary affidavit showing that the Government had not insisted upon prior residence as a pre-condition for the issue of accreditation in the case of some other Press Correspondents while granting accreditation. On September 22, 1980, the learned Government Advocate filed an application stating that the relevant file had been submitted to the Administrator but he was out of station, and 10 days' time be granted to the Government to enable it to obtain the

approval of the Administrator. The matter came up for hearing on October 1, 1980. On that day, Mr Dias, the learned Government Advocate, reported no instructions. There was no appearance by any other lawyer for the Government, and after hearing argument of the respondents, the learned Additional Judicial Commissioner reserved the case for orders. On October 3, 1980, Mr P. Mulgaonkar, Government Advocate, who was directed to appear in place of Mr Dias, made an application seeking an opportunity to make his submissions. The application came up for hearing on October 7, 1980, the prayer made by Mr Mulgaonkar was allowed and the parties were heard.

5. By order dated October 10, 1980, the learned Additional Judicial Commissioner held that prior residence was not a pre-condition for the issue of accreditation and accordingly directed that the Government of Goa, Daman & Diu should issue accreditation to the respondent within seven days from the date of the order, i.e., by October 17, 1980, and also made a direction for the production of the relevant files by the next date. On October 17, 1980, the learned Government Advocate moved an application stating that the Administrator had gone out of station, and, therefore, it was not possible for the Government to apprise him of the order of the court as to the issue of accreditation, and since no action was possible without a decision of the Administrator, who was expected to return to Goa that evening, the Government should be given reasonable time to deal with the matter. It was submitted that the accreditation files were in the custody of the learned Government Advocate and he would produce them along with other files as soon as they were made available to him, in compliance with the directions of the court. On the same day, the Government Advocate reported no instructions and withdrew from the case. Apparently, the Government must have instructed him to do so as the respondent had, in the meanwhile, on October 13, 1980, moved an application seeking to implead the Administrator and the Acting Chief Secretary as contemnors, on the allegation that they were the persons who had committed contempt. The learned Additional Judicial Commissioner by his order dated October 17, 1980, observed that 'it is now clear that none of the seven respondents seems to have played any part in the ultimate refusal of accreditation', presumably on the basis of the allegation of the respondent that even though the Council of Minister had cleared the file in his favour, he had reasons to believe that the Administrator at the instigation of the Acting Chief Secretary was seeking to frustrate compliance of the court's order dated April 29, 1980. He accordingly, directed issue of notices to the Administrator and the Acting Chief Secretary to show cause why they should not be committed for contempt. The reason given by the learned Additional Judicial Commissioner for taking this unusual step is :

... in order to decide who is the person who has committed the contempt of court it is necessary to implead the Administrator as well as the Chief Secretary as parties to the contempt petition when it is alleged that they are responsible.

The appellants were therefore constrained to make an application on October 18, 1980, under sub-section (3) of Section 19 of the Act to the learned Additional Judicial Commissioner for Suspension of the impugned orders dated October 10 and 17, 1980, to enable them to secure from this Court an order of stay in terms of sub-section (2) thereof. The learned Additional Judicial Commissioner by his order of October 21, 1980, however, rejected the application, observing that the words "from any order or decision of the High Court" appearing in sub-section (1) of Section 19 of the Act, 'do not take in its sweep' the impugned order in question, and, therefore, 'no appeal to the Supreme Court was competent'.

6. The question of maintainability of the appeal under Section 19(1) of the Act need not detain us for long. In *Purshotam Dass Goel v. B.S. Dhillon* ((1978) 3 SCR 510 : (1978) 2 SCC 370 : 1978 SCC (Cri) 195 : 1978 Cri LJ 772), this Court held that an order initiating proceedings for contempt

by a notice issued under Section 17 of the Act, is not appealable under Section 19 thereof. It was observed : (SCC p. 372, para 3)

In our considered judgment, an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemner and cannot be appealed against as a matter of right under Section 19. In a given case special leave may be granted under Article 136 of the Constitution from an order initiating the proceeding. But that is entirely a different matter....

In the present case, we have heard the parties on merits on the basis that the appeals are by special leave.

7. In support of the appeals, two contentions are advanced. In the first place, it is urged that the order passed by the learned Additional Judicial Commissioner on April 29, 1980, disposing of the writ petition on the basis of the undertaking given by the learned Government Advocate, contained no 'enforceable direction' and therefore, the failure of the Government to grant accreditation would not amount to contempt of the court. Secondly, it is urged that after the learned Additional Judicial Commissioner had held that there was no contempt committed by respondents 1 to 7, the application for contempt moved by the respondent did not survive and, therefore, there was no warrant or any material for the learned Additional Judicial Commissioner to go in search of new contemnors. It is said that the direction made by him for impleading the Administrator and the Acting Chief Secretary was wholly uncalled for. It is, therefore, submitted that the learned Additional Judicial Commissioner acted illegally in directing the Administrator and the Acting Chief Secretary to be impleaded as parties to the contempt proceedings and in issuing notices to them to show cause why they should not be committed for contempt of the court.

8. The appellants, in these appeals, have filed an affidavit of the Acting Chief Secretary, wherein it is asserted that though accreditation was refused to the respondent on the ground that he did not fulfil the requirements of Rule 2(1), because admittedly, he had no residence at the headquarters of the Government, nevertheless, the Government still had the inherent right to grant or refuse accreditation under Rule 4 of Section I of the Rules. In contesting the claim of the respondent, it is said that 'the profession of journalism is not his full-time occupation', that he is 'just a free-lancer' and that he 'does not possess sufficient experience and standing' to able to discharge his duties in a responsible manner. From the tenor of the affidavit, it is quite obvious that the respondent has incurred the displeasure of the powers that be.

9. Repelling the contentions, the respondent who appeared in person, argued the appeals with conspicuous ability. He took serious exception to the affidavit of the Acting Chief Secretary filed in the appeal, and urged that the refusal of accreditation to him being based on the sole ground that he did not fulfil the requirements of Rule 2(1) of Section II of the Rules, its validity must be judged by the reason so mentioned, and the Government cannot be allowed to supplement by other grounds in the shape of affidavit or otherwise. Our attention was drawn to various orders passed by the learned Additional Judicial Commissioner culminating in the issue of notice for contempt to the Administrator and the Acting Chief Secretary, to highlight that prior residence at the headquarters was not insisted upon in the past as a condition precedent to the grant of accreditation in the case of other correspondents and that nowhere in the three conditions set out in Rule 2 of Section II of the Rules, has it been stated that accreditation should not be given unless the Press Correspondent was residing at the headquarters at the time of issuing accreditation. It was, therefore, urged that the learned Government Advocates had rightly conceded that no such condition could be insisted upon

in the case of respondent.

10. It seems to us that the essential question is not whether the learned Additional Judicial Commissioner could issue a direction for the grant of accreditation under Rule 2 of Section II of the Rules in view of the fact that it is a matter of privilege and not of right, and in terms of Rule 4 of Section I of the Rules, the Government has the inherent right to grant or refuse the accreditation to any correspondent. Nor, it seems to us, is the question whether prior residence at the headquarters by a Press Correspondent cannot be insisted upon for grant of accreditation under Rule 2(1) of Section II of the Rules. On these question, we refrain from expressing any opinion. These are all matters to be dealt with in the writ petition. The fundamental question, we think, is whether there was wilful breach on the part of the appellants of an undertaking given to the court, or wilful disobedience to any order or direction by them so as to constitute 'civil contempt', as defined in Section 2(b) of the Act, or whether they committed an act which lowers or tends to lower the authority of any court so as to amount to 'criminal contempt', within the meaning of Section 2(c) of the Act. We are left with the impression that the learned Additional Judicial Commissioner is not sure of his ground. It is difficult to attribute that the appellants were guilty of contempt in that the committed a wilful breach of an undertaking or wilful disobedience of any order or direction. Nor, can it be said that the refusal of the Government to grant accreditation was an act which lowers or tends to lower the authority of the court, in the facts and circumstances of the case.

11. The legality and propriety of the action taken by the learned Additional Judicial Commissioner are open to question. The operative part of the order rests on the assurance given by the learned Government Advocate that he 'would advise the Government' that accreditation be issued to the respondent on the condition that he should be at the headquarters of the Government, as required by Rule 2(1) of Section II of the Rules. It appears that the learned Government Advocate tendered his advice, but the Government was of the view that prior residence should be pre-condition for the issue of accreditation. The learned Government Advocate never intended or meant to convey that the Government would in all circumstances, grant accreditation to the respondent. Nor was he authorised to make binding commitment in that behalf. All that the learned Government Advocate conveyed by his undertaking to the learned Additional Judicial Commissioner was that he 'would advise the Government' upon which the learned Additional Judicial Commissioner made no orders in the writ petition. It was up to the Government to act upon that advice or not. When the Government placed its point of view before the learned Additional Judicial Commissioner, the proper course for him to adopt was to have resorted the writ petition to file and decide it on merits. The order passed by him on April 29, 1980 contained no 'enforceable direction'. There being no undertaking for the grant of accreditation, the failure of the Government to do so would not amount to contempt of the court. We are distressed to find that a responsible judicial officer like the Additional Judicial Commissioner should have displayed such lack of judicial propriety in issuing notices for contempt when there was none.

12. The contention of the respondent that the Government cannot be permitted to shift the ground for refusal to grant accreditation must be accepted. The legality of the governmental action must be adjudged on the reason stated in the impugned order, and it is impermissible for the Government to take a new ground. In *Commissioner of Police, Bombay v. Gordhandas Bhanji* (1952 SCR 135 : AIR 1952 SC 16 : 1951 SCJ 803), Vivian Bose, J., speaking for the Court, observed :

(P)ublic orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given in the officer making the order of what he meant, or of what was in his mind, or what he intended to do.

Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

It was, therefore, not permissible for the Government to offer a justification for refusal to grant accreditation to the respondent, on grounds other than the one that he did not fulfil the requirements of Rule 2(1) of Section II of the Rules.

13. The question whether prior residence at the headquarters of the Government was a pre-condition for the issue of accreditation turns on the construction of Rule 2(1) of Section II of the Rules. That question is involved in the writ petition filed by the respondent, and it is one to be determined by the Court of the Judicial Commissioner.

14. For these reasons, the impugned orders passed by the Additional Judicial Commissioner on October 10 and 17, 1980, are set aside, and the proceedings for contempt are quashed. In view of the stand taken by the Government of Goa, Daman & Diu, that the respondent was not entitled to accreditation under Rule 2(1) of Section II of the Rules for Accreditation of Press Correspondents and News Agencies, the earlier order passed by the Additional Judicial Commissioner on April 29, 1980, is also set aside. The Judicial Commissioner is directed to restore the proceedings in Special Civil Application (Writ Petition) No. 93 of 1979, to file, and dispose it of on merits as expeditiously as possible, without being influenced by any of the observations made above.

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