State of Himachal Pradesh

Vs

A Parent of A Student of Medical College, Simla and Others

Civil Appeal No. 1499 of 1985

(P. N. Bhagwati, A. N. Sen, Ranganath Misra JJ)

11.04.1985

JUDGMENT

P. N. BHAGWATI, J. -

1. This appeal by special leave is directed against two orders made by a Division Bench of the High Court of Himachal Pradesh, one dated July 24, 1984 and the other dated September 18, 1984, insofar as they direct the Chief Secretary to the Government of Himachal Pradesh to file an affidavit setting out what action has been taken by the State Government towards implementation of the recommendation contained in paragraph 16 of the Report of the Anti-Ragging Committee. The impugned orders are in our opinion wholly unsustainable and ordinarily we would not have taken time to deliver a reasoned judgment and merely set aside the impugned orders with a brief observations, but we think it necessary to state in some detail our opinion in regard to the directions given in the impugned orders, because we find that this is one of those few cases which demonstrates what we have often said before, that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.

2. It appears that the Chief Justice of the High court received a letter dated April 4, 1984 from the guardian of a student of the Medical College in Simla complaining about the ragging of freshers by senior students within as also outside the college campus and the hostel. The guardian of the student had annexed along with his letter to the Chief Justice a letter dated March 25, 1984 received by him from his son. The Division Bench of the High Court presided over by the Chief Justice treated these two letters as constituting the memo of writ petition but directed that these two letters should not be placed on the record of the proceedings in view of the request made in paragraph 6 of the letter of the guardian that the identity of the writer should not be disclosed on account of fear of reprisal and for the selfsame reason the Division Bench ordered that the identity of the student and the guardian should not be disclosed in the proceedings. The division Bench treating the two letters as a writ petition registered them as Civil Writ Petition No. 155 of 1984 and issued notice to the State Government, the Principal of the Medical College, Simla, the Himachal Pradesh University and the Director of Health Services, Government of Himachal Pradesh who were arrayed as respondents 1 to 4. On receipt of the notice of the writ petition, the Government of Himachal Pradesh filed an affidavit setting out the steps which the State Government and the college authorities had taken to check the ragging of freshers by senior students. The Director of Medical Education-cum-Principal of the Medical College, Simla also filed an affidavit opposing the admission of the writ petition on the ground that the college authorities had taken various steps for the purpose of curbing the evil of ragging and in fact and taken action on at least two occasions awarding punishment to the students

who indulged in ragging by suspending them for a period of 4 to 6 months. The Division Bench, on a consideration of this material placed before it, came to the conclusion that the practice of ragging was prevailing in the Medical College, Simla on a noticeable scale and that ragging took the form of subjecting freshers including female students to inhuman and humiliating treatment degenerating even into physical violence and that the college authorities had not been able to effectively control ragging with the result that the college administration had lost confidence of a sizeable section of students, parents and well-wishers as regards its capacity to deal with the problem of ragging. The Division Bench accordingly gave various direction which included a direction to the State Government to constitute a committee consisting of the Vice-Chancellor of the Himachal Pradesh University and the Secretary to the Government, Health Department, inter alia, to make "recommendations in regard to the curative, preventive and punitive measures to be adopted by the college authorities to control and curb the evil of ragging and the machinery to be set up to enforce these measures." This Committee which we shall for the sake of convenience refer to as the Anti-Ragging Committee, was to complete its work and submit its report within a period of six months from the date of its constitution.

3. The Anti-Ragging Committee submitted its Report to the High Court on June 26, 1984. The Report contained various recommendations intended to control and curb the ragging of freshers by senior students in the Medical College and its hostel. We are concerned here with only one recommendation namely that contained in paragraph 16 of the Report which was in the following terms :

> In quite a number of States in the country there are Acts on ragging which make ragging a cognizable offence and prescribe the types of punishment commensurate with the crimes committed. The Himachal Pradesh Government could be suggested to initiate such legislation as early as possible. Pending such a legislation by the State Government, the university authorities could think of incorporating some provisions relating to ragging in the relevant ordinance of discipline in the ordinance of the university.

The Division Bench by its order dated July 24, 1984 gave directions for implementation of the various recommendations made in the Report and so far as recommendation contained in paragraph 16 of the Report was concerned, the Division Bench said : "The Chief Secretary to the State Government will file an affidavit within a period of 3 months from the date of receipt of the writ setting out the action proposed to be taken on the recommendation contained in paragraph 16 (First Part) of the relevant portion of the Report". Though this direction ostensibly did no more than call upon the Chief Secretary to inform the court as to what action the State Government proposed to take on the recommendations to initiate legislation for curbing ragging, it was, in fact and substance, intended to require the State Government to initiate legislation on the subject. If this direction were merely an innocuous one intended to inform the court whether the State Government intended to take any action on the recommendation to initiate legislation against ragging, no objection could possibly be taken against it, because it would leave the Government free to decide whether or not to initiate legislation in regard to ragging without mandatorily requiring the State Government to do so. But as the subsequent event would show, what the Division Bench intended to achieve by giving the direction was not just to obtain information as to what the State Government proposed to do in the matter but to actually require the State Government to initiate legislation against ragging. That is why, when the Chief Secretary in deference to this direction filed an affidavit stating, inter alia, that the State Government had "taken notice of the recommendation to initiate legislation in this behalf, if found necessary and so advised", the Division Bench was not satisfied with this statement of the

Chief Secretary and declined to close the proceeding so far as this particular aspect was concerned and proceeded, inter alia, to reiterate in its order dated September 18, 1984 :

> The Chief Secretary to the State Government will file an affidavit within a period of 6 weeks from the date of receipt of the writ setting out the further action taken in the direction of the implementation of the recommendation contained in paragraph 16 (First Part) of the relevant portion of the Report of the Anti-Ragging Committee.

When this direction was given by the Division Bench, it clearly implied that what the Division Bench wanted the State Government to do was to initiate legislation against ragging and for this purpose, time of 6 weeks was granted to the State Government. The State Government thereupon preferred the present appeal with special leave obtained from this Court.

4. We may point out, even at the cost of repetition, that the direction given by the Division Bench in its order dated July 24, 1984 and reiterated in its order dated September 18, 1984 was not an innocuous direction issued merely for the purpose of informing the court as to what the State Government proposed to do in regard to the recommendation in paragraph 16 of the Report to initiate legislation against ragging. The Division Bench would have been certainly justified in enquiring from the Chief Secretary as to what action the State Government proposed to take in regard to the recommendation of the Anti-Ragging Committee to initiate legislation on the subject of ragging. Such enquiry could have been legitimately made by the Division Bench for the purpose of obtaining information on a matter which the Division Bench regarded, and in our opinion rightly, as necessary for eradicating the evil practice of ragging which is not only subversive of human dignity but also prejudicially affects the interests of the student and the discipline in the campus and no exception could have been taken to it because it would have left the State Government free to decide whether or not to initiate any legislation on the subject and not mandatorily required the State Government to initiate any such legislation. If such only were the purpose of the direction issued by the Division Bench and the Division Bench did not intend anything more, the Division Bench would have closed the proceedings when the Chief Secretary intimated in his affidavit that the State Government would initiate legislation in this behalf "if found necessary and so advised". But despite this statement made by the Chief Secretary on behalf of the State Government, the Division Bench persisted in reiterating its direction that the Chief Secretary should file an affidavit within a further period of 6 weeks settings out the further action taken by the State Government in the direction of implementation of the recommendation contained in paragraph 16 of the Report. This persistence in reiterating the direction to file an affidavit setting out the action taken by the State Government toward implementation of the recommendation to initiate legislation against ragging, clearly shows that what the Division Bench intended was not merely to obtain information as to what action the State Government proposed to take but to obligate the State Government to take action by way of initiation of legislation against ragging. The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the

Constitution. If the executive is no carrying out any duty laid upon it by the Constitution or the law, the court can certainly require the executive to carry out such duty and this is precisely what the court does when it entertains public interest litigation. Where the court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor and the underprivileged continue to be subjected to exploitation and injustice or are deprived of their social and economic entitlements of that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the court certainly can and intervene and compel the executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realise their social and economic rights. When the court passes any orders in public interest litigation, the court does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the Constitution and the law, because it is vital for the maintenance of the rule of law that the obligations which are laid upon the executive by the Constitution and the law should be carried out faithfully and as one should go away with a feeling that the Constitution and the law are meant only for the benefit of a fortunate few and have no meaning for the large numbers of half-clad, half-hungry people of this country. That is a feeling which should never be allowed to grow. But at the same time the court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law making activities of the executive and the legislature. We are, therefore, of the view that the Division Bench was clearly in error in issuing a direction to the Chief Secretary to file an affidavit within 6 weeks setting out the action taken by the State Government with a view to implementing the recommendation contained in paragraph 16 of the Report.

5. There is also one other error into which the Division Bench of the High Court seems to have fallen. The Division Bench of the High Court treated the letter of the guardians of the student along with the letter addressed to the guardian by the student as constituting a memo of writ petition. This was certainly within the jurisdiction of the High Court to do, since it is now settled law that this Court under Article 32 of the Constitution and the High Court under Articles 226 of the Constitution can treat a letter as a writ petition and take action upon it. We may of course make it clear that it is not every letter which may be treated as a writ petition by the Supreme Court or the High Court. It is only where a letter is addressed by an aggrieved person or by a public spirited individual or a social action group for enforcement of the constitutional or legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress that the Supreme Court or the High Court would be justified, may bound, to treat the letter as a writ petition. There may also be cases where even letter addressed for redressal of a wrong done to an individual may be treated as a writ petition where the Supreme Court or the High Court considers it expedient to do so in the interests of justice. This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economics entitlements. It is a highly effective weapon in the armoury of the law for reaching social justice to the common man. The Division Bench was, therefore, certainly right in entertaining the two letters as a writ petition and no exception can be taken to it, but it was wholly in error in directing that these two letters on which the Division Bench acted should not be placed on the

record of the proceedings and the identify of the guardian and the student should not be disclosed. It is difficult to see how any proceedings can be entertained by the court keeping the petitioner before it anonymous or his identity secret. If the identity of the petitioner is not disclosed, how would the respondent against whom relief is sought ever be able to verify the authenticity of the petitioner and the credibility of the case brought by him. It would be contrary to all canons of fair play and violative of all principles of judicial propriety and administration to entertain a writ petition without disclosing the identity of the petitioner, though the court knows who the petitioner is. We are, therefore, of the opinion that the procedure adopted by the Division Bench was wrong and the Division Bench was not justified in directing that the two letters on which action was initiated by the Division Bench should not be kept in the record of the proceedings and that the identity of the guardian and the student should not be disclosed.

6. We accordingly allow the appeal and set aside the orders dated July 24, 1984 and September 18, 1984 insofar as they direct the Chief Secretary to file an affidavit setting out the action taken by the State Government in implementing the recommendation contained in paragraph 16 of the Report to the Anti-Ragging Committee. There will be no order as to costs of the appeal.

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