

Advocate-General Of Bihar

Vs

High Court Judicature at Patna

Civil Appeal No. 1248 of 1986

(CJI P. N. Bhagwati, G. L. Oza, V. Khalid JJ)

02.04.1986

JUDGMENT

BHAGWATI, C.J. -

1. This is a rather unusual appeal in two respects. In the first place, it is preferred by the Advocate-General of Bihar, the highest Law Officer in the State and leader of the Bar by virtue of his official position and secondly, it is not directed against any order of the High Court with a view to its reversal or modification but it merely seeks expunction of certain remarks made by the High Court against the appellant. It arises out of an unfortunate incident which happened in the court of Mr Justice S.K. Jha and which, in our opinion, could have been avoided with a little tact and understanding. We do not propose to enquire as to who was at fault in this regrettable incident - whether the learned Judge or the appellant - since any finding reached by us as a result of such enquiry would either affect the dignity of the judicial institution or the position and prestige of the high office of Advocate-General. We would like to avoid either consequence because the dignity of the judicial institution which alone can ensure the confidence and respect of the people is as much dear to us as the position of prestige occupied by the office of Advocate-General of a State. Let us state the facts giving rise to the present appeal.

2. On November 6, 1984, a writ petition bearing CWJC No. 4100 of 1984 was placed for admission before Mr Justice S.K. Jha sitting as a Single Judge in the High Court of Patna. The writ petition was admitted by him but no notice was ordered to issue since all the respondents were represented by Government Pleader 1. It seems that Government Pleader 1 had already accepted notice and filed a counter-affidavit on behalf of the respondents. There were three respondents, namely, the State of Bihar, the Director of Primary Education, Bihar, and Shri Pramod Ban Bihari Singh, Regional Deputy Director of Education, Patna Division. The learned Judge while admitting the writ petition made an order that if the services of the petitioners in the writ petition were being utilised in any manner, they should be paid their minimum legal dues. It seems that some doubt was felt in regard to the true effect of this portion of the order dated November 6, 1984 and an application for clarification was, therefore, made on behalf of the petitioners and this application came up for hearing before the learned Judge on February 15, 1985. The learned counsel appearing on behalf of the petitioners as well as the respondents were present and they were heard on the application and after hearing them, the learned Judge passed an order on February 15, 1985 pointing out that the order passed by him on November 6, 1984 did not require any clarification but with a view to erring on the safe side, the learned Judge directed that "all such teachers from whom work was being taken shall be paid their legal dues" and "the authorities concerned shall in duty bound pay to the petitioners the B.A. trained scale which they were getting earlier and against which post their work is being utilised". This order made by the learned Judge was not carried out by the respondents and

the petitioners were compelled to file an application for contempt, viz., MJC No. 173/85. The learned Judge took up the application for contempt for hearing on December 6, 1985. The learned Judge found that the attitude of respondent 3 was defiant and he accordingly sent for the appellant and requested him in his capacity as Advocate-General "to look into the matter personally and to see that the matter with regard to the contempt may not end in some unseemly result against the contemner", i.e. respondent 3. The appellant obviously was not bound to intervene in the matter and he could have easily left the contempt application to be decided by the learned Judge on merits, but as a responsible Law Officer, he, in deference to the request of the learned Judge, took upon himself to see that the order dated February 15, 1985 passed by the learned Judge was obeyed and the contemner was purged of the contempt committed by him and assured the court that he would "look to it that it is so done within a period of one month". The learned Judge, in view of this statement made by the appellant, granted, instead of one month as prayed for by the appellant, six weeks' time to the contemner to purge himself of the contempt committed by him. The learned Judge made an order directing that if the contemner does not purge himself of the contempt within the period of six weeks granted to him, the contempt application would stand revived and it would be disposed of according to law. Thus, by this order dated December 6, 1985, six weeks' time was granted for respondent 3 to purge himself of the contempt by carrying out the order dated February 15, 1985 and this order was made in view of the statement made by the appellant that he would see to it that this was done within a period of one month.

3. It is the case of the appellant that at the time when the order dated December 6, 1985 was passed by the learned Judge, respondent 3 was present in court and the appellant there and then instructed him that the order dated February 15, 1985 must be immediately carried out by the respondents. The appellant followed up this oral instruction to respondent 3 by telephoning to the Special Secretary to the Government of Bihar in the Education Department on December 24, 1985. The appellant impressed upon the Special Secretary that the teachers in whose favour the order dated February 15, 1985 had been made should be paid the B.A. trained scale and that if the writ petition was ultimately disposed of in favour of the respondents and the claim of the teachers to the B.A. trained scale was not accepted, the excess amount paid to the teachers could always be recovered from them. The appellant having personally instructed respondent 3 on December 6, 1985 to implement the directions given by the learned Judge on February 15, 1985 and having directly talked to the Special Secretary in the Education Department to make payment according to the directions given by the learned Judge, presumably remained under the impression that payment must have been made by the respondents to the teachers in accordance with the directions of the learned Judge and consequently did not take any further steps in the matter. It seems that instead of complying with the directions given by the learned Judge and making payment to the teachers according to the B.A. trained scale, respondents 1 and 3, viz., the State of Bihar and the Regional Deputy Director of Education filed a special leave petition in this Court against the order of the learned Judge dated December 6, 1985. This was done by respondents 1 and 3 without consulting the appellant or taking his advice and the appellant was not aware that such special leave petition had been filed by them. Since the order dated February 15, 1985 was not carried out within the period of six weeks granted by the court, the application for contempt was revived and directed to be placed on Board on February 11, 1986. On that day, the appellant was not in Patna as he had gone to Bokaro in order to attend the sitting of Justice Ranganath Misra Commission of Inquiry. The learned Judge was terribly annoyed and in our opinion rightly that the order dated February 15, 1985, had not been carried out by the respondents though an assurance had been given by the appellant that he would see to it that the order was carried out within one month and since the appellant was likely to be away until February 15, 1986, the learned Judge passed an order adjourning the application for contempt to

February 15, 1986. The learned Judge however added that "the learned Advocate-General must be present personally in this Court, failing which appropriate action in accordance with law shall be taken against him". The learned Judge also took an undertaking from Shri S.K.P. Sinha, who was junior counsel in the case, that he would ensure the presence of the Advocate-General and that he would be hauled up if the Advocate-General failed to turn up. This order made by the learned Judge received considerable publicity in the newspapers and the appellant came to learn about it on receiving a telephonic message from his office in Patna on February 12, 1986. He completed his work before Justice Ranganath Misra Commission of Inquiry at Bokaro on February 14, 1986 and immediately took a train to Patna, reaching there at 10.30 a.m. on February 15, 1986. On reaching Patna, he straightway went home and after washing and changing, rushed to the court without having had any time to enquire as to what had happened in regard to the implementation of the order of the court dated February 15, 1985. No sooner did the appellant reach the court, the learned Judge observed that he had been informed that both respondents 1 and 3 had filed a special leave petition in the Supreme Court against the order dated December 6, 1985 and he asked the appellant as to whether it was under his advice that such special leave petition had been filed. The appellant stated that the special leave petition had been filed without taking his advice and that at the moment he was unable to inform the court as to what steps had been taken by the authorities in implementation of the assurance given by him to the court on December 6, 1985 as he was not aware of what had transpired between the State authorities inter se. The appellant pointed out that he had come directly to the court from his house after arriving at the Patna railway station at 10.30 a.m. and that he had not had time to go through the files of the Government and that the matter should, therefore, be taken up on the next working day, namely, Monday. The learned Judge, however, remarked that he was going to be away in Ranchi for a month from Monday. The appellant thereupon asked for time till 2 p.m. so that he could call for the files and look into them but the learned Judge refused this request of the appellant and proceeded to make an order dated February 15, 1986 convicting respondent 3 for committing contempt of court by not carrying out the order dated February 15, 1985 and sentencing him to undergo simple imprisonment for a period of one month and to pay a fine of Rs 1000. The appellant could have no grievance against this part of the order but the learned Judge proceeded to pass strictures against the appellant and to admonish him in rather severe terms. It is this part of the order made by the learned Judge which is complained of by the appellant in the present appeal. The appellant seeks expunction of the strictures passed by the learned Judge against him on the ground that the strictures were unjustified.

4. We will first deal with the order dated February 11, 1986 passed by the learned Judge when the application for contempt was revived and placed on Board for hearing. On that day, the appellant was admittedly out of Patna. He was representing the State of Bihar before Justice Ranganath Misra Commission of Inquiry at Bokaro. There can be no doubt that the learned Judge had every reason to feel angry because despite the assurance given by the appellant on December 6, 1985, the order dated February 15, 1985 had not been carried out by the respondents and respondent 3 was clearly in contempt. Not only had respondent 3 failed to obey the order dated February 15, 1985 but he, alongwith the first respondent, had preferred special leave petition in the Supreme Court against the order dated December 6, 1985. The learned Judge was justified in expressing his sense of indignation at the manner in which respondents 1 and 3, and particularly respondent 3 had behaved, because while taking advantage of the six weeks' time grants by the learned Judge, respondents 1 and 3 had, instead of carrying out the order dated February 15, 1985, preferred special leave petition in the Supreme Court challenging that very order by which six weeks' time had been granted to them for complying with the order dated February 15, 1985. This was clearly an act of bad faith on the part of respondents 1 and 3 and we cannot blame the learned Judge for his outburst of anger : his

anger was fully justified. The learned Judge was in the circumstances clearly right in asking the appellant to remain present at the next date of hearing of the application for contempt on February 15, 1986. But, we feel that the learned Judge need not have expressed himself in the manner he did against the appellant. The learned Judge had no reason at all to infer or even as much as to suspect, that the appellant had evaded remaining present or had deliberately absented himself at the hearing of the application for contempt. The appellant was in fact on official duty at Bokaro and that was the reason why he could not remain present at the hearing of the application for contempt on February 11, 1986. We are in the circumstances constrained to observe that the learned Judge was not justified in remarking that "if the appellant did not remain present on February 15, 1986 appropriate action in accordance with law would be taken against him" nor was the learned Judge justified in taking an undertaking from Shri S.K.P. Sinha that he would ensure the presence of the appellant on that day and that if the appellant failed to turn up, S.K.P. Sinha would be hauled up. Nothing had transpired to provoke the learned Judge into believing that without threat of coercive action the appellant would not remain present on February 15, 1986. It can reasonably be assumed, in the absence of any circumstances to the contrary, that if a Judge asks a lawyer to remain present on a particular fixed date for hearing of an application, the lawyer would certainly comply with the direction of the court and if, on account of circumstances beyond his control, he is unable to do so, he would make necessary application to the court for permitting him to remain absent. This would be much more true in the case of the Advocate-General who is the leader of the Bar. The learned Judge could have just asked the office to inform the appellant that the application for contempt was adjourned to February 15, 1986 and that the learned Judge desired the appellant to remain present at that time. We have no doubt that the appellant as Advocate-General would have readily and unhesitatingly complied with the request of the learned Judge as indeed, in fact, he did on an earlier occasion. We must therefore hold, though with a tinge of regret, that the remarks made by the learned Judge were not justified and could have been avoided. We accordingly expunge these remarks in the order dated February 11, 1986.

5. That takes us to the order dated February 15, 1986. We may reiterate that on this day also, the learned Judge was justified in expressing himself strongly against respondents 1 and 3 who had, abusing the indulgence granted by the learned Judge on the assurance given by the appellant, filed a special leave petition in the Supreme Court against the order dated December 6, 1985. There can be no doubt that respondent 3 had behaved with great impropriety in not complying with the order dated February 15, 1985 though on the assurance given by the appellant, time for six weeks had been granted to him by the learned Judge to purge himself of the contempt committed by him and he had instead filed a special leave petition in the Supreme Court. But, we are of the view that despite this grave provocation, the learned Judge could have avoided making observations against the appellant. The appellant did not originally appear for respondents 1 and 3 in the case and it was only on the request of the learned Judge that the appellant intervened in the matter and with a view to avoiding an ugly situation which might arise - and which eventually did arise owing to the intransigence of respondent 3 - the appellant stated that he would see to it that the order of the learned Judge dated February 15, 1985 was implemented by respondent 3 and that this would be done within a period of one month. It is undoubtedly true that because of the assurance given by the appellant, the learned Judge granted six weeks' time to respondent 3 to carry out the order dated February 15, 1985, but it may be noted that the appellant gave this assurance because he was summoned by the learned Judge to use his good offices as Advocate-General to ensure that an ugly situation was averted and the order dated February 15, 1985 was complied with. The appellant immediately there and then instructed respondent 3 who was present in the court to carry out the order dated February 15, 1985 and he also instructed the Special Secretary in the Education

Department on telephone on December 24, 1985 to see that the order dated February 15, 1985 was implemented. It is the appellant's case that since he did not hear anything from the Special Secretary in the Education Department or respondent 3, he assumed that the order dated February 15, 1985 must have been carried out by respondent 3. We must observe that in our opinion the appellant should not have rested content with this assumption but he should have continued to make enquiries from the Special Secretary and respondent 3 whether the order dated February 15, 1985 had been carried out, particularly since he had given an assurance to the learned Judge that he would "look to it" that the order was complied with by respondent 3. We do not, however, regard this inaction on the part of the appellant as something very much blameworthy, because as the Advocate-General he could not be seriously faulted in assuming that the Special Secretary and respondent 3 will carry out the instructions given by him in regard to the implementation of the order dated February 15, 1985, though, as we said a little while ago, it would have been better if he had pursued the matter with the Special Secretary and respondent 3 with a view to ensuring that his instructions were carried out and the order dated February 15, 1985 was implemented.

6. The learned Judge was obviously annoyed with the appellant because he had not been able to carry out the assurance given by him that the order date February 15, 1985 would be implemented and instead a special leave petition had been filed by respondents 1 and 3. But, when the appellant frankly stated, in answer to a question put by the learned Judge, that the special leave petition had been filed without taking his advice, no blame could have been laid at the door of the appellant for the filing of the special leave petition. It is, of course, true that when the learned Judge asked the appellant as to what had happened in the case, the appellant was not in a position to make any statement since admittedly he was ignorant of what had transpired between the authorities inter se. But it may be noted that on February 11, 1986 when the application for contempt was revived and placed on Board, the appellant was not in Patna and immediately on his return to Patna at 10.30 a.m. on February 15, 1986, he went home and after washing and changing, rushed to the court. The appellant had no time even to enquire from the authorities as to what they had done in the matter of implementation of the order dated February 15, 1985, though, of course, as we stated a little earlier, he should have been a little more diligent and persevering and it would have been better if he had continued to pursue the matter with the authorities. The appellant, therefore, wanted time up to 2 p.m. that day in order to make enquiries and inform the court as to what had happened, but the learned Judge declined to grant time and proceeded to make his order. We do not think that the learned Judge was wrong in declining to adjourn the case up to 2 p.m. because the appellant could not have thrown any further light in the matter even if time had been granted up to 2 p.m. The two undisputed facts which were apparent from the record were - first, that the order dated February 15, 1985 had not been carried out by respondent 3 and secondly, that instead of complying with this order respondents 1 and 3 had filed a special leave petition in the Supreme Court and the appellant had not been able to see that this order was carried out by respondent 3. But, for the intransigence of respondent 3 in not complying with the order dated February 15, 1985 despite the instructions given to him as also to the Special Secretary by the appellant, the appellant could not be faulted, because it was something over which the appellant had no control and all that he could do was to advise and instruct. It is indeed a sad commentary on the administration in the State of Bihar that the advice of the appellant in his capacity as Advocate-General should have been ignored by respondents 1 and 3 and blatant defiance of the order of the learned Judge dated February 15, 1985 should have been contumaciously committed by respondent 3. The learned Judge was perfectly right in committing respondent 3 for contempt of court but, as we have pointed out above, he could have avoided passing strictures against the appellant, though he had every reason to feel angry with what had happened.

7. We, therefore, allow the appeal and expunge the observations made against the appellant in the order dated February 11, 1986 as also the strictures passed against the appellant in paragraphs 6, 7 and 8 of the order dated February 15, 1986. There will be no order as to costs of the appeal.

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