Kanubhai Brahmbhatt

Vs

State of Gujarat

Writ Petition No. 1669 of 1986

(M. P. Thakkar, B. C. Ray JJ)

18.02.1987

JUDGMENT

THAKKAR, J. –

1. Reasons, good and substantial, exist for directing the petitioner to approach the concerned High Court in the first instance instead of knocking at the doors of this Court straightway. And these need to be spelled out.

2. An illustration may tell more effectively, what otherwise may not be told as effectively, and perhaps, only with some embarrassment. Suppose there is only one National Hospital established especially for performing open-heart surgery which cannot be performed elsewhere in any of the eighteen Regional Hospitals. What will happen to the patients needing such surgery, if the National Hospital which alone is specially equipped for this type of surgery, throws its doors wide open also for patients suffering from other ailments who can be treated by any and every one of the eighteen Regional Hospitals ? More particularly when the patients already admitted for such surgery by the National Hospital are already lying unattended to, on its floors, and in its corridors, for an unconscionably long time ? Showing sympathy for a patient with other than a heart problem who can also be treated equally effectively, and perhaps much more quickly, may well constitute cruelty to the heart patients who can be treated only by the National Hospital established especially and exclusively for the treatment of such patients. Will it not be more merciful to all concerned (by being firm enough) to tell those suffering from other than heart problems to go to Regional Hospitals, instead of insisting on being treated at the National Hospital, which also can of course treat them, but only at the cost of neglecting the heart patients who have nowhere else to go ? More so as the patients going to the Regional Hospital may well benefit much more by securing more personalized and urgent attention threat. On the other hand, not to do so may well amount to being engaged in trying to relieve the distress of those whose distress can be removed by anyone else at the cost of refusing to treat those who cannot be treated by anyone else.

3. If this Court takes upon itself to do everything which even the High Court can do, this Court will not be able to do what this Court alone can do under Article 136 of the Constitution of India, and other provisions conferring exclusive jurisdiction on this Court. There is no reason to assume that the concerned High Court will not do justice. Or that this Court alone can do justice. If this Court entertains writ petitions at the instance of parties who approach this Court directly instead of approaching the concerned High Court in the first instance, tens of thousands of writ petitions would in course of time be instituted in this Court directly (More than 9000 are already pending now). The inevitable result will be that the arrears pertaining to matters in respect of which this Court exercises exclusive jurisdiction under the Constitution will assume more alarming

proportions. As it is, more than ten years old civil appeals and criminal appeals are sobbing for attention. It will occasion great misery and immense hardship to tens of thousands of litigants if the seriousness of this aspect is not sufficiently realized. And this is no imaginary phobia. A dismissed government servant has to wait for nearly ten years for redress in this Court (Kashinath Dikshita v. Union of India, (1986) 3 SCC 229) A litigant whose appeal has been dismissed by wrongly refusing to condone delay has to wait for 14 years before his wrong is righted by this Court (Shankarrao v. Chandrasenkunwar Civil Appeal No. 1335(N) of 1973, decided on January 29, 1987). The time for imposing self-discipline has already come, even if it involves shedding of some amount of institutional ego, or raising of some eyebrows. Again, it is as important to do justice at this level, as to inspire confidence in the litigants that justice will be meted out to them at the High Court level, and other levels. Faith must be inspired in the hierarchy of courts and the institution as a whole, not only in this Court alone. And this objective can be achieved only this Court showing trust in the High Court by directing the litigants to approach the High Court in the first instance. Besides, as a matter of fact, if matters like the present one are instituted in the High Court, there is a likelihood of the same being disposed of much more quickly, and equally effectively, on account of the decentralisation of the process of administering justice. We are of the opinion that the petitioner should be directed to adopt this course and approach the High Court.

4. It needs to be clarified that it will be open to the High Court to call upon the petitioner to present a properly framed writ petition without obliging him to incur the legal and other incidental expenditure if the petitioner cannot afford the same. The matter may in such an event be assigned to a learned advocate practising in the High Court through the State Legal Aid and Assistance Board, or through the High Court Legal Aid Committee which can provide him with the requisite funds to enable him to do the needful. It will also be open to the High Court to request the learned District Judge of Vadodara to look into the matter from the point of view of the complaints made in the letter in question, and make an appropriate report to enable the High Court to pass such suitable orders as may be called for in the facts and circumstances of the case in order to secure ends of justice.

5. These are the reasons which we 'now' articulate in support of the order we passed 'then'.

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