Vinod Kumar Singh

Vs

Banaras Hindu University and Others

Civil Appeal No. 2976 of 1987

(S. Ranganathan, Ranganathan JJ)

11.11.1987

ORDER

1. Special leave granted.

2. Appellant passed Bachelor's examination in law from the Banaras Hindu University securing 54.4 per cent marks and was placed in the second division. He applied for admission in the Master's Course in Law in the academic session 1979/80. The University had prescribed a minimum of 55 per cent marks on the average of three years of the degree course as the qualifying requirement. Appellant claimed weightage on the basis that members of his family had donated lands and houses to the University and cited the case of Shri Anant Narain Singh as a precedent. As he failed to secure admission, he again applied for taking admission in the academic session 1983-84 but was not granted admission. Ultimately he filed a writ petition before the Allahabad High Court. On July 28, 1986 the said writ petition was taken up for hearing by a Division Bench and when hearing was concluded, judgment was dictated in open court allowing the writ petition and direction to the University to admit the petitioner was ordered. The appellant applied for certified copy of the judgment but was told that the matter was again in the hearing list and would be heard afresh. The matter continued to appear in the hearing list from September 1986 till February 5, 1987 when the particular Division Bench which had heard the matter released the case to be taken up by another Bench. On March 23, 1987, the writ petition was dismissed by the new Division Bench.

3. Two contentions have been raised before us. It is maintained that once the judgment was delivered in open court it became operative and could not be changed. The dismissal of the writ petition after it had been once allowed was, therefore, without jurisdiction; it was also contended that on the facts of the case the appellant should have been given admission.

4. There is no dispute that on July 28, 1986, a Division Bench heard the writ petition and disposed it of. The order sheet of that day reads thus :

> Sri Aditya Narain for the petitioner
>
> Sri Siddheshwar Pd. for the respondents
>
> Petition heard finally.
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> Writ petition disposed of.

Subsequently there is an endorsement without anybody's signature to the following effect :

Under signature (illegible)

Listed for further hearing.

On February 5, 1987, the same learned Judges who had allowed the writ petition gave the following directions :

> We release this case but we direct that this case be placed before the Hon'ble the Chief Justice for getting it listed before the appropriate Bench as the matter was once heard by us and judgment dictated but later on was not signed and was ordered to be listed for further hearing.

As prayed by counsel for University the petition may be listed, if possible on February 25, 1987.

5. There is no dispute that the writ petition had been allowed by judgment pronounced in open court on July 28, 1986 after hearing was concluded. According to the appellant the judgment once pronounced in open court became operative even without signature of the learned judges and could not be altered. Reliance is placed on a judgment of this Court in the case of Surendra Singh v. State of Uttar Pradesh (1954 SCR 330 : AIR 1954 SC 194). The facts of that case show that a Division Bench of the Allahabad High Court sitting at Lucknow consisting of Kidwai and Bhargava, JJ. heard a criminal appeal and on December 11, 1952, judgment was reserved. Before it could be delivered Bhargava, J. was shifted to Allahabad. While there, he dictated a judgment treating it to be a judgment of both. He signed every page of the judgment as well as at the end but did not put the date. He sent it to Kidwai, J. at Lucknow. On December 24, 1952, before the judgment was delivered Bhargava. J. passed away. On January 5, 1953, Kidwai, J. delivered the judgment of the court. He signed it and dated it. The question as to whether the judgment was a valid one came up for consideration. While dealing with such a question, Bose, J. spoke for the Court thus : (SCR P. 334)

In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there : that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest - the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter - can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is done does not matter. In some courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open court. But however it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else uptil then is done out of court and is not intended to be the operative act which sets all the consequences which follow on the

judgment in motion. Judges may, not often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the "judgment".

Bose, J. continued to say : (SCR p. 337)

As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication.

After the judgment has been delivered provision is made for review. One provision is that it can be freely altered or amended or even changed completely without further formality, except notice to the parties and a rehearing on the point of change should that be necessary, provided it has not been signed. Another is that after signature a review properly so called would lie in civil cases but none in criminal; but the review, when it lies, is only permitted on very narrow grounds.

6. The above observations were made, as already mentioned, in a case where the judgment had been signed but not pronounced in the open court. In the present case, we are concerned with a judgment that had been pronounced but not signed. The provision in Order 20, Rule 3 of the Code of Civil Procedure indicates the position in such cases. It permits alterations or additions to a judgment so long as it is not signed. This is also apparently what has been referred to in the last paragraph of the extract from the judgment of Bose, J. quoted above, where it has been pointed out that a judgment which has been delivered "can be freely altered or amended or even changed completely without further formality, except notice to the parties and re-hearing on the point of change, should that be necessary, provided it has not been signed". It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except under the provisions of Section 152 or Section 114 of the Code of Civil Procedure or, in very exceptional cases, under Section 151 of the Code of Civil Procedure.

7. But, while the court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open court, parties act on the basis that it is the judgment of the court and that the signing is a formality to follow.

8. We have extensively extracted from what Bose, J. spoke in this judgment to impress upon everyone that pronouncement of a judgment in court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the court with reference to the case. Bose, J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does not await signing thereof by the court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel of any of the parties or the court discovers some new facts from the record. In such a case the court may give direction that the

judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases - though their number would be few and far between - where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given.

9. Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the court in regard to the conclusion. Once that stage is reached and the court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced, parties present in the court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case. In the instant matter, we find that there is no material at all to show as to what led the Division Bench which had pronounced the judgment in open court not to authenticate the same by signing it. In such a situation the judgment delivered has to be taken as final and the writ petition should not have been placed for fresh hearing. The subsequent order dismissing the writ petition was not available to be made once it is held that the writ petition stood disposed of by the judgment of the Division Bench on July 28, 1986.

10. The record of the proceedings of the High Court which is before us does not contain the judgment delivered in court on July 28, 1986 but there is not dispute that the writ petition had been allowed. On the conceded position that the appellant's writ petition was allowed by the High Court, the University is directed to admit the appellant to the Master's Course in Law in the current session.

11. We understand that the University's courses of study have now been changed. The University shall take such steps as are practicable to give effect to this decision.

12. The appeal is accordingly allowed. There will be no order for costs.

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