

A. M. Mathur

Vs

Pramod Kumar Gupta and Others

Civil Appeal No. 1537 of 1990

(R. M. Sahai, K. Jagannatha Shetty JJ)

22.03.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. Special leave granted.

2. Mr. B. M. Lal, J. of the Madhya Pradesh High Court while dismissing an apparently unsustainable review petition has, however, made certain derogatory remarks against Mr. A. M. Mathur, senior advocate and also the ex-Advocate General of the State. Mr. Mathur has appealed to this Court for setting aside that order.

3. This matter pertains to a case which has come to be known as M.P. Liquor case. It was with regard to the grant for construction of new distilleries by the policy decision of the Government of Madhya Pradesh. That policy decision was challenged before the High Court by way of writ petitions. The writ petitions were allowed by the Division Bench consisting of the Acting chief Justice Mr. J. S. Verma (as he then was) and Justice B. M. Lal. In those writ petitions Mr. Mathur as Advocate General appeared and argued for the State Government. Learned Acting Chief Justice delivered the main judgment in the writ petitions invalidating the decision of the government on the ground that it violated Article 14 of the Constitution. Justice B. M. Lal delivered a separate concurring opinion in which he made highly disparaging remarks attributing mala fides and underhand dealing to the State Government. Against the judgment of the High Court, several appeals including one by the State of Madhya Pradesh are filed before this Court. The appeal preferred by the State was argued by the then Attorney General of India assisted by the appellant. This Court allowed the appeals and set aside the judgment of the High Court. The decision of this Court has since been reported in State of M. P. v. Nandlal Jaiswal ((1986) 4 SCC 566 : (1987) 1 SCR 1).

4. Bhagwati, C.J. speaking for the court in that case while expressing strong disapproval of the strictures by B. M. Lal, J. observed (at p. 66) : (SCC p. 615, para 43)

"We may observe in conclusion that judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B. M. Lal, J. were totally unjustified and

unwarranted and thy ought not to have been made."

On or about June 3, 1988 i.e. after a delay of 738 days Mr. Promod Kumar Gupta, advocate who had no connection whatsoever with the earlier litigation in the writ petitions or appeals filed a review petition before the High Court. He was represented by Mr. S. Dixit, advocate. In the review petition it was inter alia alleged that the State Government by committing fraud has procured the judgment from the Supreme Court, thereby vitiating the most solemn proceedings of the Apex Court of the Nation. He has also filed an Application No. 3858 of 1988 for interim findings on the question of fraud.

5. On October 29, 1988, the matter was listed for admission before a bench consisting of learned Judges Mr. C. P. Sen and Mr. B. M. Lal. After arguments, C. P. Sen, J. seems to have dictated his order in the open court dismissing the review petition. He expressed the view the petitioner has in locus standi to file the petition and the economically well-to-do parties to the writ petitions who lost their case before this Court did not choose to file any review petition. He also held that the petition for review was not maintainable before the High Court since the decision of the High Court was reversed by this Court. The petition was also held to be hopelessly barred by limitation and there was no sufficient cause for condoning the inordinate delay.

6. B. M. Lal, J. did not pass any order on October 29, 1988. He pronounced his order on February 6, 1989. In this interregnum there was another application from Mr. Gupta. On January 25, 1989, he filed an application in the aforesaid review petition requesting the court to take judicial notice of some extract of the Vidhan Sabha proceedings and to pass appropriate strictures against the appellant. According to him, that extract of the proceedings of the Vidhan Sabha proceedings and to pass appropriate strictures against the appellant. According to him, that extract of the proceedings of the Vidhan Sabha would lend credence to his contention that the State has practised fraud on the court. That application was not served on the appellant nor the court gave him any opportunity to file his counter. It may be mentioned that Mr. Mathur has tendered his resignation as Advocate General on January 25, 1989. On February 6, 1989, the said application was taken on record along with the documents annexed thereby. On the same day B. M. Lal, J. pronounced his order dismissing the review petition. The relevant portion of that order is as under :

"While briefing about the application for amendment of the return to the Chief Minister Shri Arjun Singh, has Shri A. M. Mathur, Advocate General acted in bona fide and honest manner, the fraud on the court would have been avoided. So also the misleading press statement by the Chief Minister to the Blitz would have been on true facts and this situation would not have arise; putting the courts in an embarrassing position."

Continued :

"It is the moral duty of a lawyer, much less the Advocate General, to act faithfully for the cause of his client and to furnish information about the court's proceedings correctly. In the past the chair of Advocate General was adorned by glorious and eminent lawyers who never showed any sycophancy and never suffered from mosaifi. As such, the action on the part of the Advocate General, was not befitting to the status of the high office."

Added :

"It appears that this was the reason that Shri A. M. Mathur avoided filing reply to the petition and skilfully succeeded in his attempt to abstain himself from the case on August 28, 1988, presumably, he had no courage to face the situation."

Finally, rounded off the conclusion :

"As far as exercise of jurisdiction of this Court is concerned, observing the judicial discipline envisaged under Article 141 of the Constitution and has been merged in the decision of the Supreme Court particularly when the decision of this Court in State of Madhya Pradesh v. Nandlal Jaiswal case ((1986) 4 SCC 566 : (1987) 1 SCR 1), it is for the petitioner, if he is so advised, to vindicate his grievances before the Apex Court.

Learned counsel further pointed out that one of the distiller's application for modification of the order is sub-judice before the Apex Court. As such, in view of the observations made in A. R. Antulay case (A. R. Antulay v. R. S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372) the petitioner, if so advised, may approach the Apex Court for getting redress."

7. From the foregoing order it will be seen that the learned Judge seems to have formed an opinion that the appellant did not act honestly and bona fide in briefing the then Chief Minister Mr. Arjun Singh and if he had acted bona fide and in honest manner, the fraud on the court would have been avoided and the Chief Minister would not have given a misleading press statement. He has also remarked that the appellant did not act befitting with the status of the high office of the Advocate General and he did not have the courage to face the situation in the court. Such are his conclusions, or surmises in the review petition which was not disposed of on the merits, but dismissed for want of jurisdiction.

8. The appellant's complaint before us is that he had no opportunity to meet the allegations in the review petition, much less as against averments in the subsequent application dated January 25, 1989. He made it clear to the High Court on October 6, 1988 and also on October 29, 1988 that he entered appearance pursuant to service of a copy of the review petition as per the High Court Rules, on the Advocate General's office. He has not entered appearance as such on behalf of the State or other respondents. He has, further, made it clear that there was no ground for review and it deserved to be dismissed and so he did not wish to enter appearance at that stage before the admission of the review petition. The appellant appears to be correct in these statements and they are found recorded in the court proceedings dated October 6, 1988.

9. It may be noted that C. P. Sen, J. dismissed the review petition on the ground of maintainability, limitation and locus standi of the petitioner. Thereafter the application was filed to pass strictures against the appellant in the light of the Vidhan Sabha proceedings. B. M. Lal, J. seems to have acceded to that request. No doubt each judge is independent to form an opinion of his own in deciding cases or in any phase of the decisional function. But the facts of the present case against the background of the views expressed by this Court apropos to the earlier strictures against the government, should have warned B. M. Lal, J. no matter how clear he was in his mind, not to criticise the appellant. The avoidance of even the appearances of bitterness, so important in a judge, required him not to cast aspersions on the professional conduct of the appellant.

10. Justice Cardozo of course said : (The Nature of the Judicial Process, Benjamin N. Cardozo pp.

168-69)

"The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass judges by. We like to figure to ourselves the processes of justice as coldly objective and impersonal. The law, conceived of as a real existence, dwelling apart and alone, speaks, through the voices of priests and ministers, the words which they have no choice except to utter. That is an ideal of objective truth toward which every system of jurisprudence tends It has a lofty sound; it is well and finely said; but it can never be more than partly true."

11. Justice Felix Frankfurter, put it with a different emphasis : (Some observations of Felix Frankfurter, J. on the "Nature of Judicial Process of Supreme Court Litigation", 98 Proceedings AM Phil Society 233 (1954))

"Judges are men, not disembodied spirits. Of course a judge is not free from preferences or, if you will, biases."

12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said : (The Judiciary and Constitutional Politics - Views from the Bench, Mark W. Cannon and David M. O.'s Brien p.27)

"First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness ... and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law."

13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judges nor for the judicial process.

14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decision legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter of scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. [See (1) R. K. Laksman v. A. K. Srinivasan ((1975) 2 SCC 466 : 1975 SCC (Cri) 654 : (1976) 1 SCR 204), (ii) Niranjana Patnaik v. Sashibhusan Kar ((1986) 2 SCC 569, 576 : 1986 SCC (Cri) 196)].

15. Learned judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted.

16. We therefor, allow the appeal and expunge all the remarks made by B. M. Lal, J. against the appellant in the impugned order.

17. Normally, we would have awarded heavy costs against the respondent but since the respondent is also an advocate, we refrain from making any order as to costs.

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