

Sabyasachi Sengupta and Others

Vs

Nanigopal Datta and Others

I. A. No. 3 of 1990 in Civil Appeal No. 4131 of 1989

(K. Jayachandra Reddy, S. Ratnavel Pandian JJ)

11.04.1990

ORDER

S. RATNAVEL PANDIAN, J. –

1. This application if filed by the State of West Bengal for clarification of the two orders of this Court dated September 7 and September 27 of 1989 in SLP (Civil) No. 10670 of 1989 in the context of the order dated September 4 and order/report dated September 15, 1989 passed by a division Bench of the High Court of Calcutta in Writ Appeal Nos. 240 and 241 of 1989 in the matter No. 1436 of 1988.

2. This case has got a chequered history, the facts of which are set in clear terms in the judgment dated July 10, 1989 of the High Court of Calcutta vide Annexure I to this application. Therefore, it is no necessary to reiterate the entire facts, but suffice to refer a few relevant facts for the disposal of this application.

3. A batch of employees of the State of West Bengal belonging to the West Bengal Civil Service (Executive) filed writ petition being Matter No. 1436 of 1988 under Article 226 of the Constitution of India. Subsequently some more members of the said cadre were added as respondents on their application and they also supported the writ petition. The original respondents to the writ petition who are also in the same cadre as well as the State Government which is made a party opposed the writ petition.

4. The main pleading in the writ petition is that there was no rule relating to determination of seniority as between promotees and direct recruits of the West Bengal Civil Service and the prayer on the above pleading is for issuance of a writ of mandamus directing the State Government to frame appropriate seniority rules in that behalf. On April 5, 1988, a learned Single Judge of the High Court, Ajit Kumar Sengupta, J. passed an interim order directing the State Government to frame seniority rules and determine inter se seniority on the basis of the seniority rules within one month from the date of the communication of the order. On April 29, 1988 on an application moved by the writ petitioners, the same learned Judge passed an interim order to the effect that if any seniority rules have been framed pursuant to his order dated April 5, 1988 the writ petitioners moved another interim application in the writ petition before the same learned Single Judge for setting aside the draft seniority rules. On the same day, the learned Judge passed the interim order restraining the State Government from taking any further action on the basis of the draft rules of seniority which were in the meantime prepared in compliance with the earlier order dated April 5, 1988.

5. On March 23, 1989 Ajit Kumar Sengupta, J. pronounced the judgment, the operative portion of which reads thus :

"The application is allowed. The draft rules are ultra vires as I have already held in my judgment. Following the directions given in my judgment, the inter se seniority will be done. There will be a stay of the operation of the judgment and order for four weeks but the interim order granted by this Court will continue also for four weeks."

The State Government preferred an appeal against the judgment and order dated March 23, 1989 before Division Bench of the High Court in Appeal No. 240 of 1989. The original respondents to the writ petition also preferred another appeal against that judgment in Appeal No. 241 of 1989. Both the appeals are with reference to Matter No. 1436 of 1988. In both the appeals, stay applications were filed before the Division Bench comprised of Justice Roy and Justice Sudhangshu Sekhar Ganguly. The said Division Bench delivered its judgment on July 10, 1989 disposing of the interim application, the relevant portion of which is as follows :

"On a consideration of all the submissions made before us, we are inclined to hold, therefore that the appellant-petitioners have made out a prima facie case for staying the operation of the judgment and order passed by the learned Judge. Since the respondent have not been able to establish that the prima facie case is in their favour, it cannot be held that the balance of convenience and inconvenience lies in their favour. The learned Judge has restrained the appellant-State from filling up a number of important posts till the making of the Seniority Rules and determination of seniority of the respondents. Such a stay order has been there since the filing of the original writ petition. It is obvious that the government has been suffering because of this embargo and it is also obvious to (sic that) these officers who would have otherwise been appointed to these posts been suffering financially. The operation of this order of injunction shall also, therefore have to be stayed along with the operation of the judgment and decree passed by the learned Judge.

In the circumstances stated it is hereby ordered that the operation of the judgment and order dated March 23, 1989 passed by the Hon'ble Mr. Justice Ajit Kumar Sengupta in the Matter No. 1436 of 1988 together with all interim orders passed by His Lordship in the said matter are hereby stayed. Pending the disposal of this appeal the government will be at liberty to proceed with the finalisation of the Security rules governing the members of the unified W. B. C. S. The government will be also at liberty to fill up all the vacancies and award all service benefits including appointments in higher posts or higher scale which will be subject to the results of these appeals. Since many such posts are lying vacant at present, the court desires the government to consider, if it will take in its consideration, the cases of the writ petitioners and respondents 9 to 15, while filling up these posts"

In the same order, the Division Bench after disposing this application has made the following orders :

"The operation of this judgment together with the order shall remain stayed for eight weeks."

The stay of the operation of the judgment evidently has been made on the request of the aggrieved

party, namely, the respondents to the appeal to enable them to approach this Court.

6. Aggrieved by this order, the writ petitioners who are respondents in the appeals filed S. L. P. No 9920 of 1989 challenging the judgment and order of the Division Bench dated July 10, 1989 along with a petition for stay in I. A. No. 1 of 1989 praying "to stay the operation of the impugned judgment and order dated July 10, 1989, passed by the Division Bench of the Calcutta High Court in Appeal No. Nil of 1989 in Matter No. 1436 of 198 till the disposal of the SLP..."

A bench of this Court to which one of us (Ratnavel Pandian, J.) was a party after hearing the learned counsel for the petitioners and respondents to the SLP passed the following order on August 29, 1989 :

"As the special leave petition is directed against the interim order of the Division Bench of the High Court, we are not inclined to interfere in the matter. The special leave petition is dismissed. We, however, request the High Court to dispose the writ petition pending in the High Court as expeditiously as possible preferable within two months from today."

7. It seems on September 4, 1989 Justice M. N. Roy, who was a party to the order dated July 10, 1989 expressed his inability to hear the appeals in the course of the said week in view of other matters being listed before him and released these appeal in question. Thereafter these two appeals had been assigned to another Division Bench comprised of the learned Judges Bimal Chandra Basak and Amarava Sengupta, JJ. This bench on the same day i. e. on the afternoon of September 4, 1989 itself extended the stay of eight weeks, granted by the earlier Division Bench dated July 10, 1989 till the disposal of the appeals and directed the status quo. On being aggrieved by the order dated September 4, 1989 extending the order of stay, the original respondents on the writ petition filed Special Leave Petition No. 10670 of 1989 before this Court which came up before the bench of this Court presided over by the Hon'ble Chief Justice along with K. N. Singh, J. This bench passed an interim order on the above SLP on September 7, 1989, the operative portion of which reads thus :

"In the meanwhile the order passed by this Court on August 29, 1989 shall hold the field notwithstanding any contrary order passed by the Division Bench of the Calcutta High court."

This SLP was finally listed before another bench comprised of Murari Mohan Dutt, J. and one of us (Ratnavel Pandian, J.) This bench passed the following order on July 29, 1989 in Civil Appeal No. 4131 of 1989 (arising out of S. L. P. (Civil) No. 10670 of 1989) :

"Special leave is granted. Perused the report.

After hearing the learned counsel for both the parties, we direct that in view of the order dated September 7, 1989, passed by this Court, no further order need be made on this appeal.

The appeal is disposed of as above. There will be no order as to costs."

8. The submissions made on behalf of the applicants in the present interlocutory application (No. 3 of 1990) are that the ex parte order extending the stay and granting status quo as on September 4, 1989 passed by the Division Bench consisting of Bimal Chandra Basak and Amarava Sengupta, JJ. was in violation of the earlier order of this Court made on August 29, 1989 and that since the

appeals though heard on a number of days are not yet disposed of the State Government is constrained to approach this Court for necessary orders and direction/clarification in the interest of smooth administration and eliminating stagnation and frustration among the members of West Bengal Civil Service (Executive) cadres. According to the state government, there are number of posts lying vacant in the cadre of Deputy Secretary and equivalent posts in different departments of the State Government including core departments like Revenue, Finance, Education, Milk Supplies, Hospital, Administrative Reforms, Power etc. that the State Government is unable to fill up the same in view of the interim order of status quo passed on September 4, 1989, that the State Government is unable even to make transfers on promotion or sending officers on deputation to equivalent posts and that no service benefits could be awarded to those officials. Respondent 2 on his behalf and on behalf of respondents 1, 3, 4 and 5 has filed a counter stating that the order of extension of stay passed by the Division Bench on September 4, 1989 is in no way inconsistent or in contravention of the order of this Court and the delay in disposal of the appeal is only on the account of a dilatory tactics adopted by the applicants and the order obtained from this Court on September 7, 1989 was without any notice to and behind the back of respondents 1 to 5 and that most of the posts (as shown in Annexure 'A' to the counter) have understandably been filled up by the State Government during the pendency of the interim orders and that the grievance expressed by the State Government in filling up the posts is totally a false statement since all the posts mentioned have been filled up and that in case the extended stay order is disturbed, the respondents would be put to immeasurable hardships.

9. As the two Appeals Nos. 240 of 1989 and 241 of 1989 in Matter No. 1436 of 1988 are now pending before the High Court for final disposal, we without making any detailed discussion on the issues involved, are inclined to dispose of this application by making only a clarification. It is the admitted case that the Division Bench consisting of Justice Roy and Justice Sudhangshu Sekhar Ganguly by their order dated July 10, 1989 stayed the operation of the order of the learned Single Judge dated March 23, 1989 in Matter No. 1436 of 1988 and allowed the government to fill up all the vacancies and award all service benefits including appointments to higher posts or higher scales which will be subject to the results of the two appeals. However, the same bench stayed the operation of this order for a period of 8 weeks, admittedly to enable the respondents in these two appeals to approach this Court. When the matter came up before this Court for admission in S. L. P. No. 9920 of 1989 with the petition (I. A. No. 1 of 1989) to stay the operation of the order dated July 10, 1989 staying the order of the Single Judge of the High Court, this Court dismissed that SLP by its order dated August 29, 1989 after hearing the counsel for both the parties. The Court, observing "We are not inclined to interfere in the matter", has upheld the order of stay dated July 10, 1989 passed by the earlier Division Bench has been revived and come into operation. The 8 weeks period from which the order dated July 10, 1989 has been stayed by the Division Bench would have in the normal course expired by September 9, 1989. It seems that meanwhile, the respondents in the two appeals have approached another Division Bench to which the appeals have been assigned for the reasons already indicated and obtained an order of extension of stay of the operation of the judgment of the Division Bench dated July 10, 1989. Feeling aggrieved, the appellants in the two appeals—namely, Sabyasachi Sengupta and others filed S. L. P. No. 10670 of 1989. This Court by its order dated September 7, 1989 directed that the order passed by this Court on August 29, 1989 i. e. the order passed in S. L. P. No. 9920 of 1989 shall hold the field notwithstanding any contrary order passed by the division Bench of the Calcutta High Court. The 'contrary order' is referable to the order passed by the second bench of the Calcutta High Court on September 4, 1989. Mr. Ashok Desai, the learned Solicitor General and Mr. Ashok Sen, senior counsel appearing for the applicants forcibly articulated that in the teeth of the order passed by this Court on September 7, 1989

observing "notwithstanding any contrary order passed by the Division Bench of the Calcutta High Court", the order of the court dated August 29, 1989 shall hold the field, it is made clear that the order of the High Court dated September 4, 1989 has become otiose and further request that this Court, however, be pleased to clarify the position in the context of the subsequent order/report dated September 15, 1980. Mr. D. P. Mukherji appearing on behalf of the respondents made a fervent plea that even assuming that the order dated September 4, 1989 is in infraction of the order dated September 7, 1989, it would amount only to a technical infraction and as such there can be no justification to grant the relief asked for by the applicants in this interlocutory application and if the relief, as prayed for is granted, it would be causing substantial and grave injustice to the respondents.

10. On a careful analysis of the facts and circumstances of the case, we hold that the plea of Mr. Mukherji is illogical and inconceivable and does not merit consideration. If his plea is to be accepted, then it will be only a mockery of justice because it will be tantamount to nullifying our own order which has reached its finality. It is the settled principle of law that any order or direction pronounced by this apex court in exercise of its jurisdiction in any matter pending before it, that order or direction is binding on all courts within the territory of India and should be implemented and executed in all its rigour.

11. From the report sent by the Division Bench of the Calcutta High Court dated September 15, 1989 it seems the latter Division Bench extended the 8 weeks stay on the grounds - firstly that the order of this Court dated August 29, 1989 has not prevented the Division Bench from passing such order and secondly that the 8 weeks stay stood vacated w. e. f. September 4, 1989. But in fact, the order of this Court dated August 29, 1989 has restored the order of the first Division Bench of the High Court dated July 10, 1989 on the expiry of 8 weeks and that the 8 weeks stay had expired only by September 9, 1989 and not on September 4, 1989.

12. Be that as it may, the order of this Court dated September 7, 1989 in S. L. P. No. 10670 of 1989 has clarified that position to the effect that the order of this Court dated August 29, 1989 shall hold the field notwithstanding the contrary order passed by the division Bench of the Calcutta High Court. The "contrary order" mentioned in the order dated September 7, 1989 refers to the order dated September 4, 1989. the resultant position is that this Court by the order dated September 7, 1989 has rendered the order of the second Division Bench of the High Court dated September 4, 1989 inoperative. Subsequently, this S. L. P. No. 10670 of 1989 was disposed of after grant of leave. Thus the matter now stands concluded that from September 10, 1989 onwards the order of the first Division Bench dated July 10, 1989 has become operative and executable and the interim direction given by that order is brought back to life and resuscitated. Therefore, it is open to the State Government to act in accordance with the order dated July 10, 1989. with this clarification, the above application is disposed of with no order as to costs.

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