

Commissioner, Agra & Ors.

Vs.

Rohtas Singh

(Sujata V. Manohar, G. T. Nanavati JJ)

09.12.1997

JUDGMENT

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MRS.SUJATA V.MANOHAR, J.

1 Leave granted

2 These appeals are from a judgment of the Allahabad High Court holding that Government Advocates and Standing Counsel for the State of Uttar Pradesh cannot be allowed to appear and defend Government officials against whom notices for contempt of court are issued. In the Allahabad High Court advocates for the State appearing in criminal matters are designated as Government Advocates while advocates on behalf of the State appearing in civil matters are designated as Standing Counsel The High Court has held that neither category of advocates can appear in contempt proceedings on behalf of an alleged contemnor who is an official of the State Government The Allahabad High Court has further held that no monetary help Government officials towards litigation expenses in contempt proceedings These expenses are to be incurred personally by the Government officials concerned which can be subsequently reimbursed to them if they are honourably exonerated in contempt proceedings The High Court has also struck down a Government Order dated 12th of September, 1996 issued by the Special Secretary and Additional Legal Remembrance, Government of U.P. under which a panel of Advocates has been nominated for appearance in contempt petitions filed against the Government of U.P. and its officers and/or employees. The High Court has struck down the names of the two Additional Chief Standing Counsel from both these panels It has also held as of no consequence, the relevant provisions in the Legal Remembrancer's Manual permitting Government Advocates and/or Standing Counsel to appear in such matters C3 The impugned judgment has been pronounced in the course of contempt proceedings for alleged violation of the orders of the Allahabad High Court dated 6.9.1996 in Civil (Misc.) Writ Petition No.28721 of 1996-Rohtas Singh Vs The Commissioner, Agra Division & Ors.and the order of the High Court dated 11.7.1996 in Civil (Misc.) Writ Petition No.21843 of 1996-Gaon Panchayat of Village Bhavokara & Ors Vs District Panchayat Raj Adhikari, Bulandshaher and Ors In these proceedings, Shri S.M.A. Kazmi, Additional Chief Standing Counsel appeared for the alleged contemnors who were Government officials and who were alleged to have violated the respective orders in the above two writ petitions When the court raised an objection that the State Law Officers cannot appear in contempt proceedings to defend the contemnors, Shri S.M.A. Kazmi, Additional Chief Standing Counsel drew the attention of the court to the above Government Order No.D/2714/7-Nyay-3-36-83/96 dated 12th September, 1996 under which six State Law Officers as aforesaid had been appointed by the State Government to appear in all contempt cases in the High Court of Judicature at Allahabad end its Bench at Lucknow for the purpose of defending r.Kazmi contended that he being one of the six State Law Officers so named,

was authorised to appear for the alleged contemnors. 4 The attention of the High Court was also drawn to the Legal Remembrancer's Manual of 1975 Under the Legal Remembrancer's Manual of 1975 Chapter V deals with Chief Standing Counsel and Standing Counsel in the High Court who are responsible for the conduct of all civil cases in the High Court to which the State Government is a party. Under Clause 5 04 of Chapter V the Standing Counsel is entitled to represent the State or any authority within the State in such other civil cases in which he might be required or directed to appear by the Government, the Legal Remembrance or the High Court Chapter IV deals with Government Advocate, his Deputies and Assistants Under Clause 4.07 of Chapter IV, the Government Advocate, Additional Government Advocate, Deputy Government Advocate or Assistant Government Advocate shall have the right of private practice but shall not, except under special permission of the Government, appear for the defence in any criminal or quasi-criminal case or proceedings nor can he advise any private party regarding any criminal case which might be pending or be likely to be instituted in Uttar Pradesh 5 It was contended by Shri Kazmi, Additional Chief Standing Counsel for the State of U.P. that the Government order of 12th of September, 1998 constituted special authorisation entitling him to appear in contempt proceedings on behalf of an alleged contemnor when that alleged contemnor was an employee or officer of the State. The High Court, however, rejected this contention while holding that the Government Advocates and Standing Counsel cannot be allowed to so appear. 6 The High Court seems to have proceeded on the basis that it is for the State to prosecute contemnors Therefore, counsel for the State cannot appear for the "accused" contemnor This foundation of the High Court's reasoning is unfortunately not sound A contempt proceeding is often described as a quasi-criminal proceeding because it results in punishment for the contemnor. The proceeding, however, cannot be equated with the prosecution of a criminal by the State Contempt proceedings are essentially a matter between the court and the contemnor. Contempt jurisdiction enables the court to ensure proper administration of justice and maintenance of the Rule of Law. It is meant to ensure that the courts are able to discharge their functions properly, unhampered and unsullied by wanton attacks on the system of administration of justice or on officials who administer it, and to prevent wilful defiance of orders of the court or undertakings given to the court That is why the Supreme Court and the High Court have an inherent power to punish for contempt even de hors legislation pertaining to contempt of court 7 This is apparent also from the definition of "contempt" under the Contempt of Courts Act, 1971. Two types of contempt are defined. Under Section 2(b), Civil Contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. While criminal contempt is defined under Section 2(c) to mean the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise), of any matter or the doing of any other act whatsoever which - (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner From this definition it is clear that the courts' power to punish for contempt is a power which is required in furtherance of proper administration of justice and preserving the authority of the court This power is expressly preserved under Articles 129 and 215 of the Constitution. That is why the question of contempt is a question which is essentially between the court and the contemnor 8 Explaining this position, this Court in the case of D.N. Taneja Vs Bhajan Lal (1988 [3] SCC 26) observed, "A contempt is a matter between the court and the alleged contemnor Any person who moves the machinery of the court for contempt only contempt of court After furnishing such information he may still assist the court but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor" In that case this Court held that the person who had lodged the complaint was not entitled to any right of appeal because he

was not a necessary party in contempt proceedings⁹ It is on account of the mistaken notion that the State has to prosecute an action for contempt of court against the contemnor that the High Court, in the present case, came to the conclusion that the Advocates appointed by the State to represent it in courts of law cannot appear for an officer of the State who is charged with contempt. It is, therefore, open to the State to nominate its advocates to appear for its officials in contempt proceedings. In fact, in the case of the highest law officer of the State—the Advocate General, this Court, in the case of *T.C Hingorani Vs G.P.Misra* (1967 Law Reports Lucknow, page 662), held that the State Government could assign to the Advocate General the duty to appear in a contempt proceeding for a contemnor, and the Advocate General was entitled to so appear This has been reiterated in *Mohd.Iqbal Khandey Vs Abdul Majid Rather* [(1994) 4 SCC 34] where the Court held that there was no justification for the court to direct the counsel for the appellant, namely the Additional Advocate General, not to appear for the appellant or to direct that he should instead, assist the court¹⁰ It is possible that there might be situations where the Advocate General may decline to appear for an alleged contemnor who is an officer or employee of the State Section 15, for example, of the Contempt of Courts Act, 1971, which deals with cognizance of criminal contempt, provides that in the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by (a) the Advocate General, or (b) any other person with the consent in writing of the Advocate General, or (c) in relation to the High Court for the Union Territory of Delhi, such law officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such law officer In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or, in relation to a Union Territory, such law officer as the Central Government may, by notification in the Official Gazette, specify in this behalf The Advocate General or the law officer concerned may in such a case decline to appear for the alleged contemnor in a criminal contempt case¹¹ Our attention was also drawn to Rule 6 of the Allahabad High Court Rules framed under Section 23 of the Contempt of Courts Act which provides for a notice of a criminal contempt being served on the Government Advocate This, however, does not make the Government Advocate an interested party in the contempt proceedings Moreover, the present case deals not with criminal contempt but with civil contempt.¹² The State is, therefore, entitled to authorise a law officer to appear in cases where the contempt consists of disobedience of an order of the court by an official or employee of the State. The further directions given by the High Court that in all such cases the legal expenses should be borne personally by the alleged contemnor except when he is honourably acquitted also appear to be unwarranted. The High Court seems to have been moved into issuing such a direction because of the large number of contempt cases pending in that court against the officers of the State for their failure to carry out the orders of the Court. It is indeed a disturbing situation Where the conduct of the concerned official is contumacious, the Court can direct him to pay costs personally, if the facts and circumstances of the case so warrant But a general direction of the kind given by the High Court cannot be sustained.¹³ Hence, the impugned order of the High Court is set aside and the appeals are allowed There will, however, no order as to costs