

SUPREME COURT OF INDIA

Hari Singh Nagra

Vs.

Kapil Sibal

Crl.A.No.2 of 1997

(J.M. Panchal and A.K. Patnaik JJ.)

15.07.2010

JUDGEMENT

J.M. Panchal, J.

1. The relevant facts, from which the present contempt petition arises, are as under :

2. Mehfil-e-Wukala ('Mehfil' for short) is a cultural and literary group / association of lawyers practicing in the Supreme Court. The main object as claimed by the said organization has been to promote art, culture and literature amongst the members of the Bar. The said group of lawyers also claims that Mehfil provides the members of legal fraternity a chance to break away from the busy schedule to pursue their talents in the fields of art, culture and literature. The Mehfil was started in the year 1986 as a small group of poets-advocates who used to sit periodically at each other's place and recite poems etc. In the year 1992-93, the members of the Mehfil decided to hold an annual function and to invite more members of the Bar and also the Hon'ble Judges of the Supreme Court and the High Court of Delhi to participate in the activities of the Mehfil. It was also decided to release a souvenir on the said occasion, which was to contain brief account of the activities of the Mehfil, messages, articles etc. to be contributed by the Hon'ble Judges and senior members of the Bar. Accordingly, Annual Function was held on February 6, 1993 at India International Centre, New Delhi and a souvenir was published. Again on February 5, 1994, Annual Function was held which was attended by the members of the Bar and the Hon'ble Judges. On this occasion also a souvenir was published which contained various messages, articles, poems etc. contributed by the members of the Bar and the Hon'ble Judges. For the year 1994-95, it was decided to hold the Annual Function on March 25, 1995. As was done in the previous years, it was decided to release a souvenir on the said occasion. The function was held on the scheduled date and the souvenir was published. It is claimed by Mr. Suresh C. Gupta, learned counsel practicing in this Court in his affidavit in reply that articles and messages were sent by the then Hon'ble Chief Justice of India, Hon'ble Mr. Justice K. Jayachandra Reddy, hon'ble Justice Dr. A.S. Anand, Hon'ble Mr. Justice S.P. Bharucha, Mr. K.K. Venugopal, Senior Advocate and the then President of Supreme Court Bar Association,

Hon'ble Mr. Justice M.M. Punchhi, Hon'ble Mr. Justice B.L. Hansaria etc. Mr. Kapil Sibal who is Senior Advocate also sent a message to be published in the souvenir. In his message Mr. Sibal expressed concern about the plight of junior members of the Bar and also about falling standards of the legal fraternity.

“The message was not released to the press nor the souvenir was made available for sale but was circulated to its members and other members of the Bar. Initially, the message sent by Mr. Sibal did not invite any controversy whatsoever for about a month. However, Mr. Sibal, the learned Senior Advocate, decided to contest for the post of President of Supreme Court Bar Association and filed his nomination. Thereafter, a news item was published in the Sunday Times of India daily dated April 16, 1995 wherein certain excerpts from the message which was published in the souvenir of the Mehfil, were reported which suggested that Mr. Sibal had made a frontal attack on the judiciary.”

3. The petitioner Nos.1 to 5 are practicing advocates at the Punjab and Haryana High Court, Chandigarh. Their claim was that Mr. Sibal who is a Senior Advocate of the Supreme Court and was contender for the Presidentship of Supreme Court Bar Association, had by sending a message which was published in the souvenir of the Mehfil committed a criminal contempt of the court. The petitioner Nos.1 to 5 were of the view that a real prejudice, which can be regarded as substantial interference in the administration of justice was caused because of the calculated and keenly studied attempt by Mr. Sibal to denigrate the institution of judiciary. The petitioner Nos.1 to 5 claimed that the remarks made by Mr. Sibal against Hon'ble Judges amounted to an unignorable and unpardonable mischief which had tendency to shake the faith of the people of the country in the judiciary. What was claimed by the petitioners was that Mr. Sibal had entered into a conspiracy with the respondent Nos.2 and 3 to bring the administration of justice into disrespect which amounted to deliberate interference in the administration of justice and as he had imputed unsubstantiated charges of corruption against the Judges, he was liable to be hauled up for contempt of Court. Therefore, the petitioners instituted Criminal Contempt Petition No.12 of 1995 in the High Court of Punjab and Haryana at Chandigarh. The said petition was filed under Article 215 of the Constitution and prayer made was to punish the respondents for committing contempt of the High Court of Punjab and Haryana at Chandigarh. Initially, the said petition was placed for preliminary hearing before a learned Single Judge of the High Court. The learned Single Judge was of the view that what was alleged by the petitioners against the three respondents impleaded therein was criminal contempt and, therefore, in view of the mandatory provisions contained in Section 15 of the Contempt of Courts Act, 1971 the petition should be heard and decided by a Bench of not less than two Judges. Therefore, the learned Single Judge, by an order dated May 16, 1991 directed the Registry to place the papers before Hon'ble the Chief Justice for listing the matter before a Bench consisting of not less than two judges. Accordingly, the matter was placed for preliminary hearing before a Division Bench and the Bench issued show cause notice to the original respondent Nos.1 to 3 stating that they were directed by the Division Bench to implead the Editors, Printers and Publishers of 'Mehfil-e-Wukala'. The petitioners filed an application to implead the respondent Nos.4 and 5 as respondents in the

contempt petition as they were editors of the Mehfil. The said application was granted and the respondent Nos.4 and 5 were impleaded in the Contempt Petition. The respondent Nos.5 and 6 Secretaries of Mehfil-e-Wukala filed Transfer Petition No.251 of 1996 in this Court and prayed to transfer the Contempt Petition pending before the Punjab and Haryana High Court at Chandigarh to this Court. After hearing the learned counsel for the parties the said petition was allowed and that is why the Registry has registered the case as Transfer Case (Criminal) No.2 of 1997. On notice being served, Mr. Sibal and other respondents have filed affidavit in reply controverting the claims advanced by the petitioners.

4. The question posed for consideration of the Court is whether sufficient case is made out by the petitioners to initiate contempt proceedings against the respondents. It may be mentioned that after transfer of the case from Punjab and Haryana High Court at Chandigarh to this Court, several notices have been issued to the petitioners who are practicing lawyers at the High Court of Punjab and Haryana, Chandigarh. However, they have not responded to the notices nor entered appearance through their learned advocate nor thought it fit to assist the Court in the proceedings initiated by them. However, it is well settled that contempt of Court is a matter between the Court and the alleged contemnor. The matter is pending in this Court since the year 1997.

“Therefore, this Court has decided to proceed with the hearing of the matter, notwithstanding, the absence of the petitioners.

This Court has heard Mr. Harish Salve, learned senior counsel for the respondent No.1 and learned senior counsel Mr. Ranjit Kumar appearing for the learned advocates at whose instance, the contempt petition was transferred to this Court.”

5. In order to decide the question posed for consideration of this Court, it would be relevant to set out the Message/Article contributed by the respondent No.1 in the souvenir of the Mehfil:

“The public image of the legal community is at its nadir. Influx of large numbers into the profession, deterioration of moral standards of the legal community questionable integrity of some of those who are in judiciary and the sheer economic cost of starting as a professional and sustaining one self have contributed to these falling standards.

The judiciary, despite the above, provides a glimmer of hope for the common man. Those who adorn this institution, though tainted, have not yet lost all credibility. We have to all unite together to refurbish the image of the legal fraternity. Before we point fingers at others, let us do some soul-searching.

For a start, let us concentrate on the junior members of the Bar. Our senior colleagues owe it to the profession to bring up the Junior Bar. This can never be done until junior members of the Bar have access to the chambers of senior lawyers. We must devise what I may call Voluntary Access Scheme : in terms of which the Supreme Court Bar

Association should rotate junior members of the bar amongst the chambers of Senior Lawyers who voluntarily want to participate in this scheme. Access should be provided to at least one, if not two, junior members of the bar to each senior on the basis of rotation for 6 months at a time. This will give to the junior members the advantage of having worked with a variety of seniors. Of course, a minimum payment schedule must be part of this scheme.

We must draw up a Code of Conduct applicable to the members of the Bar which will lay down norms not only in relation to their conduct with each other but also with reference to their conduct qua the Bench. Lawyers must refrain from shouting at each other, speaking in anger, threatening judges, threatening colleagues and the like. It is also necessary that procedures must be devised to ensure adherence to these norms.

Entry into the profession should be limited to only those who pass an examination which may be conducted by the Bar Council of India. This, of course, requires legislation. Lawyers must get together, apply their mind to this issue and ensure the passing of this legislation.

It seems that judges have started disciplining lawyers. Judges themselves need disciplining. The judiciary has failed in its efforts to eradicate the phenomenon of corruption. This phenomenon includes receiving monetary benefits for judicial pronouncements rendering blatantly dishonest judgments, kow-towing with political personalities and obviously favouring the Government and thereby losing all sense of objectivity.

The legal community instead of publically denigrating judicial system should come forward with proposed legislation to deal with this issue. A committee must be set up by the Supreme Court Bar Association to look into the modalities of bringing about such legislation in the context of the present constitutional frame-work which provides complete protection to the judiciary.

The issue of legal education must be addressed by the legal fraternity in cooperation with institutions providing legal education in India. Funding should be provided for studies to be conducted in such aspects of the law as required urgent attention.

There must be greater interaction between the various Bar Associations in the country. Constant interaction will lead to exchange of information which, in turn, will enable all of us to attend urgently to the needs of the members of the legal profession.

These are thoughts which require both immediate attention and a well thought of strategy. If we pause for a moment and think about what I have said, at least we will have made a start.”

6. It may be stated that the Times of India, Delhi dated April 16, 1995 in the issue of Sunday Times published excerpts from the above quoted message sent by Mr. Sibal and title it as Sibal's Remark Stir Row in Legal Circles.

7. A fair analysis of the message sent by Mr. Sibal makes it clear that he was concerned with the public image of the legal community which according to him was at its nadir. He was of the view that influx of large numbers into the profession, deterioration of moral standards of the legal community, questionable integrity of some of those who were in judiciary and the sheer economic cost of starting as a professional and sustaining one self had contributed to these falling standards.

“He expressed his firm opinion that judiciary despite the above, provided a glimmer of hope for the common man and though there were tainted Judges, the institution had not yet lost all credibility. He called upon all concerned to unite together to refurbish the image of the legal fraternity. In order to make out his point Mr. Sibal first of all concentrated on the plight of junior members of the Bar. After emphasizing that senior colleagues owe it to the profession to bring up the Junior Bar and that the junior members of the bar must have access to the chambers of the Senior Lawyers, he appealed to the members of the Bar to devise a Voluntary Access Scheme in terms of which the Supreme Court Bar Association would rotate junior members of the Bar amongst the chambers of Senior Lawyers who voluntarily want to participate in the Scheme. Mr. Sibal was of the view that access should be provided to at least one if not two junior members of the bar to each senior on the basis of rotation for at least six months which according to him was likely to give the junior members the advantage of having worked with a variety of seniors. He also emphasized that a minimum payment schedule to the junior members of the Bar must be part of this Scheme. He called upon those concerned to draw up a Code of Conduct applicable to the members of the bar which would lay down norms not only in relation to their conduct with each other but also with reference to their conduct qua the Bench. He was of the opinion that lawyers must refrain from shouting at each other, speaking in anger, threatening Judges, threatening colleagues and the like and expressed his strong feeling by stating that procedures must be devised to ensure adherence to these norms. He was of the further opinion that entry into the profession should be limited to those who passed an examination which should be conducted by the Bar Council of India. Having addressed to the drawbacks then prevailing in the legal profession, he proceeded to discuss the malaise affecting the judiciary. Having practiced in the Supreme Court for a pretty long time, he perceived that Judges had started disciplining lawyers. He, therefore, mentioned that Judges themselves needed to be disciplined. In his Message, he noted with pain that judiciary had failed in its efforts to eradicate the phenomenon of corruption which included receiving monetary benefits for judicial pronouncements, rendering blantly dishonest, judgments, kow-towing with political personalities and favouring the Government and thereby losing sense of objectivity. Mr. Sibal had noticed that legal community was assailing and belittling the judicial system publically, which was harmful. He, therefore, urged the

legal community to desist from criticizing the judicial system publically and asked them to come forward with proposed legislation to deal with this issue and advised a Committee to be set up by the Supreme Court Bar Association to look into the modalities of bringing about such legislation in the context of then prevalent constitutional framework which according to him provided complete protection to the judiciary. He also emphasized in his message the necessity of legal education by the legal fraternity in cooperation with institutions providing legal education in India and expressed a point of view that funding should be provided for studies to be conducted in such aspects of the law as required urgent attention. Mr. Sibal further stressed necessity of having greater interaction between the various Bar Associations in the country to exchange information which in turn would enable all concerned to attend urgently to the needs of the members of the legal profession.

As mentioned earlier, only a part of message was published in the newspaper wherein sentences were torn out of context and an impression was given that Mr. Sibal had made a frontal attack on the judiciary. A fair reading of the message quoted above makes it explicit that the sending and/or publication of the message in the Mehfil did not scandalize or tend to scandalize, or lower or tend to lower the authority of any court nor prejudiced, or interfered or tended to interfere with the due course of any judicial proceedings; or interfered or tended to interfere with or obstructed or tended to obstruct, the administration of justice in any other manner, within the meaning of 'criminal contempt' as defined in Section 2(c) of the Contempt of Courts Act, 1971. Having regard to the contours of the issue involved, this Court feels that it would be essential to recall to the memory the weighty observations made by *His Lordship Sabyasachi Mukherji in P.N. Duda vs. P. Shiv Shanker & Ors.*¹.

Therein, Mr. P. Shiv Shankar who at the relevant time was the Hon'ble Minister for Law, Justice and Company Affairs had delivered a speech before a meeting of the Bar Council of Hyderabad. Mr. P.N. Duda, an advocate practicing in Supreme Court had drawn attention of the Court to that speech. According to Mr. Duda, the speech of Mr. P. Shiv Shankar contained statements which were derogatory to the dignity of this Court as it attributed partiality towards economically affluent sections of the people, by this Court.

Mr. Duda was of the view that language used in the statements was extremely intemperate, undignified and unbecoming of a person of Mr. Shiv Shankar's stature and position. Mr. Duda, therefore, urged the Court to initiate contempt proceedings against Mr. P. Shiv Shankar. The Court went through the entire speech and also noticed the newspaper version of the said speech. This Court took into consideration the suggestion made by *Lord Atkin in Ambard vs. Attorney General for Trinidad and Tobago*², *E.M. Shankaran Namboodiripad vs. T. Narayanan Nambiar*³ and made following apt observations in paragraphs 12 and 13 of the reported decision :

"12. The question of contempt of court by newspaper article criticising the Judges of the Court came up for consideration in the case of Re: Shri S. Mulgaokar. In order to appreciate the controversy in this case it has to be stated that the issue dated 13th December, 1977, of the Indian Express published a news item that the High Courts had reacted very strongly to the suggestion of introducing a code of judicial ethics and propriety and that "an adverse has been the criticism that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it". In its issue dated December 21, 1977 an article entitled "behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs. Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by Judges themselves was "so utterly inimical to the independence of the judiciary, violative of the Constitutional safeguards in that respect and offensive to the self-respect of the Judges as to make one wonder how it was conceived in the first place". A notice had been issued to the Editor-in-Chief of the Newspaper to show-cause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items.

13. It was observed by Chief Justice Beg in that decision that national interest required that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics. This should be a part of national ethics. The comments about Judges of the Supreme Court suggesting that they lack moral courage to the extent of having "disowned" what they had done or in other words, to the extent of uttering what was untrue, at least verge on contempt. None could say that such suggestions would not make Judges of this Court look ridiculous or even unworthy, in the estimation of the public, of the very high office they hold if they could so easily "disown" what they had done after having really done it. It was reiterated that the judiciary can not be immune from criticism. But, when that criticism was based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it could not be ignored. A decision on the question whether the discretion to take action for Contempt of Court should be exercised must depend on the totality of facts and circumstances of the case. The Chief Justice agreed with the other two learned Judges in that decision that in those facts the proceedings should be dropped. Krishna Iyer, J. in his judgment observed that the Court should act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack was calculated to obstruct or destroy the judicial process. The Court must harmonise the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the judge. To criticise a judge fairly albeit fiercely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it. The Court must avoid confusion between personal protection of a libelled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not

contempt but latter is, although overlapping spaces abound. The fourth functional canon is that the Fourth Estate should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court.

The fifth normative guideline for the Judges to observe is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, and the sixth consideration is that if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its sources and stream.”

8. There is no manner of doubt that Judges are accountable to the society and their accountability must be judged by their conscience and oath of their office. Any criticism about the judicial system or the judges which hampers the administration of justice or brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. National interest requires that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics. There is no manner of doubt that freedom of expression as contemplated by Article 19(1)(a) of the Constitution is available to the Press and to criticize a judgment fairly albeit fiercely is no crime but a necessary right. A fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. In fact, such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. The Message examined the evils prevailing in the judicial system and was written with an object to achieve maintenance of purity in the administration of justice. The message was exposition of Mr. 22 Sibal's ideology and he had shown the corrective measures to be adopted to get the institution rid of the shortcomings mentioned by him. On the facts of the case, the message sent by Mr. Sibal to be published in the souvenir of the Mehfil will have to be regarded as fair criticism of his senior colleagues for their failure to bring up the Junior Bar and of those members of the Bar who were shouting at each other and threatening the Judges. The message is nothing but concerns of a senior advocate who has practiced long in this Court who noticed that the public image of the legal community was its nadir.

“The article nowhere targets a particular judge. This is not a case of an attack on a Judge which is scurrilous, offensive, intimidatory or malicious beyond condonable limits, in respect of a judgment or his conduct. The article is an expression of opinion about an institutional pattern. The article by itself does not affect the administration of justice. Here, it would not be out of place to refer to certain reported decisions dealing with the question as to when a publication can be regarded as scandalizing the Court or tending to interfere with the administration of justice or lowering the authority of Court. Scandalising in substance is an attack on individual Judges or the Court as a whole with or without referring to particular cases casting unwarranted and defamatory aspersions upon the character or the ability of the Judges.

‘Scandalising the Court’ is a convenient way of describing a publication which, although it does not relate to any specific case either post or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole which is calculated to undermine the authority of the Courts and public confidence in the administration of justice.”

9. *In re: Sham Lal*⁴, a news item referring to a signed document describing one of the views expressed in the Habeas Corpus case, i.e., *ADM Jabalpur vs. Shivkant Shukla*⁵ as ‘misdeed’ and Judges who gave such decision would be ‘ostracized’ in other countries appeared in newspaper Times of India. This Court was called upon to initiate contempt proceedings. The Court took the view that this was not a fit case for drawing up formal contempt proceedings and dropped the proceedings. In *Vishwanath vs. E.S. Venkataramaih*⁶ (Bom), Mr. E.S. Venkataramaiah, former Chief Justice of India, gave an interview to a noted journalist Kuldeep Nair at the eve of his retirement on 17.12.1989 which was published in several newspapers. In course of interview, the former Chief Justice is stated to have made the following statements : “The judiciary in India has deteriorated in its standards because such judges are appointed as are willing to be influenced by lavish parties & Whisky Bottles.” In every High Court, Justice Venkataramaiah said, there are at least 4 to 5 judges who are practically out every evening, wining and dining either at a lawyer's house or foreign embassy. He estimates the number of such judges around 90 and favours transferring them to other High Courts.

“Chief Justice Venkataramaiah reiterated that close relations of Judges be debarred from practicing in the same High Courts. He expressed himself strongly against sons-in-law and brothers of Judges appearing in the Courts where the latter are on the Bench. Most relations of Judges are practicing in High Courts of Allahabad, Chandigarh, Delhi and Patna.

According to C.J. Venkataramaiah practically in all the High Courts in the country close relations of Judges are thriving. There are allegations that certain judgments have been influenced through them even though they have not been directly engaged as lawyers in such case. It is hard to believe the reports that every brother, son or son-in-law of a judge whatever his merit or lack of it as lawyer can be sure of earning an income of more than Rs.10,000/- a month.

The Division Bench of Bombay High Court held that the words complained of did not amount to Contempt of Court on the grounds that (1) the entire interview appears to have been given with the idea to improve the judiciary; (2) the Supreme Court had dismissed the Writ Petition (C) No.126 of 1990 filed on behalf of State Legal Aid Committee, J & K for an appropriate writ commanding the Union of India or any other appropriate authority to disclose the names of 90 judges as mentioned by the former Chief Justice of India.”

10. In *Bramhaprakash Sharma vs. State of UP*⁷, Resolution of the Executive Committee of the District Bar Association of the Muzzafarnagar to the effect that two judicial officers were thoroughly incompetent and to not inspire confidence and are given to stating wrong facts, was considered overbearing and discourteous but no action was taken against the members of the Bar.

11. Bearing in mind the trends in the law of contempt as noticed by this Court in *P.N. Duda vs. P. Shiv Shankar* (supra), the message contributed by Mr. Sibal, read in its proper prospective, did not bring the administration of justice into disrepute or impair. Therefore, it must be held that no criminal contempt was committed or attempted to be committed by the respondent No.1.

12. On behalf of the Times of India, written statement has been filed by Mr. Rakesh Bhatnagar. In the reply, the contempt petition is sought to be defended on merits but it is mentioned that there was no deliberate or intentional attempt on the part of the answering respondent to lower the prestige of the Hon'ble Court. By filing the reply the newspaper has tendered unconditional and unqualified apology, if the Court comes to the conclusion that contempt of court was committed by the respondent No.3. However, it will not be out of place to mention that the article which appeared in the Times of India was torn out of text. If the full text of the message sent by Mr. Sibal had been published in the newspaper, in all probabilities the petitioners were not likely to initiate proceedings for criminal contempt of the Court against the respondents.

“However, in view of the unconditional apology tendered, it is not necessary for this Court to delve into details about the conduct of the respondent No.3 any further. There is nothing on the record to show that the souvenir of the Mehfil in which the message was printed was sold to the public. This was a kind of internal pamphlet/brochure which was distributed to its members. Therefore, no case is made out against respondent Nos.4 and 5 who were subsequently impleaded in the petition.”

13. On the facts and in the circumstances of the case, this Court is of the opinion that this is not a fit case where a formal proceedings for contempt should be drawn up and, therefore, notices issued to them will have to be discharged and the petition will have to be dismissed.

“For the foregoing reasons, the contempt proceedings are dropped. The notices issued to the respondents are discharged and the petition is dismissed.”

¹(1988) 3 SCC 167

²1936 AC 322

³(1970) 2 SCC 325

⁴AIR 1978 SC 489

⁵(1976) 2 SCC 521

⁶1990 Cri.L.J. 2179

⁷AIR 1954 SC 10