

SUPREME COURT OF INDIA

Rajeev Dhawan

Vs.

Gulshan Kumar Mahajan

(R.M. Lodha CJI., Anil R. Dave, Sudhansu Jyoti Mukhopadhaya, Dipak Misra and Shiva Kirti Singh JJ.)

23.07.2014

JUDGMENT

R.M. LODHA, CJI.

As a result of the incidents at Ayodhya on 06.12.1992, the President of India issued a Proclamation under Article 356 of the Constitution of India assuming to himself all the functions of the Government of Uttar Pradesh, dissolving the U.P. Vidhan Sabha. Initially, the Acquisition of Certain Area at Ayodhya Ordinance, 1993 (No.8 of 1993) was promulgated. The said Ordinance was later on replaced by Acquisition of Certain Area at Ayodhya Act, 1993 (No.33 of 1993) (for short, ~the 1993 Act). On the same day, i.e. on 07.01.1993, when Act No.33 of 1993 was enacted, Special Reference (being Special Reference No.1 of 1993) was made to this Court by the President of India under Article 143 (1) of the Constitution of India. The constitutional validity of the 1993 Act and the maintainability of the Special Reference No.1 of 1993 were being examined by the Constitution Bench of this Court. It is alleged that the Vishwa Hindu Parishad (VHP), which was banned at that time, held Dharam Sansad in the first week of April, 1994 and after the Dharam Sansad was over, its President, Vishnu Hari Dalmia and Joint General Secretary, Giriraj Kishore made certain derogatory statements concerning this Court in the news conference. The statements to the media made by Vishnu Hari Dalmia and Giriraj Kishore were published in Indian Express in its edition of 10.04.1994. Dr. Rajeev Dhawan, designated Senior Advocate filed Contempt Petition (Crl.) before this Court against Vishnu Hari Dalmia and Giriraj Kishore, President and Joint General Secretary of the Vishwa Hindu Parishad and

Indian Express by invoking the jurisdiction of this Court under Article 129 of the Constitution of India. It is averred that the statements made by Vishnu Hari Dalmia and Giriraj Kishore and published in Indian Express were malicious and tantamount to scandalizing this Court and lowering its authority. In the contempt petition, the petitioner had drawn the attention to the following extracts from Indian Express news report: "VHP warns SC not to 'exceed limits'

"Addressing to media persons here on Saturday Vishnu Hari Dalmia and Giriraj Kishore VHP President and joint general Secretary respectively assailed the apex Court for attempting to "arrogate the power of the executive.

"The Ayodhya issue had so far eluded a solution only because of the delay in pronouncing the judgment." "Justice delayed is justice denied" "The judiciary has no jurisdiction over the Ram Janam Bhoomi "Kishore cautioned the court not to overstep its limits"

" He (Kishore) remarked that the Supreme Court had lost its prestige because of the delay in adjudicating the Ayodhya dispute".

The above report in Indian Express is attributed to Express News Service.

2. It is also averred that Giriraj Kishore also gave a statement in Khabardar India (11-17 April, 1994) that the Government influences the Court and quotes an anonymous Minister to have said, he has the Court in one pocket and leaders in another. The contempt petition also states that the news item in the Indian Express constitutes a gross criminal contempt for which the authors of the statement, namely, Vishnu Hari Dalmia and Giriraj Kishore, the Editor and Publisher of the Indian Express, the persons in-charge of the Express News Service and the reporters, are answerable to this Court.

3. On 12.04.1994, upon motion by Dr. Rajeev Dhawan before the Constitution Bench presided over by the Chief Justice, the Contempt Petition was taken on board. The Constitution Bench, on that day, passed the following order:

This application is moved by Dr. Rajeev Dhawan, a learned advocate drawing attention of the Court to certain statements attributed to Sri Giriraj Kishore

published in the newspaper Indian Express of 10th April, 1994 and in the Periodical styled "Khabardar India" of 11-17th April, 1994, which, it is contended, tend to lower the image of the Court in the mind of the public and constitute an affront to the dignity and authority of this Court.

The utterances of Sri Giriraj Kishore, if true, might amount to criminal contempt.

In the first instance we direct issue of notice to Sri Giriraj Kishore and to the Editor, Printer, Publisher as well as the Reporter of the particular news item of the said issue of Indian Express.

For the present we defer initiation of proceedings against Sri Vishnu Hari Dalmia against whom also the petitioner seeks action. That will be considered after the returns are filed by Sri Giriraj Kishore and the Editor, Printer, Publisher and reporter of the Newspaper.

So far as the second publication, viz. "Khabardar India" referred to in Annexure-II to the petition is concerned, Dr. Dhawan has not been able to furnish the names or addresses of the Editor, Printer, Publisher and the reporter of the publication, as, according to the submission, these particulars are not discernable from the publication. Dr. Dhawan shall furnish these particulars after which notices will go to them.

However, in regard to the statement in Annexure-II attributed to Sri Giriraj Kishore, he will file his return. After the returns are filed the question whether the Court will initiate suo motu contempt proceedings shall be considered. Notices are returnable by 26th April, 1994.

4. On 13.04.1994, the petitioner Dr. Rajeev Dhawan filed a memo setting out the names and addresses of the editor, printer and publisher of the periodical Khabardar India. The cause title of the contempt petition was amended and the following were impleaded as contemners: (1) Gulshan Kumar Mahajan, Owner, Publisher, Printer and Editor of Khabardar India, (2) Pradeep Thakur, Reporter, Khabardar India, (3) Giriraj Kishore, (4) Prabhu Chawla, Editor, Indian Express (5) V.K. Kapur, Printer and Publisher, Indian Express and (6) Bhaskar Roy, Reporter, Express News Service.

5. On 13.04.1994, the Court issued notice to show cause (but no cognizance was taken on that date) to the editor, printer, publisher and reporter of Khabardar India as well making the notice returnable on 26.04.1994.

6. On 26.04.1994, the Court noted that all six respondents were served. On behalf of respondent Nos.4, 5 and 6, counter affidavits were filed, which were taken on record. The counsel for respondent Nos.1 and 2 and so also counsel for respondent No.3 sought time, which was granted to file their counter affidavits. In the course of proceedings before the Constitution Bench on 26.04.1994, Dr. Rajeev Dhawan sought to bring to the notice of the Court that even after notices were served on respondent No.3, he had continued to make provocative utterances holding the process of Court to contempt. He referred to certain newspaper publications. The Court observed that after respondent No.3 had filed his counter affidavit, it would be open to the petitioner to place on record any statement or conduct attributable to respondent No.3. The matter was then kept for 06.05.1994.

7. On 06.05.1994, the Court took suo motu cognizance of criminal contempt against respondent No.1, Gulshan Kumar Mahajan, owner, publisher, printer and editor of Khabardar India, respondent No.2, Pradeep Thakur, Reporter, Khabardar India and respondent No.3 Giriraj Kishore. The Court directed that appropriate notices in the prescribed form shall be served on the three contemnors by the Registry, fixing the date for their personal appearance in Court. Shri Dipankar P. Gupta, learned Solicitor General (as he then was) was requested to assist the Court as prosecutor in the proceedings for criminal contempt. The Court directed that before issue of the notice accompanied by the charges, the Registry will have the matter shown to the Prosecutor (Solicitor General). Insofar as, respondents 4, 5 and 6 are concerned, the Court kept the question for examination separately. The order of 06.05.1994 reads as under:

"We have heard learned counsel for the persons to whom show-cause notices had been ordered as to why proceedings of criminal contempt should not be initiated against them on the Court own motion.

We have perused the counter-affidavits filed by them.

On a consideration, we find at the outset that there is no justification for issue of

any show-cause notice or initiating proceedings against Sri Vishnu Hari Dalmia. The proceedings as against Sri Vishnu Hari Dalmia are dropped.

Suo motu proceedings for criminal contempt of Court are directed to be initiated against the first-accused, Sri Gulshan Kumar Mahajan, Owner, Publisher, Printer & Editor of Khabardar India, against the second- accused, Sri Pradeep Thakur, Reporter, Khabardar India; and the third- accused, Sri Giriraj Kishore.

Appropriate notices in the prescribed form shall be served on them by the Registry, fixing the date for their personal appearance in Court.

Sri Dipankar P. Gupta, learned Solicitor General, is requested to assist the Court as Prosecutor in the proceedings for criminal contempt.

Before issue of the notices accompanied by the charges, the Registry will have the matter shown to the Prosecutor.

So far as Respondent Nos.4, 5 & 6 are concerned, we propose to examine the question whether in the interest of maintaining an appropriate balance between the fundamental right under Article 19(1)(a) of the Constitution on the one hand, and the need to protect the authority and dignity of courts on the other, the Court should initiate similar proceedings for criminal contempt against respondents 4, 5 and 6 particularly in the light of the fact that these respondents had carried the publication pertaining to the Press-interview of accused No. 3, Sri Giriraj Kishore in the newspaper along with a comment on the impropriety of such utterances and statements, followed-up by an Editorial in the Newspaper condemning such conduct. This aspect shall be examined separately.

8. The matters remained dormant for almost two decades. On 25.03.2014, when the matters were called by the Constitution Bench, Mr. Pallav Sisodia, learned senior counsel appearing for contemner No.3, Giriraj Kishore submitted that notices for personal appearance accompanied by charges, as directed by the Court are not yet served on the contemner. In light of this, the Constitution Bench sought clarification from the office regarding service on the contemnners and also directed advocate on record for contemner No.3 to keep present Giriraj Kishore in the Court on the next

day, i.e., 26.03.2014.

9. In compliance of the order dated 25.03.2014, the office submitted its report on 26.03.2014 which reads as follows: It is submitted that in pursuance of Honble Court order dated 6.5.1994 notices to the Contemnors i.e. Pradeep Thakur (R-2), Giriraj Kishore (R-3), and Gulshan Kumar Mahajan (R-1) were issued on 20.6.1994 to appear in person before the Honble Court on 8th August, 1994. The copy of the said notices were also sent to the counsel for the contemnors which were acknowledged by the counsel for the contemnors. However, no AD Cards in respect of the notices sent to the contemnors have been received.

It is further submitted that the matters mentioned above were not to be listed on 8th August, 1994 so the notices were again sent on 6.8.1994 to the contemnors with its copy to the counsel for the contemnors through Registered A/D cover. The said notices were served on the contemnor No.1 on 8.8.94, contemnor no.2 on 8.8.94 and contemnor no.3 on 12.8.94.

10. On 26.03.2014, contemner No.3, Giriraj Kishore was brought to the Court on wheel chair by his attendant. Learned senior counsel for the contemner No.3 reiterated that notice for personal appearance accompanied by charges as directed by the Court on 06.05.1994 has not been served on the contemner. He also submitted that contemner No.3 is 96 years and is not able to respond due to severe physical and mental illness. The attendant accompanying contemner No.3, Giriraj Kishore, on the query of the Court, informed that contemner No.3 is not in a position to respond to the query because of hearing impairment and feeble mental condition.

11. One thing is clear from the record that the notice for personal appearance accompanied by charges as directed by this Court in the order dated 06.05.1994, after cognizance of contempt was taken, has not been served on contemner No.3 so far. In a situation such as this, the question that arises immediately for our consideration is, whether the Court should direct the service of notice accompanied by charges now. Dr. Rajeev Dhawan vehemently contended that the backdrop to these cases is the destruction of the Babri Masjid on 06.12.1992. According to him, this had resulted in injury to the secular fabric of India. He submitted that tension persisted as the Vishwa Hindu Parishad held a Sansad on 03-04.04.1994 while hearings were taking place before this Court. Contemner No. 3 made contemptuous statements about the Court at

that time and, therefore, matter of this gravity should not be left undecided.

12. We appreciate the gravity of the subject matter highlighted by Dr. Rajeev Dhawan. We are also not oblivious of the fact that the Court was not satisfied prima facie with the initial response filed by contemner No. 3, Giriraj Kishore and ordered on 06.05.1994 to initiate the contempt proceedings against respondent Nos. 1 to 3. But, the fact of the matter is that despite the order passed on 06.05.1994, the notice accompanied by charges on contemner No. 3 has not been served so far. In this view of the matter, at this distance of time, when the subject matter remained dormant for almost two decades and now contemner No.3 is 96 years and he is not able to respond to the charges due to old age and illness, we do not think that this is a fit case where we should deal with the matter further. Now, since contempt proceedings are not being pursued further to find out criminality against the author (contemner No.3) who made the offending statements, we are of the view that contempt matter does not deserve to be pursued as against contemner Nos. 1 and 2 as well. The contemner Nos.1 and 2 have also tendered unconditional apology. Insofar as contemner Nos.4 to 6 are concerned, the Court has not yet taken cognizance of criminal complaint against them. In what has been said above, we think the contempt matters deserve to be closed. We order accordingly.