

ORISSA HIGH COURT

B.K. Misra

Vs

Chief Justice, Orissa H.C

Original Criminal Misc. Case No. 3 of 1973

(S.K. Ray, B.K. Patra and R.N. Misra, JJ.)

13.02.1973

ORDER

R.N. Misra, JJ.

1. We propose to give a short account of facts forming the background of the present petition and we have taken these from the Full Bench judgement of this Court in (*Registrar, Orissa High Court v. Baradakanta Misra and another*¹) disposed of on 5-2-1973. Sri Baradakanta Misra, the petitioner herein, is a permanent Subordinate Judge in the State of Orissa. After being superseded on certain occasions, he was promoted to officiate as an Additional District Magistrate in the Junior Branch of the Orissa Superior Judicial Service, and while so officiating in that post, he was in August, 1968 promoted to officiate in the Senior Branch of the said Service which comprises inter alia the post of Additional District Judge. By June, 1971, he was functioning as Additional District Judge at Cuttack. On 21-6-1971, he heard Money Appeal No. 33 of 1970 and posted it for judgment to the next day. It was alleged that on 22-6-1971 he delivered judgment in that appeal which was duly signed and sealed and the fact was noted in the order sheet, but that subsequently, on the same day, he scored through his signatures in the judgment and also the order which was duly recorded in the order sheet, and making it appear that judgment had not been delivered, he accepted an application from the appellant for adducing additional evidence. On the ground that one of the parties in the appeal was known to him, he sent the record to the District Judge asking the latter to hear and dispose of the case. The District Judge brought this incident to the notice of the High Court. It may be stated here that the general record of service of the petitioner was far from satisfactory. During the period the petitioner functioned as Additional District Judge, Cuttack several acts of gross indiscipline on his part had also been from time to time brought to the notice of the High Court. In that background when the specific allegation relating to the manner in which the petitioner dealt with Money Appeal No. 33 of 1970 came to the notice of the High Court, instead of starting any disciplinary proceeding against the petitioner, which it was open to be done, the Court recommended to Government to revert him to the next

lower rank of Additional District Magistrate in the Junior Branch of the Superior Judicial Service. Government accepted the recommendation and ordered the petitioner's reversion. The petitioner submitted a representation to the Chief Minister praying for withdrawal of the order of reversion and for drawing up of a regular departmental proceeding against him and for placing him under suspension during the pendency of the proceeding, if necessary. Government accepted the representation and set aside the order of reversion. After receipt of the order of Government, the Full Court at its meeting held on 28th March, 1972, decided to start a departmental proceeding against the petitioner, and, pending initiation and finalization of the departmental proceeding, to place him under suspension. The petitioner was suspended with effect from 30th of March, 1972, and his headquarters was fixed to be Cuttack. The petitioner did not comply with the order fixing his headquarters at Cuttack and continued to stay at Bhubaneswar.

2. On 29-4-72, eight charges framed by the High Court in the departmental proceeding were communicated to the petitioner. Charge 1 referred to the manner in which he dealt with the Money Appeal No. 33 of 1970. Charge No. 2 related to his inefficiency as a Sessions Judge as disclosed by the manner of his disposal of Criminal Appeal No. 268 of 1970. Charges 3 and 4 referred to his acts of insubordination in relation to his dealings with the District Judge, Cuttack. Charge 5 dealt with unauthorized expenditure incurred by him while temporarily functioning as District Judge, Cuttack, during a short leave vacancy. Charge 6 dealt with unauthorized removal of Court furniture from the Court at Cuttack to his residence at Bhubaneswar outside the jurisdiction of the District Judge of Cuttack. Charge No. 7 dealt with use by him of indecorous and intemperate language against the District Judge of Cuttack. Charge No. 8 related to his non-compliance of the order of the High Court by not shifting his headquarters to Cuttack during the period of his suspension. The departmental proceeding initiated against the petitioner was entrusted for inquiry to Mr. Justice K.B. Panda, a Judge of this Court who after inquiry submitted his report on 2nd August, 1972, finding the petitioner guilty of all the charges, excepting charge No. 4(a).

3. Meanwhile, on 10th April, 1972, the petitioner submitted to the Governor what purported to be an appeal complaining against the order of suspension passed against him by the High Court in the disciplinary proceeding and praying to the Governor to cancel the order of suspension and post him directly under Government. In the garb and camouflage of the appeal, he had made several statements therein which prima facie amounted to contempt of the High Court. This was followed by a representation dated 14th May, 1972, made by the petitioner to the Governor, a copy of which was forwarded by him to the Registrar, High Court, and it was alleged that the said representation read as a whole constituted contempt of this Court and had the tendency of undermining and lowering its dignity, prestige and authority and scandalizing the High Court. On 3-7-1972, therefore, a notice under the order of the High Court was issued by the Registrar to the petitioner to show cause why he should not be punished for contempt of this Court. Details of the passages in the several representations made by him to the Governor, copies of which were sent to the High Court, and which were prima facie considered amounting to contempt, were

mentioned in the notice. The petitioner entered appearance and showed cause. The defense was that there was nothing in the various representations made by him to the Governor and letters written to the Registrar and referred to in the notice, which would amount to contempt of the Court. The impugned averments according to him were made with the sole object of stating the facts before his higher authorities in support of his contentions in the appeal and that those averments were based on truth as honestly believed by him and that he was legally entitled to express them. He further stated that the impugned acts, conduct and writings mentioned in the notice referred to the High Court only on its administrative side and not to the Court or its individual Judges on the judicial side.

4. When the contempt matter came up for hearing, the petitioner requested the Court to decide as a preliminary issue whether criticism of Judges casting reflections on their conduct in discharge of their administrative functions would amount to contempt of the Court. That prayer having been rejected, the petitioner appealed to the Supreme Court in Criminal Appeal No. 174 of 1972 which eventually was dismissed. It came to the notice of this Court that the memorandum of appeal filed in the Supreme Court contained passages constituting gross contempt of this Court. A supplementary notice was accordingly issued to the petitioner on 5-1-1973 to show cause which he did. The contempt matter (Orgl. Crl. Misc. Case No. 8 of 1972) was heard by a Bench of five Judges consisting of the Chief Justice and S.K. Ray, B.K. Patra, R.N. Misra and B.K. Ray, JJ. commencing from 4-12-1972.

5. Meanwhile, the report of the inquiry submitted by Mr. Justice Panda, was considered by the Full Court in September, 1972. The report was accepted and it was tentatively decided to impose on the petitioner the penalty of reduction to the rank of Additional District Magistrate (Judicial). A notice was issued to him to show cause why he should not be so punished. The petitioner showed cause and asked for personal hearing. Personal hearing was granted to him on 2-12-1972. On the merits of the charges, his submissions were confined practically to charge No. 1 and they were duly considered. Regarding charge No. 8 he conceded that if the Court had the power to order his suspension pending inquiry, it certainly had also powers to fix his headquarters at Cuttack and in view of the admitted fact that he had not complied with the Court's order to stay at Cuttack during the inquiry, he was guilty of the charge. Finally he pleaded that the punishment proposed was too severe. The submissions made by him were duly considered in a Full Court meeting held on 8-12-1972 and the Court directed that the petitioner be reduced to the rank of Additional District Magistrate (Judicial). The Court further directed that for the period of his suspension, he should be paid half of his pay and allowances to which he would have been entitled but for the order of suspension and that subject to the above, his absence from duty during the period of suspension should be treated as period spent on duty for all other purposes. The hearing of the contempt case (Orgl. Cri. Misc. Case No. 8 of 1972) was concluded on 10-1-1973 and judgment was delivered on 5-2-1973, holding the petitioner guilty of gross contempt of this Court and sentencing him to simple imprisonment of two months.

6. This, in short, is the history of the case against the background of which the petitioner has filed the present application.

"Against Hon'ble Justice Sri Gati Krushna Misra, Chief Justice of the Orissa High Court (referred to in this application, as the opposite party) and other Hon'ble Judge/Judges of the said Court-All in their personal character."

Praying that in the light of the facts and circumstances mentioned in the petition, a proceeding for contempt of this Court may be initiated against the opposite party and other Judge/Judges of this Hon'ble Court, as may be deemed necessary. This petition was presented to the Full Bench immediately after the Full Bench pronounced judgment in the contempt case and even before the petitioner as contemner in that case had moved his prayer for enlargement on bail.

7. It is unnecessary to refer at length to the various averments made by the petitioner in this petition which, to say the least, are somewhat confusing. His stand, as clarified during the hearing for admission, appears to be that –

(1) As certain issues which are necessary to be decided to dispose of the disciplinary proceedings against him were pending consideration in Original Criminal Misc. Case No. 8 of 1972, the six Judges who finalized the disciplinary proceedings on 8-12-1972 and gave publicity to their decision, are guilty of contempt of the Full Bench, which was engaged in hearing of the Original Criminal Misc. Case No. 8 of 1972.

(2) The five Judges who constituted the Full Bench being parties to the Full Court decision in the disciplinary proceeding had participated in the proceeding in the Court in Orgl. Crl. Mis. Case No. 8 of 1972 with preconceived notions in respect of the issues which were common to both the proceedings and thereby they committed contempt of this Court.

(3) Apart from the above, it was alleged as against the learned Chief Justice that in an attempt to get the other Judges of the Full Court committed to his views in the contempt proceeding, he intentionally got the disciplinary proceeding fixed to 8-12-1972 for disposal, although - so it is alleged - he had previously announced at the close of the personal hearing that the disciplinary proceeding would be finalized after the judgment in the contempt case was delivered and that thereby he committed contempt of Court.

8. When this case came up for admission before us, the petitioner filed a memorandum stating –

"1. That in this contempt proceedings, there have been three charges - allegations, the first one virtually against the six Hon'ble Judges, disposing of and publishing the disciplinary proceedings on the charge dated 29-4-1972 against me, the second charge - allegations against five Hon'ble Judges (out of the above six), hearing Orl. Crl. Misc. Case No. 8 of 1972, and the third, only against Hon'ble Sri G.K. Misra, the Chief Justice out of the above six.

2. That in the above circumstance, the Hon'ble Judges of this Hon'ble Bench, are the

Hon'ble Judges against whom two of the charges, allegations in this case, are, laid, and so, this case may not be heard by the Hon'ble Bench in the interest of justice.

x x x x

4. That in case the above contentions are overruled, I intend to move the Hon'ble Supreme Court for transfer of this proceeding."

It is sufficient in answer to this prayer to quote what the Supreme Court stated in *Sukhdev Singh v. Hon'ble C.J., S. Teja Singh* and the Hon'ble Judges of the Pepsu High Court at Patiala, (AIR 1954 SC 186). That proceeding arose out of a petition filed in Supreme Court praying to the Court to order transfer of a contempt proceeding from the Pepsu High Court to any other High Court. This is what their Lordships stated at page 190 in para 26 :

"We wish, however, to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example, in a Court where there is only one judge or two and both are attacked. Other cases may also arise where it is more convenient and proper for the judge to deal with the matter himself, as for example in a contempt 'in facie curiae'." This Court consists of seven Judges. One of them, Mr. Justice Acharya being related to the petitioner has not taken part in any of the proceedings - judicial or administrative - against the petitioner. Although, excepting the Hon'ble Chief Justice, no other Judge has been specifically named in the petition, it is clear from the averments made in the application that allegations have been made against all the Judges excepting Mr. Justice Acharya. In the light of the dictum of the Supreme Court referred to above, there was no other alternative for us except to proceed to deal with the application, and therefore, we proceeded to hear the same.

9. When we indicated our view that the application shall be heard by us, the petitioner contended that we - the three judges - were in the position of accused persona and were thus incompetent to deal with the matter (vide order No. 2 dated 9-2-1973). Learned Advocate General appearing for the opposite party drew our attention to the provisions of Section 14 of the Contempt of Courts Act (Act 70 of 1971), and advised from the Bar that we may initiate action for contempt committed in our face. In reply thereto on the close of his submissions the petitioner stated that he did not intend to commit any contempt, but if what he stated in Court as referred to above amounted to contempt, he tendered unqualified apology. We had no doubt in our mind that what was stated in Court then amounted to contempt of a gross nature; yet we did not initiate a proceeding under Section 14 of the Act and decided to deal with the application of the petitioner.

10. Adverting now to the merits of the application, it would be clear from the earlier narration

that what the Full Court was concerned with in the disciplinary inquiry was to (examine) whether the petitioner was guilty of the several charges framed against him which, as already indicated, related to certain acts of omission and commission alleged against him in the discharge of his duties as the Additional District Judge, Cuttack. In view of the decision of the Supreme Court in Bagchi's case (*The State of West Bengal v. Nripendra Nath Bagchi*²), which rendered in the context of a disciplinary proceeding against an officiating District Judge, as in the case before us, that the control which under Article 35 of the Constitution is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges, and that in the exercise of that control vested in the High Court, the High Court can hold enquiries, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal if granted by the conditions of service and to the giving of an opportunity of showing cause as required by clause (2) of Article 311, and further in view of the decision of the Supreme Court in *Mohammad Ghouse v. State of Andhra*³, that an order passed by the High Court suspending a Judicial Officer pending finalization of disciplinary proceedings is not an order either of dismissal or removal from service, it is idle to contend that these very questions were pending consideration by the High Court either in the disciplinary proceeding started against the petitioner or in the contempt proceeding pending against him in Court. A matter which has been finally decided in the highest Court of the land, and particularly in view of the provisions of Article 141 of the Constitution, cannot become *res integra* merely because a stubborn delinquent continues to question its correctness. The power of the High Court to initiate disciplinary proceeding against a District Judge and to place him under suspension pending finalization of that proceeding was, therefore, no more open to question, and cannot, and in fact was not, a matter in issue. It had been conceded by the petitioner both during the personal hearing in the disciplinary matter and also in the contempt proceeding that if the High Court had power to suspend him, it certainly had also the power to fix his headquarters during suspension. With the opening of argument before the Full Bench in Orgl. Cr. Misc. 8 of 1972 on 4-12-1972, both the learned Advocate General and Mr. Patnaik, Counsel for the Registrar, clearly stated that charge for contempt on the allegation that the contemner had not shifted to Cuttack in compliance with the direction of the Court was not sustainable. The substantial questions which were debated in the judicial proceeding were the following :

- (1) Whether an appeal lay to the Governor against an order of suspension passed by the High Court against the petitioner during the pendency of the disciplinary proceeding ;
- (2) Assuming that an appeal in fact lies to the Governor, whether the petitioner is entitled in such representation to scandalise the High Court and make imputations which would amount to contempt of the Court;
- (3) Whether any disparaging remarks made against a judge in his administrative capacity and not in relation to the discharge by him of judicial functions would amount to contempt of Court; and
- (4) Whether the impugned passages as mentioned in the notices issued to the petitioner

constituted contempt.

None of these questions arose for decision in the disciplinary proceedings. Apart from the factual issues involved in the disciplinary proceeding, the only constitutional questions which may be said to have arisen by implication there, were (1) Whether the High Court had the right to place a Judicial Officer under suspension pending initiation and finalization of disciplinary proceeding against him and (2) whether the High Court has power to reduce a Judicial Officer in rank. As already indicated, the

Supreme Court in Bagchi's case AIR 1966 SC 447 had already decided these questions and it was not open to the petitioner to question their correctness. It is thus clear that none of the matters which arose for adjudication in the contempt proceeding was in issue in the disciplinary proceeding started against the petitioner. We would, therefore, reject the contention of the petitioner that the six Judges who participated in the finalization of the disciplinary proceedings against the petitioner have committed contempt of the Full Bench or that the five Judges who constituted the Full Bench approached the issues which arose for consideration therein with pre-conceived notions and as such are guilty of contempt of Court.

11. Assuming for a moment, that there was any issue which was common to both the proceedings, still by reason of the fact that the disciplinary proceedings were finalised during the pendency of the contempt proceeding, the Judges who decided the disciplinary proceeding cannot be guilty of contempt of Court. The Constitution by Article 235 has vested complete disciplinary control over Judicial Officers in the High Court. The High Court alone in its administrative capacity could initiate and dispose of the disciplinary proceeding subject to the limitations imposed by Article 235 itself. The power of a High Court to institute proceedings for contempt and impose punishments wherever necessary is a special jurisdiction which is vested in the High Court and any proceeding for contempt against the High Court can be initiated and disposed of by the High Court alone in its judicial capacity. When the Constitution has vested in the High Court, judicial and certain administrative functions, the Judges who decide certain matters on the administrative side cannot be disqualified from deciding the very same matters when such orders are challenged in a judicial proceeding. Likewise, Judges who are called upon to decide certain matters on the administrative side cannot be charged with interfering with the course of justice merely because similar matters are pending consideration before them on the judicial side. So far as this Court is concerned, the administrative control over District Judges is exercised by the Full Court. Therefore, there could not be available a Judge in this Court who would not have dealt with the delinquency of the petitioner. Disciplinary proceedings under Article 311(2) at both stages are judicial (See *Bachhittar Singh v. State of Punjab*⁴) and just because one such judicial proceeding has been disposed of by the Full Court, some of the Judges who constitute a Bench to hear a lis even involving overlapping questions cannot be found to be disqualified. It is now well settled by a series of pronouncements of the several High Courts and the Supreme Court that an enquiry by a domestic tribunal, in good faith, in exercise of powers statutorily vested in it, into the charges of misconduct against an employee does not amount to

contempt of Court merely because an inquiry into the same charges is pending before a Civil or a Criminal Court. The initiation and continuation of disciplinary proceeding in good faith do not obstruct or interfere with the course of justice in a pending Court proceeding. (See *Jang Bahadur Singh v. Baij Nath Tiwari*⁵).

12. All that remains for consideration is the allegations made by the petitioner against the learned Chief Justice in the petition and in the annexure attached thereto. There is nothing in the annexure which is relevant to the present proceeding. The petitioner in para 28 of his petition himself says that it contains an account which, according to the petitioner, would show the malice and mala fides of the Chief Justice against him. We refrain to say anything further regarding the annexure because it appears to us that it has no relevance to the present proceeding. What is insinuated against the learned Chief Justice in the body of the petition is that he displayed undue interest in the initiation and finalisation of the disciplinary proceeding against the petitioner and had influenced the decision of the other Judges of the Full Court, in an attempt to make the other Judges commit to his views. Being some of the Judges who constituted the Full Court and as members of the Full Bench which heard the petitioner's contempt matter, it is sufficient for us to say that these allegations are not only false and malicious - but are also mischievous.

13. The Full Bench in the contempt proceeding against the petitioner in paragraph 104 of their judgment said –

"A little analytical survey of the history of the service of the contemner would indicate that this Court has not been as strict as it should have been in regard to him. Compassion had been introduced into the treatment of the contemner by the Court with a genuine belief that the contemner would mould his ways, pick up the usual judicial temper and correct himself. Unfortunately, the expectations have been belied. On the other hand, the contemner instead of realizing his own mistakes, developed an attitude of considering his own actions to be above board and anybody who found fault with him to be on the erring side. He took to making reckless and scurrilous allegations against his administrative superiors and even this Court. When any step was taken for correcting his lapses, he took to intimidation of this Court in answer."

14. The learned Advocate General has brought to our notice to-day the provision of Section 15 of the Contempt of Courts Act, 1971. Sub-Section (1) whereof provides,

"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.

The learned Advocate General contends that there are three modes only of initiating a proceeding for criminal contempt –

- (i) by the Court on its own motion,
- (ii) on a motion by the Advocate General, and
- (iii) on a motion by any other person with the consent in writing of the Advocate General.

The petitioner has asked for initiating a proceeding for criminal contempt. Such a motion at the instance of the petitioner without the consent of the Advocate General is not in accordance with the requirement of Section 15(1) of the Act and hence not maintainable. If the petitioner wanted action to be taken by this Court on its own motion, for the reasons recorded above, we decline to take any action. This application is borne out of contumacy and is more a counterblast to the contempt proceeding in Orgl. CrI. Misc. Case No. 8 of 1972 than a citizen's genuine anxiety in assisting in maintaining the seat of justice from becoming soiled.

15. The only appropriate direction can, therefore, be to record the dismissal, which we hereby do. Application dismissed.

Cases Referred.

¹ Original Criminal Misc. Case No. 8 of 1972

² AIR 1966 SC 447

³(AIR 1957 SC 246)

⁴ AIR 1963 SC 395

⁵ AIR 1969 SC 30