
(2008) 03 AHC CK 0061
In the Allahabad High Court

District Bar Association

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : AIR 2008 All 135 : (2008) 2 AWC 1841

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Learned Counsel for the petitioner sought to assail the letter dated 25-1-2008 issued by Additional District Judge, Deoria, requiring the President/Secretary District Advocate Association to provide a list of advocate members who are interested for allotment of lawyers chamber after payment of requisite security as provided therein. It is contended that the procedure for allotment sought to be followed by respondent No. 2 is not consistent with the procedure prescribed in the Government order dated 06-9-2004 which provides that allotment of Chamber in the court would be made by a Committee consisting of District Judge and Member of the Bar Association.

2. It is submitted that the aforesaid procedure for allotment of advocates' chamber, is binding on the District Judge, Deoria, respondent No. 2 and, therefore, the impugned order which is contrary to the said procedure, is liable to be set aside.

3. On the contrary learned Standing Counsel appearing for respondent No. 2 submitted that the lawyers' chamber in the Courts' premises are to be allotted by the District Judge, Deoria, as per his own procedure and he cannot be said to be bound to observe the procedure laid down in the Government Order, inasmuch as the District Judge, respondent No. 2 is not subordinate to the authorities of the Government and, therefore, no Government order can provide

regulating procedure with respect to functioning of the District Judge, even though it is in respect to administration and maintenance of building etc. in the precinct of the District Court. He further submits that to the extent the impugned Government order intends to regulate procedure to be followed by the District Judge for allotment of lawyers' chamber in the District court premises, the same is illegal and is not binding being *ultra vires* of Article 235 of the Constitution.

4. Learned Standing Counsel however appearing for respondent No. 3 submits that since the fund for construction of lawyers' chamber has been provided by the State Government, therefore, the State Government is fully empowered to own and control the subsequent maintenance etc. of the said Chamber and for the said purpose is also authorized to issue Government order providing procedure for allotment of lawyers' chamber and, therefore, the respondent No. 2 is bound to observe the same.

5. Since the issue raised in this writ petition is based on the Government order dated 6-9-2004 and as to whether such Government order is binding on District Judges, in respect to allotment etc. of lawyer's chamber, constructed in the District court's premises, as agreed between the parties, the matter has been heard and is being decided finally under rule of the Court at this stage.

6. If the Government order is applicable and binding upon the District Judge and is enforceable, obviously the writ petition would have to be allowed and in case it is found that the Government order can not bound District Judges with respect to the manner and procedure they have to observe for administration and maintenance within Court premises, in such case, to that extent, the Government order will have to be declared *ultra vires* and not binding on the District Judges and in that case the writ petition would fail.

7. Therefore, the short question requires to be answered in this case is whether the State Government can exercise any administrative or executive control with respect to the property or building constructed in the Court's premises for the use of court's purposes which includes lawyer's chamber and canteen etc. for the reasons that necessary funds have been provided by the State Government where and can it issue general directions laying down procedure with respect to administration of such building which is binding on the District Judges.

8. In wider sense the term "State" includes "Legislature", "Executive" and "Judiciary", since all the three wings perform necessary functions of the State. In the Constitution of India, however, there is separation of power to all the said wing of the State "Legislature", "Executive" and "Judiciary", though funds of all the three bodies originate from the same end i.e. contingency fund of the State. No wing of the State can be said to be owner of the fund and on the contrary the Constitution provides that certain amount of fees and taxes collected by the State shall be deposited and would form part of the consolidated fund of the State and would be available to various wings and departments as per finance bill passed by the Legislature. Till then the Executive wing of the State acts as

custodian of such fund and after allocation of fund by way of budget i.e. finance bill the concerned department receives respective funds to meet their expenditure etc.

9. Therefore the mere fact that funds have been made available by the Executive wing of the State, it would be difficult to determine the ownership of a particular property in favour of executive wing of the State. In respect of any building or part of any structure in Court premises, in our view, at the District level, it would be the District Judge, who is the authority to see as to how that premises should be administered and maintained and his power cannot be effected in any manner by the executive or any other branch of the State only on the ground that the funds have been provided by them. Article 235 of the Constitution confers administrative control over the subordinate Court upon High Court and if in any manner the District Judge is to be guided as to how and in what manner he should administer the Court and its premises on administration side, in our view, such power would vest in the High Court and not the State Government. We are surprise to see that the respondent No. 1 despite of being aware that the District Judge is subordinate to the High Court, yet has issued the said Government order to the District Judges directing them to observe a particular procedure and manner with respect to allotment of he chamber which have been constructed in the Court's premises for being used in aid and assistance of the Court's functioning. It is well settled that lawyers" are officers of the court and, therefore for effective assistance of the Court they need proper place in the court premises where they may keep their files/ briefs, meet clients and if necessary, prepare the case and take lunch etc and hence the lawyers chamber are constructed and allotted to the respective lawyers. Therefore, the lawyers chamber in every respect is part and parcel of the functioning of "administration of justice" In respect to subordinate Courts at District level, it is the District Judge, who is competent to administer and manage the things in the manner, he finds it appropriate and at the best he could have been guided or instructed by the High Court. But in no way the State Government could have exercised any such supervisory control over District Judge regulating the manner in which he would function for allotment of lawyers" chamber.

10. It is true that allotment of lawyers chamber is not a fundamental or legal right of advocates practising in the court. In fact, it has no right for such claim. In the case of Vinay Balalchandra Joshi Vs. Registrar General Supreme Court of India and Another, the Apex Court observed that:

Even if we proceed on the basis that to practice as an advocate is a fundamental right, no right to be allotted a chamber within the court premises follows from it A legal practioner/an advocate can carry on his legal profession without a chamber. It is not necessary that he should have a chamber within the Court premises. That which merely facilitates the exercise of the fundamental right cannot be regarded as an integral part of that fundamental right. Far from being a fundamental right it does not even have the status of a right.No law confers

such a right on a member of a legal profession nor such a facility has been accepted as a right even otherwise. Making a chamber available to a member of the legal profession practising in a Court of law is really a facility provided to him by the Court....

Supreme Court in the said Judgment further observed that as it is not a matter of right or legal obligation of the court to provide facility of a chamber to an advocate it would really be a matter of discretion of the Principal Judge of the court to decide to whom and to what extent that facility should be extended, when the same is available and his only obligation would be to act in a fair and just manner and not arbitrarily. For the said purpose the Principal Judge of the court may appoint a committee or proceed in such a manner as he decides, which may ensure fair treatment to all advocates, but the obligation is no higher than to act in a reasonable manner.

11. If the contention of learned Standing Counsel is accepted that mere reason that the funds have been provided by the State and, therefore it is the authority to claim ownership of the chamber and manner in which lawyers chamber shall be allotted, is accepted, it would mean that whenever in the court premises something is done on the funds provided by the State, the entire authority would lie with the State Government i.e. "executive wing" of the State. The submission is thoroughly misconceived and down grade the independence of Judiciary. We may take judicial cognizance of the fact that in the High court also advocates chamber have been constructed with the funds available by the State, but that does not mean that the said chambers are the property of the State and it can exercise control over the procedure for allotment of such chambers. It is a matter of common knowledge that the Chambers in High court premises are allotted according to the orders of Hon"ble the Chief Justice and as per procedure determined by him or by such other authority as directed by the Chief Justice. The State Government cannot exercise any control in the manner of allotment of lawyers chamber in the premises of High Court. Similarly, in the District court also the lawyers chamber can be allotted as per the orders of District Judge and after following the procedure as he may deem fit and proper or as directed or instructed by the High Court. But the State Government would have no role in such a matter The position of Judges has been explained by Apex Court in All India Judges" Association and Others Vs. Union of India and Others, and it has observed as under:

The judicial service is not service in the sense of "employment". The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority

of the State. However, those who exercise the State power are the ministers, the legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the legislators and the Judges and not between the Judges and the administrative executive.

12. The aforesaid view has been referred to by a Constitution Bench subsequently in *State of Bihar and Another Vs. Bal Mukund Sah and Others*, The Court also observed that distinction between the Judges and the members of other services has to be constantly kept in mind for the reason that judicial independence has to be secured both in substance and in practice.

13. In the aforesaid background we find it difficult to eschew that Government can issue a policy direction to the District Judges regulating the manner in which they have to exercise their powers in respect to administration of the court which includes the court premises also. Here we do not mean to say that if some procedure has been prescribed by the State governing similar matter it is always open to the District Judge to adopt and follow such a procedure unless otherwise instructions or orders are issued by the High Court. But it is a different aspect to say that the State Government may issue executive orders laying down the manner in which District Judge functions with respect to administration of Court premises, such an order would be ex-facie interference in the control of subordinate court, which power is vested in the High Court and not the State Government.

4. We are therefore, clearly of the view that the Government order dated 06-9-2004 in so far as it directs various District Judges to be guided and bound by the said Government order, is clearly illegal, unauthorized and without any authority of law, it is also ultra vires to Article 235 of the Constitution and, therefore, is neither enforceable nor binding on the District Judges. That being so the petitioner cannot claim enforcement of the aforesaid Government order against respondent No. 2.

15. In the result writ petition lacks merit and is accordingly dismissed. There shall be no order as to cost.