
(2004) 04 JH CK 0018
In the Jharkhand High Court
Case No : Writ Petition (S) No. 768 of 2004

Dr. Nand Kishore Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 227(2), 233, 234
Criminal Procedure Code, 1973 (CrPC) — Section 146(1D), 24, 24(1), 24(2), 24(3)
Government of India (Amendment) Act, 1935 — Section 224, 224(2)
Government of India Act, 1915 — Section 107
High Courts Act, 1861 — Section 15
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2006) 1 JCR 206

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; M.K. Laik, Sr. SC-1, R.S. Mazumdar and A. Sen, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioner has filed the instant writ petition challenging the show cause notice dated 22.11.2003 issued under the signature of Registrar (Vigilance), Jharkhand High Court, Ranchi whereby petitioner was directed to show cause as to why recommendation should not be made for removing him from the post of Public Prosecutor.

2. During pendency of the writ petition, the petitioner has been served with an order as contained in letter dated 9th February, 2004 issued by the Secretary-cum-Law Advisor to the Government of Jharkhand whereby his appointment as Public Prosecutor, Chatra has been cancelled. The said order has also been challenged by filing amendment petition.

3. Petitioner's case is that he was appointed as Public Prosecutor in the District of Chatra by the Government of Jharkhand vide letter dated 28th September,

2002 and since then he was discharging his duties as Public Prosecutor. It is stated by the petitioner that he was shocked and surprised to receive a show cause notice issued by the Registrar (Vigilance) directing him to show cause as to why recommendation should not be made to the State Government for removing him from the post of Public Prosecutor. Petitioner was also served with a letter dated 25.11,2003 issued by the Deputy Commissioner, Chatra. intimating him not to act as a Public Prosecutor till further order and also to hand over the files to the Assistant Public Prosecutor, Chatra. It is stated by the petitioner that in pursuance of show cause notice the show cause submitted by him to the Dist. & Sessions Judge, Chatra was forwarded it to this Court. Finally, the impugned order cancelling his appointment as Public Prosecutor was issued by the Government.

4. Mr. Indrajeet Sinha. learned Counsel appearing for the petitioner assailed the impugned show cause notice as being illegal and wholly without jurisdiction. Learned Counsel, firstly, submitted that the High Court has no authority or jurisdiction to recommend the removal of the Public Prosecutor working in the district. It is contended that it is the State Government only who can remove a Public Prosecutor in consultation with the District Judge and District Magistrate of the concerned district, Learned Counsel drawn my attention to Section 24 of the Code of Criminal Procedure and Clause 143 of the Bihar Practice and Procedure Manual and submitted that the Collector of the district never issued any show cause notice before passing the order of removal by the Law Department of the Government of Jharkhand. Learned Counsel put reliance on the decisions of the Supreme Court in the case of Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others, ; State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , and Shrilekha Vidyarthi v. State of U.P. (1991) 1 SCC 214.

5. A counter-affidavit has been filed by the respondent Nos. 2 and 3, Jharkhand High Court and the Registrar (Vigilance) of the Court. The respondents' case is that several complaints were received in the High Court against the petitioner particularly in conducting Sessions Trial in irresponsible manner. The High Court was informed that in S.T. Case No. 73/90 one Khiru Garju, the victim of the case died after his statement was recorded by the Circle Officer, Simaria Anchal. The wife and daughter of the deceased, medical witnesses and other witnesses deposed before the Court. The petitioner who was conducting the prosecution case, in connivance with the Presiding Officer of the Court, on extraneous consideration, filed a petition in the Court to recall the witnesses already discharged and accordingly order was passed by the Trial Court recalling the discharged witnesses in the background of compromise, although there is no such provision in the Code of Criminal Procedure. Similarly in S.T. Case No. 28-A/2002 a complaint, was received from the widow of Late Nand Kishore Singh, Ex-Block Development Officer at Gidhapur, Chatra alleging that after framing of charge in the aforesaid case, the petitioner in connivance with the Presiding Officer of the Court got the prosecution case closed without service of summons

on remaining important prosecution witnesses in order to benefit the accused facing charge of murder. As a result of which the accused persons were acquitted. It was further alleged that Brahmdeo Paswan, the sole accused in the case is an extremist, is very close to the petitioner and that both of them belong to the same caste. Another complaint was received by the High Court in respect of S.T. Case No. 400/96 registered under Sections 302/34 and 307 of the Indian Penal Code. In that case eight contesting witnesses were examined on behalf of the prosecution after framing of charge on 18.8.1997. The case was closed on 27.8.2001 but on 4.1.2003, a compromise petition and a petition for grant of permission was filed. The aforesaid petition was allowed by the Court and the Court ordered for issuance of summons on the witnesses. This case was also conducted by the petitioner.

6. Further case of the respondent-High Court is that on receipt of the complaint the matter was inquired into by the Dist. & Sessions Judge and it was found that the petitioner was quite irresponsible as Public Prosecutor and misused the power of Public Prosecutor against the interest of justice.

7. In a separate counter-affidavit filed by the respondent-State of Jharkhand and Deputy Commissioner, Chatra it is stated that the petitioner was appointed by the Government as Public Prosecutor to represent the State sincerely and effectively but the petitioner did not perform his duty to the satisfaction of the State Government. Since the petitioner lost confidence of the State, the service of the petitioner was no more required and accordingly his appointment was cancelled.

8. After having heard the learned Counsels appearing for the parties, the moot question that falls for consideration is whether it is within a domain and jurisdiction of the High Court to call for an explanation/show cause from the Public Prosecutor of the District and send recommendation to the Government for removal of the Public Prosecutor or Assistant Public Prosecutor of the District.

9. I would first like to refer Section 24 of the Code of Criminal Procedure which makes provision for appointment of Public Prosecutor and Assistant Public Prosecutor for the High Court and for the District Courts. For better appreciation Section 24 of the Code is reproduced hereinbelow :

24. Public Prosecutors.--(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutor, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district :

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

(6) Notwithstanding anything contained in Sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre :

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only if he has been in practice as an Advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of Sub-section (7) and Sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an Advocate.

10. From bare perusal of the aforesaid provision it is manifest that for every High Court the Central Government or the State Government after consultation with the High Court shall appoint a Public Prosecutor. Similarly the Central Government or the State Government may also appoint one or more Public Prosecutors for conducting cases in a district or local area. Sub-section (4) of Section 24 empowers the District Magistrate to prepare a panel of names in consultation with the Sessions Judge of such persons who are fit to be appointed as Public Prosecutor or Assistant Public Prosecutor for the districts. It further provides that no person shall be appointed by the State Government as Public Prosecutor or Assistant Public Prosecutor for the district unless his name appears

in the panel of names prepared by the District Magistrate.

11. It is well settled that the power conferred by the Constitution on the High Courts in each State under Article 227 of the Constitution is not only confined to judicial superintendence but also administrative superintendence over subordinate Courts and Tribunals. This is because each High Court is the highest Court in the State. The judicial power of superintendence enable the High Courts to ensure that sub-ordinate Courts and Tribunals function within the boundary of law. The judicial as well as administrative superintendence is to be exercised if it is found that there is a serious breach of law which resulting injustice to the parties. Articles 233 to 237 of the Constitution of India confer and vest the power in the High Court to control over all District Courts and other Sub-ordinate Courts and Tribunal. It is worth to quote a passage of the book [Constitutional Law of India, 4th Edition) by H.M. Seerval which reads as under ;--

There is nothing surprising in our Constitution conferring on the High Courts in each State, and not on the Sup. Ct., the power and administrative and judicial superintendence over subordinate Courts and Tribunals. This is because each High Court is the highest Court in the State and is the highest Court of Appeal? The number of sub-ordinate Courts, civil, criminal revenue, etc. and the number of Tribunals exercising the judicial power of the State is very large in each State. The judicial power of superintendence enables the High Courts to ensure that sub-ordinate Courts and Tribunals function within the bounds of law. The power of judicial superintendence is not to be lightly exercised, e.g. for a mere error of law or fact, but is to be exercised if the error results in a serious breach of the law and/or produces injustice. Again, administrative superintendence includes, inter alia, the power to call for returns from such Courts; to make and issue general rules and prescribe forms for regulating the practice and proceeding of such Courts [Article 227(2)(a) and (b)] and also to settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to Attorneys, Advocates and pleaders practising therein [Art. 227(3)]. It is obvious that the power conferred by Art. 227(2) and (3) could not have been conferred on the Sup. Ct. as the wording of Art. 227(2) and (3) clearly shows. It may be mentioned that, as we have seen, the power of superintendence over subordinate Courts has been both administrative and judicial.

12. In the case of Waryam Singh and Another Vs. Amarnath and Another, , their Lordships gave a lucid account of the history of High Court's power of superintendence and observed :

Re. 2.--The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by the Article also to Tribunals. That the Rent Controller and the District Judge exercising jurisdiction under the Act are Tribunals cannot and has not been controverted. The only question raised is as to the nature of the power of superintendence conferred by the Article. Reference is made to Clause (2) of the Article in support of the contention that this Article

only confers on the High Court administrative superintendence over the subordinate Courts and Tribunals. We are unable to accept this contention because Clause (2) is expressed to be without prejudice to the generality of the provisions in Clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court.

In this connection it has to be remembered that Section 107 of the Government of India Act, 1915 was reproduced in the Government of India Act, 1935 as Section 224. Section 224 of the 1935 Act, however, introduced Sub-section (2), which was new providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior Court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that Sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227.

This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had u/s 15 of the High Courts Act, 1861 and Section 107 of the Government of India Act, 1915. See the cases referred to in-- *Motilal Vs. State*, . Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view.

13. In the case of *Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others*, , the Apex Court has held that the powers conferred on the High Court under Article 227 of the Constitution cannot in any way be curtailed by the provisions of Criminal Procedure Code and such powers under Article 227 of the Constitution can be invoked in spite of the restrictions placed u/s 146(1-D) of the Criminal Procedure Code.

14. The Public Prosecutor and Assistant Public Prosecutor of a district are the officers of Court and they are supposed to discharge their duty impartially in the administration of justice. Hence, if it is brought to the notice of the High Court in the form of complaint that any of the Public Prosecutor of the district is not discharging his duty impartially and against the interest of the State then the High Court has jurisdiction to call for an explanation and to find out the truth by directing the Dist. & Sessions Judge to hold an inquiry and submit report. In the instant case, the High Court being the Highest Court having power of administrative and judicial superintendence to all the sub-ordinate Courts can also communicate its views to the Government in respect of any of the Public Prosecutor of the district if complaint is made against him.

15. In the instant case, as noticed above, serious complaints were received against the Presiding Officer of the Sessions Court and against the Public Prosecutor alleging, inter alia, that the Public Prosecutor in connivance with the Presiding Officer have favoured the accused persons for the purpose of their acquittal in the sessions cases. The High Court proceeded against the Presiding Officer and action has been taken against him . At the same time, the High Court also issued show cause notice to the Public Prosecutor and held an inquiry through the Dist. & Sessions Judge. The High Court found that the petitioner was quite irresponsible and acted against the interest of justice and therefore the said fact was communicated to the District Magistrate. Consequently, because of irresponsible conduct of the petitioner in the discharge of his duty the Government took a decision to remove him from the Post of Public Prosecutor. In my considered opinion, no illegality has been committed by the respondents in removing the petitioner from the Post of Public Prosecutor.

16. Mr. Sinha, learned Counsel for the petitioner, but heavy reliance on the decision of the Supreme Court in the case of Baldev Raj v. Punj. & Har. H.C., (supra). The fact of that case was that on the basis of resolution of the Bar Association leveling certain charges against a Judicial Officer affecting his integrity and impartiality. The High Court ascertained the facts through a preliminary enquiry held by the District Judge. Thereafter, on the report of the District Judge a regular departmental enquiry was instituted. The High Court finally came to a tentative conclusion that the officer should be removed from service. The High Court recommended to the State Government for final order. The State Government, although, inclined to agree with the views of the High Court but referred the case to the Public Service Commission for advice. The Commission advised that no case had been made out against the officer and that he should be exonerated. The Governor accepted the advice of the Commission and passed the order, reinstating the officer in service. The High Court did not issue any posting order to the officer as it was of the opinion that the order of the Government was illegal for the vice of consultation with the Public Service Commission and for accepting its advice disregarding the recommendation of the High Court. Since the High Court refused to pass any posting order the officer concerned moved under Article 226 of the Constitution praying for a writ of mandamus directing the High Court to issue an appropriate order of posting. The matter ultimately came to the Apex Court. The Apex Court held that the recommendation of the High Court in respect of Judicial Officer should always be accepted by the Governor Their Lordships observed :--

28. For the first time, in the country's history, appeared in the Constitution of India the concept of control over sub- ordinate Courts to vest in the High Courts. The quantity of exhaustive control of the High Court does not appear to be whittled by the constitutional device of all orders being issued in the name of the Governor as the head of the State administration. When, therefore, the High Court exercising disciplinary control over the subordinate judiciary finds, after a proper enquiry, that a certain officer is guilty of gross misconduct and is

unworthy to be retained in judicial service and, therefore, recommends to the Governor his removal or dismissal, it is difficult to conceive how and under what circumstances such a recommendation should be rejected by the Governor acting with the aid and advice of the Council of Ministers or, as is usually the case, of one of the Ministers. It is in this context that this Court has more than once observed that the recommendation of the High Court in respect of Judicial Officer should always be accepted by the Governor. This is the inner significance of the constitutional provisions relating to the subordinate judiciary. Whenever in an extraordinary case, rare in itself, the Governor feels, for certain reasons, that he is unable to accept the High Court's recommendations, these reasons will be communicated to the High Court to enable it to reconsider the matter. It is, however, inconceivable that, without reference to the High Court, the Governor would pass an order which had not been earlier recommended by the High Court. That will be contrary to the contemplation in the Constitution and should not take place.

17. Similarly the decision in *Shrilekha Vidyarthi* case (*supra*), also not in any way will be of much help to the petitioner. There is no dispute that the Public Prosecutor of a district is the holder of the public office and termination or removal of a Public Prosecutor without the existence of any cogent reasons would be arbitrary and against the public policy. But in the instant case, the Government have issued the impugned order of removal of the petitioner from the post of Public Prosecutor on the basis of cogent reasons and for the public interest which is evident from the complaint made by the litigant and the said allegations have been eventually found correct in the enquiry conducted by the Dist. & Sessions Judge. In any view of the matter, the High Court has not issued the impugned order of removal rather on the basis of the reports submitted by the High Court, the Government who is the appointing authority have taken action against the petitioner by removing him from the post of Public Prosecutor. The action of the High Court and also the Government cannot at any stage of imagination be held to be arbitrary, illegal or violative of the principles of natural justice.

18. For the aforesaid reason, I do not find any merit in this writ petition which is accordingly dismissed.