
(1996) 03 PAT CK 0030
In the Patna High Court
Case No : M.J.C. No. 530 of 1990

Dr. Shashi Ranjan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Citation : (1996) 03 PAT CK 0030

Judgement

A.K. Ganguly, J.—This conempt application has been filed on 3rd July, 1990 on which notice was issued to the Secretary. Department of health, Government of Bihar (respondent No. 1) and the Joint Secretary, of the said department (respondent No. 2) to show cause as to why a proceeding for contempt be not initiated against them for violation of order dated 2-5-1988 passed in Service Case No. 367 of 1987 by the Bihar Administrative Tribunal.

2. The facts which are relevant for the purpose of the present proceeding are noted below :

The petitioner filed a service case being Service Case No. 367 of 1987 before the then existing Bihar Administrative Tribunal (hereinafter-referred to as the said Tribunal) for commanding the respondents to decide the petitioner's seniority and not to fill up the post of Assistant or Associate Professor, Pathology, Darbhanga Medical College and further to quash the order of the State Government transferring the petitioner from Darbhanga Medical College to Patliputra Medical College, Dhanbad on the basis of the notification dated 3rd September, 1987, a copy of which is at Annexure 1 to this writ petition.

3. The petitioner's case is that the said Tribunal after hearing the matter on the stay petition filed by the petitioner passed an order on 18th December, 1987 staying the order of transfer passed against the petitioner pending final hearing of the case i.e. Service Case No. 367 of 1987. Thereafter the petitioner further made another prayer for passing an interim order restraining the respondents from filling up the post of Associate Professor, Pathology in Darbhanga Medical College. In connection with the hearing of the said stay petition, on 3rd May,

1988 the Tribunal passed an order, the material portion of which is set out below :-

Heard Mr. A. B. Ojha, learned counsel appearing for the petitioner and Mr. Jawahardhari Singh, learned counsel for the respondents in the final hearing of the stay matter. It appears that on 18-12-87 an order was passed staying Annexure 1 so far as the petitioner is concerned. In the order dated 10-2-1988 the order was "it is expected that the aforesaid vacant post in Darbhanga Medical College will not be filled up till the stay matter is finally heard". Mr. Jawahardhari Singh states that he has not received any instruction to state before this Court as to whether any post of Associate Professor of Pathology is lying vacant in the Darbhanga Medical College or has already -been filled up. In the circumstances we direct that if the post has not been filled up till today it will not be filled up till the disposal of this case, but in the meantime i.e. 10-2-88 it has already been filled up then it will be subject to the result of this case.

4. The petitioner's positive case is that the post of Associate Professor of Pathology in Darbhanga Medical College was vacant on the date of passing of the said order dated 3rd May, 1988 and under the said order the respondents were not to fill up the said post till the disposal of the case before the said Tribunal.

5. The act of contempt which is alleged in this petition is that subsequently by an order dated 19th May, 1990 the post of Associate Professor of Pathology in Darbhanga Medical College was sought to be filled up by appointing one Dr. Ravi Nandan Prasad Sinha (respondent No. 4) whereby the contemnors have acted in gross disobedience to and violation of the order dated 3rd May, 1988.

6. The petitioner has of course stated in the petition that the said Tribunal is not functioning at the present moment and the same was dissolved but that does not authorise the contemnors herein to flout the order of the Tribunal as they have allegedly done.

7. From a perusal of the order dated 19th May, 1990 it is clear that the respondent No. 4 has been appointed to the post of Associate Professor of Pathology, in Darbhanga Medical College till the disposal of Service Case No. 367 of 1987. It has also been stated in the said order that the aforesaid post on which respondent No. 4 has been appointed was lying vacant.

8. In the counter-affidavit which has been filed on behalf of respondent Nos. 1 and 2 by one Section Officer various particulars about the service case filed by the petitioner have been given. This Court is not concerned with those particulars in so far as the charge of contempt is concerned. The stand which has been taken in the said counter-affidavit is that the appointment was made only as a temporary arrangement and there was no intention to commit contempt of Court. It has also been stated that the work of Darbhanga Medical College was suffering considerably because of such vacancy and so the appointment was made subject to the result of the service case in question.

9. An affidavit was also filed on behalf of the Principal of Darbhanga Medical College & Hospital (respondent No. 3) affirmed by the Head Clerk. In the said affidavit the same stand has been taken namely that in the interest of teaching of the students, the aforesaid appointment was made and the said appointment was made only subject to the result of the service case pending before the said Tribunal. Therefore, the said appointment is a conditional appointment. In both the affidavits it has, however, been stated that there was no wilful or deliberate defiance of the order of the Tribunal.

10. Apart from filing the aforesaid affidavits, it appears that a show cause was also filed in this matter by one Nagendra Prasad Singh, who is presently posted as Deputy Secretary, Health, Medical Education and Family Welfare Department. In the said show cause it has been stated that there are seven posts of Associate Professors in Darbhanga Medical College & Hospital and it appears that there are four posts vacant in the said Medical College and as such there is a post reserved for the petitioner as ordered by the said Tribunal. In the said show cause filed before the Court on 14-12-1995 it has been stated that the petitioner had filed a writ petition being C.W.J.C. No. 5241 of 1990 in which a challenge about the determination of seniority has been raised. It has further been stated that both the posts of Assistant Professor and Associate Professor are teaching posts and as such the Students will suffer a great deal if the post of Associate Professor is left vacant. In the said show cause petition, the Deputy Secretary has also offered his apology.

11. Another counter-affidavit has also been filed by one Anjani Kumar Sinha describing himself as the Joint Additional Secretary, Government of Bihar, Health and Medical Department, New Secretariat, Patna. It has been stated in paragraph 7 of the said counter-affidavit that the post of Associate Professor, Darbhanga Medical College has not yet been filled up and it has been further stated that the same will appear from Annexure 1 to the writ petition. In the said affidavit also apology has been tendered for any act of omission and commission on his part.

12. Now a few interesting questions arise in the facts of this case. It is no doubt true that the Tribunal which has passed the order dated 3rd May, 1988 is not in existence. Now the obvious question which arises is whether any violation of the order passed by the said Tribunal which is not in existence at the time when the proceeding in contempt is initiated can validly give rise to a contempt proceeding. The next question which arises is whether this Court in exercise of its power u/s 10 of the Contempt of Courts Act (hereinafter referred to as the said Act) can initiate a contempt proceeding in connection with the contempt alleged to be committed of the order dated 3rd May, 1988. The other incidental question is whether the said Tribunal is a Court subordinate to High Court.

13. In a judgment delivered in the case of K.P. Verma and I.K. Saran Vs. The State of Bihar and Others, , a learned Division Bench of this Court has come to the conclusion that the Tribunal under the Bihar Administrative Tribunal Act is a Court within the meaning of the said Contempt of Courts Act as also a Court

within the meaning of the Evidence Act. Therefore, if it is a Court within the meaning of. Contempt of Courts Act, then any disobedience of an order passed by it may give rise to a case of civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971. Section 2(b) of the said Act is set out below :-

"civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court;

14. Learned counsel for the respondents, however, has argued that the said Tribunal is not a Court subordinate to High Court. Therefore, this Court cannot exercise its jurisdiction u/s 10 of the said Act.

15. A somewhat similar matter came up for consideration before a Division Bench of Calcutta High Court in the case of *The State Vs. Debabrata Bandopadhyay, Dist. Magistrate, Nadia and Another*, , in the said Calcutta decision, on a construction of Article 215 of the Constitution of India it was held that the High Court is empowered on the strength of Article 215 of the Constitution of India to punish for contempt not only of itself but all contempt of Courts subordinate to the High Court. Article 215 of the Constitution of India was construed as investing the High Court with the same jurisdiction, power and authority in accordance with the same procedure and practice. The said Calcutta decision was delivered in 1964 when Section 10 of the present Contempt of Courts Act was not in existence. Therefore, u/s 10 of the present Act, the legislature has simply given recognition to the principle elucidated in various judicial pronouncements on the strength of Article 215 of the Constitution of India.

16. In the context of this controversy, the provisions of Article 215 of the Constitution of India are set out below :-

Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.

A similar provision has been made under Article 129 of the Constitution of India in respect of Supreme Court. The said provision is also set out below :-

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

17. Now the relevant question in this context is what is meant by a Court of record and what are the powers of such a Court?

18. The extent and ambit of power of the Court of record has received judicial attention both in India and abroad in a number of decisions. The first decision in point of time, in so far as the Supreme Court is concerned, is in the case of *Sukhdev Singh v. Teja Singh C.J.*, reported in AIR 1954 SC 186 : 1954 Cri LJ 460, wherein it was held that the jurisdiction of the High Court under Article 215

of the Constitution is a special jurisdiction and in exercising the said jurisdiction, the High Court can deal with the matter relating to contempt summarily and adopt its own procedure. It is further stated that all that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.

19. Subsequently also in a famous Constitution Bench judgment of the Supreme Court in Special Reference No. 1 of 1964 reported in In the matter of: Under Article 143 of the Constitution of India, it has been held in paragraph 138 that in the case of a superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "Therefore, when this Court is exercising its jurisdiction under Article 215 of the Constitution of India, such jurisdiction is not and as obviously it cannot be in any way, be curtailed or circumscribed by either the provisions of the Contempt of Courts Act or the provisions of the Bihar Administrative Tribunals Act, 1981. Therefore, notwithstanding anything contained in Section 10 of the Contempt of Courts Act, the High Court's power to deal with the contempt of all Courts subordinate to it is vested under Article 215 of the Constitution of India. It is, however, un-doubtedly true that the said Tribunal, as would appear from Section 3 of the said Act, is a Court subordinate to the High Court.

20. Consequently in the two judgments of the Supreme Court, namely, (i) in the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, and (ii) in the case of Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , the concept of the "Court of record" in the context of the jurisdiction of the Supreme Court under Article 129 of the Constitution vis-a-vis the jurisdiction of the High Court under Article 215 of the Constitution were thoroughly considered and discussed.

21. On a reference to the aforesaid two decisions of the Supreme Court, it is clear that the jurisdiction of the High Court under Article 215 of the Constitution of India is an expansive jurisdiction. Such jurisdiction is not restricted in nature. The expression "including" which has been used in the context of construction of Article 129 of the Constitution of India in the case of Delhi Judicial Service Association (Supra) is also applicable for construction of the High Court's jurisdiction under Article 215 of the Constitution where same word "including" has been used and the Supreme Court in those two judgments, on a consideration of the history of the law of contempt and also the jurisdiction of the Court of record came to the conclusion that the subordinate Courts administer justice at the grass root level and protection of their order is necessary in order to preserve "confidence of the people in the efficacy of Courts and to ensure unsullied flow of justice.

22. The elucidation of the aforesaid legal principle in the case of Delhi Judicial Service Association (Supra) has also been accepted by the Supreme Court in its subsequent decision in the case of In re: Vinay Chandra Mishra (the alleged

contemner), having correctly laying down the legal position.

23. Having regard to the aforesaid preponderance of judicial authority on the interpretation of Article 215 of the Constitution of India, this Court holds that the High Court has jurisdiction to deal with those contempt matters despite dissolution of the said Tribunal prior to the institution of this proceeding before this Court.

24. Here by exercising its jurisdiction under the Contempt on the strength of Article 215 of the Constitution the High Court is exercising its jurisdiction in public interest, namely, to sustain the confidence of the people in the administration of justice.

25. It is of paramount public interest that the people, after obtaining an order of the Court, should not feel helpless or without any remedy when such an order is flouted just because the Tribunal which has passed the order within its jurisdiction has sub-sequently ceased to exist. This aspect of the matter has been best expressed by Oswald in his famous treatise of Contempt of Court in the following words:-

The summary power of punishment for contempt has been conferred on the Courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free, as it is of great importance to society.

26. Now coming down to the facts of the present case, this Court is of the view that the acts complained of in the instant contempt application show that the authorities have taken steps to fill up the post in question only as a temporary measure. The post has been filled up having regard to the fact that in absence of Associate Professor of Pathology the teaching of the Students was suffering. Therefore, in order to serve a public purpose, namely, imparting of education to the students, the appointment has been made and that too it has been made by way of a temporary arrangement and subject to ultimate decision to be passed in the service case before the said Tribunal. Therefore, the order has been passed showing due deference to the pending proceeding and in the respectful manner and not by showing any deliberate defiance to an order passed by a validly constituted Tribunal.

27. Therefore, taking all the facts into account this Court cannot hold that passing of the order dated 19th May, 1990 amounts to an act of civil contempt. This Court, however, observes that the respondents-contemners should have, before passing the order, filed an application to obtain the leave of the Court. That has admittedly not been done. Therefore, passing of the order complained of, namely, is an act of impropriety or may be also an act of indiscretion but the same cannot be construed to be an act of contempt within the meaning of Section 2(b) of the said Act. So, the said action on the part of the respondents does not call for either any punishment or censure by this Court.

28. It is, however, made clear that in the event the petitioner succeeds in the proceeding filed by him and if any court passes an order posting the petitioner to the post in question, namely, the post of Associate Professor of Pathology, Darbhanga Medical College and Hospital, the respondents-contemners must immediately make the said post available for the petitioner and they cannot be heard to say that the post has already been filled up.

29. With the above direction, this contempt proceeding is disposed of and the rule is discharged. There will be no order as to cost.