

(2019) 04 CAL CK 0095

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9313 (W) Of 2019

In re: The Court on its own Motion And Registrar General Vs

Date of Decision : 29-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 227

Citation : (2019) 04 CAL CK 0095

Hon'ble Judges : Thottathil B. Radhakrishnan, CJ;Arijit Banerjee, J

Bench : Division Bench

Advocate : Susmita Saha Dutta, D. Nag, Chandrani Mukherjee, Niladri Saha, Amritlal Dhar, Subhankar Chatterjee, Purabi Saha Das, Indrani Chakraborty, Tanushri Das, Rohit Kumar, Subir Sanyal, Subhasish Chakraborty, Samim Ahmed, Achin Jana, Sabyasachi Chatterjee, Sudipta Dasgupta

Judgement

1) As directed by the Chief Justice, this file is placed on the Judicial Side to consider matters touching certain untoward incidents which are stated to have occurred in the premises of the Courts at Howrah on 24th April, 2019. The Chief Justice has perused the reports of the District Judge and the Chief Judicial Magistrate who have furnished separate reports to the High Court. The report of the Commissioner of Police, Howrah, forwarded by the Chief Secretary of the Government of West Bengal with his comments thereon, has also been perused by the Chief Justice. This matter is taken up for consideration on the Judicial Side.

2) Courts of justice are, constitutionally, established throughout the land for administration of justice. The whole set up of a court is for the purpose of administration of justice. The courts of justice in a State, from the highest to the lowest, are by their constitution, entrusted with functions directly connected with the administration of justice. Courts of justice have, in accordance with their constitution, to perform multifarious functions for due "Administration of justice" which is a term of wider import than mere adjudication of causes from the seat of justice. Laying down the law or doing justice between the parties is of the soul of the duties of the court though "administration of justice" is a term of wider import than mere adjudication of causes from the seat of justice. The Presiding Judge of a Court embodies in that person the Court, and when engaged in the

task of administering justice, is assisted by a complement of clerks and ministerial officers whose duty it is, to protect and maintain the records, prepare the writs, serve the processes etc. The acts in which they are engaged are acts in aid of administration of justice. Originally the term 'court' meant, among other meanings, the sovereign's place. It has acquired the meaning of the place where justice is administered and further, has come to mean the persons who exercise judicial functions under authority derived from the sovereign. A 'court' is an agency created by the sovereign for the purpose of administering justice. It is a place where justice is judicially administered. It is a legal entity. It is presided over by one or more Judges on whom are conferred certain judicial powers for administering justice in accordance with law. When a Judge takes his/her seat in court, the court is said to have assembled for administering justice. The authority to create courts is an attribute of sovereignty. When complete in its organised aspect with all the constituent elements of time, place and officers, a 'court' is constituted in the general legal acceptance of the term. In our Republic, in the ultimate sense, all courts derive their authority from the People and hold it in trust for their security and benefit. The power they exercise is nothing but the authority of the People themselves, exercised through courts as their agents. It is the authority and laws emanating from the People, which the judges sit to exercise and enforce. See for support: *Rama Rao v. Narayan*, [(1969) 1 SCC 167] quoting Halsbury's Laws of England, 3rd Edn., Vol. 9, Article 809, at page 342; *Baradakanta Mishra v. Registrar of Orissa High Court*, [(1974) 1 SCC 374]; *Supreme Court Legal Aid Committee v. Union of India* [(1994) 6 SCC 731]; and, *K.M. Abdulla vs. Secretary* dated 19.08.2009 in W.P. (C) No. 21574 of 2008 of the Kerala High Court.

3) As stated by the Apex Court in *S.P. Gupta v. Union of India*, [(1981) Supp SCC 87], if there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law. Under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuses or abuse of power by the executive. Reiterating the views expressed in *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, [(1995) 5 SCC 457], it was emphasised in *High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil*, [(1997) 6 SCC 339], that in a democracy governed by rule of law, under a written constitution, judiciary is the sentinel on the qui vive to protect the fundamental rights and poised to keep even scales of justice between the citizens and the States or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. The Constitution of India has delineated distribution of sovereign power between the

legislature, executive and judiciary. As members of the judiciary, the Judges exercise the sovereign judicial power of the State. They are holders of public offices; which are offices of public trust and in a democracy, such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State. It was laid down that Judges, at whatever level they may be, represent the State and its authority. The Hon'ble Supreme Court reminded that a Government founded on anything except liberty and justice cannot stand and no nation founded on injustice can permanently stand. Therefore, dispensation of justice is an essential and inevitable feature in the civilized democratic society. Maintenance of law and order requires the presence of an efficient system of administration of justice.

4) In the speech delivered on 11.12.2004, H'ble Mr. Justice M. Katju, as the then Chief Justice of the Madras High Court - (The Judiciary - 2005 (2) SCC Jour 37), posed the questions: "What is the need of a judiciary? Why have a judiciary?" The learned Justice answered that query by saying that, ".....it is in the nature of things that in every society, in every country, there are bound to be disputes between the people, grievances of the people and therefore, there has to be a forum for peaceful resolution of the disputes and peaceful ventilation of these grievances. Otherwise, the disputes will be resolved and the grievances will be ventilated with bombs, bullets and sticks in a violent manner. Therefore, the judiciary is a great safety valve. It prevents violence. When people have some grievances, some disputes, they come to court, they are heard through their lawyers, the opposite parties are heard through their lawyers and then a decision is given. Even if the decision goes against that person, he has the feeling that he was given a hearing and this pacifies him. Otherwise, if you do not hear him, then the feeling of injustice may turn into violence. Therefore, the judiciary ensures peace and tranquillity in society and that is its most important purpose."

5) The judicial power and dispensation of justice is part of the sovereign function. The seat of the sovereign power, that is, the Court, has necessarily to be sustained in larger public interest. As noticed in Baradakanta Mishra (supra), the whole set up of a court is for the administration of justice and the courts have to perform multifarious functions for due administration of justice. The presiding Judge is assisted by a complement of clerks and ministerial officers. Records have to be maintained. In modern day administration of courts, even electronic gadgets are used to expedite the justice delivery system. For support see: K.M. Abdulla (supra).

6) Access to justice is not only a matter enumerated among the Directive Principles of State Policy which obliges the State to secure that the operation of the legal system promotes justice on the basis of the equal opportunity, it is inherent in the seminal doctrine of equality contained in Article 14 of the Constitution that the State shall not deny equal protection of the laws, as also equality before the law. The fundamental entitlement of the citizenry to be governed by rule of law is well engrafted even in the Preamble to the

Constitution, which requires that justice has to be secured to all the citizens. Therefore, the society cannot afford to exclude the existence of courts within the reasonable reach of the citizens, including geographically. Hence, the State is duty bound to ensure the presence of courts, as required.

7) The need for a building for a court is fundamental to its existence. Judicial institutions are the institutions of the national life contemporaneous with the fact that they are the seeds of dispensation of the Judicial Authority under the Constitution and the Laws. Such authority of the Court being inseparable element of the sovereign, unauthorised intrusion into its premises and the activities would stand to breach the Constitution and the Laws. The executive agency of a State, viz., the Government, has the constitutional duty to provide infrastructure for the Courts and also to protect those institutions and premises dedicated for activities in connection with the Courts.

8) The Courts are Constitutional Forts of Power and Authority from where Judicial Power is exercised on behalf of the Sovereign. The Court premises are locations which are to be insulated from all sorts of intrusions, except as authorised by law.

9) Having regard to the different aspects and issues which may be relevant for consideration in larger public interest and for protecting the premises of Courts and to ensure that due process in terms of the Constitution and the laws are obeyed and enforced in relation to the incident at Howrah, this matter is ordered to be registered as a writ petition taken up

suo moto in exercise of authority under Article 226 of the Constitution and the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. This will stand registered and notice is hereby ordered to be issued to the authorities listed in the cause title.

10) Respondent Nos. 7, 8, 9, 10, 11 and 12 are directed to file separate personal affidavits touching all aspects of the untoward incidents which are stated to have occurred in the premises of the Courts at Howrah on 24th April, 2019. All such affidavits shall be available before the Bench when this matter is taken up at the next date of hearing.

11) Post on Wednesday, 1st May, 2019.

12) In the meantime, the High Court on the Administrative Side, at the appropriate level, will carry out requisite exercise to ensure that judicial functioning of the Courts at Howrah is smoothly carried out. For this purpose the organizations of the Advocates, including the Bar Council of West Bengal and other requisite stake-holders, may extend such cooperation as the High Court may require and call for. It is clarified that the pendency of this Writ Petition on the Judicial Side will not, in any manner, stand in the way of any action that the High Court may take on the Administrative Side.