

(2001) 03 AHC CK 0094

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 27696 of 2001 (under Article 215 of the Constitution) in C.M.W.P. No. 47177 of 1999

Kamlakar Tripathi

APPELLANT

Vs

Vice-Chancellor, Banaras Hindu University and others

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 4
Constitution of India, 1950 — Article 129, 215
Contempt of Courts Act, 1971 — Section 23

Citation : (2001) 2 AWC 1227 : (2001) AWC 1227 : (2001) 2 UPLBEC 1259

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Irshad Ali and Shailendra Kumar Pathak, for the Appellant; V.K. Upadhyaya, for the Respondent

Judgement

V. M. Sahai, J

1. This is an application under Article 215 of the Constitution filed by the petitioner for initiating contempt proceedings against Sri Y. C. Simhadri. Vice Chancellor, Banaras Hindu University, Sri V. V. Menon, Controller of Examinations, Banaras Hindu University and Sri P. C. Upadhyaya, Registrar, Banaras Hindu University for wilful disobedience of the order dated 21.3.2001 passed by this Court in Civil Misc. Writ Petition No. 47177 of 1999. It is prayed that the aforesaid respondents be punished for contempt of court.

2. Notice on contempt application was served on Sri V. K. Upadhyaya learned counsel appearing for respondents on 26.3.2001. This application came up before this Court on 27.3.2001 and it was directed to be put up along with the records.

3. Petitioner appeared in LL.B. IIInd year examination in 1997. After examination of LL.B. IIInd year, the petitioner was expelled by order dated 5.2.1997 passed by Vice Chancellor of the university. The expulsion was for a period of two years.

The order further stated that he was not allowed to appear in entrance test for admission to any course of the university. After the expulsion period of two years expired, the petitioner moved an application on 12.8.1999 that his result of LL.B. IInd year examination which was withheld due to expulsion be declared and he be permitted to complete LL.B. IInd year course provisionally. The respondents did not admit the petitioner to LL.B. IIIrd year course nor declared his result. The respondents issued show cause notice to the petitioner on 23.10.1999 to show cause why the petitioner be not expelled from the university for all times to come. No order has been passed by the university in pursuance to show cause notice. Since the expulsion period of two years was over, the respondents could not deny admission to the petitioner in LL.B. IIIrd year course and were bound to admit the petitioner in LL.B. IIIrd year course. The respondents were further under legal duty to declare the result of petitioner of LL.B. IInd year examination which was withheld due to expulsion as the respondents had not cancelled the examination of petitioner of LL.B. IInd year.

4. This Court, after hearing the learned counsel for the petitioner and Sri V. K. Upadhyaya learned counsel appearing for the respondents, passed an interim order on 21.3.2001 which is extracted below :

"Heard Sri Irshad Ali learned counsel for the petitioner and Sri V. K. Upadhyaya learned counsel appearing for respondents.

By order dated 5.2.1997 passed by the university, the petitioner was expelled from the university for a period of two years. He was not allowed to appear in any entrance test for admission to any course of the university. After the expulsion period of two years expired, the petitioner moved an application on 12.8.1999 that he has passed LL.B. Ist year examination and his result of LL.B. IInd year examination was withheld due to his expulsion. The order of expulsion passed by the university came to an end on 5.2.1999. He prayed that his result of LL.B. IInd year be declared and he be permitted to complete LL.B. IIIrd year course. The respondents did not admit the petitioner and instead issued a show cause notice to him on 23.10.1999 to show cause why the petitioner be not expelled from university for all times to come. No order has been passed by the university in pursuance of the show cause notice. The respondents could not deny admission to the petitioner in LL.B. IIIrd year course and were bound to admit the petitioner in LL.B. IIIrd year course.

Sri V. K. Upadhyaya learned counsel appearing for the respondents has urged that till the petitioner is declared pass in LL.B. IInd year examination, he cannot be permitted to appear in LL.B. IIIrd year examination. From the facts of this case, it is clear that after the expulsion came to end, it was duly of the respondents to declare the result of the petitioner of LL.B. IInd year examination. For this lapse on the part of the university, the petitioner is entitled to be compensated by the university. The university shall show cause as to why adequate compensation be not awarded to the petitioner. The university shall further explain in the counter-affidavit as to whose accountability has to be fixed

for non-declaration of result of the petitioner. In this view of the matter, the petitioner is entitled for interim order.

Until further orders of this Court, the respondents are directed to declare the result of the petitioner of LL.B. IIInd year examination, 1997 within three weeks from the date a certified copy of this order is produced before respondent No. 3. The respondent Nos. 1 to 4 are further directed to admit the petitioner in LL.B. IIIrd year course and permit him provisionally to appear in LL.B. IIIrd year examination which is scheduled to commence from 23.3.2001. The necessary form shall be got filled from the petitioner and the admit card shall be issued to the petitioner before 22.3.2001 by the respondent No. 3. This order shall be compiled by respondent No. 3 and a certified copy of this order be produced before him on 22.3.2001 by the petitioner.

Office is directed to issue a certified copy of this order to the learned counsel for the parties today on payment of usual charges."

5. The petitioner served a certified copy of the order passed by this Court on 21.3.2001 on the Controller of Examinations, Banaras Hindu University, Varanasi, on Sri V. V. Menon who himself received the order on 22.3.2001. A copy of the order dated 21.3.2001 was also served by the petitioner on Vice Chancellor as well as Registrar of the University. The petitioner complied with order dated 21.3.2001. This contempt application under Article 215 has been filed by the petitioner for punishing the respondents for committing contempt of court as they have not complied with the order dated 21.3.2001.

6. Shri Irshad Ali the learned counsel for the petitioner has urged that the respondents have intentionally, deliberately and wilfully flouted the interim order dated 21.3.2001 passed by this Court. He urged that respondents are guilty of committing contempt of court and are liable to be punished under Article 215 of the Constitution. He urged that constitutional powers of this Court under Article 215 of the Constitution cannot be restricted by the provisions of Contempt of Courts Act, 1971 or by the Rules of the Allahabad High Court and this Court has ample power to punish the respondents under Article 215 of the Constitution.

7. On the other hand, Shri V. K. Upadhyaya, the learned counsel appearing for the respondents has vehemently urged that this Court had no power under Article 215 of the Constitution to hear a contempt alleged to have been committed by the respondents. He urged that under Chapter XXXV-E of the Rules of the Court, a civil contempt or criminal contempt could only be heard by a single Judge or a Division Bench nominated by Hon"ble The Chief Justice. He placed reliance on the decision of the Apex Court in High Court of Judicature at Allahabad through its High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others,

8. Though judicial hyper-sensitiveness is not warranted but angelic silence on the part of a Judge is also not expected vis-a-vis an infraction of the majesty of law. The course of justice must not be deflected or interfered with. Those who strike

at it strike at the very foundation of our society. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the Courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community, it is imperative that the authority of Courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

9. Article 215 of the Constitution of India states that "every High Court shall be a court of record and shall have all the powers of such a Court including power to punish for contempt of itself." The Constitution vests the High Court power to punish for contempt of Itself and no Act of Legislature could take it away. Power under Article 215 can only be curtailed or excluded with respect to any matter by a constitutional amendment and not by any ordinary legislation. The maxim "salus populi suprema lex", that is "the welfare of the people is the supreme law" adequately enunciates the Idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered and maintained. It may be necessary to punish for contempt if someone makes mockery of the judicial process and mocks at the order of the Court that whatever may be the result, he would abide by his administrative decision, which he takes irrespective of the Court's order. In such situations, the Court has the duty of protecting the interest of the public in due administration of justice so that the confidence of people in judiciary is not eroded.

10. The argument of Shri V. K. Upadhyaya that this Court has no power to proceed under Article 215 against the respondents and the only remedy available to the petitioner is to file a contempt petition under the Contempt of Courts Act, 1971, under Chapter XXXV-E of the Allahabad High Court Rules, 1952, cannot be accepted. The power to proceed under Article 215 is an inherent power of the High Court. It cannot be curtailed or abridged by either Contempt of Courts Act, 1971 or under Chapter XXXV-E of the Allahabad High Court Rules, 1952. It has to be exercised sparingly and with caution. The Contempt of Courts Act, 1971, is concerned with nature and type of punishment which a court of record may impose whereas Chapter XXXV-E of the Allahabad High Court Rules, 1952, has been framed u/s 23 of the Contempt of Courts Act, 1971 and is concerned with the procedure for presentation and hearing of contempt of court cases under the Contempt of Courts Act, 1971. Allahabad High Court Rules, 1952 do not lay down any procedure for exercise of power under Article 215 of the Constitution. The Apex Court has considered the scope of power under Article 215 of the

Constitution in Pritam Pal v. High Court of Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , and has held in paragraph 24 as under:

"From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the courts of record as embodied under Arts. 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit."

In the same decision, in paragraph 41, the Apex Court observed :

"The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being courts of record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja Vs. Bhajan Lal, and therefore, the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself."

11. The Constitution Bench of the Apex Court in Supreme Court Bar Association Vs. Union of India and Another, , has held that. "The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically Incorporated in the Contempt of Courts Act. 1971, insofar as the High Courts are concerned and therefore, to the extent the Contempt of Courts Act. 1971, identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed." The Apex Court in another decision in Dr. L.P. Misra Vs. State of U.P., , in paragraph 12 has held that, "It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law." It further held that the procedure prescribed under Chapter XXXV-E of the Allahabad High Court Rules has to be followed. Even in the decision of the Apex Court in Raj Kishore Yadav (supra) relied by learned counsel for the respondents, it has been held in paragraph 16 that, "contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India." This decision was concerned with the question whether Rule 4 (a) of Chapter XXXV-E of the Allahabad High Court Rules, 1952, is ultra vires to Article 215 of the Constitution.

It did not lay down that the inherent power of High Court under Article 215 has been curtailed by Allahabad High Court Rules. 1952. Moreover, in view of law laid down by the Constitution Bench of the Apex Court Supreme Court Bar Association (supra) that the Contempt of Courts Act. 1971, does not impinge upon the inherent powers of the High Court under Article 215 this Court has inherent power to proceed against the respondents on an application under Article 215 of the Constitution.

12. From the facts on record, it is borne out that orders passed by this Court on 21.3.2001 in writ petition was communicated to the respondents but they did not comply with the order knowingly, wilfully, intentionally and deliberately which is clear from the counter-affidavit filed today in the writ petition while this order was being dictated by this Court. In the counter-affidavit, there is no whisper that order dated 21.3.2001 has been complied by the respondents.

13. Issue notice to the respondents.

Sri V. K. Upadhyaya has accepted notice on behalf of respondents.

Shri Y. C. Simhadri, Vice Chancellor, Banaras Hindu University, Varanasi and Shri V. V. Menon, Controller of Examination, Banaras Hindu University, Varanasi and Shri P. C. Upadhyaya, Registrar, Banaras Hindu University, Varanasi, are directed to file counter-affidavit within two weeks and they shall be personally present in the Court on 16.4.2001.

14. List this case on 16.4.2001 before appropriate Bench.

Office is directed to place the record of this contempt application within one week from today before Hon"ble the Chief Justice for nominating appropriate Bench.