

(2000) 04 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 12482 of 1999

Nagarjuna Sethi		APPELLANT
	Vs	
State of Orissa and Others		RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 4

Citation : AIR 2000 Ori 108 : (2000) 1 OLR 580

Hon'ble Judges : P.C. Naik, J;B.P. Das, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; R.K. Mohanty, Additional Government Advocate, Sanjit Mohanty, N.C. Sahu, D. Mohanty, S. Patnaik and S. Nada, for the Respondent

Judgement

B.P. Das, J.—The petitioner, a practising advocate of this Court, has filed this writ petition in the interest of the public bringing to the notice of this Court a news item published in the New Indian Express on 23-9-1999 vide Annexure-1, wherein it was stated that the Chairman of the Orissa State Administrative Tribunal (shortly "the Tribunal") passed an order to its Principal Bench at Bhubaneswar against which the members of the Orissa State Administrative Tribunal. Bar Association (shortly the Association") decided to send memoranda to the President of India, Chief Justice of India, Chief Justice of Orissa as well as the Law Ministry.

2. The petitioner in the present writ petition alleges that this is not the solitary incident but there were repeated disturbances in the past and there are instances of mal-administration against which protest was lodged by the practising lawyers at various point of time. The prayer in the writ petition is to direct opposite party Nos. 3 and 4 i.e. the Chairman and the Registrar of the Tribunal respectively to open the Principal Bench of the Tribunal at Bhubaneswar and its Circuit Bench of Berhampur, immediately.

3. On 1-10-1999 notice on this application was issued by special messenger and

the matter was directed to be listed on 12-10-1999. In the meantime, it was brought to the notice of this Court by opposite party No. 5 the Secretary of the Association, by filing Misc. Case No. 11779 of 1999 that an order had been passed by the Chairman on 6-10-1999, vide Annexure-A for re-opening of the Principal Bench of the Tribunal. The relevant portion of the aforesaid order (Annexure-A) reads as follows:--

"3. Any resolution made by the microscopic minority of the members of the bar having no public support, is totally ignored. Any unlawful act such as boycott and Dharana by a few agitators shall be sternly dealt with in accordance with law, if they continue to carry on the same, which has resulted in causing immense harm to the public in general.

4. Since a great majority of the members of the bar have made the request to reopen the registry, in deference to their request the Hon''ble Chairman has decided to resume the normal functions of the Principal Bench of the Tribunal and its registry,"

4. Opposite Party No. 5 in the aforesaid misc. petition has stated that from the tenor of the order (Annexure-A) particularly in para 3 it was apprehended that the Chairman might take coercive action against the members of the Bar and as police had been deployed inside the premises of the Tribunal, they may create a situation leading to some untowards incidents. By order dated 8-10-1999 passed in M.C. No. 11779/99, we directed the matter to be heard on 12-10-1999 and expressed our hope that in the meantime no untoward incident shall happen. That apart, the President and the Secretary of the Association along with some members of the Bar, who were present in Court on that day, undertook that though the members of the Association were on a "strike", they were not involved nor would they get themselves involved in any untoward incident.

On 12-10-1999, a counter affidavit on behalf of opposite party Nos. 3 and 4 and another on behalf of opposite party No. 5 the Secretary of the Association, we re filed. Both the counter affidavits were taken up for consideration on 14-10-1999.

5. As the counter affidavit filed on behalf of opposite parties 3 and 4 was silent regarding the reasons and circumstances which led to the closure of the Tribunal, a direction-was issued requiring the Tribunal to clearly indicate the reasons and circumstances which led to the closure of the Tribunal. But on that day, it was submitted by Shri Sanjit Mohanty on behalf of opposite party No. 5 that the members of the Bar had started participating in the proceedings before the Tribunal. The matter was taken up on 19-11-1999 and in the meantime, pursuant to the direction given on 14-10-1999 a further affidavit was filed on behalf of opposite party Nos. 3 and 4 on 17-11-1999 wherein it was stated that in pursuance of the resolution of the Association in Annexure-F/3 there was genuine apprehension about untoward incident and ultimately on 16-9-1999 the chairman was informed that many rowdy elements had come prepared to manhandle him if there was any attempt to enter the Tribunal. Three platoons of

armed police with fire brigade engine were deployed and stationed around the Tribunal premises. It was further stated in the said affidavit that because of the aforesaid compelling circumstances, the Chairman took the ultimate decision to close the Tribunal, vide Annexure-A/3.

6. On 26-11-1999 during the course of hearing, our attention was drawn to Annexure R/3 a resolution of the Association dated 10-9-1999. Indicating that the Bar Association only requested the Chairman for placing one Ramesh Chandra Mishra a staff member, under suspension pending contemplation of a departmental proceeding. But there being no socintilla of evidence that the members of the Association had come prepared for a physical confrontation with the Chairman as stated in the order vide Annexure-A/3 to the counter affidavit, on 26-11-1999, this Court directed Shri R.K. Mohanty, learned Addl. Govt. Advocates, to indicate clearly as to what brought about this situation and on 1-12-1999 as no instruction was received by the State Counsel the matter was again adjourned to 2-12-1999 but even though the Tribunal opened, it being an exceptional case where a Tribunal was closed down by its Chairman, we thought it fit to delve into the matter to find out as to what led to the closure thereof, as in spite of the direction dated 26-11-1999 no affidavit had come from the State Counsel till 2-12-1999. Ultimately, on 8-12-1999 an affidavit was filed in para 3 whereof it is stated as follows:--

"That, in Paragraph 5 of the further affidavit submitted on behalf of opposite party Nos. 3 and 4 sworn to by me on 17-11-1999 it has been stated that there were various compelling reasons for the Hon"ble Chairman to take extreme steps. In the following sentences of the said paragraphs the various compelling reasons have been indicated as abstention of Bar members from Court. Dharana given by them before the Tribunal gate and lastly the resolutions of the Bar Association of the Administrative Tribunal, Principal Bench, Bhubaneswar indicating that the members of the Bar will boycott the Tribunal and will not allow the office to function from 16-9-1999 and would paralyse the function of the entire Tribunal, These are the reasons which have described as various compelling reasons in para-5 of the said further affidavit filed in the above mentioned case by the opposite party Nos. 3 and 4. In para 6 of the said further affidavit, the telephonic call received by the Chairman have also been indicated.

The resolution of the Association which was annexed to the counter affidavit filed by opposite party No. 5 as Annexure-A/5 indicates that the members of the Bar were protesting against the filthy and slang language used against them by one Ramesh Chandra Mishra, Bench Clerk of Court No. I. The relevant portion of the resolution is reproduced below:

"The Association unanimously resolves and urges the Chairman of the Tribunal to proceed against the aforesaid Shri Mishra in appropriate disciplinary contempt proceedings for his misconduct and pending the same to place him under suspension with immediate effect.

The association further resolves that the members shall not appear and act in the Tribunal till Shri Mishra was placed under suspension. This Resolution takes effect from 2p.m. of 9-9-1999."

In the counter affidavit filed on behalf of the Association, it has been alleged that though the Association had drawn the attention of the Chairman on several occasions regarding the Benches not being constituted in accordance with Section 5(2) of the Administrative Tribunals Act, adjudicating the matters, showing favoritism to some selected few by giving a go-bye to the provisions and procedure, all the efforts of the Association yielded no result, It is further stated that one incident took place where a particular employee of the Registry, who claimed himself to be close to the Chairman, had on 9-9-1999 misbehaved with the lawyers by showing them his shoe and using abusive and filthy language. The said employee also threatened the lawyers with dire consequences and that faced with such a situation, the Association adopted the resolution vide Annexure-A/5.

The tenor of the order passed by the learned Chairman for re-opening of the Tribunal is itself provocative and in our opinion the learned Chairman misdirected himself in going into the controversy whether the agitating members of the Bar were having any public support or not and invited more agitation from the lawyers. This unfortunate incident could have been avoided by the learned Chairman had he inquired into the unbecoming conduct of the Bench Clerk.

We fail to understand, and the learned Chairman has also failed to explain us by way of counters and further affidavits as to under which provisions of law he being the head of the Tribunal closed the Tribunal. The counter affidavit and the affidavits so filed by opposite parties Nos. 3 and 4 are also conspicuously silent regarding this aspect as well as about the actions taken against the errant Bench Clerk. Though there was a specific direction from this Court to indicate clearly the nature of various compelling reasons, which left the Chairman with no alternative than to take recourse to the closure of the Tribunal save and except the resolution of the Association, there is nothing to indicate as to what are the definite reasons for taking such an extreme step. There is also nothing to indicate that before asking such a harsh and unprecedented measure of closing down the Tribunal, the learned Chairman had at any point of time informed the developments, either to the State Government or to the authorities maintaining law and order. The counter affidavit filed by opposite party Nos. 2 and 4 does not bring out a case that there was threat to life of the staff and the property of the Tribunal from the members of the Association. Rather, it creates a doubt in our mind whether all these efforts of the Chairman were intended to protect a Bench Clerk, who according to the members of the Association is close to him and, as indicated in their resolution, used abusive and filthy language in the vernacular, against the lawyers in the court room itself. Nothing has come out from the Tribunal till the hearing of the case was closed to show that any action has been taken against the aforesaid employee.

7. In our opinion, if the allegations of the lawyers, are correct, the conduct of the Bench Clerk in question is derogatory and an insult to the institution itself. In these circumstances, the learned Chairman should have been prudent enough to have taken strong action against the erring staff instead of allowing the situation to become a volatile by closing the Tribunal. Regrettably, till the closure of the hearing, nothing has been placed before us indicating the nature of action taken by the learned Chairman in this regard to avoid a confrontation between the Bar and the Bench.

8. In reply to the allegations regarding the non-functioning of the Circuit Bench of the Tribunal at Berhampur, in the counter affidavit so filed it has been stated that Shri J.N. Poddar, learned Member (Admn.) was insulted at Berhampur while holding the Circuit Bench and reliance was placed on the order-sheet of the Tribunal dated 5-7-1999 (vide Annexure-D/3) which reads as follows:--

"Learned counsel for the applicant corrected the paging with annexures in the Original Application. List it in the next Circuit Bench for admission. At this stage, Shri Bhubaneswar Panigrahi, Advocate flared up without any provocation and started shouting and howling at me in the open Court in unparliamentary language. He declared that was incompetent to occupy the seat of the Member. Orissa Administrative Tribunal and he would not present any case before me and I did not know A.B.C. of law of limitation. He further declared that he would not allow me to hold Court in Berhampur and demanded that I should vacate the sea and come down from the dais. If I would not stop functioning, he would physically throw me out and rushed to the steps of the dais, two to three times, threateningly making a gesture of throwing me out from the seat/dais, All the while, he addressed me as "Mr. Poddar, forgetting the Court decorum of appropriately addressing the Presiding Officer. He repeatedly contemptuously stated that I was occupying the seat on account of O.R.V. Act. He also made a sarcastic reference to a statutory order I passed as R.D.C. Southern Division. Berhampur, 5/6 years ago. He did not stop at that and made a slanderous statement that I had been bribed by the Advocates of Bhubaneswar and Cuttack.

2. He was joined in his outrageous utterances and slanderous statements by Shri Srinivas Panigrahi, Advocate who appeared in connection with a group of cases at serial Nos. 9 to 16 of the cause list of 5-7-1999 which were briefly heard and adjourned to give time to the learned Standing Counsel for filing reply, for which he had received parawise comments. Both Shri Bhubaneswar Panigrahi and Sri Srinivas Panigrahi and a few others did not allow the other Advocates to participate in the proceeding of the day and compelled them to leave the Court Hall though many of them were not in a mood to leave the Court. After going out, they closed all the front doors and windows of the Court Hall and also switched off lights and fans making it impossible to carry on the Court proceedings. The contumacious statements and utterances and threatening continued from about 12.00 noon till about 1 p.m.

3. By such outrageous, slanderous and contumacious statements/utterances and

declarations Shri Bhubaneswar Panigrahi aided and abetted by Shri Srinivas Panigrahi and a few other Advocates, scandalised and lowered the authority and dignity of the Tribunal prejudiced and interfered with the due course of judicial proceedings and interfered with and obstructed the administration of justice. I am satisfied that there is a prima facie case for drawing up proceedings for criminal contempt of the Tribunal against Shri Bhubaneswar Panigrahi, Advocate, Shri Srinivas Panigrahi, Advocate and a few other Advocates. The Registrar, Orissa Administrative Tribunal, Bhubaneswar, shall, therefore issue notice to Shri Bhubaneswar Panigrahi, Advocate and Shri Srinivas Panigrahi, Advocate under the Contempt of Courts (OAT) Rules, 1998."

Sd/-J.N. Poddar, 5-7-1999.

4. When I came to the Office of the R.D.C. (S.D.), Berhampur in the afternoon, at about 2.00 p.m. for the afternoon session of the sitting, I noticed that Shri Bhubaneswar Panigrahi, Advocate, had collected a large number of Advocates (50-60) in the foyer on the first floor of the Office of the R.D.C. and accosted me to the Chamber and started hackling me and haranguing with me falsely saying that I had misbehaved with Shri Bhubaneswar Panigrahi, Advocate, that I told, him that he had no knowledge of law, asserting that I did not know any law and demanding that I should not come to Berhampur any longer to hold Circuit Bench. All this time, Shri B. Panigrahi went on making/repeating his slanderous remarks against me, including the outrageous remark that I had been bribed by the Advocate of Bhubaneswar and Cuttack. Thereby they did not allow me to hold the afternoon session of the Tribunal and obstructed and interfered with the administration of justice.

5. As ordered hereinabove, the Registrar shall issue notice under the Contempt of Courts (OAT) Rules, 1998 to Shri Bhubaneswar Panigrahi, Advocate and Shri Srinivas Panigrahi, Advocate, both of Berhampur, to appear in person before me in the Principal Bench, Bhubaneswar on 20-8-1999 at 10.30 a.m. and show cause why action as deemed fit under the Contempt of Courts Act, 1971 shall not be taken against them.

Sd/- J.N. Poddar, 5-7-1999."

9. As it is apparent that the matter has been referred to the Bar Council and a proceeding under the Contempt of Court has already been initiated we refrain ourselves from making any observation on the issue as the matter is subjudice. But at this stage it is profitable to re-produce the observations made in para 13 of the historic judgment of the Apex Court In re: Vinay Chandra Mishra (the alleged contemner),

"The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence, judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior Courts, the judiciary has a

special and additional duty to perform, viz., to oversee that all individual and institutions including the executive and the legislature act within the framework of not only the law also but the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the Courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the Courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour.:

From this, it is crystal clear that the courts are not helpless to deal with such a situation. If a counsel conducts himself in such a manner leads to undermine the dignity and decorum of the Court and bring the court into disrepute, the Court can punish by exercising the extraordinary power entrusted to it. But the decision of closing down the circuit court at Berhampur cannot be accepted for the right course was not to close down the institution but to take such exemplary measures so that there is no recurrence of similar situation like the one complained of in future.

10. We may at this stage quote the observation of the Apex Court In Re: Sanjiv Datta and Others, which reads thus:--

"..... .If such trends as are displayed in these proceedings by the condemner are allowed to go scot-free, there is a danger of the erosion of the deference to and confidence in the judicial system."

11. On the other hand it goes without saying that members of the Bar are also officers of the Court and it is their prime duty to upkeep the dignity and decorum of the Court. In this regard, we cannot resist our temptation to the observation of the Supreme Court in Re: Shri Sanjiv Datta (AIR 1995 SCW 2203) (supra) while deciding a contempt proceeding against advocate, which is as follows (At Pp. 2211-12):

"The legal profession is a solemn and serious occupation. It is a noble calling and those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence the honour as a professional has to be maintained to its members by their exemplary conduct both in and outside the Court. The legal professional is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself so a model for others

both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial system in this country in small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive the judicial system has to be vitalised. No service will be too small in making the system efficient effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the Courts the unpleasant duty. We say no more.

12. Last but not the least, we part with the case, with the hope that the learned Chairman shall make a sincere effort to see that the Circuit Bench of the Tribunal at Berhampur starts functioning if not functioning, and that the members of the Bar shall maintain and uphold the high tradition of the Bar and shall desist from doing anything that is unbecoming on the part of the Bar. In conclusion, we may refer to the following observations of the Apex Court in *Re:--Under Article 143 of the Constitution of India* In the matter of: *Under Article 143 of the Constitution of India*,

". . . . Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. . . . The writ petition is disposed of with the above observations, No costs.

P.C. Naik, J.

13. I agree.