

(1959) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 199 of 1957

Nirbhayadas Gangaram

APPELLANT

Vs

Rameshwar Agnibhoj

RESPONDENT

Date of Decision : 30-04-1959

Acts Referred:

Constitution of India, 1950 — Article 227
Contempt of Courts Act, 1971 — Section 3
Representation of the People Act, 1951 — Section 116A, 86

Citation : AIR 1960 MP 115 : (1960) CriLJ 484 : (1959) ILR (MP) 312 : (1959) 4 MPLJ 1139

Hon'ble Judges : T.C. Shrivastava, J;P.R. Sharma, J

Bench : Division Bench

Advocate : R.S. Dabir and Rameshwar Prasad Verma, for the Appellant; J.P. Dwivedi, for the Respondent

Judgement

Sharma, J.

This is an application u/s 3 of the Contempt of Courts Act by one Nirbhayadas who is an elector in the double-member constituency of Harda, District Hoshangabad. The respondent Rameshwar Agnibhoj is the husband of Smt. Gulab Bai, who has been returned as a member to the Legislative Assembly of Madhya Pradesh from the said constituency at an election held on 11-3-1957. The petitioner has filed an election petition (Annexure-B) before the Election Commission of India under the provisions of the Representation of the People Act, 1951 for an order declaring the election of Salt, Gulab Bai as well as of the other candidate Shri Laxnian Rao Naysk as void.

The petition was registered as petition No. 334 of 1957 and has been referred by the Election Commission of India for trial to the District Judge, Hoshangabad who has been constituted as Election Tribunal for deciding the same. The grounds on which the election of Gulab Bai is challenged are set forth in para 7 of the petition (Annexure-B). Sub-paras (c) and (d) of para 7 pertain to the petitioner

and his daughter and they alone are material for the present case.

Notices to parties of the formation of the Tribunal were issued on 13-7-1957, and 26-7-1957 was fixed for appearance of the parties before the Tribunal. The non-applicant served a notice dated 25-8-1957 (Annexure-A) on the petitioner stating that the petitioner had wrongly, maliciously and falsely dragged him and his daughter in sub-paras (c) and (d) of para 7 of the election petition and threatening the petitioner with prosecution for defamation and action in a civil court for damages to the extent of Rs. 10,00,000/-. The notice winds up with a warning to the petitioner that the non-applicant and his people are Balai by caste and that if in spite of the notice, the petitioner writes, utters, expresses or interprets their caste to be something else than "Balai" it would give rise to fresh liability for prosecution and action in a civil court.

The petitioner contends that this notice threatened him with a view to compel him to withdraw or not to press a plea which is most material to his case. The learned counsel for the petitioner, contends that this act of the opposite party amounts to interference with administration of justice and, therefore, constitutes contempt of the Election Tribunal which, being a court subordinate to the High Court, is punishable by this court.

In his reply to the notice issued by this court to the opposite party to show cause why he should not be committed for contempt it is not denied by him that he gave the notice in question. All that is contended by the non-applicant in para 4 of his reply is that the allegations in the election petition against the non-applicant and his daughter are unnecessary, irrelevant and made deliberately and maliciously to defame and harm the non-applicant and his daughter. It was also contended by the learned counsel for the non-applicant before us that the Election Tribunal was not a court nor was it subordinate to the High Court. He finally contended that the notice did not amount to contempt of the Election Tribunal.

We will take up first the question as to whether the Election Tribunal is a court and whether it is subordinate to the High Court. A "court" as defined in Coke on Littleton and by Stroud as a place where justice is judicially administered. According to Stephen (Stephen's Commentaries on the Laws of England, 6th Edn. page 383):

"In every court there must be at least three constituent parts -- the "actor" "reus" and "judex"; the factor or plaintiff, who complains of an injury done; the "reus" or defendant, who is called upon to make satisfaction for it; and the "judex" or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done to ascertain, and by its officers to apply the remedy."

In Wharton's Law Lexicon a Tribunal has been defined as "a seat of a Judge or a court of justice." In Mahabaleswarappa v. Gopalaswami Mudaliar, AIR (1935) Mad 673 after reviewing several authorities it was observed:

"To summarise the effect of these decisions it would seem that we have to look, not to the source of a tribunal's authority, or to any peculiarity in the method adopted of creating it. (though it is undoubtedly a consideration that it derives its powers mediate-by or immediately from the Crown) but to the general character of its powers and activities. It has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions, and if its procedure is judicial in character, in such matters as the taking of evidence and the administration of the oath, then it is a court."

These observations were approved in *Hari Charan Kundu Vs. Kaushi Charan Dey*, as also in *Deputy Commissioner, Goalpara v. Upendra Saran*, AIR 1950 Assam 25. The capacity to deliver a definitive judgment not arbitrarily but according to certain rules and procedure which ensure that the person called upon to decide them acts with fairness and impartiality, were held in *Satdeo Pandey Vs. Baba Raghav Das*, as the least attributes of a court.

In *Brajnandan Sinha Vs. Jyoti Narain*, it was observed by their Lordships of the Supreme Court that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal power to give a definitive judgment with finality and authoritativeness.

In the case of *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, their Lordships observed that "proceedings before the Election Tribunal approximate in all essential matters to proceedings in Civil Courts."

We have, therefore, no hesitation in holding that an Election Tribunal is a court.

Section 116A of the Representation of the People Act (XLIII of 1951) provides for an appeal to the High Court from an order made by an Election Tribunal. The Election Tribunal is therefore, a court subordinate to the High Court.

We are fortified in the view we have taken by a decision given by a Division Bench of this High Court in *Chunnilal Ken Vs. Shyamlal Sukhram and Others*, .

It was argued by the learned counsel for the non-applicant that this decision requires to be re-considered by a larger Bench in view of the observations made by their Lordships of the Supreme Court in *Hanskumar Kishanchand Vs. The Union of India (UOI)*, . In my opinion that case can have no bearing on the question which we are called upon to decide in this case. In the case aforesaid their Lordships were dealing with a case which started with a reference to an Arbitrator u/s 19(1)(b) of the Defence of India Act. It was held that such proceedings were arbitration proceedings and that on appeal before the High Court from an award given in such proceedings, the character of such proceedings did not suffer a change.

It was consequently held in that case that a decision given by the High Court in an appeal u/s 19(1) (f) of the Defence of India Act is not a judgment, decree or order within the meaning of Section 109 or 110 of the CPC or Clause 29 of the

Letters Patent of the High Court. Now it cannot by any stretch of imagination be said that proceedings before the Election Tribunal are in the nature of arbitration proceedings.

During the course of arguments, Shri J.P. Dwivedi for the respondent contended that after the Constitution, the only courts which can be considered subordinate to High Court are those which are mentioned in Chapter VI of the Constitution. He refers to the heading of the Chapter to support his contention. We do not consider that that Chapter is exhaustive of the courts which are subordinate to the High Court much less do we agree that the provision applies to the interpretation of the expression as used in the Contempt of Courts Act.

The test to find out whether a court is subordinate is as we have already said whether an appeal lies to the superior court. As an appeal to High Court against the decision of the Tribunal is expressly provided, that tribunal must be considered subordinate to it. Further, in view of Article 227 which gives the right of superintendence to High Court over all Tribunals it appears to us that these would all be subordinate to the High Court.

We are, therefore, of opinion that Chunnilal's case, 1958 MPLJ 820: (AIR 1959 Madh Pra 50) was correctly decided and that it is in no way affected by the observations made, in the aforesaid decision of the Supreme Court.

Now we turn to consider the next question as to whether the notice in question amounts to contempt of court. It has to be seen in this connection whether by sending the notice the non-applicant did interfere or did intend to interfere with the administration of justice. The counsel for the petitioner relied on the cases of Ch. Rajender Singh Vs. Uma Prasad, & AIR 1940 110 (Nagpur)

In the first case from the Allahabad High Court it was the plaintiff himself in pending proceedings who sent a notice through his Advocate to the defendant. The notice in the Allahabad case contained a direct threat that unless the plea was withdrawn and certain sum paid as damages, a criminal prosecution for defamation would be launched. In the present case the respondent was not a party to the proceedings before the Election Tribunal nor was there a demand made in the notice for withdrawal of any plea.

It would be pertinent to note here that the Election petition nowhere contains a direct assertion to the effect that the present applicant or his daughter are *katias* by caste. The only allegations made in Sub-clauses (c) and (d) of para 7 of the petition are --(1) that admission register P/3, a certified copy of J. E. Middle School, Hardu and a certified copy in two sheets of the admission register High School, Harda records the blood relations in direct line of Gulab Bai as well as of her husband Shri Rameshwar Agnibhoj as *katias*, and (2) Kumari Ninnala d/o Shri Ramehswar Agnibhoj has been recorded by her parents as *katia* in the admission register.

It would be clear from the above that the petitioner merely relied on certain

entries in the school admission registers in which blood-relations of Smt. Gulab Bai and of her husband were shown as karias. In the case of the present non-applicant's daughter, reliance was placed on a similar entry in the school register. The election petition merely refers to certain evidentiary facts. The question then arises as to whether the non-applicant could by giving the notice in question have intended to put pressure on the applicant to withdraw an allegation material to his case.

Since the election petition does not contain any allegations to the effect that the petitioner or his daughter are karia by caste, there could be no question of its withdrawal. Whatever documentary evidence in the shape of certified copies of entries the applicant wished to rely on had already been produced along with the petition.

We are, therefore, of opinion that both *Ch. Rajender Singh Vs. Uma Prasad*, as well as the AIR 1940 110 (Nagpur) are distinguishable from the one before us on several important points. In both of the cases aforesaid there was a direct demand for withdrawal of a certain plea. It was contended on the authority of some English cases in *Ch. Rajender Singh Vs. Uma Prasad*, that the opposite party would be within its rights in bringing a suit for libel or defamation and that it was not objectionable to serve a notice on the offending party giving him an opportunity to withdraw the defamatory words & threatening to take legal steps against him, if he fails to do so. It was observed by their Lordships in dealing with this contention as follows:

"We are not dealing here with the case of a private defamation; the present case is one where an attempt was made to put pressure on the defendant to withdraw his plea which had been taken in the written-statement."

It would thus be seen that a mere notice demanding payment of damages and an apology in writing unaccompanied by a demand for withdrawal of a plea would not amount to interference with administration of justice. A similar view was taken in a later Allahabad decision reported in *Hrishikesh Sanyal Vs. A.P. Bagchi*, -- A still later case of the same court is *Radhey Lal Vs. Niranjana Nath*, where in an insolvency application certain defamatory allegations were made against a person who thereupon instituted a complaint u/s 500 I.P.C.

It was held that the filing of a complaint did not amount to contempt of court. The cases discussed above were followed in *Emperor v. V.P. Kolte* ILR (1942) Nag 506: (AIR 1941 Nag 241). In this case the accused in his written statement had made certain allegations against Professor Kolte and another gentlemen which were considered by them to be insulting and defamatory. Accordingly Prof. Kolte through his counsel sent to the accused Mr. Behere a notice demanding damages and a public unconditional apology to be published in three news-papers,

The notice concluded with a warning that if its terms were not complied with such civil and criminal action as is advised will be taken. Their Lordships on distinguishing the case before them from AIR 1940 110 (Nagpur) as also *Ch.*

Rajender Singh Vs. Uma Prasad, , held that the notice in question did not amount to contempt of court,

We are of opinion that the notice in the case before us read as a whole could not be interpreted as a demand for withdrawal of any plea material to the case as set out in the election petition. All that the non-applicant stated therein was that he and his daughter should not be called as karias. The reference to the words "I and my people" and "our caste" in para 10 of the notice when read in the context of the statements made in the earlier portion thereof can only mean the non-applicant and his daughter,

We are, therefore, of opinion that this case is more in line with Emperor v. Kolte's case ILR (1942) Nag 506: (AIR 1941 Nag 241) than those relied on by the learned counsel for the applicant. We, therefore, hold that the notice in question did not nor could be deemed to have intended to interfere with the administration of justice by the Election Tribunal.

The rule is, therefore, discharged. In the circumstances there will be no order as to costs,

T.C. Shrivastava, J.

I agree.