

(2011) 03 SC CK 0069
In the Supreme Court Of India
Case No : Civil Appeal No. 5600 of 2006

R.S. Singh

APPELLANT

Vs

U.P. Malaria Nirikshak Sangh and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) AIRSCW 2179 : (2011) AIRSCW 1840 : (2011) 3 AWC 2278 : (2011) 2 GLT 1 : (2011) 2 JCR 189 : (2011) 6 JT 367 : (2011) 3 KCCR 234 SN : (2011) 3 KCCR 1696 : (2011) 4 LW 800 : (2011) 2 MPJR 405 : (2011) 1 OLR 1076 : (2011) 2 RCR(Criminal) 909 : (2011) 1

Hon'ble Judges : Markandey Katju, J;Gyan Sudha Mishra, J

Bench : Division Bench

Advocate : Niranjana Singh, for the Appellant; Subramonium Prasad, Niranjana Singh and Subramonium Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.
2. This appeal has been filed against the impugned interim orders dated 13th November, 2003 and 18th December, 2003 passed by the High Court of Judicature at Allahabad, Bench at Lucknow.
3. We have perused the said orders.
4. A direction has been given in the said orders that the Principal Secretary, Finance along with the Principal Secretary, Medical & Health, U.P. Government shall appear personally before the High Court on the next date for non-compliance of the judgment of the High Court dated 15.11.1989/13.12.1989.
5. This Court has been repeatedly observing that the High Courts ordinarily should not summon the senior officials of the government and that should only be done in very rare and exceptional cases when there are compelling circumstances to do so.

6. In State of Gujarat Vs. Turabali Gulamhussain Hirani and Another, , this Court observed:

6. A large number of cases have come up before this Court where we find that learned Judges of various High Courts have been summoning the Chief Secretary, Secretaries to the government (Central and State), Director Generals of Police, Director, CBI or BSF or other senior officials of the government.

7. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the drop of a hat.

8. Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official concerned.

9. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night. No doubt, the ministers lay down the policy, but the actual implementation of the policy and day to day running of the government has to be done by the bureaucrats, and hence the bureaucrats are often working round the clock. If they are summoned by the Court they will, of course, appear before the Court, but then a lot of public money and time may be unnecessarily wasted. Sometimes High Court Judges summon high officials in far off places like Director, CBI or Home Secretary to the Government of India not realizing that it entails heavy expenditure like arranging of a BSF aircraft, coupled with public money and valuable time which would have been otherwise spent on public welfare.

10. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated. We are constrained to make these observations because we are coming across a large number of cases where such orders summoning of high officials are being passed by the High Courts and often it is nothing but for the ego satisfaction of the learned Judge.

11. We do not mean to say that in no circumstances and on no occasion should an official be summoned by the Court. In some extreme and compelling situation that may be done, but on such occasions also the senior official must be given proper respect by the Court and he should not be humiliated. Such senior officials need not be made to stand all the time when the hearing is going on, and they can be offered a chair by the Court to sit. They need to stand only when answering or making a statement in the Court. The senior officials too have their self-respect, and if the Court gives them respect they in turn will respect the Court. Respect begets respect.

12. It sometimes happens that a senior official may not even know about the order of the High Court. For example, if the High Court stays the order of the Collector of suspension of a class-III or class IV employee in a government department, and certified copy of that order is left with the Clerk in the office of the Collector, it often happens that the Collector is not even aware of the order as he has gone on tour and he may come to know about it only after a few days. In the meantime a contempt of court notice is issued against him by the Court summoning him to be personally present in Court. In our opinion, this should not be readily done, because there is no reason why the Collector would not obey the order of the High Court. In such circumstances, the Court should only request the government counsel to inform the concerned Collector about the earlier order of the Court which may not have been brought to the notice of the Collector concerned, and the High Court can again list the case after a week or two. Almost invariably it will be found that as soon as the Collector comes to know about the stay order of the High Court, he orders compliance of it.

13. In the present case, we find no occasion or reason for the learned Judge to summon the Chief Secretary or the Law Secretary by the impugned order. If the learned Judge was concerned about the lack of enough Stenographers in the office of the Public Prosecutor he could have called the Advocate General or Govt. Advocate to his chamber and have asked him to convey the Court's displeasure to the government, but where was the need to summon the Chief Secretary or Law Secretary ? Hence, we set aside the impugned interim order dated 11.4.2007 and condone the delay of 25 days in filing the appeal before the High Court. The High Court may now proceed to hear the Criminal Appeal in accordance with law. The appeal is allowed.

7. Following the above decision, this Court in *State of U.P. and Ors. v. Jasvir Singh and Ors.* JT 2011(1) SC 446, observed:

7. It is a matter of concern that there is a growing trend among a few Judges of the High Court to routinely and frequently require the presence, in court, of senior officers of the government and local and other authorities, including officers of the level of Secretaries, for perceived non-compliance with its suggestions or to seek insignificant clarifications. The power of the High Court under Article 226 is no doubt very wide. It can issue to any person or authority or government, directions, orders, writs for enforcement of fundamental rights or for any other purpose. The High Court has the power to summon or require the personal presence of any officer, to assist the court to render justice or arrive at a proper decision. But there are well settled norms and procedures for exercise of such power.

8. This Court has repeatedly noticed that the real power of courts is not in passing decrees and orders, nor in punishing offenders and contemnors, nor in summoning the presence of senior officers, but in the trust, faith and confidence of the common man in the judiciary. Such trust and confidence should not be frittered away by unnecessary and unwarranted show or exercise of power.

Greater the power, greater should be the responsibility in exercising such power. The normal procedure in writ petitions is to hear the parties through their counsel who are instructed in the matter, and decide them by examining the pleadings/affidavit/evidence/documents/material. Where the court seeks any information about the compliance with any of its directions, it is furnished by affidavits or reports supported by relevant documents. Requiring the presence of the senior officers of the government in court should be as a last resort, in rare and exceptional cases, where such presence is absolutely necessary, as for example, where it is necessary to seek assistance in explaining complex policy or technical issues, which the counsel is not able to explain properly. The court may also require personal attendance of the officers, where it finds that any officer is deliberately or with ulterior motives withholding any specific information required by the court which he is legally bound to provide or has misrepresented or suppressed the correct position.

9. Where the State has a definite policy or taken a specific stand and that has been clearly explained by way of affidavit, the court should not attempt to impose a contrary view by way of suggestions or proposals for settlement. A court can of course express its views and issue directions through its reasoned orders, subject to limitations in regard to interference in matters of policy. But it should not, and in fact, it cannot attempt to impose its views by asking an unwilling party to settle on the terms suggested by it. At all events the courts should avoid directing the senior officers to be present in court to settle the grievances of individual litigants for whom the court may have sympathy. The court should realize that the state has its own priorities, policies and compulsions which may result in a particular stand. Merely because the court does not like such a stand, it cannot summon or call the senior officers time and again to court or issue threatening show cause notices. The senior officers of the government are in-charge of the administration of the State, have their own busy schedules. The court should desist from calling them for all and sundry matters, as that would amount to abuse of judicial power. Courts should guard against such transgressions in the exercise of power...

(Emphasis supplied)

8. We are pained to observe that despite our decision in *State of Gujarat v. Turabali Gulamhussain Hirani* (supra) many High Courts are persisting in summoning executive officials where it was not absolutely necessary to summon them. It is possible that our judgment in the aforesaid decision has not been brought to the notice of the Hon'ble Judges in many of the High Courts and it may also be that the subsequent decision of this Court in *State of U.P. v. Jasvir Singh* (supra) has not been brought to their notice. Consequently we are coming across many orders where High Court Judges are summoning executive officials routinely, casually, and sometimes even at the drop of a hat. This is most improper.

9. We are constrained to make these observations because we are repeatedly

coming across a large number of cases where such orders summoning high officials are being passed by the High Courts and often it is only for the ego satisfaction of the learned Judge. Judges should not have any ego problems. In particular, members of the higher judiciary (High Court and Supreme Court) should have great modesty and humility. This is because the higher one moves in the hierarchy the greater become his powers. Hence, unless one has modesty and humility, he may play havoc. High Court Judges have tremendous powers, but the beauty lies in not exercising those powers except where absolutely necessary. Flaunting these powers unnecessarily only brings the judiciary into disrepute. Some of the greatest Judges have been the most modest, e.g., Justice Holmes, Judge Learned Hand, Justice Brandeis, Justice Cardozo, Lord Atkins, Lord Denning, Justice Venkatachaliah, etc.

10. At the same time, we make it clear that we have also come across cases where orders of the Courts are deliberately ignored by government officials which is not proper. Democracy and the rule of law requires that the orders of the Courts should be complied with by the executive authorities promptly and with due diligence. If the executive authorities are dissatisfied with a High Court order, they may appeal against that order to the Supreme court but it is not proper to ignore such orders.

11. In our opinion, if the High Court finds that its order has not been complied with, it shall first see whether the order can be complied with without summoning any official and for that purpose it can ask the Advocate General, Additional Advocate General or Chief Standing Counsel or some other counsel of the State to communicate to the concerned official that there is some order of the Court which has not been complied with. Ordinarily, this will suffice because we see no reason as to why the executive authorities will not comply with the orders of the court. It is only in some extreme case where the High Court is convinced that deliberately the order of the court has been ignored in a spirit of defiance that it may summon the official to explain why the order of the court has not been complied with.

12. The system functions on mutual respect between the judiciary and the executive. While the judiciary must respect the executive, at the same time, the executive must also respect the judiciary. If we do not respect each other, the system will collapse.

13. In the present case, we are of the opinion that the High Court was not justified in summoning the aforementioned officials.

14. Following the decision in Turabali's case(supra) and Jasvir Singh's case (supra), this appeal is allowed and consequently the direction of the High Court summoning Principal Secretary, Finance along with Principal Secretary, Medical & health is set aside. The Contempt Petition shall be decided on its own merits, in accordance with law, expeditiously.

15. A copy of this order will be sent to the Registrar Generals/Registrars of all the

High Courts, who shall circulate copies to the learned Judges of the High Courts. The Chief Justices of the High Courts, in particular, shall bring this judgment to the notice of all Hon'ble Judges of the Court, with the request that they follow this decision, in letter and spirit.

16. A copy of this order will also be sent to the Cabinet Secretary, Union of India, New Delhi as well as to all the Chief Secretaries of all States/Union Territories.