
(2003) 07 MP CK 0035

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 9 of 2003

Shekhar Bhargava

APPELLANT

Vs

Indore Municipal Corporation and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 1 MPHT 378

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : B.L. Pavecha and N.K. Dave, for the Appellant; Anand agrawal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.—This is an intra Court appeal under Clause X of the Letters Patent for expunging certain remarks made by the learned Single Judge against the appellant herein while disposing of the Writ Petition No. 942 of 2002.

2. Facts and circumstances leading to the remarks are as under. One writ petition on behalf of and for Vijay Bajaj was filed on 24-6-2002. One Amarlal Wadhwani father in law of Vijay Bajaj duly signed the said petition. Amarlal Wadhwani had also sworn the affidavit in support of the writ petition and filed the Vakalatnama. In Para 5.1 of the prescribed format, it was mentioned that as Vijay Bajaj had to go out of the station (Indore) all of a sudden and since the matter was urgent, hence it is being filed as mentioned above and no sooner Vijay Bajaj is available his affidavit and Vakalatnama would be filed. Writ Petition without any office objection was listed before the Court on 1-7-2002 and 5-7-2002 but on both dates could not reach the Board. Ultimately, on 10-7-2002, the Writ Petition was taken up for consideration for orders on admission and interim relief and after hearing the appellant, a designated Senior Advocate, learned Single Judge passed the following order :--

"10-7-2002

Shri Shekhar Bhargava, learned Senior Counsel with Shri Praveen Pal for petitioner.

Issue notice to respondents on payment of P.F. within three days, returnable within two weeks. Hamdast is permitted.

In the meantime and until further orders respondent Nos. 1 and 2 shall not finalise the tenders received by them pursuant to advertisement issued/published in daily newspaper Dainik Bhaskar on 24-5-2002.

C.C. on usual charges.

Judge."

3. On 31-7-2002, respondents in the writ petition filed the reply wherein an objection to the effect that the writ petition was not properly constituted was taken. It was contended that no Power of Attorney duly executed by Vijay Bajaj in favour of Amarlal Wadhwani, which authorized the later to swear an affidavit, execute the Vakalatnama and sign the writ petition, accompanied the writ petition. In view of this objection, on 7-8-2002, additional documents, including the Power of Attorney executed by Vijay Bajaj in favour of his father-in-law Amarlal Wadhwani was filed in the writ petition. On 12-8-2002 the learned Single Judge finally heard the writ petition and reserved it for order. On 16-8-2002 the order dismissing the writ petition was passed containing certain remarks in Paragraph No. 3 of the order against the appellant, which are as under :--

"3. Such a petition is no petition in the eye of law before the Court. It deserves dismissal on this short ground it being filed without following requirement of Rules. Indeed, it was the duty of the Senior Counsel appearing for the petitioner at the time of hearing of the writ petition to have brought this infirmity to the notice of the Court at its threshold and seek appropriate orders from the Court to maintain high standard of professional ethics. Rather, it was not done and an attempt was made as if the petition is filed properly and by proper person thereby complying the requirement of Rules framed for filing writs. This Court too over looked this infirmity and issued notice to respondent on merits. This Court views this type of behaviour on the part of a Counsel with concern as it violets the high and basic standard of professional ethics which the Court expects from every Counsel to ob serve while addressing the Court." (Emphasis is added)

4. We have heard Shri B.L. Pavecha, learned Senior Counsel appearing along with Shri N.K. Dave, Advocate for the appellant at length. Shri Pavecha raised threefold submission before us. According to him, remarks are not the integral part of findings; remarks are wholly unjustified and unnecessary; and no opportunity of hearing was afforded to the appellant before making disparaging remarks against him. Elaborating his submissions, Shri Pavecha contended learned Single Judge assigned five reasons for the dismissal of the writ petition, which find place in Paragraphs 2, 4, 5, 6 to 8 and 9 respectively in the order. In

Para 2 of the Order, learned Single Judge held that in absence of the affidavit of the person who is described as petitioner, Amarlal Wadhwani had no locus to maintain the writ petition. In Para 4 of the Order learned Single Judge held that in absence of affidavit of persons described as petitioner or duly authorized person, writ petition could not be entertained. In Para 5 of the order, it was held that subsequent execution of Power of Attorney by Vijay Bajaj in favour of Amarlal Wadhwani would not cure the inherent defect so as to make the writ petition properly constituted writ petition. In Paras 6 and 7 learned Single Judge found the writ petition devoid of any merit and substance. In Para 9 of the order learned Single Judge found that the equity is not in favour of Vijay Bajaj, as he had come not with clean hands seeking relief under extra-ordinary jurisdiction conferred on the Court under Article 226/227 of the Constitution of India. According to learned Counsel, even if entire Para 3 or the underlined portion of Para 3 were omitted it would not make any difference, as tenor of the order remains unchanged. Placing reliance on the decisions of the Supreme Court reported in *Ishwari Prasad Mishra Vs. Mohammad Isa*, , learned Counsel submitted that remarks made against the appellant were wholly unjustified and were made in violation of principles of natural justice as no opportunity was afforded to the appellant before making remarks.

5. We find force in the submissions of the learned Counsel for the appellant. After going through the entire order of the learned Single Judge we find that there would be no change either in the reasoning or the end result, even if the entire Para 3 is bodily lifted from the order impugned. We find that there was no justification for using such harsh language, specially when in Para 5.1 of the writ petition, it was mentioned specifically as under :--

"5.1. The petitioner is a citizen of India from his shop on M.G. Road, Indore. It may however be stated that since the petitioner had to leave Indore suddenly in the early hours of 22-6-2002, he duly requested and authorized Shri Amarlal Wadhwani s/o Shri Soomamal Wadhwani, his father-in-law, to file the present petition on his behalf. The petitioner, therefore, undertakes to file the formal power of attorney at the first opportunity." (Emphasis is added)

From this unambiguous and categorical statement of fact, it can not be said that any attempt was made directly or indirectly to conceal defect in the writ petition, if any, from the Court. Not only the checking clerk, but also the Dealing Assistant failed to exercise due vigilance while processing the writ petition before its registration and listing before the Court. It is quite possible that due to inadvertent oversight, the Office also failed to put up note on the file but that is no ground to make remarks against Counsel who has been designated as Senior Counsel looking to his standing in the profession. The remarks, do not meet the tests to be applied while dealing with the question of expunction of disparaging remarks made against a person whose conduct comes in for consideration before a Court of law in cases to be decided by it. The tests laid down by the Supreme Court are :--

(A) Whether the person whose conduct is in question is before the Court or has an opportunity of explaining or defending himself;

(B) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(C) Whether it is necessary for the decision of the case as an integral part thereof to comment critically on that conduct.

See The State of Uttar Pradesh Vs. Mohammad Naim, ; R.K. Lakshmanan Vs. A.K. Srinivasan and Another, ; Niranjan Patnaik Vs. Sashibhusan Kar and Another, .

6. It can not be denied that the nature of remarks the learned Single Judge has made, has cast a serious aspersion on the appellant, affecting his standing and reputation in the Profession. The remarks do not meet any of the tests laid down in various decisions of the Supreme Court. It would be useful to recall old saying that the Court and Counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent Counsel are the wheels of the chariot. While the Judge holding the reigns controls the direction of the movement, the movement itself is made easy by the wheels without which the chariot of justice may not move and come to grinding halt. We find that there is nothing reprehensible in the conduct of the appellant so as to invite diatribe from the learned Single Judge. It is well to remember caution sounded by the Supreme Court in Abani Kanta Ray Vs. State of Orissa and Others, "that as per the established norms of judicial propriety restraints are expected from every one discharging judicial functions. Use of intemperate language or making disparaging remarks against any one unless that be the requirement for deciding the case, is inconsistent with judicial behaviour. Written words in judicial orders form permanent record, which makes it even more necessary to practice self- restraint in exercise of judicial power while making written orders. Supreme Court has further observed in Niranjan Patnaik Vs. Sashibhusan Kar and Another, . "We need only remind that the higher the forum and greater the power, the greater the need for restraint and the more mellowed the approach should be".

7. Thus in the light of observations of the Supreme Court as given in various decisions, we feel, learned Single Judge while criticising the appellant, ought have exercised judicial restraints by using temperate language and moderate expressions for judicious restraint only provide more dignity to the high office and imparts greater respect to judiciary. In view of the foregoing discussion we allow the appeal and expunge the remarks as made in Para 3 (italicized portion) of the order dated 16-8-2002 passed by the learned Single Judge, Thus the appeal is allowed to the extent indicated above. Rest of the order of the learned Single Judge shall stand as it is, as the same is not challenged before us in the appeal.

8. Order accordingly but no costs.