
(2013) 08 AP CK 0008

In the Andhra Pradesh High Court

Case No : W.A.M.P. No. 2220 of 2013 and Review W.A.M.P. (SR) No. 13316 of 2013 in Writ Appeal No. 556 of 2010

T.D. Dayal

APPELLANT

Vs

Sri Madupu Harinarayana and Others

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2013) 6 ALD 734 : (2013) 6 ALT 681

Hon'ble Judges : Ramesh Ranganathan, J;Raja Elango, J

Bench : Division Bench

Advocate : Bathula Rajkiran, SC for APHC, for the Respondent

Judgement

Ramesh Ranganathan, J.—Review can be sought not only by those who were parties to the order but even by third parties who are affected by such an order. P. Neelakanteswaramma and Others Vs. Uppari Muthamma and Others, . Leave as sought for, to file the Review Petition, is therefore granted.

The petitioner (who appeared and presented his case before this Court in person) seeks review of the order of this Court dated 19.01.2011, dismissing W.A. No. 556 of 2010 as an abuse of process of law with the following directions:

1. the Registry should not accept any case or proceeding, application filed by Sri T.D. Dayal either as a party in person or as a holder of a GPA for third parties; all the District and Subordinate Courts in the State of Andhra Pradesh were also directed to abide by this direction;
2. the Security Officer, Incharge of the High Court Security, should not allow Sri T.D. Dayal to enter the High Court premises/precincts and to be stopped and sent away from the entry point itself unless he is specifically summoned by the Court to answer a charge or as a witness;
3. the Registry should communicate a copy of the order forthwith to the Secretary, Bar Council of Andhra Pradesh, Hyderabad, for taking necessary action

as indicated in paragraph 51 of the Judgment.

4. as the appellant and the GPA had filed the case, in gross abuse of the process of Court, both of them were jointly and severally directed to pay Rs. 25,000/- (Rupees Twenty five thousand only) as costs within a period of two months to the Member Secretary, District Legal Services Authority, Kadapa and, if the amount was not paid, the Member Secretary was directed to execute the order as a decree of the Court by attachment and sale of movable and/or immovable properties of the appellant and/or Sri T.D. Dayal, the GPA holder of the appellant; and

5. the Registry was directed to, suo motu, register a contempt case against Sri T.D. Dayal drawing appropriate charges for making false, unfounded and scurrilous remarks, and attributing prejudice and motives to the Hon"ble Judges of this Court and the Supreme Court.

2. In W.A. No. 556 of 2010, the petitioner herein contended before the Division Bench that he was the General Power of Attorney (GPA) holder of the appellant. In its order in W.A. No. 556 of 2010 dated 19.01.2011 the Division Bench examined questions relating to the maintainability of the Writ Petition; the right of a GPA holder to address the Court; and the Court's response to vexatious and frivolous litigations. The petitioner herein stated before us that he was not questioning the order passed, in W.A. No. 556 of 2010 dated 19.01.2011, on its merits; and the said order necessitated review in all other aspects. It is, therefore, necessary for us only to examine whether the findings and the conclusions of the Division Bench, in its order in W.A. No. 556 of 2010 dated 19.01.2011, on (1) right of a GPA holder to address the Court; and (2) the Court's response to vexatious and frivolous litigations; suffer from errors apparent on the face of the record necessitating review.

I. Conclusions of the division bench on the right of a gpa to address the court:

3. The petitioner contends that the directions to the Registry and to other subordinate Courts not to receive any petition, case or other prosecution filed by him, was undemocratic, contrary to law and in violation of the basic structure of the Constitution of India; the order, faulting him for appearing and pleading before the Court, is in violation of Order III Rules 1 and 2 CPC read with Section 32 of the Advocates Act, 1961, and Article 20(1) of the Constitution of India; and the Division Bench failed to note that he had filed an application to appear and plead on behalf of the appellant in the Writ Appeal. Reliance is placed by him on the judgments of the Supreme Court in Harishankar Rastogi Vs. Girdhari Sharma and Another, and A.M. Mathur Vs. Pramod Kumar Gupta,

4. It is necessary for us, therefore, to briefly note the conclusions of the Division bench on the right of a GPA to address the Court. Relying on the judgments of the Supreme Court in Harishankar Rastogi Vs. Girdhari Sharma and Another, ; T.C. Mathai and Another Vs. The District and Sessions Judge, Thiruvananthapuram, Kerala, and the High Courts in M. Krishnammal Vs. T.

Balasubramania Pillai, Power of Attorney Agent of M. Krishnammal, Kota Co-operative Agricultural Bank Limited Vs. State of Karnataka and Another, and, after referring to the rules made by the High Court, the Civil Rules of Practice and Circular Orders, and the Criminal Rules of Practice and Circular Orders, the Division Bench held that a party to the proceedings can either himself appear as a party-in-person to ventilate his grievance or engage an Advocate on the rolls of the Bar Council of Andhra Pradesh (a Statutory professional body constituted under the Advocates Act, 1961); the party to a proceeding may authorize another by giving a Power of Attorney ("PoA" for short) to appear in the case, file affidavits, instruct lawyers and act on his behalf; the GPA holder cannot, however, plead and/or argue for his principal; the petitioner, in this review petition, did not derive any authority under the GPA allegedly executed by the appellant in W.A. No. 556 of 2010; and no GPA or a copy thereof was annexed to the Writ Petition or the Writ Appeal.

5. The Division Bench examined the provisions of the Powers-of Attorney Act, 1882, the relevant provisions of the Code of Civil Procedure, and observed that the vakalat can be signed and the pleadings verified either by the party or a PoA; as per Rule 33 of the Civil Rules of Practice, when pleadings are verified and signed by a person, under written authority, such document shall be filed with an affidavit by the PoA holder to the effect that such person is a recognized agent of the party as defined in Order III Rule 2 CPC; Rules 30, 33, Form XII (Vakalatnama) and the relevant Rules showed that the pleader or an Advocate, who is given vakalatnama, can only appear in the Court as contemplated under Order III Rule 4 CPC; while a PoA holder can sign and verify the pleadings, sign affidavits, instruct advocates to whom vakalatnama is issued, he cannot even give evidence on behalf of the party to the proceedings who has given him the PoA; Section 303 Cr.P.C. read with Section 2(q) thereof showed that a PoA in favour of a person, to act for another in a Court proceeding, cannot be construed as authorizing the holder of the PoA to argue a case in the Court; Order III Rule 1 CPC, which permits appearance or acting in any Court by a PoA, is subject to the provisions of the Advocates Act; a conspectus of Rules 1 and 2 of Order III CPC, Section 2(a) and Sections 29, 30, 33, 34 of the Advocates Act, and Rule 2 of Order III CPC, Section 34 of the Advocates Act and the provisions of the Cr.P.C. would show that all the pleadings in a proceeding shall be made by the party in person or by his recognized agent; a party in person, and a recognized agent, have to make an appointment (vakalatnama) duly authorizing the advocate to appear and argue the case; only an advocate, entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, has the right of audience on behalf of the party, or his recognized agent, who engaged the advocate; Sections 29 and 30 of the Advocates Act make it clear that advocates are the only recognized class of persons entitled to practice law, and such an advocate should have been enrolled as such under the Advocates Act; Section 32 of the Advocates Act empowers the Court to permit any non-advocate to appear in a particular case; this only means

that any person has to seek prior permission of the court, to argue a case, if he is not an advocate enrolled under the provisions of the Advocates Act; it is an offence for a non-advocate to practice under the provisions of the Advocates Act; it is only those advocates, whose names are entered in the rolls of the State Bar Council, who have the right to practice in any Court; and, if a person practices in any Court without any such authority, it would amount to an offence u/s 45 of the Advocates Act.

II. Review of an order passed under article 226 of the constitution: its scope:

6. It is in this context that the scope of review of an order, passed in the exercise of the jurisdiction of the High Court under Article 226 of the Constitution of India, needs to be examined. While Article 226 of the Constitution of India does not preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it, it would not be exercised on the ground that the decision was erroneous on merits as that is the province of a court of appeal. A power of review is not to be confused with the appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court. *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others, Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, Mudiki Bhimesh Nanda Vs. Tirupathi Urban Development Authority and Others,*

7. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement. The power of review can be exercised for correction of a mistake and not to substitute a view. The mere possibility of two views on the subject is not a ground for review. *Lily Thomas, Vs. Union of India and Others, ; Mudiki Bhimesh Nanda Vs. Tirupathi Urban Development Authority and Others, .* Review literally, and even judicially, means re-examination or re-consideration. The basic philosophy inherent in it is the universal acceptance of human fallibility. Yet, in the realm of law, Courts lean strongly in favour of the finality of a decision-legally and properly made. Exceptions have been carved out to judicially correct accidental mistakes or errors which result in miscarriage of justice. *Shivdeo Singh and Others Vs. State of Punjab and Others,* An application for review would lie, inter alia, when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed. The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that, once a judgment is signed or pronounced, it should not be altered. Review is not an appeal in disguise. *Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., Rajendra Kumar v. Rambai (2007) 15 SCC 513 Lily Thomas, Vs. Union of India and Others,*

8. An error, which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record

justifying the court to exercise its power of review. In the exercise of the review jurisdiction, it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter alone can be corrected by the exercise of the review jurisdiction. Parsion Devi and Others Vs. Sumitri Devi and Others, Mudiki Bhimesh Nanda Vs. Tirupathi Urban Development Authority and Others,). An error which is not self evident, and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying exercise of the power of review. A review petition, it must be remembered, has a limited purpose. (Haridas Das Vs. Smt. Usha Rani Banik and Others and Apu Banik,

9. A review lies only for correction of a patent error. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, ; Mudiki Bhimesh Nanda Vs. Tirupathi Urban Development Authority and Others, ; Delhi Administration Vs. Gurdip Singh Uban and Others, The error contemplated under the rule is not an error which is to be fished out and searched. It must be an error of inadvertence Lily Thomas, Vs. Union of India and Others, It must be an error which must strike one merely on looking at the record and not one which requires a long drawn process of reasoning on points where there may conceivably be two opinions. Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, ; Mudiki Bhimesh Nanda Vs. Tirupathi Urban Development Authority and Others,); Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale,). There can be no review unless the Court is satisfied that there exists a material error manifest on the face of the earlier order resulting in miscarriage of justice. Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others, P. Neelakanteswaramma 1998 (3) An.W.R. 132 (D.B)).

10. An error, which necessitates review, should be something more than a mere error and it must be one which must be manifest on the face of the record. If the error is so apparent that, without further investigation or enquiry, only one conclusion can be drawn in favour of the petitioner, a review will lie. If the issue can be decided just by a perusal of the records, and if it is manifest, it can be set right by reviewing the order. If the judgment/order is vitiated by an apparent error or it is a palpable wrong, and if the error is self evident, review is permissible. S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, A review proceeding cannot be equated with the original hearing of the case and the finality of the judgment will be reconsidered only where a glaring omission or patent mistake or like grave error has crept into by judicial fallibility. Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, Mudiki Bhimesh Nanda Vs. Tirupathi Urban Development Authority and Others,

11. All the statutory provisions which the petitioner has referred to in the grounds, for seeking review of the order, have been noted and considered by the Division bench in its order in W.A. No. 556 of 2010 dated 19.01.2011. As the

power of review cannot be exercised to examine the decision, in W.A. No. 556 of 2010 dated 19.01.2011, on merits which is the province of a Court of appeal, the order of the Division Bench, on the right of a GPA holder to address the Court, does not necessitate being reviewed.

III. Dismissal of SLP by the supreme court by a speaking order: its effect:

12. It is also necessary to note that, aggrieved by the order passed by the Division Bench in W.A.No. 556 of 2010 dated 19.01.2011, Sri Madupu Harinarayana (the appellant in the said Writ Appeal) filed a petition seeking leave to Appeal and the Supreme Court, in its order in Special Leave to Appeal (Civil) No. 6815 of 2011 dated 28.11.2011, observed:

...Having heard learned counsel for the respondent and since, in our view, the General Power of Attorney holder is not entitled to represent the person aggrieved in accordance with the rules, the special leave petition, as also all the interlocutory applications, are dismissed.....

(emphasis supplied)

13. A petition for leave to appeal to the Supreme Court may be dismissed by a non-speaking order or by a speaking order. If the order refusing leave to appeal is a speaking order, i.e. it gives reasons for refusing to grant leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex court of the country. Kunhayammed and Others Vs. State of Kerala and Another,

14. As no case has been made out by the petitioner for reviewing the order of the Division Bench; as the Special Leave Petition, preferred against the order of the Division Bench in W.A.No. 556 of 2010 dated 19.01.2011, was dismissed by a speaking order: and the conclusions of the Supreme Court, in its order in Special Leave to Appeal (Civil) No. 6815 of 2011 dated 28.11.2011, would bind this Court; we see no reason to review the order, in W.A.No. 556 of 2010 dated 19.01.2011, on the question of the rights of the G.P.A. to address the Court or to interfere with direction Nos. 1 and 3 noted hereinabove.

IV. Conclusions of the division bench on the court's response to frivolous and vexatious litigation:

15. The petitioner would also contend that derogatory remarks, not connected with the decision of the case, were passed against him without giving him an opportunity to explain. It is necessary for us, therefore, to briefly refer to the conclusions of the Division bench on the Court's response to frivolous and vexatious litigation. The Division Bench noted that, when the Writ Appeal was

initially listed on 02.08.2010, the petitioner herein (the alleged GPA holder of the appellant in W.A.No. 556 of 2010), was himself arguing the case; when asked how he could appear, he had stated that he had appeared in a number of cases in this Court; the matter was adjourned as he had sought time to place the order of the Supreme Court; when the matter was again listed on 16.08.2010, and having regard to his submission that he had appeared in a number of cases during the last more than twenty years, information was called for from the Registry; the information furnished by the Registry showed that the petitioner herein was a habitual court bird filing all sorts of cases; all of them were vexatious and frivolous; more often than not he had annoyed Judges and had attributed motives to them; and he had filed and argued false, frivolous and vexatious cases.

16. The Division Bench summarized the various cases where the petitioner had appeared, either as a party in person or as a GPA for others, under two separate tables containing details of the case number, the party's name, the prayer sought for and the result of the cases. It also noted that a suo motu contempt case was initiated (against the petitioner herein) by an earlier Division Bench, in C.C. No. 7 of 1996 dated 22.02.1996, wherein his litigation adventures as a GPA was noted and his imprisonment, for a period of three months for contemptuous, unruly conduct and gesticulations made in the Court, was confirmed. After referring to several other orders, the Division Bench observed that it was evident from the nature of cases filed by the petitioner herein, either as a party in person or as a GPA holder of third parties, that all the cases were frivolous; and, on more than one occasion, he had filed cases for the same cause of action even though they were dismissed one after the other; he had attained notoriety in the corridors of the High Court of Andhra Pradesh, and was punished for contempt of court.

17. In para 52 of its judgment, the Division bench held:-

... We are also surprised to notice that, on occasions more than one, this Court directed the Registry not to accept any case filed by Sri T.D. Dayal. But somehow or the other he is being allowed to sneak into the High Court system and file all sorts of cases. Serious attention should be bestowed on this. If there is any lapse, it would be contumacious and liable for contempt. Indeed in W.A.No. 999 of 1997, this court even directed the Registry to issue directions to the District/ Subordinate Courts not to allow any GPA to argue cases. This direction issued more than a decade ago has been followed more in breach. We can only caution all those concerned in the Registry about this aspect....

(Emphasis supplied)

18. The table, in the order of the Division Bench in W.A.No. 556 of 2010 dated 19.01.2011, refers, amongst others, to W.P.M.P. Nos. 1056 and 1057 of 1997, filed by the petitioner herein as a party in person, wherein another Division Bench of this Court, by its order dated 24.01.1997, observed:

...The main writ petition No. 19345 of 1995 has already been disposed of with the judgment in Writ Petition No. 19609 of 1995 and other petitions. The party in person has already suffered conviction for Contempt of Court for insisting that his petition was not disposed of and that it was still pending. Notwithstanding the above, he has chosen to file further petitions seeking hearing of his writ petition and indulged in abuses to the Hon'ble Judges. A person, who has not learnt the ways of dealing with the Court and making petitions inspite of conviction for contempt, will never learn even if he is convicted over and over again. The Registry of the Court is directed not to entertain any petition filed on his behalf unless specifically ordered by the Court...

(emphasis supplied).

19. The said table also refers to the order passed in W.A.No. 999 of 1997 dated 11.09.1997 wherein the Division Bench of this Court held:

...The right to represent a litigant, which is recognised for an advocate u/s 30 of the Advocate's Act, it appears, is sought to be used by the so-called General Power of Attorney holder, one Mr. T.D. Dayal, who has already earned notoriety in filing so called public interest petitions in the Court and already convicted for contempt of court in Contempt Case No. 7 of 1996. We record for the future guidance of the court that any appearance by him i.e., Mr. T.D. Dayal, who is not an advocate, by obtaining so called General Power of Attorney is not permitted and thus he is not allowed to represent any petitioner for the purpose of arguing the cases before the court.

Registrar (Judicial) is directed to issue necessary instructions not to number the cases filed by him without first verifying whether there is General Power of Attorney as claimed by him to represent the petitioner/appellant or respondent, as the case may be, in any proceeding and to permit any cases to be posted only when, in exercise of the General Power of Attorney, he appoints an advocate to appear for the petitioner/appellant or the respondent, as the case may be. Registrar (Judicial) is also directed to inform all District/Subordinate Courts to take notice of the appearance of Mr. T.D. Dayal as General Power of Attorney holder and his appearance in the court proceedings which is permissible for advocates only....

(emphasis supplied)

20. In its order, in W.A. No. 556 of 2010 dated 19.01.2011, the Division Bench also noted that the petitioner was in the habit of making allegations against Judges; when the case had come up before it on 02.08.2010 and, when it observed that a GPA holder did not have the right of audience before the Court to plead on behalf of others like an advocate enrolled on the rolls of the Bar Council, the petitioner had, by his letter dated 19.08.2010 (which was circulated to the Registrar (Judicial)), made unfounded and wild allegations to the effect that one of the Judges to the Division Bench (V.V.S. Rao, J) was biased against him, and it was not desirable to post the Writ Appeal before the Bench consisting

of his Lordship; however, during arguments, this aspect was not pressed; and, even in paragraph 7 of the affidavit filed in support of the Writ Petition by the petitioner as a GPA, (i.e., W.P. (S.R.) No. 81961 of 2010 dated 13.07.2010 against which W.A. No. 556 of 2010 was filed), he had used bad language imputing prejudice to the High Court which decided the first appeal, and the Supreme Court which decided the SLPs, which was contumacious. After referring to several judgments of the Supreme Court, the Division Bench observed that, by using bad and intemperate language attributing prejudice to the Judges of the highest Court and also by addressing a letter to the Registrar attributing bias, the petitioner had committed contempt scandalizing the Court besides interfering with the course of justice.

V. article 215 of the constitution - truth of the records of the high court not to be called in question:

21. As noted hereinabove, the Division bench summarised several cases in which the petitioner had appeared, either as a party in person or G.P.A. for others, under two separate tables after obtaining information from the Registry of the High Court. The conclusions reached by the Division Bench were based on information received from the High Court Registry. This Court is a Court of record under Article 215 of the Constitution of India and the orders, referred to in the order under Review, are matters of record. The expression court of record has not been defined in the Constitution of India. Article 215 declares a High Court also to be a court of record. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. According to Jowitt's Dictionary of English Law, First Edn. (p. 526) a court of record has been defined as:

A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority.

Wharton's Law Lexicon explains a court of record as:

Record, courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not to be called in question....

Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, in facie curiae. Supreme Court Bar Association Vs. Union of India and Another,

22. We see no error in the order of the Division Bench in calling for information from the High Court Registry, and in referring to such orders, as they have evidentiary value and can be relied upon in any legal proceedings.

VI. Judicial independence would be eroded if litigants or their counsel threaten

judges:

23. That the petitioner has repeatedly resorted to abusing and casting aspersions on the judges of this Court and the Supreme Court is evident from the orders referred to in the tabular statements which form part of the order in W.A. No. 556 of 2010. While Judges should not use strong and carping language while criticising the conduct of parties or their witnesses, they must act with sobriety, moderation and restraint, they must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified, and, if so, they may do considerable harm and mischief and result in injustice *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, it must also be borne in mind that, in order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity. If, litigants and their counsel start threatening the Judge for what he has honestly and bona fide done in his court, the judicial independence would vanish eroding the very edifice on which the institution of justice stands. It would also be in violation of the statutory protection available to the Judges and Magistrates under the Judicial Officers (Protection) Act as also the Judges (Protection) Act. In *Re: Ajay Kumar Pandey*,

VII. Principles of natural justice have no application in cases where the facts are not in dispute:

24. Even before this Court, the petitioner does not dispute the findings recorded by the Division Bench in W.A.No. 556 of 2010 regarding the cases filed by him or the contemptuous, unruly conduct and gestures made in the Court earlier or even his being sentenced to imprisonment, hitherto, for a period of three months. The question as to what extent principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. *Escorts Farms Ltd., Previously known as Escorts Farms (Ramgarh) Ltd. Vs. The Commissioner, Kumaon Division, Nainital, U.P. and Others*, *Bar Council of India Vs. High Court of Kerala*, ; *A. Umarani Vs. Registrar, Cooperative Societies and Others*, ; *Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others*, and *Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another*, Principles of natural justice is not a "mantra" to be applied in a vacuum, or be put in a straitjacket. Natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. The court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of the particular case. *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, ; *Union of India and Another Vs. Tulsiram Patel and Others*, *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, ; *Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and Others*,). They are not required to be complied with when it would be an empty formality. *State Bank of Patiala and others Vs. S.K. Sharma*, ; *S.G. Kotturappa (2005) 3 SCC 409*; and

Rasiklal Vs. Kisore Wadhwani,

25. The application of principles of natural justice would be limited to a situation where the factual position or legal implication arising thereunder is disputed, and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice, (Punjab National Bank and Others Vs. Manjeet Singh and Another,), as it would be a futile exercise and an empty formality. (State of Uttar Pradesh Vs. Om Prakash Gupta, Juwarsingh and Others Vs. State of Madhya Pradesh, ; U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others, ; Punjab State Electricity Board; The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, S.G. Kotturappa 29; P.D. Agrawal Vs. State Bank of India and Others, M.C. Mehta Vs. Union of India (UOI) and Others, ; and Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, . The petitioner's claim of non-compliance with principles of natural justice, on the ground that he was not put on notice before such findings were recorded, does not merit acceptance as he has not even now contended before us, in the present review proceedings, that these findings are either perverse or are based on no evidence.

VIII. Power of the high court under article 215 of the constitution cannot be restricted by legislation (plenary or subordinate):

26. In para 51 of its judgment, the Division bench held:-

....As per Section 45 of the Advocates Act, if any person practices in any Court though he is not entitled to practise under the Advocates Act, it is an offence punishable with imprisonment for a term which may extend to six months. As per Section 4 of Cr.P.C., the same has to be investigated, enquired into and tried in accordance with the provisions of Cr.P.C. When an offence is committed with reference to the Advocates Act, there cannot be any better complainant than the Bar Council. Therefore, the Bar Council of Andhra Pradesh should file criminal cases against Sri T.D. Dayal, who appeared as a GPA for litigants even though he is not entitled to practise, appear and argue cases before this Court or any Court. Indeed, at least on two occasions, the Division Bench of this Court has recorded a finding that Sri T.D. Dayal cannot appear and argue cases for others. We, therefore, issue directions in this regard in this judgment. We may, however, mention that, while filing criminal complaints, one must also keep in view the provisions of Chapter XXXVI of Cr.PC which deal with "Limitation for taking cognizance of certain offences....

27. It is in the light of these observations that direction 4, as aforementioned, was issued by the Division Bench. The power to issue such directions is referable to Article 215 of the Constitution of India. The power of the High Court, being the Courts of Record as embodied under Article 215, cannot be restricted and trammelled by any ordinary legislation and their inherent power is elastic, unfettered and not subjected to any limit. Pritam Pal Vs. High Court of Madhya

Pradesh, Jabalpur through Registrar, ; Sukhdev Singh Sodhi Vs. The Hon''ble Chief Justice S. Teja Singh and the Hon''ble Judges of the Pepsu High Court at Patiala Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. (Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, ; M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, . Whether Article 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the article confers the power as inherent in a court of record, the jurisdiction is a special one. Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, ; R.L. Kapur Vs. State of Madras, ; Sukhdev Singh Sodhi Vs. The Hon''ble Chief Justice S. Teja Singh and the Hon''ble Judges of the Pepsu High Court at Patiala The jurisdiction derived from Article 215 of the Constitution of India, a 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 any Rules Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, ; D.N. Taneja Vs. Bhajan Lal, . We see no reason, therefore to interfere with direction No. 4 aforementioned.

28. Pursuant to the order, in W.A. No. 556 of 2010 dated 19.01.2011, a suo motu Contempt Case, in C.C. No. 227 of 2011, was registered against the petitioner herein; it was heard by a Division Bench which, in its order dated 10.12.2012, noted that the petitioner herein (contemnor in the Contempt Case) had specifically tendered his unconditional apology; he had also appeared in person before the Division Bench, and had tendered an unconditional apology before the Court; he had further submitted that he had great respect for Courts and he always obeyed orders passed by Courts; and he had prayed that, on the basis of the additional counter affidavit filed by him, his apology may be accepted by the Court. Accepting the apology, tendered by the petitioner herein, the Division Bench closed the Contempt Case. As the Contempt Case, in C.C. No. 227 of 2011, has been closed, direction No. 5 in the order of the Division bench in W.A. No. 556 of 2010 dated 19.01.2011 does not survive.

IX. "Open court" - is an integral part of the judicial process:

29. The petitioner would contend, not without justification, that direction No. 2 aforementioned, prohibiting him from entering the High Court premises, is in violation of Section 327 Cr.P.C. and Section 153-B CPC read with Article 225 of the Constitution of India. The procedure established by law, indicated in Article 21 of the Constitution of India, must be a fair and just procedure and is as is provided in Section 327 Cr.P.C., Kehar Singh and Others Vs. State (Delhi Administration), , Section 153-B CPC and Rule 24 of the Writ Proceedings Rules, 1977. Section 327 Cr.P.C. stipulates that the place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be

an open Court, to which the public generally may have access, so far as the same can conveniently contain them. u/s 153-B CPC, the place in which any Civil Court is held, for the purpose of trying any suit, shall be deemed to be an open Court to which the public generally may have access so far as the same can conveniently contain them. Rule 24 of the Writ Proceedings Rules, 1977 stipulates that all other rules relating to causes and matters coming before the Original Side and Appellate Side of the High Court and the provisions of the Code of Civil Procedure, 1908 will apply to Writ Petitions and the Writ Appeals in so far as they are not inconsistent with these rules.

30. There is an underlying object in the "open court" system followed in all courts in India - from the highest to the lowest tier. In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion, as publicity has place, can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the judge himself, while trying, under trial in the sense that the security of securities is publicity. ("Scott v. Scott" 1913 AC 417). "Every Court of Justice is open to every subject". The actual presence of the public is never, of course, necessary. Even if there be no members of the public available to attend, the Court must be open to any who may present themselves for admission. The remoteness of the possibility of any public attendance must never, by judicial action, be reduced to the certainty that there will be none. AIR 1936 246 (Privy Council) Scott 1913 AC 417). Every Court of justice is open to every citizen, and a right to an open trial is one of his cherished rights Kailash Nath Agarwal and Another Vs. Emperor,

31. In our country, even as far back as 3000 years ago, Hindu law givers have directed that a Court should be held in a public place; the proceedings of a Court should always be public; and the decisions of a Court shall always be pronounced fully and openly. The principle, that a trial should be held in a public place and all the members of the public should have access to it, is the general rule followed now in all civilized countries. (In Re Venkataraman 1950 CRL.L.J. 1032). "Hallowed by the administration of justice for long years gone by, and by the promise of administration of justice for years to come, public court houses may well be said to be "temples of justice", (Anthony Allen Fletcher Vs. The State, ; Kumar Purnendu Nath Tagore Vs. Kalipada Dutt and Others, where everybody has a right of access. Every Court of justice is open to every citizen. Public court houses are temples of justice where all who seek justice may enter and where none, being called on to help justice being administered, should refuse to come. That justice should be properly administered in the interest of all and not merely of the parties in a particular case. It is for this reason that the highest in the land together with the lowest have entered the portals of Courts of law without hesitation and with prayerful humility. Chhatisagarh Mukti Morcha Vs. State of Madhya Pradesh and Others, . As a result of the hugely significant role that the higher courts play in the lives of citizens across the country, it becomes all the

more important that the courts remain as open as possible to public scrutiny. Any measures to restrict public access to court proceedings must be viewed in the light of the wide-reaching functions and role that the courts play in the lives of citizens, whether or not they have invoked the jurisdiction of the court or are parties to proceedings before the court. In any democratic society, the open justice rule must always be the norm and "covertness" the exception. Sahara India Real Estate Corporation Ltd. and Others Vs. Securities and Exchange Board of India and Another, In general, all cases brought before the courts, whether civil, criminal, or others, must be heard in open court. Trial held, subject to public scrutiny and gaze, naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence in the public of the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that, in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another,

32. It cannot, however, be overlooked that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If the primary function of the court is to do justice in causes brought before it then, on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, Public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of justice which is the end of judicial process and so, if ever a real conflict arises between fair administration of justice itself on the one hand and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. The High Court has inherent jurisdiction if the ends of justice clearly and necessarily require the adoption of such a course. This inherent power must be exercised with great caution and only if the court is satisfied beyond doubt that the ends of justice themselves would be defeated thereby. Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, . A right to exclude the public generally, or any particular person, being an exception to a very well settled rule, the Court must record reasons if it decides to exclude either the public or the person. Kailash Nath Agarwal and Another Vs. Emperor, . Where the number of persons are more than the Court room can accommodate the access can be regulated in a manner so that the proper and fair administration of justice is not obstructed. Chhatisagarh Mukti Morcha Vs. State of Madhya Pradesh and Others, . As a general rule, all persons have a right to be present in court, provided there is sufficient accommodation and there is no disturbance of the proceedings. There are, however, exceptions warranted by the exigencies of the case and,

accordingly, the legislature, in its wisdom, has laid down specific provisions in different Acts for the said purpose. The Court has the inherent jurisdiction to exclude the public if it becomes necessary to do so for the administration of justice. Anthony Allen Fletcher Vs. The State, Halsbury's Laws of Eng., 2nd Edn. Vol. X para 750).

33. As the present case cannot be brought under the exceptions to the general rule that High Court is an open Court, and as no specific reasons were assigned for his exclusion therefrom, we are satisfied that the second direction aforementioned is not only contrary to the statutory provisions referred to hereinabove, but also to the law declared in the judgments aforecited. As the relevant statutory provisions and judicial pronouncements were not noticed by the Division Bench, the direction No. 2 i.e.,

We direct the Security Officer, Incharge of the High Court Security, not to allow Sri T.D. Dayal to enter the High Court premises/precincts and he shall be stopped and sent away from the entry point itself unless he is specifically summoned by the Court to answer a charge or as a witness,

34. in the order in W.A. No. 556 of 2010 dated 19.01.2011 suffers from an error apparent on the face of the record and must be, and is accordingly, set aside. Except to the limited extent that direction No. 2 is set aside, the order of the Division Bench, in W.A. No. 556 of 2010 dated 19.01.2011, does not, in all other respects, necessitate interference and the Review Petition is, accordingly, dismissed. No costs.