

(1996) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12173 of 1996

The District and Sessions Judge

APPELLANT

Vs

The Executive Engineer, R and B Department and Others

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 ALD(Cri) 844 : (1996) 4 ALT 546 : (1997) 1 ALT(Cri) 250

Hon'ble Judges : P.S. Mishra, C.J.; Syed Saadatulla Hussaini, J

Bench : Division Bench

Advocate : B. Sreeramulu, for the Appellant; Govt. Pleader for Respondent No. 1, M.S.K. Sastry, for Respondent Nos. 2 and 3 and A.G., for the Respondent

Judgement

P.S. Mishra, C.J.—The District and Sessions Judge, East Godavari at Rajahmundry sent a letter No. 8126 dated 8-9-1995 to the Registry of the Court stating that on the existing ground floor of the reading and library room of the Bar Association building at Rajahmundry, first floor was being constructed and when enquiries were made, it was revealed that the then local Member of Parliament, Sri K.V.R. Chowdary had granted an amount of Rs. 1,35,000/- for the construction of first floor of the said building and released the said amount in favour of the Executive Engineer and the Executive Engineer had taken up the construction work. He further stated that the present Bar Association building was within the control of Judicial Department and that on his initial enquiry, he came to know that the foundation laying ceremony was organised earlier during the time of his predecessor and that no permission had been obtained earlier for construction of first floor. The District Judge further stated that on his further probe, he came to know that no permission of the High Court had been taken for construction of the first floor and that no plans have been submitted by the Executive Engineer to the High Court for necessary permission and authorisation. He stated that immediately he had issued instructions to stop the construction work, by which time the construction work was half through. He also stated that the Executive Engineer immediately approached him and has submitted the

xerox copies of the estimate and plan prepared by him. The District Judge also reported that there has been quick progress in construction and the roof slab has been laid, but doors and windows etc., were not fixed. The Court instructed the District Judge to seek explanation from the Bar Association and furnish the information on the following:

- (1) Who permitted construction;
- (2) Whether any written request for construction either to the District Judge or the High Court was made;
- (3) Who received the money from the Member Parliament funds;
- (4) Whether Roads and Buildings Department was involved in the construction or any third party was involved; and
- (5) How could the Executive Engineer proceed with the work without sanction from the High Court.

The District Judge in answer to the above furnished the following information.

- (1) No request for the construction of the building had been made either to the District Court or to the High Court;
- (2) No permission had been given either by the High Court or the District Court to start construction;
- (3) Bar Association explanation mentioned, however, that the foundation stone was laid for the construction of the first floor on 4-2-1996 during the tenure of Sri K.B. Siddappa, District Judge, as he then was;
- (4) Out of the funds made available to the Member of Parliament, Rajahmundry, he allotted an amount of Rs. 135 lakhs for the purpose of construction of first floor over the existing library room by giving a letter to the Collector, East Godavari, with whom the funds were available and the Collector gave the necessary administrative sanction to the R & B Department for the construction of the building and the Department accordingly had taken up the work;
- (5) No third party was involved in the construction process of the building.

2. The District Judge also informed the Court that the Bar Association had been pleading for additional accommodation owing to the increase in the strength of the members of the Bar, including lady advocates. There was genuine need for additional accommodation. The Court on the administrative side had already taken the need of the additional accommodation in the various Courts in the State and asked the District Judges to report about the need of such additional accommodation, including accommodation for the Bar Associations. On receipt of the report from the District Judges above, however, in taking up the construction of first floor of a building in the court premises, the Registrar (Judl.) was directed to place the matter for being taken up on judicial side. Accordingly, notices have been issued to the Executive Engineer, Roads & Buildings Department,

Rajahmundry, East Godavari District, the Bar Association, Rajahmundry, represented by its President as well as the Secretary, Rajahmundry Bar Association and the District Collector-

3. The Executive Engineer has since filed a counter-affidavit and a statement of facts. His case in brief, before this Court, is that Sri A. Venku Reddy. the then District Judge had directed for preparation of plans and estimates/ which the Executive Engineer had prepared and submitted to the Superintending Engineer (R & B), Kakinada with counter signature of the District Judge and eventually to the Engineer-in-Chief (R & B) in 1991. On verifying the records, he found that the then District Judge, Sri K.B. Siddappa sent a letter dated 2-8-1994 to the Registrar (Management)/ High Court, in which he referred to the earlier correspondence dated 16-5-1991, 2-8-1991 and 9-10-1991 etc, and sought for administrative sanction from the High Court. He has stated that the construction is bona fide and is not with any intention to disobey any orders of the Court.

4. The President, Bar Association of Rajahmundry has filed an affidavit stating that he and Sri K.W. Maniraj, the present Secretary of the Bar Association were elected only on 26-4-1996 and were not Office Bearers at the relevant time. He has stated, however, that the Bar Association was in the need of additional accommodation and representations were made periodically to the District Judge in this behalf. Sri A. Venku Reddy wrote a letter to the Executive Engineer on 16-5-1991 with a copy to the President of Bar Association informing him that pursuant to their representation, it was requested that construction of first floor over the existing library hall for providing accommodation to the members of the Bar would be taken up. The Superintending Engineer (R & B) wrote a letter to the Executive Engineer giving the estimation at a total sum of Rs. 1,30,000/- and requested the Chief Engineer to grant administrative sanction. By letter dated 8-10-1991 the then District Judge wrote a letter to the Registrar of the High Court intimating the above facts and asked for necessary administrative sanction for taking up the construction work of the first floor. Again on 2-8-1994 the then District Judge Sri K.B. Siddappa wrote a letter to the Registrar (Management) of this Court informing about the above facts and also that the estimation for the construction was made at Rs. 75,000/- and Rs. 60,000/-, totalling to Rs. 1,35,000/- and the said estimate was counter-signed by the District Judge. He requested the Registrar for granting necessary administrative sanction to allot necessary funds for the said construction. The Executive Engineer wrote a letter to the Superintending Engineer (R & B) for sanctioning the revised estimate for Rs. 1.35 lakhs as per his letter dated 14-3-1995. The said sum was released from out of the Constituency Development Fund of the Member of Parliament, Rajahmundry Constituency and the construction work was taken up.

5. The Secretary of the Bar Association has filed a separate counter-affidavit and reiterated the statements in the counter-affidavit of the President of the Bar Association.

6. The Collector of the District has filed an affidavit stating as follows:

"(1) I am the 4th respondent in the above Writ Petition and submit the following facts for your kind consideration.

(2) It is submitted that the Bar Association building in Rajahmundry District Court premises was constructed in 1904 when the total membership was only 20. Since then, the Court had grown and there is a persistent demand from Bar Association, to augment the seating capacity, on 2-8-1994 the then learned Sessions Judge Sri K.B. Siddappa had requested the Registrar of Hon'ble High Court to provide Additional accommodation to the Bar Association and also provide funds for the same. When the request was receiving attention of Hon'ble High Court, the Bar Association had approached the Member of Parliament, Rajahmundry Sri K.V.R, Chowdary, who had in his letter dated 4-2-1995 requested the District Collector, East Godavari District to allot Rs. 135 lakhs from the Constituency Development Funds allotted by the Government of India for this work. On 7-4-1996, Administrative sanction was given by the then Collector, East Godavari District (along with 2 other works) to take up the construction of first floor of the Bar Association Buildings to the Executive Engineer (R & B) as per rules of M.P. Local Area Development Scheme. The work was completed on 21-9-1995.

(3) It is submitted that it is clear from the above, the request for construction of the said buildings was also originated from the then District Judge as well. Therefore, it is submitted that the work was taken and completed with explicit and express consent of the learned District Court. As such, it is respectfully submitted that there is no interference with the Court property without proper authority.

(4) It is submitted that the respondent No. 4 has only limited role in this case. Government of India released Rs. 100.00 lakhs to each M.P. for taking up Constituency Development Works. Collector is only custodian of the funds and has only to execute the works as selected by the M.P. As such, there is no discretion with respondent No. 4 either to take up the work or not.

(5) It is submitted that this respondent No. 4 was not the Collector, East Godavari District at the time of sanction of the work. The then Collector of East Godavari District had verified the records as to letter of the then District Judge and sanctioned the work. As such, there is no disobedience to the Judicial authority.

(6) Finally, it is submitted that the action of the then Collector, East Godavari was taken with bona fide intention to improve the infrastructure of the District Court. The action was taken only in consultation with the then District Judge. As such, it is submitted that the same may be condoned in the circumstances, and pass appropriate orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

7. The Court has taken up the matter under Article 226 of the Constitution of India. Respondents, however, appear to labour under the idea that the Courts"

authority is confined to making judicial orders and issuing directions on the judicial side only. It is indeed surprising that the Collector, Executive Engineer and even Office Bearers of the local Bar Association have shown lack of knowledge of the administrative authority of the Court and chosen to plead the administrative authority to sanction construction in the Court premises in the Collector of the District and the Chief Engineer, Roads & Buildings. The above also demonstrates how a certain Member of the Parliament got interested with the affairs of the local Bar Association and identified allotment of Rs. 1,35,000/-, as estimated by the Engineers, for the construction of the first floor of a building exclusively for the advocates and neither the members of the Bar nor the District Administrative head, including Engineers, ever cared that the Court existed as a "State" within the State of Andhra Pradesh and existed independent of any executive control of either the Collector of the District or the Engineers. Informations have been received in the meanwhile from other Districts of the State that Collectors have abrogated to themselves such power to decide about any construction in the Court premises and also to specify the purpose for which any building is being constructed. Collector, Rajahmundry has been no exception to the above for he evidently thought he was independent of any control of the High Court in the matter of constructions or interference otherwise with the property of the Court in the District. The affidavit suggesting that he has implicit consent of the District Judge is obviously not acceptable as the Collector is well informed that the District Judge had addressed a letter to the High Court seeking its administrative sanction. He did not draw from the said letter of the District Judge, about which he was duly informed, the inference that the District Judge had his own limitations in the matter and that he would accord no sanction to deal with any property of the Court or to interfere with the immovable property of the Court without the order of the High Court. The Executive Engineer has evidently acted at the behest of the Bar Association of the District and not under the instructions of the District Judge. The Bar Association in taking up the issue for additional accommodation had every justification but not to take it on themselves to make constructions and involve any Member of the Parliament or the Collector of the District for the said purpose without obtaining proper authorisation from the competent authority i.e., the High Court.

8. One of the well settled principles of law is that it is not only disobedience of the judicial order of the Court or interference with the judicial proceedings, which constitutes Contempt of Court, interference in exercise of administrative power by the Court also is a Contempt of Court. The respondents have interfered with the administrative control of the Court and thus are guilty of committing Contempt of Court. We are not proceeding, however, in the instant case, to discuss in further detail how the above act of the respondents is a criminal contempt, except stating that by resorting to the above, they have lowered the authority of the Court and thus have committed contempt. We also do not propose to discuss any further as to how the Court should now deal with the construction already made. The Collector has asserted it is completed, the

District Judge has reported it is only partly done. The High Court has taken up the matter on administrative side and would decide accordingly in due course. We have no hesitation, however, in holding that the respondents have acted in a very irresponsible manner. The Collector's statements in the affidavit do not show the regrets of a responsible Officer who has detected that a wrong thing has been done by his predecessor in Office as he has attempted to justify the alleged administrative sanction which his predecessor allegedly had accorded to the said construction. He has exhibited that the Collector could on his own assumptions, proceed as if he would have no need to wait for the administrative sanction by the High Court of any construction in the Court campus. We feel sorry that we have developed, particularly in the executive, a sense of superior authority and not that they are to act with the authority of the law and within the bounds of the law. No person in authority can justify his role in the democratic polity of the country unless he learns to obey the law and to act strictly in accordance with law. Those who cannot otherwise touch the independence of the Courts find some such occasions to exhibit their power and cause embarrassment to the Court and the then Collector, Rajahmundry, who accorded sanction, has obviously done so and the present Collector has not thought it proper to express to the Court even regrets.

9. The above applies to the Executive Engineer as well. No one can take any instructions from any authority, other than the authority created by the Court and the law, for doing anything concerning the Courts and he, as the Executive Engineer, we have reasons to think, is well aware of the fact that the District Judge is the administrative head of the unit and he alone is competent to grant any permission to do anything legally permissible within the Court campus. His defiance is not that of an ignorant but of a person, who thinks his allegiance is somewhere else and not to the law. The present President and the Secretary of the Bar Association have disowned personal responsibility on the ground that they have been elected recently to their respective offices. The President and the Secretary, however, are only representatives of the local Bar Association and if any role they have to play, it is as the representatives of the Bar Association and not in their individual capacity in the instant proceeding. Their explanation to the above is full of holes suggesting that they could, at some stage, think they i.e., members of the Bar Association, were free to do things as they want in the Court premises and independent of the authority of the Court could decide on their own with the help of the Engineers and the Collector to get a building in the Court premises constructed exclusively for their use. They, as representatives of the Bar Association, themselves have to take the blame that they, as Officers of the Court, failed in discharge of their duty towards the law of the land and abetted the actions of the Collector of the District and the Engineers concerned by giving more importance to their vested interests than to the interest of the law and independence of the judiciary. Coming, however, to the issue of finally to give any directions to the respondents, we have no hesitation in ordering that the respondents are restrained from doing anything in the Court premises without an

order in writing by the District Judge. About any other direction, however, which should be, on the facts of this case, ordered by us, we have no reasons to think that the Government of the State shall not issue appropriate instructions forthwith to all Executive Officers, including Collectors and the Engineers to exercise any and every power effecting the properties of the Court only with explicit and prior order in writing by the District Judge who is the unit head. If such instruction is issued with the timely caution that the respondents deserve, there is a chance of improvement in the behaviour of the Executive towards the affairs of the Court, which, we strongly feel, must improve; otherwise the Government of the State will have to take the blame of misdoings of the Officers at the level of the Collector, the Executive Engineer etc.

10. There are quite a few occasions when persons holding responsible offices are concerned more with satisfying their ego and less with the cause which they are expected to serve. We hope and trust that the Government of the State shall see wisdom in issuing proper instructions to the Executive Officers, including Engineers that in dealing with the Court they exercise due caution and deference which the system deserves.

11. In the result, the application is allowed. The respondents are restrained from doing anything touching the affairs and properties of the Court/Courts in the District, East Godavari without prior permission in writing of the District Judge and to fulfil their obligations as and when the District Judge/ with prior sanction of the High Court and necessary administrative approvals/ calls upon them to do. The government of the State in the concerned Department is directed to issue necessary instructions to all concerned to abide in future by the above at all places in the State.