

(2000) 03 PAT CK 0105

In the Patna High Court

Case No : Criminal Miscellaneous No. 1518 of 1996

Uttam Sengupta and Others

APPELLANT

Vs

Bihar Public Service Comm. and Another

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 316, 320
Criminal Procedure Code, 1973 (CrPC) — Section 199, 202
Penal Code, 1860 (IPC) — Section 120B, 499, 500, 501, 502

Citation : (2000) 2 PLJR 467 : (2001) 3 RCR(Rent) 188

Hon'ble Judges : Nagendra Rai, J;A.K. Verma, J

Bench : Division Bench

Advocate : Ravi Shankar Prasad and Anjani Kumar Sharan, for the Appellant;
Anil Kumar Tiwary and Kaushal Kishore, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—This application has been filed for quashing the entire criminal proceeding against the Petitioner for the offences under Sections 500, 501, 502, 506 and 120-B of the Indian Penal Code (for short "I.P.C.").

2. Petitioner No. 1 Uttam Sengupta is the Resident Editor of the Times of India, Patna Edition, which is published by M/s Bennett, Coleman and Co. Ltd. having its registered office at Bombay, Petitioner No. 2 Ramesh Chandra is its Publisher and Petitioner No. 3 Sudhir Jain is the Director of Pearl Printwell Company, which prints the Times of India, Patna.

3. The Bihar Public Service Commission (for short "the Commission") is the complainant in this case. The complaint petition was filed through one Madan Mohan Prasad Srivastava, who at the relevant time was working as the Under Secretary in the office of the Commission. The allegation as stated in the complaint petition, in brief, is that the Commission is a constitutional authority created u/s 315 of the Constitution and its functions are detailed under Article 320 of the Constitution. The Chairman is appointed under Article 316 of the

Constitution and he is the administrative head and In that regard his decisions are final. There was controversy with regard to his powers which was set at rest by the Supreme Court in Civil Appeal No. 4878 of 1994, disposed of on 22.7.1994, wherein the Apex Court held that the Chairman of the Commission is made the repository of duties to be performed in respect of administration of the Commission under the Constitution. The Chairman being the administrative head took certain decisions with regard to the publication of the advertisements. The Petitioners were interested in getting the advertisements by using undue pressure and other illegal methods on the Commission and when they did not succeed they conspired amongst themselves to put illegal pressure on the Commission and in furtherance of that object, they started acting in a manner so as to bring the Commission to disrepute in the eye of the public. They published a news-item at page 12 of the said newspaper on 21.8.1995 under the heading "A Seshan in BPSC". In the said publication, they dishonestly put imputation against the Commission and its Chairman by alleging that the Auditor General in its report has accused the Commission for misappropriation of funds though till that date, no final audit report was ready and was not submitted by the Auditor General either to the State Government or to any of the Houses of the State Legislature. They also stated in the said publication as follows:

... The newspaper clearly was guilty of impropriety, specially since there is ample proof that the BPSC has been doling out large sums of money in the form of advertisement to the newspapers group to the exclusion of the others....

They published the said news item with a view to get advertisement from the Commission. They further published as follows:

... the newspapers in the State have not bothered to explore the actual status of the BPSC Chairman. Now in view of the Hon'ble Supreme Court's judgment holding the Chief Election Commissioner Mr. T.N. Sheshan to be equal to other Election Commissioners and which laid down that the Commission with multiple Members must act jointly. Several newspapers including the India Today had once spoken of the BPSC Chairman in glowing term. It remains to be seen if they now follow up on the A.G.'s report.

It is further alleged that in spite of the fact that the Supreme Court settled the controversy with regard to the power of the Chairman, the accused persons tried to create impression in the mind of the public that the Chairman of the Commission has to act jointly like the Election Commission. The said statements are defamatory on the face of it as the same amount to an imputation with intent to harm the reputation of the Commission, its Chairman and its officials, for which they are liable to be punished. A copy of the said news publication has been appended as Annexure 2 to the application.

4. The Commission after having come to know about the aforesaid news publication issued a letter dated 30.8.1995 through its Public Relation Officer to Petitioner No. 1 ringing to his notice the judgment of the Supreme Court deciding

the power of the Chairman. It was further stated in the said letter that the publication of the said news-item is in bad taste and it defames the Commission and its Chairman by distorting the facts with the intention to get an advertisement, which is very unfortunate. A copy of the said letter dated 30.8.1995 has been appended as Annexure 2/A.

5. Thereafter, the Petitioner again published another news-item on 2.9.1995 (Annexure 2/B) with the heading "Journalists need to exercise restraint", wherein they alleged as follows:

... The Public Relations Officer of the BPSC (which probably does not need a PRO) since the Chairman himself is the best P.R. man it has had....

They further alleged therein as follows:

... The Commission should come out with a complete list of newspapers in and outside the State which are receiving advertisements from it along with the amounts paid out during the last six years.

6. It is asserted that the newspapers have no authority to ask for such information in their own interest. They should have asked from the Government and any other authority including the Accountant General to enquire if any in the matter. Though, the publication amounted to clear contempt but the Chairman or the Commission did not take any action against them in good faith and the same emboldened them and on 11.9.1995 they made a serious and mischievous allegation in the alleged news-item with the heading "BPSC made mysterious advances". It was alleged that huge sum of Rs. 1.91 lacs has been advanced to the so-called Public Relations Officer to entertain the media persons. It falsely states:

...the matter was brought to light through an audit report of Comptroller and Auditor General. The audit report while detecting irregularities in expenditure to the tune of lakhs of rupees, has noticed that the Chairman had allowed mysterious advances to the tune of over Rs. 1.91 lakhs to a particular Junior Selection Grade Assistant, Satya Narain Mishra.

The said statement was false and misleading. No such report of the Auditor General has ever been served on the Commission. In this connection, it is also stated that the Commission requested to the Personnel Secretary, State Government, by letter dated 4.9.1992 to create a post of Public Relation Officer but no final decision has been taken by the Government and the Commission has appointed Shri Satya Narayan Mishra, the then In-charge of the Public Relations Cell as the Public Relations Officer In same scale of pay, on which the incumbent was working. In the said news-item, it was further stated as follows:

... Significantly Mr. Mishra claims in media circle that he is the PRO of the Commission and at the cost of BPSC exchequer he manages publication of advertisement in local newspapers (not the Times of India) in his name (PRO) thus magnifying the stature of the controversial Chairman of the Commission Dr.

Ram Ashray Yadav. The Commission has no PRO as the State Government is yet to give clearance for creation of any such post....

7. According to the complainant, the State" Government has not cancelled the said appointment and not even a single paisa has been advanced to Mr. Mishra nor any one requires it for publishing an advertisement in the newspaper since the same is legally paid by the Commission. Said Mr. Mishra has been advanced money for expenses in the Court cases which he is looking after as per duties and the travelling allowance as and when required. A copy of the said news-item was appended as Enclosure "4" to the complaint petition.

8. Thus, according to the complainant, all those news-items published in the Times of India are false, based on no evidence and misusing the liberty and freedom of expression guaranteed to it, they have published the said news-items with the sole intention to harm the reputation of the Commission, its Chairman and its officials in the eyes of the general public.

9. The complaint petition was filed on 18.9.1995 and, thereafter, the Court below took cognizance and ordered for an enquiry u/s 202 of the Code of Criminal Procedure (for short "the Code") and after holding enquiry and having found sufficient ground for proceeding against the Petitioners, by order dated 29.9.1995, it directed for issuance of processes.

10. The matter was placed before the learned Single Judge and by order dated 9.2.1996, while admitting the case, it was directed to be heard by a Division Bench. This is how the present application has been placed before us for disposal.

11. Learned Counsel for the Petitioners raised two points, firstly that even if the allegations are accepted on their face value, they do not make out an offence of defamation as defined u/s 499 of the I.P.C. and secondly that as the imputation or insinuation has been made against the Chairman" of the Commission or its Public Relations Officer and no allegation has been made against the Commission, the aggrieved person to file the complaint petition in term of Section 199 of the Code was the Chairman or the Public Relations Officer and as such the complaint petition filed by the Commission through its Under Secretary is not maintainable for the reason that the Commission is not the aggrieved person in terms of the aforesaid provision.

12. Learned Counsel appearing for the Commission, on the other hand, submitted that the publications made by the Petitioners are clear imputations with a view to harm the reputation of the Commission, its Chairman and its officers and as such no case for quashing is made out. He also submitted that the imputation has been made against the Commission and as such the Commission is the aggrieved person and the complaint at its instance is maintainable in terms of provision of Section 199 of the Code.

13. Two questions arise for consideration in this case, namely, (i) whether the allegations, if accepted on their face value, make out a prima-facie case for

prosecution of the Petitioners and (ii) whether even if the allegations made out a prima-facie case, the cognizance of the offence is vitiated due to non-compliance of the mandatory provision contained in Section 199 of the Code.

14. Article 19(1)(a) of the Constitution of India guarantees the freedom of speech and expression. The expression "freedom of Press" is not mentioned in the aforesaid provision, but it is settled law that it is included under Article 19(1) (a) of the Constitution. Press has a very important role to play in the democracy. It is an important means of communication of ideas and voice. Discussion of public issues and spreading of information and opinion on these issues are the main functions of the newspaper. It is the important means for educating the people. The constitutional guarantee of freedom of Press is not for the benefit of the Press, on the other hand, it is for the benefit of the people. The free Press strengthens the democracy. Now a days, the Press has assumed immense power to advance thought or progress of civilization. Many publications of news and views by the newspapers with regard to the public administration and mal-administration have unveiled the misdeeds of the public authorities including public servants and such publications have caused irritant or even a threat to the Government in power and the public servants and as such the attempts have been made or are being made to suppress the freedom of Press. A free Press is the demand of the democracy and if the Press will not be free, the democracy will be in danger and the Society at large and the people will be sufferer.

15. However, the freedom of Press does not mean that it has unfettered and absolute freedom to publish whatever it likes. Article 19(2) of the Constitution itself contains a provision that the State may put reasonable restrictions on the freedom of speech and expression in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. If by publication, they make imputation or insinuation against a person harming his reputation, the same will amount to defamation as defined u/s 500 of the I.P.C. unless it is covered by any of the Exceptions under the aforesaid section.

16. In a democratic set up, the newspaper is the best means to highlight the deeds and misdeeds of the Government and the public authority. A newspaper has a public duty to comment upon the functioning of the persons holding public positions. No doubt, while making the comments for ventilating the grievances of the public through the publication, the fact should not be derogatory to such officials and it should not be made with a view to lower down his position in the society on the basis of false and frivolous allegation. A fair comment made by the newspaper gives an opportunity to the citizens to know about the function of the office and at the same time also provides an opportunity to the holder of the office to rectify if the comment is found to be correct. The public servants should not be sensitive in these matters unless the comments have been made deliberately with a mala fide intention to harm the holder of the public office.

17. Cockburn, C.J. in *Seymour v. Butterworth* (1862) 3F & F 372, observed as

follows:

Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time.

Bramwell B. in *Kelley v. Sherlock* (1866) 1 QB 686 observed as follows:

Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary though unpleasant, appendage to his office.

18. Three publications, appended with the complaint petition, are alleged to be containing defamatory statements constituting reference u/s 500 of the I.P.C.

The first news-item was published on 21.8.1995 with the heading "A Seshan in BPSC". The relevant statements are as follows:

The largest selling Hindi newspaper in the State carried a longish report on the Bihar Public Service Commission recently, which was based on the Auditor General's report in which the BPSC has been accused of misappropriating funds. But two other newspapers belonging to the same stable in the State capital went out of their way to defend the BPSC.

The newspapers in the State have not also bothered to explore the actual status of the BPSC Chairman now in view of the Supreme Court's landmark judgment holding the Chief Election Commissioner Mr. T.N. Seshan to be equal to the other Election Commissioners and which laid down that the Commission with multiple members must act "jointly". Several newspapers including "India Today" had once spoken of the BPSC Chairman in glowing terms. It remains to be seen if they now follow up on the AG's report.

19. The said news-item appears to be in two parts. The first part is with regard to the criticism of the two newspapers, which had published articles with regard to the Auditor General's report and have supported the stand of the BPSC. No whisper whatsoever has been made in the said part of the news-item either against the Commission or "the Chairman or any officials of the Commission. In the second part, only a comment in the form of suggestion has been given to examine the status of the BPSC Chairman in view of the judgment of the Supreme Court in Civil Appeal No. 4878 of 1994 wherein the Apex Court has held that the Chief Election Commissioner is equal to the other Election Commissioners and the Commission with multiple members must act jointly. Though, as stated in the complaint petition, the controversy about the power of the Chairman was already settled by the Supreme Court and it was held that his administrative control is vested in him but after subsequent judgment of the Supreme Court, the public or Press is free to express the opinion with regard to reconsideration of the matter in the light of the judgment rendered by the Supreme Court in T.N. Seshan's case. The said news-item amounts to only

expression of the opinion by the author regarding reconsideration of the matter and this can never be treated as an imputation and insinuation with a view to harm the reputation of the Commission, its Chairman and its officials.

20. Thus, the statement made in the news publication dated 21.8.1995 does not constitute an offence of defamation as alleged in the complaint petition.

21. It appears that after publication of the aforesaid news-item dated 21.8.1995, the Commission wrote a letter to the Editor of the Times of India (Petitioner No. 1) on 30.8.1995 informing that the Supreme Court has already settled the controversy with regard to the power of the Chairman of the Commission in the matter in Civil Appeal No. 4878 of 1994 with transferred case (Civil) No. 2 of 1993 and as such the writer of the news-item be apprised of the fact so that it might help him in future. It was further stated therein that the Commission had taken it in bad taste that a newspaper should malign its Chairman or be used as a platform for disseminating distorted facts and news simply that it did not get advertisement from the Commission. If it was so it was very unfortunate.

22. After receipt of the said letter, it appears that another news-item was published on 2.9.1995 in the Times of India of Patna Edition with the heading "Journalists need to exercise restraint". The relevant portion of the said news publication, which according to the complainant is defamatory is as follows:

TAILPIECE: The Public Relations Officer of the BPSC (which probably does not need a PRO since the Chairman himself is the best PR man it has had) has reacted to this fortnightly column which had asked newspapers to examine the role of the BPSC Chairman afresh in view of the Stand taken by the Supreme Court vis-a-vis the CEC.

The question of academic interest, is to examine whether incumbents in statutory posts like the CEC, UPSC Chairman and the Chairman of the State Public Service Commissions have similar roles and authority in these multi-member bodies or not. Somehow the BPSC seems to feel that the column was in bad taste and that it was intended to malign the BPSC Chairman. While this column treats the letter with the contempt it deserves, it is worth quoting the last paragraph which is as follows:

As directed I am to bring to your notice that Commission have taken it in bad taste (sic) that a newspaper should malign its Chairman or be used as a platform for disseminating distorted facts and news simply (because) it does not get advertisements from the Commission. If it is so, it is very unfortunate.

Now that the BPSC itself has raised the Issue of advertisements, one must find out if the BPSC has any policy or guidelines governing the release of advertisements? Does it think that it can do anything with public money and also keep it from audit teams on the pretext that it is confidential information? This column challenges the BPSC to come out with a complete list of newspapers in an outside the State which have received advertisements from it along with the

amounts paid during the last six years. The year-wise break-up should be an eye-opener and reveal who is acting "in bad taste". It will be very unfortunate indeed if the Commission is found to be using advertisements to oblige the pliant section of the press and use it as a handle to blackmail newspapers into submission. Surely, it would be in very bad taste.

23. In the second news-item, the allegation against the Commission is with regard to the matter of release of advertisements. The author thereof has challenged the Commission to come out with a complete list of newspapers in and outside the State, which have received the advertisements from it and also to indicate with regard to release of the advertisements. The entire statement of this news-item even if accepted does not amount to defamation at all. No public authority has absolute discretion in law. It has to act in a rational and reasonable manner. Its action should not be arbitrary even in the grant of advertisement or concession. The authority has to act fairly without discrimination and unfair procedure. Though no newspaper can claim as a matter of right to get an advertisement, but if the State or the public authority chooses to release the advertisement, then it has to adopt the same policy and procedure in case of all and if the newspaper in its publication or in news asks the Commission or its officers to disclose the policy in the matter of release of advertisement, the same cannot be treated to be an imputation having been made to defame the reputation of the Commission and as such the publication of the second news-item, prima-facie, does not amount to a defamatory statement constituting an offence u/s 500 of the I.P.C.

24. The third news-item, which is alleged to be defamatory one, is the publication made on 11.9.1995 with the heading "Has BPSC made mysterious advances". In this news-item, it has been alleged that the audit report of the Comptroller and Auditor General has taken objection to the payment of Rs. 1.91 lakhs to the PRO of the Commission. Thereafter the contents of the report have also been referred therein. It is further stated that Mr. Satya Narain Mishra claims himself to be the PRO in the media circles though the Government has not created any post of PRO in the Commission and Mr. Mishra has been directed by the Commission to return the paid amount. The Petitioners have appended a letter of the Commission dated 5.8.1995 sent to Mr. Mishra to refund the aforesaid amount of Rs. 1,91,800/-, which he had taken as an advance. Learned Counsel for the Commission did not controvert the fact that a audit report has been submitted with regard to irregularity in making advance of the aforesaid amount to Mr. Mishra. This statement also does not amount to any imputation or insinuation against the Commission, or its Chairman or its officials, on the other hand, it only states a factual matter noticed in the audit report and the subsequent action taken against Mr. Mishra for return of the advanced amount. A copy of the said letter has been appended as Annexure 3 to the petition and the Commission has not denied the genuineness of the said letter.

25. Thus, in my considered view, none of the said three news-items amounts to

any imputation or insinuation intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. Even assuming that some of the statements amount to an imputation against the Commission or its Chairman, the same appear to have been made in good faith regarding the conduct and functioning of the Commission and its Chairman and the same are covered by second Exception to Section 499 of the I.P.C.

26. Thus, the prosecution of the Petitioners is an abuse of the process of the Court.

27. It is not necessary to dwell upon the second point urged on behalf of the Petitioners as it has been found that there is no prima-facie case for prosecution of the Petitioners in the instant case.

28. In the result, this application is allowed and the prosecution of the Petitioners in this case is quashed.

A.K. Verma, J.

29. I agree.