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A.M. MATHUR
v.
PRAMOD KUMAR GUPTA

MARCH 22, 1990

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[K. JAGANNATHA SHETTY AND R.M. SAHAI, JJ.]

Practice and Procedure: Judicial restraint—Need for—High Court Judge making derogatory remarks criticising counsel, parties or witnesses—Such remark not to be made unless absolutely necessary for deciding the case.

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While allowing a writ petition, one of the Judges delivered the main Judgment invalidating the decision of the Government on the ground that it violated Article 14 of the Constitution. The other Judge delivered a separate, but concurring opinion which contained highly disparaging remarks attributing *mala fides* and underhand dealing on the part of the State Government. Several appeals were filed against the said decision before this Court. This Court allowed the appeals and observed that the strictures passed in the concurring Judgment were totally unjustified and unwarranted. *State of M.P. v. Nandlal Jaiswal & Ors.*, [1987] 1 SCR 1.

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Thereafter an Advocate who had no connection whatsoever with the litigation filed a review petition before the High Court. It was alleged that the State Government committed fraud and procured the judgment from this Court. The matter was listed before a Division Bench on 29th October 1988, and one of the Judges dismissed the review petition as not maintainable. Meanwhile, another application

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for review was filed stating that the Vidhan Sabha proceedings would lend credence to the claim that the State Government had practised fraud on the Court. On 6th February, 1989 the other Judge, (who had passed strictures against the Government in the Writ Petition) dismissed the review position, for want of jurisdiction, with an observation that had the appellant acted *bona fide* in briefing the then Chief Minister, the fraud on the Court, as also the misleading press statement by the then Chief Minister, would have been avoided. It was further observed that the appellant did not act befitting the status of the high office of the Advocate General and that he did not have the courage to face the situation in the Court later.

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opportunity to meet the allegations in the review petitions. He had also contended that earlier he entered appearance as Advocate General on behalf of the State, and that when the review petitions were heard neither he was the Advocate General nor did he wish to enter appearance since he thought that the review petitions deserved to be dismissed as there were no valid grounds.

Allowing the appeal, this Court,

HELD: 1. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the State, the Executive and the Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process. [117C-E]

2. The Judges Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. The Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. [117F-G]

R.K. Lakshmanan v. A.K. Srinivasan, [1976] 1 SCR 204 and *Niranjan Patnaik v. Sashibhushan Kar*, [1986] 2 SCC 567, relied on.

3. No doubt each Judge is independent to form an opinion of his own in deciding cases or in any phase of the decisional function. But the facts of the present case against the background of the views expressed by this Court apropos to the earlier strictures against the Government, should have warned the Judge no matter how clear he was in his mind,

A not to criticise the appellant. The avoidance of even the appearance of bitterness, so important in a Judge, required him not to cast aspersions on the professional conduct of the appellant, especially when he held that the High Court had no jurisdiction to entertain the review petition. The observations made are not only without jurisdiction, but are also wholly and utterly unjustified and unwarranted, and hence expunged. [116C-D; 118B]

B *The Nature of the Judicial Process* by Benjamin N. Cardozo, p. 168-169; *Some Observations of Felix Frankfurter, J., on the Nature of Judicial Process of Supreme Court Litigation*, 98 Proceedings AM Phil Society 233 (1954) and *The Judiciary and Constitutional Politics—Views from the Bench* by Mark W. Cannon and David M.O.'s Brien, p. 27, referred to.

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1537 of 1990

D From the Judgment and Order dated 6.2.1989 of the Madhya Pradesh High Court in M.C.C. No. 213 of 1988.

K. Parasaran, P.P. Rao, Sushil Kumar Jain, Mrs. Pratibha Jain and Sudhanshu Atreya for the Appellant.

E M.L. Chansoria, R.K. Gupta, K.K. Gupta, Dr. A.M. Singhvi, Ashok Mathur and N. Waziri for the Respondents.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. Special leave granted.

F Mr. B.M. Lal, J. of the Madhya Pradesh High Court while dismissing an apparently unsustainable review petition has, however, made certain derogatory remarks against Mr. A.M. Mathur, senior Advocate and also the Ex-Advocate General of the State. Mr. Mathur has appealed to this Court for setting aside that order.

G This matter pertains to a case which has come to be known as M.P. Liquor case. It was with regard to the grant for construction of new distillaries by the policy decision of the State Government of Madhya Pradesh. That policy decision was challenged before the High Court by way of writ petitions. The Writ Petitions were allowed by the Division Bench consisting of the Acting Chief Justice Mr. J.S. Verma H (as he then was) and Justice B.M. Lal. In those writ petitions,

Mr. Mathur as Advocate-General appeared and argued for the State Government. Learned Acting Chief Justice delivered the main judgment in the writ petitions invalidating the decision of the Government on the ground that it violated Article 14 of the Constitution. Justice B.M. Lal delivered a separate concurring opinion in which he made highly disparaging remarks attributing *mala fides* and underhand dealing to the State Government. Against the judgment of the High Court, several appeals including one by the State of Madhya Pradesh were filed before this Court. The appeal preferred by the State was argued by the then Attorney General of India assisted by the appellant. This Court allowed the appeals and set aside the judgment of the High Court. The decision of this Court has since been reported in 1987 1 SCR 1 (*State of M.P. v. Nandlal Jaiswal & Ors.*).

Bhagwati, CJ., speaking for the Court in that case while expressing strong disapproval of the strictures made by B.M. Lal, J. observed (at p. 66):

“We may observe in conclusion that Judges should not use strong and carping language while criticising the conduct of parties of 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. Here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made.”

On or about 3rd June 1988 i.e. after a delay of 738 days Mr. Promod Kumar Gupta, Advocate who had no connection whatsoever with the earlier litigation in the writ petitions or appeals, filed a review petition before the High Court. He was represented by Mr. S. Dixit, Advocate. In the review petition it was *inter alia* alleged that the State Government by committing fraud has procured the judgment from the Supreme Court, thereby vitiating the most solemn proceedings of the Apex Court of the Nation. He has also filed an application No. 3858 of 1988 for interim findings on the question of fraud.

On 29 October, 1988, the matter was listed for admission before a Bench consisting of learned Judges Mr. C.P. Sen and Mr. B.M. Lal. After arguments, C.P. Sen, J., seems to have dictated his order in the

- A open Court dismissing the review petition. He expressed the view that the petitioner has no locus standi to file the petition and the economically well-to-do parties to the writ petitions who lost their case before this Court did not choose to file any review petition. He also held that the petition for review was not maintainable before the High Court since the decision of the High Court was reversed by this Court. The
- B petition was also held to be hopelessly barred by limitation and there was no sufficient cause for condoning the inordinate delay.

- C B.M. Lal, J. did not pass any order on 29 October, 1988. He pronounced his order on 6th February 1989. In this interregnum there was another application from Mr. Gupta. On 25 January 1989, he filed an application in the aforesaid review petition requesting the Court to take judicial notice of some extract of the Vidhan Sabha proceedings and to pass appropriate strictures against the appellant. According to him, that extract of the proceedings of the Vidhan Sabha would lend credence to his contention that the State has practised fraud on the Court. That application was not served on the appellant nor the Court
- D gave him any opportunity to file his counter. It may be mentioned that Mr. Mathur has tendered his resignation as Advocate General on 25 January 1989. On 6 February 1989, the said application was taken on record along with the documents annexed thereby. On the same day B.M. Lal, J. pronounced his order dismissing the review petition.

- E The relevant portion of that order is as under:

- F “While briefing about the application for amendment of the return to the Chief Minister Shri Arjun Singh, had Shri A.M. Mathur, Advocate-General acted in *bona fide* and honest manner, the fraud on the Court would have been avoided. So also the misleading press statement by the Chief Minister to the Blitz would have been on true facts and this situation would not have arisen; putting the Courts in an embarrassing position.”

Continued:

- G “It is the moral duty of a lawyer, much less the Advocate General, to act faithfully for the cause of his client and to furnish information about the Court’s proceedings correctly. In the past the chair of Advocate General was adorned by glorious and eminent lawyers who never showed any
- H sycophancy and never suffered from mosaifi. As such, the

action on the part of the Advocate General, was not befitting to the status of the High Office.”

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Added:

“It appears that this was the reason that Shri A.M. Mathur avoided filing reply to the petition and skilfully succeeded in his attempt to abstain himself from the case on 28.8.1988, presumably, he had no courage to face the situation.”

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Finally, rounded off the conclusion:

“As far as exercise of jurisdiction of this Court is concerned, observing the judicial discipline envisaged under Article 141 of the Constitution and has been merged in the decision of the Supreme Court particularly when the decision of this Court in *State of Madhya Pradesh v. Nandlal Jaiswal*, case, it is for the petitioner, if he is so advised, to vindicate his grievances before the Apex Court.

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Learned counsel further pointed out that one of the distiller’s application for modification of the order is sub judice before the Apex Court. As such, in view of the observations made in *A.R. Antulay’s*, case [1988] SCC II 602 the petitioner, if so advised, may approach the Apex Court for getting redress.”

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From the foregoing order it will be seen that the learned Judge seems to have formed an opinion that the appellant did not act honestly and *bona fide* in briefing the then Chief Minister Mr. Arjun Singh and if he had acted *bona fide* and in honest manner, the fraud on the Court would have been avoided and the Chief Minister would not have given a misleading press statement. He has also remarked that the appellant did not act befitting with the status of the High Office of the Advocate General and he did not have the courage to face the situation in the Court. Such are his conclusions, or surmises in the review petition which was not disposed of on the merits but dismissed for want of jurisdiction.

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The appellant’s complaint before us is that he had no opportunity to meet the allegations in the review petition, much less as against averments in the subsequent application dated 25 January, 1989. He made it clear to the High Court on 6 October 1988 and also

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A on 29 October 1988 that he entered appearance pursuant to service of a copy of the review petition as per the High Court rules, on the Advocate General's office. He has not entered appearance as such on behalf of the State or other respondents. He has, further, made it clear that there was no ground for review and it deserved to be dismissed and so he did not wish to enter appearance at that stage before the admission of the review petition. The appellant appears to be correct in these statements and they are found recorded in the Court proceedings dated 6 October, 1988.

It may be noted that C.P. Sen, J. dismissed the review petition on the ground of maintainability, limitation and locus standi of the petitioner. Thereafter the application was filed to pass strictures against the appellant in the light of the Vidhan Sabha proceedings. B.M. Lal, J. seems to have acceded to that request. No doubt each Judge is independent to form an opinion of his own in deciding cases or in any phase of the decisional function. But the facts of the present case against the background of the views expressed by this Court apropos to the earlier strictures against the Government, should have warned B.M. Lal, J., no matter how clear he was in his mind, not to criticise the appellant. The avoidance of even the appearances of bitterness, so important in a Judge required him not to cast aspersions on the professional conduct of the appellant.

Justice Cardozo of course said:

E "The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass judges by. We like to figure to ourselves the processes of justice as coldly objective and impersonal. The law, conceived of as a real existence, dwelling apart and alone, speaks, through the voices of priests and ministers, the words which they have no choice except to utter. That is an ideal of objective truth toward which every system of jurisprudence tends It has a lofty sound; it is well and finely said; but it can never be more than partly true."⁽¹⁾

Justice Felix Frankfurter, put it with a different emphasis:

G "Judges are men, not disembodied spirits. Of course a Judge is not free from preferences or, if you will, biases."⁽²⁾

(1) The Nature of the Judicial Process by Benjamin N. Cardozo p. 168-169.

(2) Some observations of Felix Frankfurter, J., on the Nature of Judicial Process of Supreme Court Litigation 98 Proceedings AM Phil Society 233 (1954).

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It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:

“First and foremost, humility and an understanding of the range of the problems and (one’s) own inadequacy in dealing with them, disinterestedness and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one’s) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law.”⁽³⁾

Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

The Judges Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallenged control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. (See (i) *R.K. Lakshmanan v. A.K. Srinivasan*, [1976] 1 SCR 204 and (ii) *Niranjan Patnaik v. Sashibhushan Kar*, [1986] 2 SCC 567 at 576.

(3) The Judiciary and Constitutional Politics—Views from the Bench by Mark W. Cannon and David M.O.’s Brien p. 27.

- A Learned Judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted.
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We therefore, allow the appeal and expunge all the remarks made by B.M. Lal, J. against the appellant in the impugned order.

- C Normally, we would have awarded heavy costs against the respondent but since the respondent is also an Advocate, we refrain from making any order as to costs.

G.N.

Appeal allowed.