

P.K. GHOSH, I.A.S. AND ANR.

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v.

J.G. RAJPUT

NOVEMBER 10, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

B

Judicial Propriety

Rule of law—Basic postulate of—Justice should not be done but must also be seen to be done’—Justice delivery system—Functioning of—Need for ensuring public confidence and credibility in.

C

Lawyer—Representing the case of a litigant—Elevation to High Court Bench—Hearing of contempt petition arising out of the case represented—Propriety of—Held the Judge should have recused himself from hearing the contempt—Order passed in contempt petition held vitiated.

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The respondent, an employee of the Ahmedabad Municipal Corporation, filed a writ petition challenging his suspension. In these proceedings he was represented by Shri B.J. Shethna who was later appointed as a Judge of the Gujarat High Court. Consequently the respondent was represented by another lawyer but in view of a settlement arrived at between the parties the writ petition was permitted to be withdrawn. Thereafter the respondent was served with a charge-sheet for theft of municipal property and his application for staying the enquiry pursuant to the said charge-sheet as well as for restoration of his earlier writ petition was dismissed. He filed a contempt petition under the Contempt of Courts Act, 1971 and a Division Bench of the High Court comprising R.A. Mehta and B.J. Shethna, JJ issued notice on it. The Municipal Corporation raised an objection to the hearing of the matter on the ground that B.J. Shethna, J. had earlier represented the case of the appellant. In spite of this objection the Bench of which B.J. Shethna was a member passed an order dated 18.3.1994 granting interim stay of the enquiry initiated against the respondent. Against this order an appeal was preferred before this Court.

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Allowing the appeal and setting aside the impugned order, this Court

HELD : 1. A basic postulate of the rule of law is that ‘justice should

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A not only be done but it must also be seen to be done'. If there be a basis
 which cannot be treated as unreasonable for a litigant to expect that his
 matter should not be heard by a particular Judge and there is no compell-
 ing necessity, such as the absence of an alternative, it is appropriate that
 the learned Judge should recuse himself from the Bench hearing that
 B matter. This step is required to be taken by the learned Judge not because
 he is likely to be influenced in any manner in doing justice in the cause, but
 because his hearing the matter is likely to give rise to a reasonable ap-
 prehension in the mind of the litigant that the mind of the learned Judge,
 may be subconsciously, influenced by some extraneous factor in favour of
 C the opposite party. Credibility in the functioning of the justice delivery
 system and the reasonable perception of the affected parties are relevant
 considerations to ensure the continuance of public confidence in the
 credibility and impartiality of the judiciary. This is necessary not only for
 doing justice but also for ensuring that justice is seen to be done. [57-E-G]

D 2. In the facts and circumstances of this case, this facet of the rule
 of law has been eroded. B.J. Shethna, J should have recused himself from
 hearing the contempt petition, particularly when a specific objection to this
 effect was taken by the appellants in view of the respondent's case in the
 contempt petition wherein the impugned order came to be made in his
 favour. The impugned order is vitiated for this alone. This Court hopes
 E that no such occasion would arise in future which may tend to erode the
 credibility of the course of administration of justice. [57-H; 58-A-B; 57-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9955 of
 1995.

F From the Judgment and Order dated 18.3.94 of the Gujarat High
 Court in M.C.A. No. 1841/93 in S.C.A. No. 1497 of 1988.

R.K. Jain, U.P. Adhyaru, A. Mehrotra and A.P. Medh for the
 Appellants.

G Ms. K. Sarada Devi for Ms. Naresh Bakshi for the Respondent.

The Judgment of the Court was delivered by

J.S. VERMA, J. Leave granted.

H This appeal by special leave is against the order dated 18.3.1994

made in Misc. Civil Application No. 1841 of 1993 in Special Civil Application No. 1497 of 1988, by a Division Bench (R.A. Mehta and B.J. Shethna, JJ.) of the High Court of Gujarat. The impugned order was passed in unusual circumstances which are mentioned hereafter. A

Respondent J.G. Rajput is an employee of the Ahmedabad Municipal Corporation. He filed a writ petition - Special Civil Application No. 1497 of 1988 - in the High Court of Gujarat challenging his suspension by order dated 14.3.1988 in which he was represented by Shri B.J. Shethna (later appointed a Judge of the High Court of Gujarat) as his counsel. The respondent obtained an order on 28.3.1988 staying his suspension (Annexure A). Thereafter, Shri B.J. Shethna was elevated to the Bench of the Gujarat High Court and the respondent was then represented by Shri Adil Mehta as his counsel. A settlement was arrived at between the Ahmedabad Municipal Corporation and the respondent before the High Court which was recorded on 28.2.1990 and S.C.A. No. 1497 of 1988 was permitted to be withdrawn by C.K. Thakkar, J. before whom it was listed (Annexure B). D The Corporation contends that in terms of the settlement, the respondent was confirmed in service in the scale of Rs. 950-1400 and was also allotted a residential quarter. Thereafter on 8.4. 1991, the respondent filed Misc. Civil Application No. 540 of 1991 for review of the final order made in S.C.A. No. 1497 of 1988 which came up for hearing before C.K. Thakkar, J. who rejected the review application on 2.4.1992 on his satisfaction that the terms of settlement had been complied with by the Municipal Corporation (Annexure C). E

Thereafter on 7.5.1993, the respondent was served with a chargesheet for theft of some municipal property vide Annexure D. According to the Municipal Corporation, this chargesheet was unconnected with the earlier dispute which had ended in the manner aforesaid and it related to a subsequent incident of theft. However, the respondent filed Misc. Civil Application No. 1109 of 1993 in the High Court wherein it was prayed that the inquiry pursuant to the said chargesheet be stayed and the appellants who are the Municipal Commissioner and Deputy Municipal Commissioner of the Ahmedabad Municipal Corporation be punished for contempt of the court and the earlier Special Civil Application No. 1497 of 1988 be restored. This M.C.A. No. 1109 of 1993 was dismissed by C.K. Thakkar, J. on 30.7.1993 vide Annexure E which reads as under : F G H

A "On the basis of the compromise arrived at between the parties, the main matter i.e. Spl. C.A. No. 1497 of 1988 came to be disposed of by an order dt. December 29, 1990. An application for review being M.C.A. No. 3 of 1991 came to be filed by the present applicant, which was rejected by the order dated April 2, 1992. Once again, the present application is made. The applicant-party-in-person drew my attention to a charge-sheet issued to him by the Commissioner on May 7, 1993. I am not expressing any opinion so far that charge-sheet is concerned, but there is no question of reviewing the earlier matter when the review application came to be disposed of. Hence, this application is rejected. D.S."

C However, the respondent did not accept that the controversy in Special Civil Application No. 1497 of 1988 had concluded as held once again in the above order by C.K. Thakkar, J. and on 21.12.1993, he filed a contempt petition - Misc. Civil Application No. 1841 of 1993 under the Contempt of Courts Act, 1971 (Annexure F). This contempt petition came up for hearing on 22.12.1993 before a Division Bench of the High Court comprised of R.A. Mehta and B.J. Shethna, JJ. The Division Bench issued notice of the matter returnable on 29.12.1993. On 29.12.1993 when the matter was again taken up by the same Division Bench, the counsel appearing on behalf of the Ahmedabad Municipal Corporation requested that the matter may not be taken up by that Bench, pointing out that B.J. Shethna, J. who was on the Bench had earlier appeared as an advocate in the High Court on behalf of the respondent in S.C.A. No. 1497 of 1988 on the basis of which the allegation of contempt of court was made in this contempt petition. A persual of the contempt petition (Annexure F) shows that it is based on the earlier Special Civil Application No. 1497 of 1988 and issuance of the chargesheet dated 7.5.1993 to the respondent is alleged to be in contempt of the orders made therein. The respondent's case, therefore, is clearly on that basis in spite of the assertion of the Municipal Corporation that the chargesheet issued to him later is a subsequent and an independent matter.

G The above facts and the specific case of the respondent in the contempt petition leave no doubt that the appropriate course for B.J. Shethna, J. in these circumstances was to recuse himself from hearing this contempt matter on account of the stand taken by the respondent for whom he had appeared as counsel in Special Civil Application No. 1497 of 1988.

It appears that the constitution of the Division Bench had undergone a change in the meantime and the regular Division Bench comprised of R.A. Mehta and M.S. Parikh, JJ. but the matter was treated as part-heard by the earlier Division Bench of R.A. Mehta and B.J. Shethna, JJ. in spite of the objection taken on behalf of the Municipal Corporation to the hearing of the contempt petition by B.J. Shethna, J., as earlier indicated.

The appellants then opposed admission of the contempt petition by filing affidavits on 13.1.1994 contending *inter alia* that B.J. Shethna, J. may not hear the matter for the reason stated; and that C.K. Thakkar, J. had examined the matter twice earlier and held that the terms of settlement arrived at between the parties had been fully complied with by the Municipal Corporation on account of which on case of contempt could be made out. The matter came to be listed before the same Division Bench (R.A. Mehta and B.J. Shethna, JJ.). Thereafter, on several dates, in spite of the above objection which indicated a strong reason for B.J. Shethna, J. to recuse himself from the Bench hearing the contempt petition, he chose to hear the matter and on 18.3.1994 the Bench of R.A. Mehta and B.J. Shethna, JJ. made the impugned order as follows :

"Heard.

Rule. Interim stay of the inquiry in pursuance of the Charge sheet dt. 7.5.1993.

Dt. 18.3.1994.

sd/- (R.A. MEHTA, J)

sd/- (B.J. SHETHNA, J)"

Aggrieved by the impugned order dated 18.3.1994, this appeal has been filed by special leave.

On 11.7.1994, this Court (C.J.I. and Mohan, J.) issued notice in this matter and granted interim stay. In the counter affidavit filed by the respondent, he has expressly admitted as under :

"2. Respondent had been suspended on 14-3-1988 by the Municipal Corporation. Respondent filed Special Civil Application No. 1497/1988 in the High Court of Gujarat (hereinafter referred as High Court) challenging the said order of suspension dated 14.3.1988. *Shri B.J. Shethna (now elevated as Judge) appeared and*

A *obtained an order for staying suspension order (interlocutory). Thereafter he did not appear since he had been elevated as Judge."*

B "9. The Respondent being harassed by the Corporation left with no remedy except to initiate contempt proceedings against the Petitioners since they have not complied with the undertaking as mentioned in the terms of compromise vide dated 28.2.1990, on 21.12.1993 in the High Court which was registered as Misc. Civil Application 1841/1993.

C 10. The said Civil Misc. Application came before Hon'ble Mr. Justice R.A. Mehta and Hon'ble Mr. Justice B.J. Shethna and notice was issued returnable on 29.12.1993. *When it came for hearing before the said judges, objection was raised that it be not heard by the said Bench because Hon'ble Mr. Justice B.J. Shethna had appeared as a counsel on the first hearing in Spl. Civil Application No. 1477/1988 for the Respondent. This request was not acceded to. Again similar objection was raised on 10.3.1994 but not acceded to. On 18.3.1994 notice was issued and inquiry proceedings against this Respondent were stayed."*

(emphasis supplied)

E Rest of the affidavit is not material in this context.

F It appears that the learned Chief Justice of India apprised B.J. Shethna, J. of this allegation to elicit his comments. A letter dated 12.8.1994 of B.J. Shethna, J. to the then Chief Justice of India and another letter dated 9.10.1995 to the present Chief Justice of India in this connection are on record. In none of these letters, the basic facts relevant in the present context have been denied and the tenor of both the letters indicates, unfortunately, an attempt to justify the course adopted by B.J. Shethna, J. of hearing the contempt petition and making the impugned order in spite of the above objection expressly taken to his presence in the Bench which heard the contempt petition. In his letter dated 12.8.1994, B.J. Shethna, J. while justifying the course adopted by him also said as under :

H "..... Thus, except the fact that the contempt proceedings were arising out of the final order passed in SCA 1497/88 on 26.12.90 and subsequent petitions filed in that petition being MCA 540/91

and MCA 1109/93 note for speaking to minutes, there was no A
nexus. Therefore, that objection was over-ruled by us."

These letters also indicate his disappointment that contempt proceedings B
were not initiated against the appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.

We are indeed sad that in these circumstances, B.J. Shethna, J. C
should have persisted in hearing the contempt petition, in spite of the specific objection which cannot be called unreasonable on the undisputed facts, and in making the impugned order accepting *prima facie* the respondent's above noted contention. Ordinarily, at least at that stage it should have been appreciated that the more appropriate course for him to adopt was to recuse himself from the Bench hearing this contempt petition, even if it did not occur to him to take that step earlier when he began hearing it. It is on account of the lack even now of the proper perception needed of the appropriate course for a Judge to adopt in these circumstances that it has become our painful duty to emphasise on this fact most D
unwillingly. We do so with the fervent hope that no such occasions arise in future which may tend to erode the credibility of the course of administration of justice.

A basic postulate of the rule of law is that 'justice should not only be E
done but it must also be seen to be done.' If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be F
influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the G
reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done.

In the facts and circumstances of this case, we are afraid that this H

- A facet of the rule of law has been eroded. We are satisfied that B.J. Shethna, J., in the facts and circumstances of this case, should have recused himself from hearing this contempt petition, particularly when a specific objection to this effect was taken by the appellants in view of the respondent's case in the contempt petition wherein the impugned order came to be made in his favour. In our opinion, the impugned order is vitiated for this reason alone.

Consequently, this appeal is allowed. The impugned order dated 18.3.1994 is set aside. In view of the fact that B.J. Shethna, J. has since then been transferred from the High Court of Gujarat to the High Court of Rajasthan, it is needless to direct that the matter be now heard in the High Court of Gujarat by a Bench of which he is not a member.

T.N.A.

Appeal allowed.