

R.C. JAIN

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v.

HIGH COURT OF PATNA AND ORS.

AUGUST 23, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

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Constitution of India, 1950—Art. 136—Special Leave Petition filed challenging the admission of Letters Patent Appeal—LPA disposed of by the High Court during pendency of Special Leave Petition—Held, as LPA disposed of SLP becomes infructuous.

C

Administrative law—Malafide, proving of—Letters Patent Appeal filed under directions of Chief Justice—Appellant questioning maintainability of Letters Patent Appeal—LPA posted before different Judges—Registry of High Court by an Office note sought directions of Chief Justice regarding further posting of the LPA—Office note erroneously mentioning that LPA had been filed by Appellant—Chief Justice Ordering LPA to be heard by the LPA Bench—Whether an allegation of malafide against Officers of the Registry that they misled the Chief Justice is sustainable—Held, on the facts, malafide not sustainable.

D

Practice and Procedure—Disclosure to court regarding source of information—Held : appellant and counsel duty bound to disclose to Court, the source of their information—Refusal to do so in the instant Case—Held, reprehensible and improper.

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The appellant, a Distt. & Sessions Judge with effect from 22.9.88, was considered for extension of his services alongwith others, beyond 58 yrs. of age. The evaluation Committee held its meeting and thereafter the matter was considered by the full court which decided not to give extension to the appellant. Aggrieved, the appellant filed a writ petition in the High Court. The single judge disposed of the same with the observation that the appellant may make a representation before the Chief Justice of the High Court with a prayer to place his case before the full court for reconsideration. The Registrar General, pursuant to the orders of Chief Justice, filed Letters Patent Appeal against the decision of Single Judge. As per the orders of the Chief Justice, the matter was posted before a Division Bench. Objection seems to have been taken that the LPA was not maintainable as

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A it was filed without taking permission from the Chief Justice.

B The Division Bench passed an order to the effect that the maintainability of the appeal shall be considered at the time of admission. Thereafter there was a change in the constitution of the Division Benches. On 4.4.96, on the note of the Registrar (Inspection), the Chief Justice ordered that the matter be placed before the Bench dealing with the LPA matters. On 5.4.96, the Division Bench admitted the LPA and stayed the operation of the decision of Single Judge dated 14.2.1996. The next date of hearing was fixed on 3.7.96.

C The appellant challenged the order dated 5.4.1996 of the Division Bench by way of an SLP filed on 1.5.96 before this Court. In the said Special Leave Petition it was contended that the LPA was filed without the permission of Chief Justice; that the then Registrar General and certain other Officers of the Registry were inimically disposed towards him; that the LPA was based on the misrepresentation contained in the notes of
D Registrar (Inspection) dated 4.4.96, a copy of which was filed by the appellant alongwith his Special Leave Petition.

E Having regard to the said averments, this Court issued notice to the Registrar General of the High Court and directed that the entire papers be placed before this Court. The Registrar General filed a detailed counter affidavit, urging in particular, that the SLP has become infructuous in view of the subsequent events.

F Regarding the office note dated 4.4.96, the appellant's counsel was questioned as to how he was able to produce the said copy of office note. The counsel surprisingly refused to disclose the source of the same, instead vehemently stated that this court should call upon the High Court Registrar to explain.

Dismissing the Appeal, this Court

G HELD : 1. All that was attacked in the SLP was the order of the Division Bench dated 5.4.96 admitting the LPA. The final order passed by the Division Bench on 7.8.96 is not challenged. The Appeal was heard and final decision has also been rendered. In such circumstances the instant SLP has become infructuous. [183-C]

H 2. The appeal was filed only after obtaining the direction of the Chief

Justice and the noting made by Registrar (Inspection) dt. 4.4. 1996 had only sought for a direction regarding the subsequent posting of the appeal and noting had nothing to do regarding the directions to be given for the posting of the case before any Bench. [185-A-B]

3. The filing of the appeal, the hearing of the same from time to time by the different Division Benches of the High Court and the disposal thereof had been done in the normal and routine way and they are not open to any attack as stated in the SLP. [185-C-D]

4. The Counsel owes a duty to this Court to disclose the source or circumstances under which the said document dated 4.4.96 was obtained. This Court expresses strong displeasure at the attitude of the appellant and his Counsel in totally refusing to disclose the manner in which a document filed in the Court was obtained it is made clear that the attitude adopted is totally reprehensible and cannot be countenanced by a Court of law. [185-H; 186-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10905 of 1996.

From the Judgment and Order dated 5.4.96 of the Patna High Court in L.P.A. No. 298 of 1996.

P.K. Jain, Gautam Kapoor, Rajendra K. Jain and Irshad Ahmad for the Appellant.

Soli J. Sorabjee, P.H. Parekh, E.R. Kumar and Ms. Sunita Sharma for the Respondents.

The Judgment of the Court was delivered by

PARIPOORNAN, J. Special leave granted.

2. The appellant is a District and Sessions Judge, Patna with effect from 22.9.1988. Along with others, his name was also considered for extension of service beyond 58 years of age. The Evaluation Committee of the High Court of Patna held a meeting on 29.6.1995. Thereafter, the matter was considered by the Full Court (High Court of Patna) on 22.7.1995. The Full Court decided not to give extension to the appellant beyond the age of 58 years. Aggrieved by the same, the appellant filed

A C.W.J.C. No. 7401/95 in the High Court. By judgment dated 14.2.1996, a learned single Judge disposed of the writ petition with the observation that the appellant may make a representation before the Hon'ble Chief Justice of the High Court with a prayer to place his case before the Full Court for reconsideration. As per orders of the learned Chief Justice on the administrative side dated 1.3.1996, the Registrar General, High Court of

B Patna, filed Letters Patent Appeal (LPA) No. 298/96 against the decision of the learned single Judge dated 14.2.1996. As per the orders of the Chief Justice dated 15.3.1996, the matter was posted before the Division Bench presided over by Mr. Justice N. Pandey. Objection seems to have been taken that the LPA was not maintainable. The Division Bench consisting

C of Mr. Justice N. Pandey and Mr. Justice I.P. Singh passed an order dated 27.3.1996 stating that the maintainability of the appeal shall be considered at the time of admission. From 1.4.1996 there was a change in the constitution of the Division Benches. On 4.4.1996, the Chief Justice ordered that the matter may be placed before the Bench dealing with the LPA matters. At that time, Mr. Justice S.N. Jha was presiding over the Division Bench

D dealing with the LPA matters. On 5.4.1996, the Division Bench presided over by Mr. Justice S.N. Jha admitted the LPA and stayed the operation of the decision of the learned single Judge dated 14.2.1996. The hearing was fixed to take place on 3.7.1996. In the meanwhile, the appellant filed the Special Leave Petition (SLP) before this Court on 1.5.1996, assailing the decision of the Division Bench dated 5.4.1996, admitting LPA No.

E 298/96 to file.

3. In the SLP filed in this Court, the appellant alleged that the LPA was filed without the permission of the Chief Justice of the High Court of Patna, that the then Registrar General and certain other officers of the

F Registry of the High Court were inimically disposed towards him, and it is based on the misrepresentation contained in the notes of Registrar (Inspection) dated 4.4.1996, an erroneous impression was given to the Chief Justice that the appellant filed the LPA against the decision of the learned single Judge, certain directions were given by the learned Chief Justice which has resulted in manifest injustice to him. In view of the above averments, a

G Bench of this Court, by order dated 9.7.1996 issued notice to the Registrar General, High Court of Patna, and directed that the entire papers may be placed before this Court for perusal at the next date of hearing. Accordingly, the matter came up before this Court on 12.8.1996.

H 4. We heard counsel. At the time of hearing of the appeal, it is

common ground that the judgment passed by the learned single Judge A dated 14.2.1996 in C.W.J.C. No. 7401/95 was set aside by a Division Bench and the writ petition filed by the appellant stood dismissed. The judgment of the Division Bench is dated 7th of August, 1996.

5. The Registrar General of the Patna High Court has filed a detailed B counter-affidavit dated 9.8.1996 enclosing a copy of the judgment passed by the Division Bench dated 7.8.1996. In particular, it was urged that the SLP has become infructuous in view of the subsequent events. In our view, the submission is justified in law. All that was attacked in the SLP was the C order of the Division Bench dated 5.4.1996 admitting the LPA. The final order passed by the Division Bench dated 7.8.1986 is not challenged. The appeal was admitted, the matter was heard and final decision has also been rendered. In such circumstances, we are of the view that the proceeding D initiated as per SLP No. 11276/96 has become infructuous. On this short ground this appeal should be dismissed. We hereby do so.

6. Before closing, one aspect very vehemently contended in the SLP, D which had resulted in the issue of notice to Registrar General of the High Court and to call for the files, deserves to be considered. The complaint was that the LPA was filed in the High Court without obtaining the E directions of the learned Chief Justice. The further complaint was that an erroneous impression was given to the learned Chief Justice that the F appellant had filed the LPA against the decision of the learned single Judge and that erroneous impression has resulted in the learned Chief Justice giving certain directions in the matter. Certain vague and wild G allegations have been made against the then Registrar General and other Officers of the Registry to the effect that the said officers misled the H learned Chief Justice to further their selfish ends and to harm the appellant.

7. The Registrar General in the counter-affidavit dated 9.8.1996 has G denied the above allegations. The context in which a wrong noting was made by Registrar (Inspection) dated 4.4.96 has also been explained. The H entire files were placed before us. We perused the entire files. It is seen that the learned Chief Justice, High Court of Patna by order dated 1.3.1996 directed to take steps to file an LPA against the judgment of the learned single Judge rendered in C.W.J.C. No. 7401/95. It was thereafter the LPA

A was filed. The draft of the LPA was also perused by the learned Chief Justice. Thereafter, Shri Mudrika Prasad Registrar (Inspection) sought necessary orders for posting of the appeal. By order dated 15.3.1996, the learned Chief Justice directed the posting of the appeal before the Division Bench presided over by Justice Sri Pandey. When the matter came up before the said Bench on 27.3.1996, it was held that the objection regarding the maintainability of the LPA shall be considered at the time of admission. From 1.4.1996 there was a change in the constitution of the different Benches. The Division Bench presided over by Mr. Justice S.N. Jha was dealing with the LPA matters. Registrar (Inspection) by office note dated 4.4.1996 sought instructions from the learned Chief Justice regarding the posting of the appeal. In that note, it has been inadvertently stated that LPA No. 298/96 was filed before the High Court of Patna by the appellant. The learned Chief Justice by his order dated 4.4.1996 directed the posting of the appeal before the Bench presided over Mr. Justice S.N. Jha. Subsequently, the said Bench heard the matter and rendered its decision on 7.8.1996 whereby the judgment of the learned single Judge was set aside.

8. A perusal of the files make two aspects clear. (i) As early as 1.3.1996 the learned Chief Justice has directed the Registry to file an LPA through the Registrar against the judgment of the learned single Judge rendered in C.W.J.C. No. 7401/95, and (ii) it was thereafter on 4.4.1996, the Registrar (Inspection), by office note dated 4.4.1996 sought direction of the learned Chief Justice regarding the posting of the case. The Chief Justice was aware at that time that LPA No. 298/96 was filed against the judgment of the learned single Judge as per his orders and that earlier he had directed the posting of the case before the Division Bench presided over by Mr. Justice Pandey, and further direction was sought since the constitution of the Benches had changed with effect from 1.4.1996. It was in such circumstances, the learned Chief Justice by order dated 4.4.1996 ordered the posting of the matter before the Division Bench which was dealing with the LPA matters. The said Bench was presided over by Mr. Justice S.N. Jha.

9. The above two aspects make it abundantly clear that it was the learned Chief Justice, Patna High Court who had himself directed the filling of the LPA and the later inadvertent and mistaken noting of the Registrar (Inspection) dated 4.4.1996 had nothing to do with the direction

of the Chief Justice dated 4.4.1996 posting the case before the Bench presided over by Mr. Justice S.M. Jha. In view of the above, we have no hesitation to hold that the appeal was filed only after obtaining the directions of the learned Chief Justice, that the noting made by Registrar (Inspection) dated 4.4.1996 had only sought for a direction regarding the subsequent *posting* of the appeal and the noting had nothing to do regarding the directions to be given for the posting of the case before any Bench.

10. Considered in the light of the above facts, we are satisfied that the various allegations made in the SLP regarding the then Registrar General and also the officers of the Registry of Patna High Court, are absolutely unwarranted and unjustified. We hold that the filing of the appeal, the hearing of the same from time to time by the different Division Benches of the High Court and the disposal thereof had been done in the normal and routine way and they are not open to any attack as stated in the SLP.

11. Along with the SLP, the appellant has filed a copy of the office note submitted by Registrar (Inspection) dated 4.4.1996 before the learned Chief Justice for consideration of the Chief Justice. In the affidavit of urgency (available at pages 52 to 55) filed by Sri Rajendra Kumar Jain, son of the appellant, the said office note (available at pages 54 and 55 of the paperbook), has been reproduced. We questioned counsel for the appellant as to how the appellant was able to produce a copy of the office note dated 4.4.1996. The appellant having produced the said document, a duty is cast on him to explain the source from which he obtained the said copy and in what circumstances he could obtain the same. This is all the more so, since reference has been made in the affidavit of urgency dated 14.6.1996 to the said document. Counsel for the appellant declined to disclose the source from where he obtained a copy of the said document. On the other hand, he vehemently stated that this Court should call upon the Registrar of the Patna High Court to explain and it is no part of his duty to explain as to how he obtained a copy of the document. To say the least, we are surprised at the attitude of the appellant's counsel in totally refusing to disclose the source from which the appellant obtained a copy of the document. In our opinion, the appellant and his counsel owe a duty to this Court to disclose the source or circumstances under which the said document dated 4.4.1996 was obtained. We express our strong displeasure

A at the attitude of the appellant and his counsel in totally refusing to disclose to the Court the manner in which a document filed in Court was obtained. For the present, we do not want to say anything further in this matter, but we want to make it clear that the attitude adopted is totally reprehensible and cannot be countenanced by a Court of law.

B We dismiss the appeal. There shall be no order as to costs.

J.B.

Appeal dismissed.