

MOHANPRASAD TRIPATHI
v.
STATE OF MAHARASHTRA AND ORS.

MAY 23, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

State Assembly—No confidence motion—Allegation of mustering support in favour of Chief Minister—Writ petition for an enquiry—High Court directing the petitioner to deposit certain amount—Amount deposited by the petitioner—Application for withdrawal of the petition and claim for refund of the amount deposited—Not allowed by the High Court holding the petition infructuous—On appeal, Held: Since the Writ petition was declared infructuous by the High Court, it erred in not directing refund of the amount—High Court is directed to refund the amount so deposited by the appellant forthwith—Directions issued—Practice & Procedure.

A Writ Petition was filed by the petitioners/appellant, a social worker, praying for an enquiry into the affairs in the episode of mustering support by the ruling Government in favour of respondent No. 5, the then Chief Minister of the State of Maharashtra for the trust motion in the State Legislative Assembly. The High Court directed the appellant to deposit a sum of Rs. 1 lac within the prescribed time limit. The appellant deposited the amount. Later, the appellant filed an application before the High Court for permission to withdraw the Writ Petition and refund of the amount. The High Court dismissed the Writ Petition as infructuous as the cause of action has come to an end, however, it directed the appellant to file a separate appellation for refund of the amount. The appellant filed a Civil application for permission to withdraw the amount deposited by him. The High Court directed the appellant to file an affidavit giving details of the sources through which the amount deposited was generated. The appellant filed an affidavit giving details of the amount collected through various sources. The High Court vide impugned judgment and order refused to grant permission to withdraw the amount. The appellant then filed a review petition, which was also dismissed. Hence the present appeals.

A The appellant contended that the High Court has neither considered the certificate issued by the Chartered Accountant nor did it consider the contention and affidavit filed by him in respect of disclosure of source of the amount deposited by him pursuant to its earlier directions.

B Allowing the appeals, the Court

C HELD : 1.1. The High Court has clearly observed that the cause of action of the Writ Petition had come to an end and, therefore, no fruitful purpose was to be served by keeping the petition pending. Having observed that the Writ Petition has become infructuous, the High Court ought to have ordered refund of the amount of Rs. 1 lakh which was ordered to be deposited by the High Court to show the *bonafide* of the Public Interest Litigant. [878-H, 879-A]

D 1.2. The appellant has also filed two affidavits clearly explaining the source from which the amount came to be deposited in the High Court. However, the High Court made an observation that the source explained by the appellant for depositing the amount does not merit acceptance and they have serious doubt about the source from which the amount came to be deposited before the High Court. The High Court has entered into an unwarranted discussion in regard to the deposit made by the appellant and the source from which the amount came to be deposited. [879-A-B-C]

E 1.3. When a petition was filed for reviewing the earlier order, the Division Bench of the High Court committed the same error by dismissing the Petition and did not permit the appellant to withdraw the sum. [879-C]

F 1.4. No counter affidavit was filed by any of the respondents disputing the statement made by the appellant in regard to the deposit made and the source from which the deposit was made. The High Court has unnecessarily gone into an unwarranted controversy and then rendered the finding by rejecting the request of the appellant for withdrawal of the amount in spite of the dismissal of the Writ Petition as having become infructuous. [879-D-E]

G 2. The order passed by the High Court rejecting the prayer of the appellant is not correct, hence set aside. The High Court is directed to

refund the amount forthwith to the appellant. [879-F-G]

A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6490-6491 of 2004.

From the Judgment and Order dated 25.9.2003 of the High Court of Judicature at Bombay in Civil Appln. No. 3778/2003 in W.P. No. 2564/2002.

B

Satyajit A. Desai, Ms. Anagha S. Desai and Venkateswara Rao Anumolu, Advs., for the Appellant.

A.P. Mayee and Sanjeev K. Chaudhary, Advs., for the Respondents.

C

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondent-State of Maharashtra. Since respondent Nos. 2 to 15 are not apparently interested in contesting these appeals, notice of lodgment of petition of these appeals were ordered to be issued only to respondent No.1 for hearing.

D

The present appeals are directed against the order passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur against the judgment and final order dt.25.09.2003 in Civil Application No.3778 of 2003 in Writ Petition No.2564 of 2002 and the judgment and final order dt.24.11.2003 passed in Civil Application No.6770 of 2003 in Civil Application No.3778 of 2003 in the same Writ Petition whereby the High Court finally dismissed both the aforesaid applications of the petitioner therein who is the appellant in these two appeals.

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The Writ Petition No.2564 of 2002 was filed by the petitioners as Public Interest Litigation. According to the appellant, he is associated with various social organisations and devoted to the cause of the poor and needy persons and fighting against the evils of corruption. He filed the above Writ Petition for an enquiry into the affairs in the episode of mustering support for the trust motion concluded on 13.06.2002 in the Maharashtra State Legislative Assembly in favour of respondent No.5 (Mr.Vilasrao Deshmukh), the then Chief Minister of the State of Maharashtra.

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A The High Court vide order dt.24.07.2002 directed the appellant to deposit a sum of Rs.1 lac within a period of four weeks otherwise the Writ Petition would be dismissed without reference to the Court. It is beneficial in this context to reproduce the order passed by the High Court on 24.07.2002 which is as under :-

B “Matter is not on board.

Mentioned.

C This is a public interest Litigation filed by the Petitioners seeking various directions from this court and an order for enquiry into the affairs which took place at the time of motion taken out in the Legislative Assembly to repose Trust in favour of the Chief Minister.

D We direct the Petitioners to deposit a sum of Rs. one lakh within a period of four weeks. On such amount being deposited, this Court would taken up the matter for admission otherwise it would be dismissed without reference to the Court.

E It is made clear that no extension of time for depositing the amount will be granted.”

F Pursuant to the said order dt 24.07.2002, the appellant on 29.07.2002 deposited an amount of Rs.1 lakh vide C.No. 002327. The High Court, after deposit of the said amount of Rs.1 lakh by the appellant, issued notice to the respondents vide order dt. 05.08.2002. During the pendency of the said Writ Petition, the respondent No. 5, the then Chief Minister of Maharashtra, resigned, for inquiry against whom the said Writ Petition revolved around for mustering support for the trust motion concluded on 13.06.2002 in the Maharashtra State Legislative Assembly in favour of respondent No.5 and, therefore, the said Writ Petition became infructuous. The appellant filed an application being Civil Application No.3229 of 2003 dt.11.06.2003 for permission to withdraw the said Writ Petition and for further permission to withdraw the amount of Rs.1 lakh deposited vide C.No.002327 dt.29.07.2002. The said application is marked as Annexure P-3 in these appeals. It is stated in the said application that the Chief Minister himself had resigned from the post of Chief Minister and thus the prayer in the Writ Petition for inquiry against him became infructuous and, therefore, the appellant do not want to

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prosecute the petition further and, therefore, sought for withdrawal of the same. A prayer for withdrawal of the amount of Rs.1 lakh which was deposited by the appellant was also made.

The High Court vide order dt.13.06.2003 dismissed the said Writ Petition as infructuous as the cause of action in the said Writ Petition has come to an end. However, the High Court dismissed the Civil Application No.3229 of 2003 directing the appellant to file a separate application for withdrawal of the said amount of Rs.1 lakh deposited by him in the court pursuant to the order dt.24.07.2002. The appellant thereafter filed the Civil application No.3778 of 2003 for permission to withdraw the said amount of Rs.1 lakh deposited by him. The said Civil Application No.3778 of 2003 was listed for hearing on 11.08.2003. The High Court adjourned the matter for filing additional affidavit disclosing therein the source from which the appellant collected the said amount of Rs.1 lakh for depositing the same in the court. Pursuant to the said order, the appellant filed an affidavit on 23.08.2003 giving details of the sources through which the said amount was generated for depositing in the Court. The High Court, however, was not satisfied with the said affidavit and vide order dt. 02.08.2003 directed the appellant to file proper affidavit disclosing the exact source of the said amount of Rs.1 lakh. Thereafter, the appellant filed another affidavit on 24.09.2003 giving details of the amount collected through various sources. The first affidavit is marked as Annexure P-7 and the second affidavit marked as Annexure P-8 reads as under :-

“2. I say and submit that in an affidavit dated 23/08/2003 I have already explained regarding my financial status. I have made categorical statement in the said affidavit that the amount of Rs. 1,00,000 (Rupees one lakh only) deposited in the Court on 29/07/2002 was the amount generated from various sources like pension, post retirement benefits, income received by me and by my wife from the business of publication of newspaper, agricultural income, rental income and the amount of compensation received by us because of death of my son and cash credit facility of Shikshak Sahakari Bank Limited. I say, submit, assert and reiterate that the amount of Rs. 1,00,000 (Rupees one lakh only) deposited in the Court on 29/07/2002 was the amount generated from the aforesaid sources. Because of the aforesaid facts, it cannot be said that the amount of Rs. 1,00,000 (Rupees one lakh only) deposited in the Court on 29/07/2002 was from a particular individual source.

A 3. However, as I can gather, on the said date I arranged the said amount of Rs. 1,00,000 (Rupees one lakh only) required to be deposited in the Court in the following manner.

B (i) Cash of around Rs. 60,000 (Rupees sixty thousand only) was available in our office of M/s. Public Parliament. Generally the cash is maintained in our office for the purchases like newsprint, payment to be made to the parties etc. In our business we generally receive cash from our agents, hawkers and customers.

C (ii) Cash of around Rs. 25,000 (Rupees twenty five thousand only) was available in my house with my wife.

(iii) Remaining cash of around Rs. 15,000 (Rupees fifteen thousand only) was arranged.”

D The High Court vide the impugned judgment and order dt. 25.09.2003 dismissed the application of the appellant refusing permission to withdraw the said amount of Rs. 1 lakh deposited by the appellant in the High Court. The appellant again filed an application for reviewing the order dt. 25.09.2003 which was also dismissed.

E According to the learned counsel for the appellant, the High Court has neither considered the certificate issued by the Chartered Accountant of the appellant nor did consider the contention and affidavit dt. 24.09.2003 in respect of disclosure of source of amount of Rs. 1 lakh. We have also extracted the second affidavit filed by the appellant in the High Court and the said affidavit is self-explanatory. The appellant has also stated that the Chartered Accountant on production of books of account as demanded by the Chartered Accountant, examined the books of account and the cash account produced by the appellant, issued the Certificate dt. 23.10.2003 to the effect that the appellant had cash in hand of Rs. 1,23,293 as on 27.07.2002 out of which the appellant had withdrawn Rs. 60,000 on 28.07.2002 for court purposes as per the voucher produced.

H The High Court in its order dt. 25.09.2003 has clearly observed that the cause of action of the Writ Petition had come to an end and, therefore, no fruitful purpose was to be served by keeping the petition pending. Having observed that the Writ Petition has become infructuous, the High Court ought

to have ordered refund of Rs.1 lakh which was ordered to be deposited by the High Court to show the *bonafide* of the Public Interest Litigant. The appellant has also filed two affidavits clearly explaining the source from which amount of Rs.1 lakh came to be deposited in the High Court. However, the High Court made an observation that the source explained by the appellant for depositing Rs.1 lakh does not merit acceptance and they have serious doubt about the source from which Rs.1 lakh came to be deposited before the High Court. The High Court, in our opinion, has entered into an unwarranted discussion in regard to the deposit made by the appellant and the source from which the said amount of Rs.1 lakh came to be deposited. When a petition was filed for reviewing the earlier order, another Division Bench of the High Court committed the same error by dismissing the Petition and did not permit the appellant to withdraw the sum of Rs.1 lakh.

We have perused the affidavits filed by the appellant herein. No counter affidavit was filed by any of the respondents disputing the statement made by the appellant in regard to the deposit made and the source from which the said deposit was made. The High Court has unnecessarily gone into an unwarranted controversy and then rendered the finding by rejecting the request of the appellant for withdrawal of the amount of Rs.1 lakh in spite of the dismissal of the Writ Petition as having become infructuous. The High Court has also not ordered the payment of Rs.1 lakh to any person.

Before us, the State is the only contesting respondent. The other respondents have not appeared before us.

We are of the opinion that the two orders passed by the High Court rejecting the prayer of the appellant herein is not correct and is liable to be interfered with. We, therefore, have no hesitation to set aside the orders passed by the High Court in the Civil Applications. The Registry of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur is directed to refund the sum of Rs.1 lakh forthwith to the appellant. If the amount is deposited in any bank, the appellant shall be entitled to Rs.1 lakh together with the interest accrued thereon.

The appeals are allowed accordingly. There shall be no order as to cost.

S.K.S.

Appeals allowed.