

(2008) 01 AHC CK 0105

Allahabad High Court

Case No: None

Shri Virendra Bahadur Johri

APPELLANT

Vs

Registrar General, High Court,
Registrar (Establishment) High
Court and State of Uttar Pradesh

RESPONDENT

Date of Decision: Jan. 29, 2008

Acts Referred:

- Constitution of India, 1950 - Article 215

Citation: (2008) 1 UPLBEC 857

Hon'ble Judges: V.C. Misra, J; Amitava Lala, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Amitava Lala, J.

This is an application under Article 215 of the Constitution of India made by the petitioners of the main writ petition for the purpose of due compliance of the order passed on 25th May, 2007. The operative portion of the judgement and order dated 25th May, 2007 is as follows:

Court is a place where people come for divine justice. No wrong message should go to the people from such place. Therefore, justice is required to be done more prudently to the people who are connected with such place. So far as Sri Diwakar Mishra, Registrar (Establishment) is concerned, he should not be allowed to remain scot-free. We recommend a disciplinary proceeding against him under the aforesaid circumstances. Now it is entirely upto the Hon"ble Chief Justice to take action accordingly.

Let a copy of the order be sent to the Registrar General for necessary action.

Thus, the writ petitions are disposed of. However, no order is passed as to costs.

The aforesaid order was passed due to lapses on the part of the Registry of this High Court, as aforesaid. However, the applicant/writ petitioner again complained about the further lapses on the part of the High Court by way of the present application. We are really embarrassed.

2. The case of the applicant is that in spite of the order dated 25th May, 2007 no step was taken by the Registrar General of this Court till the date of filing of the present contempt application to comply the same. The contempt application was filed on 24th September, 2007 and vide order dated 25th September, 2007 the Hon"ble Chief Justice has been pleased to pass the following order:

(i) The further enquiry against Sri V.B. Johri, Sri Azizullah & Sri Chbotey Lal be held and the matter regarding releasing consequential service benefits be kept in abeyance till then and be put up for consideration after conclusion of the enquiry.

(ii) The disciplinary proceeding, as recommended by the Hon"ble Court, be initiated against Sri Diwakar Misra, Registrar (Establishment).

Both the enquiries to be conducted by the Special Officer (Vigilance), Sri Nirvikar Gupta.

3. Therefore, it appears to this Court that compliance has been made immediately after filing the contempt application but not immediately after receiving the copy of the original order passed in the writ petition. Hence, a question arose whether the same is procedural impropriety or not. Mr. Yashwant Varma, learned Counsel appearing in support of the alleged contemnor/s, contended before this Court that since no specific time is fixed by the Court for due compliance, contempt can not lie against the persons representing the Registry of the High Court. On a further question of the Court about the working of Sri Diwakar Mishra on the post of Registrar (Establishment) during the course of enquiry, it was further stated that since there is no specification in the original order to put him under suspension or somewhere else during the course of enquiry to maintain the independency of the enquiry and since the relevant records were placed before the Special Officer (Vigilance), there is no necessity as such to put him under suspension or somewhere else to avoid the controversy, if any.

4. We are of the view that this is a tactical ploy. Normally, we come across such situation sitting in the judicial side on many occasions, but we can not expect that the same defence will be taken by the administrative side of the High Court. Administrative side of the High Court in dealing with the cases of the employees should behave as a model employer.

5. Ms. Apama Burman, learned Counsel appearing for the applicant, contended that the order was passed on 25th May, 2007 and a certified copy of the order was supplied by the department on 31st May, 2007. On 02nd June, 2007 O.S.D. (Litigation) served the copy of the judgment to the Registrar General, Registrar (Confidential)

and Registrar (Establishment) for information and due compliance. On 03rd June, 2007 the Registrar (Confidential) sent his office note along with the complete file of the departmental enquiry to the Registrar General. After summer vacation the High Court reopened on 02nd July, 2007. On 05th July, 2007 the Registrar General put forward all previous notes and files along with the copy of the judgment and order dated 25th May, 2007 to the Hon^{ble} Chief Justice for kind consideration and necessary order/s. Thereafter nothing happened till 25th September, 2007. It appears from the affidavit in support of the alleged contemnor/s that detailed note was transmitted to the Hon^{ble} Chief Justice on 05th July, 2007 by the Registrar General. However, in the file a representation dated 13th July, 2007 was also available addressing the then Registrar General, on which the order was passed on 25th September, 2007. Thereafter, on 21st November, 2007 draft charge-sheet was prepared against all the officers/officials and submitted for approval of the Hon^{ble} Chief Justice which was accordingly approved by the Hon^{ble} Chief Justice himself on 03rd January, 2008. The Special Officer (Vigilance) received back the approved charge-sheet on 04th January, 2008 and thereafter served the same, upon the concerned persons requiring them to file their reply within a period of 15 days on receipt of the same. Therefore, due compliance was made by the High Court and they are not at fault.

6. According to us, the scope of disposing the writ petition was limited in respect of the writ petitioners therein. Therefore, if there are lapses on the part of any member of the Registry of the High Court, we can, at best, recommend his name for the purpose of taking steps either by the Hon^{ble} Chief Justice or by the High Court in an appropriate case. We can not recommend in what way the same will be carried out. However, we expect that it will be carried out in the appropriate manner, so that no prudent man can disbelieve the state of affairs or can point his finger with regard to the administrative lapses on the part of the High Court. Hence, it is expedient that if the duty of the departmental head is in question, he should be relieved from such post till the enquiry is over to maintain the independency and strictness of the procedure. Similarly, we expect that when the order is forwarded to the then Registrar General or any other authority, it will be carried out immediately to give an impression to the outsiders as to why people will call that the judiciary is supreme. Out of inquisitiveness we wanted to know from the learned Counsel appearing for the High Court that when the Registrar General has forwarded his note for the purpose of taking appropriate steps in the month of July, 2007, what was the occasion of due compliance of the same only on 25th September, 2007 just after filing of the contempt application. But in spite of giving several chances neither by filing affidavit nor verbally any submission is made on the part of the High Court about delay and on whose part the lapses are being caused. Ms. Burman also contended before the Court that she met with one Sri Jokhan Singh, Principal Private Secretary to the Hon^{ble} Chief Justice, seeking appointment for the purpose of expeditious disposal of the matter but not only said Sri Jokhan Singh disallowed her

but also misbehaved with her making several derogatory, sarcastic and unparliamentary remarks towards the judiciary and the Hon"ble Judges of the Court. On being called, Ms. Burman herself filed an affidavit, which is part of the record. However, Sri Jokhan Singh has given reply to such affidavit denying all the allegations. Ms. Burman further submitted that she has forwarded the representation to the Hon"ble Chief Justice through the Private Secretary which was opened by him but did not place the same before the Hon"ble Chief Justice at an appropriate time. She further submitted that said Sri Singh is the key-man in delaying the process due to personal relationship with Sri Diwakar Mishra. A caucus is formed in the Registry of the High Court to do all types of mischievous activities. Sri Jokhan Singh, by filing affidavit, contended before this Court that he is not required to be involved in such type of controversy because he is not supposed to receive anything but the dealing Assistant on the peon book and thereafter place it before the Hon"ble Chief Justice.

7. According to us, although it is a question of oath versus oath and our personal knowledge about the person concerned or remarks about the caucus can not find place in the judicial verdict, but we can expect the right thing, right direction and right spirit from the Registry of the High Court. It carries the administration of justice. Therefore, if any reflection is carried out to the outside in respect of own administration, it can malign the image of the High Court. We should not create any such situation as alleged or at all.

8. From the aforesaid discussion, three specific lapses have come out:

- (i) there is no explanation about the delay in complying with the order of the Court;
- (ii) in spite of holding enquiry Sri Diwakar Misra is allowed to continue in the post of Registrar (Establishment); and
- (iii) misbehaviour and/or derogatory remarks, if any, on the part of Sri Jokhan Singh, Principal Private Secretary to the Hon"ble Chief Justice.

9. So far as the first point is concerned, we have come to know that the process of enquiry has been expedited by issuing charge-sheet. Therefore, we can expect that now there should not be any delay in finalising the matter. So far as second point is concerned, placing of Sri Diwakar Mishra to somewhere else or under suspension is the discretion of the Hon"ble Chief Justice or the administrative side of the High Court, for which we can expect without exercise of judicial power. So far as Sri Jokhan Singh is concerned, we have come to know from the placement of a photocopy of the office order of the State dated 30th August, 2007 that- he is under extension of service, which is going to expire sometime in February, 2008. Such photocopy is kept with the record. According to us, extension is an exception not the rule. Extension can be made by the appropriate authority applying its discretion only when situation is inhabitable and the person concerned is well deserving. The extension can be applicable only in the rarest of the rare cases but not as a matter

of course being influenced or on the basis of nepotism, if any. Our Registry is full of Private Secretaries, who are diligent in discharging the activities of Principal Private Secretary or of similar posts. However, since his extension is expiring by the month of February, 2008, we expect that no such type of extension will be recommended or made from which there will be possibility of maligning image of the Hon"ble Chief Justice and the High Court.

10. We wanted to maintain utmost judicial restraint and accordingly done so following the doctrine of balancing. Therefore, the contempt proceeding is dropped without imposing any punishment but with the hope and trust that good thing will prevail as per our observations and caution. Accordingly, the application is disposed of.

However, there will be no order as to costs.