

(2004) 12 CAL CK 0037

Calcutta High Court

Case No: W.P.C.R.C. No. 8436 (W) of 2003 and C.R.O No. 1350 of 2002

Bipul Kumar Roy and Others

APPELLANT

Vs

M.N. Roy and Others

RESPONDENT

Date of Decision: Dec. 14, 2004

Citation: (2005) 3 CHN 197

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Amit Prokash Lahiri and Santi Das, for the Appellant; M.M. Das and Sajahan Ali Khan for Contemner No. 1 and Jaydip Kar and A.C. Kar for Contemner No. 2, for the Respondent

Judgement

Amitava Lala, J.

This contempt application is arising out of non-compliance of the order of this Court passed on 19th June, 2002. Earlier by an order of the High Court the State Government issued an Office Order dated 22nd April, 1997, to facilitate the people attached to the Career Advancement Scheme under Burdwan Zilla Parishad from 1st April, 1989 to 22nd August, 1996. A question arose why the same principle will not be applicable in respect of other districts. On 4th September, 1997 another Office Order was issued by the Principal Secretary to follow the earlier Office Order dated 22nd April, 1997. An anomalous situation arose in reading paragraph XII of the Office Order. This Court clarified the same by holding that similar principle is to be adopted in respect of all the districts within the State with effect from 23rd August, 1996 in pursuance to the impugned order dated 4th September, 1997. The order would have been complied with at the earliest. But since the same has not been done, the petitioners made this contempt application wherein Rule was issued. The contemners having been present obtained exemption from personal appearance until and unless further order or orders are to be passed by this Court. Subsequently two letters were written by the Deputy Secretary to the Government of West Bengal being dated 13th August, 2003 and 28th August, 2003 to the Executive Officer,

Hooghly Zilla Parishad to follow the Office Order dated 4th September, 1997 which was not the import of the original order. The import of the original order is that the said office order will be followed as per the clarification of the Court. Therefore, the contempt was aggravated in that way. In further, with utter surprise I saw that in the first letter i.e. 13th August, 2003 titling word of the Judge of the High Court, i.e. "Justice" was misplaced with an impression that such word can be placed anywhere or everywhere either before or after the name of a Judge. Even non-placement or replacement by any other word other than the word "Justice" can be made as if the same is mere or bare nomenclature.

2. Therefore, two issues are involved hereunder. First one is in connection with the merit and second one is in connection with showing disrespect to the members of the superior judiciary i.e. the High Courts and the Supreme Court.

3. Upon hearing the parties I am of the view that neither there was any question of misunderstanding nor availability of two possible views under the order. Therefore, no such defence can be available to the contemners. The reference in the Departmental Memorandum/Office Order dated 13th August, 2003 and 28th August, 2003 ought to have been backed by the reference of the Departmental Memorandum/Office Order dated 22nd April, 1997 which was the basis of the order passed by this Court. By not incorporating the same contemners unnecessarily kept the litigation undecided for the future. The jurisdiction of the Court of Contempt is not only restricted with a power to punish one but also have power to get the order executed in the proper manner. In fact, the Departmental Memorandum/Office Order/s was/were issued during the pendency of the application under threat of contempt. Therefore, the clarification of the order is effectively made only when the contempt proceeding was initiated. Therefore, the contempt is established. However, since unconditional apology is prayed, the same is accepted and in accepting the same I hold and say that the import of the Departmental Memorandum/Office Order is to be construed as an outcome of the original Departmental Memorandum/Office Order dated 22nd April, 1997 in addition to Departmental Memorandum/ Office Order dated 4th September, 1997 as regards paragraph XII of the earlier order to avoid possibility of tactical or clever ploy or any arbitrary action on the part of the Governmental authorities, if any, in future.

4. In the letter of compliance dated 13th August, 2003 the contemner put the name of the Judge of the High Court at first then the word "Justice". This is highly improper. If allowed, dignity of the High Court will be deteriorated. When the Court observed the same and sought for explanation, the contemner tendered apology through his Counsel and sought for leave to withdraw the letter and produce afresh with an appropriate incorporation. But surprisingly on the adjourned date again the self-same letter was placed only striking out the word "Justice" and by incorporating the word "J" after the name of the Judge. The attitude of the contemner/s can not be appreciated. Incorporation of the word "J" immediately after the name of the

Hon"ble Judge in the judicial pronouncements is the style of writings by the members of the superior judiciary amongst themselves. This is not made for the people outside the judicial fraternity. A layman or a litigant cannot be allowed to adopt such style in their official documents, correspondence etc. generally or specially. Therefore, I have no manner of hesitation but to construe that the leave granted earlier has not been properly discharged by the contemner. Aggravation of the contempt has been perpetuated. In other words, the contemner has considered the grave error as silly mistake. It is an unfortunate situation. Shall I ignore? I can easily restrain myself by ignoring such offence. But I am not an individual hereunder. If I do so it will render disrespect to the judiciary fraternity as a whole. Judicial rigour will be meaningless idea. My conscience does not permit to ignore the offence. Hence, certain amount of judicial observation in general is needed to be made hereunder.

5. Very often, we find non-placed or misplaced title "Justice" in the passports, Income Tax, PAN Nos., life insurance policies, provident fund accounts, air tickets, bank accounts, newspapers and in other innumerable places before the names of the Hon"ble Judges of the High Courts and the Supreme Court. If any mistake is caused, Hon"ble Judges ignore the same out of magnanimity. But some people are trying to take advantage of such magnanimity. If you find a Judge is titled as "Just" but not "Justice" in air tickets you will not be surprised because the as usual answer would be that it is a mistake of the computer, what can be done? Likewise when you will find that title "Justice" is not been incorporated in your passport you will not become astonished because their handbook consists of the words "Dr., Mr., Mrs., Miss, Coln., Prof, etc." only. Even you are not within the word "etc."! If it is allowed to go on uncontrollable situation will arise in future. It is such a stage I feel that there should be a verdict showing necessity of calling the High Courts or the Supreme Court Judges uniformly irrespective of their retirements otherwise materialistic world will grab entire respectability towards judiciary.

6. There is a gulf difference in between English training and English ruling. We cannot continue with their ruling at the cost of our independence but we cannot disassociate ourselves from their training. Following the same we have made our Constitution. Hon"ble Judges of the High Courts and the Supreme Court are integral part of the Constitution. They are the Constitutional authorities. Such Constitutional authorities, immediately with elevation in the Bench are called as "Justice" by the judicial fraternity and ultimately by the society at large as a matter of practice. The practice of the Court is its laws i.e. cursus curiae est lex curiae. Hence the word "Justice" neither can be said to be limited title for the purpose of sitting in the Bench only or for using the same causally or carelessly. Unless there is no special reason they would have been called "Mr.... Judge" etc. like the members of the judiciary upto the level of District Judge, Registrar etc. On the contrary, sometimes such persons are called as "Justice" or "Bicharpatti" or "Nayamurti" particularly in the media reporting due to ignorance of concerned journalists. This is also incorrect.

The words "Justice" and "Judge" grammatically might be the same or similar in nature but the word "Judge" cannot be equated with the title "Justice" in the legal parlance. Taking a contrary look we see that before the name of a Judge of the High Courts and the Supreme Court the words "Hon"ble Mr. Justice" are placed for the purpose of showing deeper respect. I want to say that the word "Hon"ble" is ornament to the word "Justice" when the word "Mr." is excess but the word "Justice" is title. Everyone can approach them in such way. But one cannot ignore the title if commits any mistake in not using other parts of address. In England sometimes the word "Mr." is replaced by the word "Lord". That is an additional title of that country. In our country there is no such practice. We firmly believe in the community of the Judges of the superior judiciary as a whole. In any event singled out departure cannot be equated with the respect of such community. The word "Justice" is indicative of their nobleness for ever. Nobody can take away such title due to his retirement from the Judgeship. A "Judge" may die but "Justice" cannot. Tenure of "Judge" may expire but "Justice" is not. Therefore, the word "Justice" is not a bare or mere nomenclature attached to a Judge of a superior judiciary but value based. Hon"ble Judges of the superior judiciary are the living Justice. Their justice as a Judge is immortal. The word "Justice" is a devotional call towards the priests of the Judiciary. They cannot be equated with man, money or executive power. Living society ends somewhere. The place is temple of Justice. Justices are part of it. Therefore, not putting the title "Justice" before the names of the Judges of the High Courts or Supreme Court is not a silly mistake as the learned Counsel on behalf of the contemner/s wants to explain before this Court but a contempt.

7. A question arose that if a "Justice" after retirement from his office as a "Judge" joins in politics or become member of the Bar, what will happen? The answer is simple. He, who opts for the same in his wisdom surrender the title "Justice" either to the High Court or Supreme Court where he last served for the necessary period and if necessary inform the Election Commission, Ministry of Parliamentary affairs, Bar Council etc., either directly by himself or through the concerned registry.

8. Therefore, in accepting unconditional apology the contempt application stands disposed of as against the Rule with the observation and order to follow the same truly and properly. Personal presence of the contemners is permanently dispensed with. However, no order is passed as to costs.

9. Copies of the order will be duly forwarded to the President of India, Ministry of Law and Justice, Union of India and the Ministry of Law of the concerned State through their respective Secretaries by the Registrar General of the High Court for the purpose of issuance of a circular upon all the departments that Judges of the High Courts and the Supreme Court, sitting or not sitting, will not be allowed to be called without putting the word "Justice" before their respective names in all the places either in speeches or in writings whenever and wherever necessary. This is also to be done by wide circulation by the appropriate public offices so that private

persons, non-Governmental organizations, enterprises operating privately or in association with the Governmental authorities or as the instrumentality and the media to follow the directives truly and properly. Incidentally, in the vernacular of the State the word "Bicharpati" or in the national language the word "Nayamurti" can be replaced. In other languages the similarly placed words are to be incorporated. Of course this will be done when the word "Justice" is not used in such language. Under no circumstances non-placement or misplacement of such title will be taken up lightly.

10. Let an urgent xeroxed certified copy of this judgment, if applied for, be given to the learned Advocates for the parties within two weeks from the date of putting the requisites.