(1982) 02 BOM CK 0062

Bombay High Court

Case No: Writ Petition No. 1976 of 1981

R.J. Mehta		APPELLANT
	Vs	
His Lordship the Chief Justice Venkat Shrinivas Deshpande and Others		RESPONDENT

Date of Decision: Feb. 4, 1982

Acts Referred:

- Constitution of India, 1950 - Article 220, 226

Citation: AIR 1982 Bom 125 : (1982) 1 BomCR 273

Hon'ble Judges: S.C. Pratap, J

Bench: Single Bench

Advocate: Indira Jainsing, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. This constitutional action stands in a class by itself. Sut generis, if one may say so. The petitioner, one R. J. Mehra, a trade union leader, has moved this Court by this unusual action under Article 226 of the Constitution. Respondent No. 1 , Mr. Justice V. S. Deshpand, is the learned Chief Justice of this High Court and the other two respondents. Mr. Justice B. A Masodkar and Mr. Justice R. L. Aggarwal, are the learned sitting Judges of this High Court. Arguments advanced by the learned Counsel Miss Indira Jaising in support of this petition were heard in externso. A speaking order was requested. There being precedents of different Courts on speaking orders st the admission stage. I proceed to give one here.

2. Initially to summarize the averments:

In Oct., 1980 a trust vix., Indira Gandhi Pratibha pratisthan Trust was set up by Mr. A. R, Antulay, till recently the Chief Minister of Maharashtra. Mr. A. R. Antulay is the principle trustees thereof and Mr. Justice B. A. Masodkar and Mr. Justice R. L.

Aggarawl, respondents Nos. 2 and 3 respectively, are two of the other trustees, For this trust, huge sums were collected from various persons Contributions were obtained by Mr. A. R. Antulay and/or the other trustees from persons who had business with the Government such as grant of cement permits, no objection certificates, liquor permits, etc. In receiving these, favours may have been or would be shows to the donors most of whom were wealthy persons who not only have business with the Government but are also often litigants in this Court - these being the obvious reasons for their contributions. Though this trust has been ".....a symbol or political corruption". Respondent Nos. 2 and 3 did nothing to dissociate themselves therefrom. ".....Their duties as judges are likely to conflict with their interest in the said trust as also in the persons who are donors to the trust as also in the Government." They have, therefore, ceased to possess the necessary qualifications for being judges and are hence disqualified in that behalf or in any event from entertaining any trying matters in which Mr. A. R. Antulay, the State Government, the ruling party viz., Congress (1) and the donors to the said trust are parties impreaded.

3. Reference is then made to:

"(a)"..... an openly political and partisan conference" viz., The All Indira Conference of the Intelligent help in August 1981 under respondent No. 2''s chairmanship of its Reception Committee;

(b) certain cases involving the trust and the trustees pending under the constitutional as also the criminal processes of this Court:

(c) resolutions of the Bar Council of India and the Bar Council of Maharashtra expressing disapproval to the contented participation by respondent Nos. 2 and 3 as trustees;

(d) press interview by respondent No. 2 identifying himself with the objective of the said trust and declining to resign therefrom.''

4. Submitting that he is associated with several petitions pending in this Court against the State of Maharashtra and is, therefore, vitally concerned and affected by administration of justice in this Court, the petitioner, to quote him verbatim, avers:

"..... for the first time issues of great constitutional significance which involve some issues of judicial functioning in an open society, issues which ultimately have a bearing on the basis structure of the Constitution, have been raised by this petition. The questions are; Whether the highest judicial functionary of the State can still discharge judicial functions when he associates with a trust, the funds of which are collected by means considered questionable by the general public, when there is great public resentment about the mode and manner in which the said funds are collected, the misrepresentation made and manner in which the said funds are collected, the misrepresentation made about the true character of the trust in an

official publication of the State and moneys are collected on such misrepresentation. The petitioner says that there is such a public censure about the transactions of the trust in the press, in Lok Sabha and the Rajya Sabha, that it is considered by the general public as raging political scandal of the day resulting in tendering of the resignation of the Chief Minister, Shri Abdui Rehaman Antulay, the principal trustee of the said Trust. A criminal complaint has been filed against the Chief Minister (Mr. A. R. Antulay) were respondent Nos. 2 and 3 have been cited as witnesses. It is submitted that a Judge should function of be allowed to function of even assigned any work in such a situation is the very negation of all constitutional values viz., the independence of the judiciary. Itis submitted that the petition is filed to restore the constitutional values and that do to so is not to show disrespect of the Judges. The petitioner submits that he has the highest respect for the Judges and the present petition is confined only to the constitutional issues arising out of their actions which are inconsistent with their function".

5. Reliefs claimed are mainly to the effect that:

(a) The court should issue a writ of quo warrant declaring respondents Nos. 2 and 3 disqualified from continuing to hold the office of a Judge in this High Court and that the office they enjoy stand vacated.

(B) Respondent Nos. 2 and 3 should be restrained from acting as Judges in all cases to which the State of Maharashtra, Co-trustees of the said trust, the donors to the said trust including the donors listed in Ex A to the said trust (deed) and members of the Congress (1) are parties impleaded.

(C) Alternative relief claimed is injunction restraining respondent No. 1 the Chief Justice, not to assign any judicial work is respondents Nos. 2 and 3.

6. It is in this overall context that the learned Counsel, miss Indira Jaising, expressed serious apprehension in the mind of the petitioner - and several like minded other citizens - on the question of judicial independence with specific reference to the second and third respondents association as trustees of the trust in dispute. The important question at the outset, however, is;

Is such apprehension justifiable? Equally important next question being:

Is a writ petition such as this an appropriate remedy at all?

My answer to both these questions is in the negative. In the first instance, grievance to be justifiable should at the minimal be concrete and real. This indeed is the sine qua non, an indispensable condition for judicial review. Basic to judicial adjudication is not a general atmospheric situation, howsoever genuine if be, but an active lie, an actual case in controversy. An issue or a controversy to be amenable to judicial adjudication and redress, as distinguished from academic or theoretical discussion, must have a visible setting of specific facts and circumstances, in the context whereof along it can be legally considered and judicially determined. Courts do not

decide abstract apprehensions. Writs - operational judicial instruments - are not issued in isolation or in vacuo. There can be no general judicial determination of hypothetical apprehension. Jurisdiction under Art. 226. Of the Constitutions not an advisory or consultative jurisdiction. Even the infrequently invoked jurisdiction under Art. 143 of the Constitution has almost always been invoked and exercised in the light internally of one or another concrete setting. Therefore, however laudable May otherwise be the object of this petition. It reflects at the highest. An admirable passing for judicial independence but dehorn any specific its of case.

7. That apart and even otherwise, the circumstances set forth in the petition do not ipso facto lead to the intercede - loss of confidence in judicial independence - sought to be so readily drawn therefrom. The advocate anxiety is more conjectural than real. The relieves claimed are also unprecedented. And though a Court need not feel constrained by mere want of precedent, it must nevertheless, when asked to set up one, act with great judicial caution and prudence, restraint and property. It would be a highly dangerous precedent to lay down by holding an validly subsisting in Court. Power to examine. Consider and adjudicate upon a judge''s judicial independence. Such a role is plainly beyond the jurisdiction of this Court Such extraordinary investigation would be an extremely hazardous course to navigate and a wholly unconstitutional exercise of judicial power.

8. So far as assignment of work is concerned. It is - subject, of course, to the rules of the High Court, - the exclusive right, duty and privilege of the learned Chief Justice Contention, however, has been that the time has come to lay down norm in that behalf but in a sphere so sensitive and with many a defecate aspect and element entering the field, the norms are best left undefined and best left to the good judgment and discretion of the learned Chief Justice. A system which has by and large worked well for a century and more is best worked well for a century and more is best left undisturbed. Counsel contends that assignment of work is an administrative function and therefore, subject to judicial reviews, Even assuming it to be so, every singular administrative function is not judicially revisable. Save and except perhaps in a case of a patent and clear breach of the of express rules affecting the jurisdiction of the Court. I am not prepared to go to the length of holding the this function is justifiable and can, therefore, by judicially reviewed, and controlled. To as hold can only open the floodgates for a virtual stalemate and anarchy to administration. Every assignment list - why, every single unpleasant assignment - can then become amenable to a judicial challenge. The wheels of judicial administration may as well come to a grinding half, In the very nature of things, therefore implicit confidence in the bona fide exercise of that function by the learned Chief Justice is necessary. Such confidence is all the mote warranted when in a given case. A request to the learned Chief Justice to look into and consider any reasonable grievance can always be made.

9. Miss Indira Jaising, however, vehemently continued to pursue her contentions And this - m ya it be said to the credit of her efforts in that regard - not by way of mere ipse dixit but by reference to authorities. The first of these is the ruling of the Supreme Court in Jyoti Prokash Mitter Vs. Hon''ble Mr. Justice Himansu Kumar Bose, Chief Justice, High Court, Calcutta and Another, That matter, however, arose from a concrete case relating to a live dispute on the age of the learned judge concerned. It was in that context that the observations, to which my attention was invited were made viz.,

".....If a dispute arises about has the age of a Judge, any prudent and wise Chief Justice would naturally think of avoiding unnecessary complications by effusing to assign any work to the sitting Judge, if at the time when the dispute had been raised. It appears that the allegation is that at the relevant time the Judge in questions has reached the age of superannuation". It being".....the duty of the Chief Justice to avoid such a complication".

(Vide page 967 of the report)

The principle of the decision does not held the learned Counsel. The cited observations cannot be delinked from the 1982 Bom/9, III very specific nature of the dispute which evoked the same.

10. My attention was also invited to the following observations of the learned Chief Justice of India in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another,

"It is beyond question that independence of judiciary is one of the foremost concerns of our Constitution"

(Vide page 2328 of the report).

As also to the following observations of the learned Judge Bhagwati. J. In his recent judgment dated 30th Dec., 1981 in the Judges Transfer Case (reported in Air 1989 Sc 146 .

".... the principle of independence of the judiciary is not an abstract conception but it is a living faith which must derive its inspiration from the constitutional charter and its nourishment and sustenance for the constitutional values." As also : (at p. 202)

"The appointment of a Judge of a High Court of the Supreme Court does not depend merely upon the professional or functional suitability of the person concerned in terms of experience or knowledge of law though this requirement is certainly important and vital and ignoring it might resuit in impairment of the efficiency of administration of Justice, but also on several other considerations such as honesty, integrity and general pattern of behaviour which would ensure dispassionate and objective adjudication with an open mind, free and fearless approach to matters in issue, social acceptability of the person concerned to the high judicial office in terms of current norms and ethos of the society. Commitment to democracy and the rule

of law, faith in the constitutional objectives indicating his approach to wards the Preamble and the Directive Principles of State Policy, sympathy or absence thereof with the constitutional goals and the needs of an activist judicial system."

Now, while dealing with a petition as the present, the context in which the above observations were made cannot be ignored. In cases relating to the accept and ambit of the constitutional power to transfer a High Court Judge from one High Court to another arose the question of the independence of the judiciary from executive interference, untrammeled executive power in that respect said to be undermining the independence of High Court Judges, it is while dealing with this altogether different question that the aforesaid observations came to be made it is therefore, difficult to see how these general observations can be availed of in support of the relieves prayed for here.

11. Yet another case referred to was a ruling of the Court of Appeal in Metropolitan Properties Co. V. Lannon. (1959) 1 QB 577, In the context here, two questions arising there (see page 598) may be referred to viz.,

(a) was there "direct pecuniary interest"? No, the purported interest in question being held to be too remote, indirect and uncertain and hence not a disqualification.

(B) was there bla? No. It being observed inter alia that there must appear to be "..... real likelihood of bias. Surmise of conjecture is not enough" In the present case there is not even the remotest indication of direct pecuniary interest nor- apart from sheer surmise and conjecture - of real likelihood of base. This authority also thus has no application here.

12. Coming to yet another authority viz., that of the United States Supreme Court in Stephen S. Chandler, United States District Judge for the Western District of Oklahoma V. Judicial Council of the Tenth Circuit of the United States. (1970) 26 Law Ed 100. The same turned on altogether different and peculiar facts and distinguishing features. That was a matter where, unlike here, the learned Judge himself viz., Judge Stephen S. Chandler, who was a Judge of the United States District Court of the Western District of Oklahonta, filed in the Supreme Court of the United States a motion for leave to file a petition for a writ of mandamus or prohibition against the Judicial Council of the Tenth Circuit which Council had by various orders deprived him of the assignment of cases filed in the District Court. The Supreme Court by majority (five to two with one not participating) denied the motion. In the majority as also in the dissenting opinion, observation - on which there cannot be two views- have been made on the independence of the judiciary such as e.g.

"..... the imperative need for total and absolute independence of Judges in deciding cases or in any phase of the decisional function."

"..... An independent judiciary is one of this nations outstanding characteristic." These observation, unexceptional as these are, do not, however, take the petitioner''s case here any further in relation to the reliefs claimed by him. The authority is clearly distinguishable.

13. The last decision referred to by Miss Indira Jaising is a Division Bench ruling (per Mr. Justice Masodkar and Mr. Justice Aggarwal) of this Court in, In Re A Letter Dated 2nd/15th Sep., 1981 of In Re: A Letter Dated 2nd/15th Sept. 1980 of Shrikant V. Bhat, , It is a detail speaking order at the admission stage of a proceedings initiated upon an order of the then learned Chief Justice whose attention was invited by an Advocate''s letter to a report of the speeches of the (then) Chief Minister Mr. A. R. Autulay and the Sales tax Commissioner Mr.. R. Padmanabaiah. In the context here, the first head note, part of which is actually an extract from Supreme Court''s opinion in the matter of Special Reference No 1 of 1964 (reported in In the matter of: Under Article 143 of the Constitution of India, runs as follows;-

"..... Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in the judicial conduct"

As in Judge Stephen S. Chandler''s case 1970 26 Law Ed 100 (supra) this Court''s response to the above Division Bench ruling is also the same. And while there need be no conflicting views on a Judge''s role as a Judge, the questions here raised and the reliefs here claimed stand on an altogether different footing and substratum.

14. Miss Indira Jaising then referred to the following from the eminent jurist - who was then the Advocate General of Maharashtra - Mr. H. M. Seervai''s Sir Chimanlal Setalved Lectures on "The Position of the Judiciary under the Constitution of India".

"But if the Judge is unable or unwilling to put an end to this perversion of Justice, the Chief Justice is not without a remedy. The Chief Justice sets the tone of the High Court. And is ultimately responsible for all that happens in it, He assigns work to Judges, constitutes benches and where a High Court sits at two different places in the State. He decides the place at which a Judge is to sit."

(Vide page 110.)

And to the following the same learned jurist''s book on "The Emergency, Future Safeguards And The Habeas Corpus Case: A Criticism".

"The present writer is award that judicial power, like any other power can be abused ..... it appears to him that two simple rules, which have only to be stated to command general acceptance are necessary. First, no Judge should make any public announcement, whether under the guise of a lecture or a seminar or not on any matter, social, political, economic or legal which is likely to come before him as a Judge. This rule does not prevent a Judge from stating the law as it exists

.....Secondly,.....No Judge Ministers and members of the executives .....The two simple rules we have mentioned earlier should be incorporated in the conditions or service of every Judge, if necessary, by a suitable constitutional amendment. And the contravention of those rules should be made a "misbehavior"" within the meaning of Art 124(4)."

(Vide pages 126 and 127)

And finally to item, 3 - Avoidance of appearance of impropriety, 24 - Business promotions and solicitation for charity; 26 - Executorships and trusteeships; and 27 - Partisan politics. - from Appendix 11, Canons of Judicial Ethics from the book "Legal and Judicial Ethics" (adapted for the Republic of the Philippines) by George A. Malcolm. Now, in regard to all these citations, suffice it to state that the principles expounded therein, however unexceptional these be, constitute at best a code of conduct and conventions, at highest a charter of judicial ethics. The permissible limits envisaged thereunder are at least in this country and as at present a matter of self-realisation and of self-regulation. Not being law nor part of any adopted code here, such ideals and ethics cannot per se constitute the basis of judicial relieves and constitutional writs.

15. Though under the recent trend, even a citizen not directly aggrieved may initiate a public interest action, the instant petition in that beheld is not just unusual but also goes too far, it may be that ambition and judicial independence may not happily co-exist. It may also be that continuous close proximity to the powers that be, may as well the Laxman Rekha, the vital dividing line of thus far and no further, Even so, however, an individual''s right to hold on to his independent thinking cannot be judicially abrogated. Freedom for the thought - and action - one does not like is one of the basis attributes of an independent people wedded to a democratic was of life. It is equally so not permissible to Judicially audit a Judge''s action dehors or outside his judicial sphere or his reasons for the said-action Stripping a Judge of his judicial function - skin to removing him pro tanto or pro tempore from officer- is an unheard of exercise even in a public interest action. Guarding the guardians is no function of this Court. Such exercise and function this Court will, therefore, decline to perform. The crescendo of public clamour and the irony of events and times - "times that try men''s souls" - may not cloud this funds'' mental issue.

16. This is not to belittle the forceful contentions of the learned Counsel on the importance and purity of the springs of justice for from it. N independent is not an irrelevant appendage but a priceless asset and conscience keeper of a free and democratic people. Though it has no influence over either the sword or the purse, it has behind it the equally important and more lasting power of truth and justice. It also acts as a safely valve and a balance wheel. It often prevents and pre-empts crisis and chaos. An independent judiciary thus becomes an indispensable essence - the very quintessence - of rule of law. That is its true rationale and raison d''etre. In the scheme of things, therefore, what is of the highest importance is that a Judge,

while on the seat of Justice, is judicially independent and enjoys public confidence in the judicial processes at this hands. The pertinent and relevant question thus it;

Does this public confidence depend upon whether a judge is or is not associated with a trust? I think not.

Judicial independence may not be so easily wished away. It may not so lightly become a forlorn hope. Though a perfect Judge free of human frailties is yet to be born - ?"Judges are men, not disembodied spirits" - Judges seized of judicial work do not deflect form the path of duty. Those holding the scales of justice do not falter nor fail their sacred oath. Any lesser rote would be inappropriate to judgeship itself. Judicial independence is not an artificial element. It is a live inner force. If liberty lies in the hearts of the people. Judicial independence lies in the hears of the Judges. And that of all is its best guarantee. And if it remains there, the flag of a free and independent judiciary should - nay, it will - continue to fly aloft the temples of Justice for the benefit of all wings of the State and all citizens of the country.

17. It has been a painful task hearing this petition against my colleagues and high constitutional dignitaries of the State Controversy of a political of a quasi political character should, one very sincerely feels, be out of bounds for a Judge. The principle of high conventions and standards in public offices applies to all the wings of the State but with greater rigour to its judicial wind Indeed, the political party constitution the executive wing of the State has after the judgment in Writ Petition No, 1165 of 1981 (the cement case) - and irrespective of appeal therefrom - laid down an ennobling example of first honouring the said judgment by calling upon its party leader in the State Legislature to lay down the highest executive office of the State. It justice must not only be done but must also appear to be done, the effect of controversial trusteeship on the office of judgeship cannot be altogether ignored. Lending one''s official prestige and with it albeit sub silentio the high authority and dignity of the High Court to a politically controversial trust cannot This anxiety grows all the more by the following judgment - to which my attention was pointedly invited;-

"..... inescapable inference in this case is that there is a nexus between allotments and donations - and that one was a quid pro quo for the other - once nexus is established, mala fides must be the natural sequitur - It cannot be said in defence or mitigation that that donations were openly received by cheque and are accounted for by the Trust or that they did not go into the pocket of the 2nd respondent himself. None of this would make any difference. It would even have made no difference had the 2nd respondent not been connected with these Trusts. That be is, makes it worse."

That be is, makes it worse/"

Surely then, as is seriously contended by the learned Counsel, if this be the finding relating to the main or the child trustee, can the position of co-trustees remain

unaffected? A cloudy sky is anathema to a judicial universe. Will not the gathering storm amidst a vast section of lawyers and citizens - as witnessed by public statements and resolutions of Bar Councils and leading Bar Associations referred to by the learned Counsel - open facts impair the confidence inspiring quality and atmosphere of an independent judiciary? As observed by chandrachud, J. As that learned Chief Justice of India then was>

"Respect for law is, in a large measure, dependent upon the esteem in which the society holds those whose duty it is to interpret the law ."

1972 74 Bom LR 68 cited by Counsel.)

18. Questions raised in this petition are undoubtedly of considerable public importance. But if I am right in the view I have taken, these question are not amenable in judicial process and legal redress. Every public question is not capable of constitutional adjudication. Judicial independence and public confidence therein is not and cannot be a matter of writs and injunctions. It is much too sacred to be secured and sustained through such strain-jacket formulas, Therefore, whatever else be the remedy, I for one feel certain that a problem posed and the reliefs prayed no answer to the questions raised.

10. This Petition thus fails and is rejected.

11. Petition rejected.